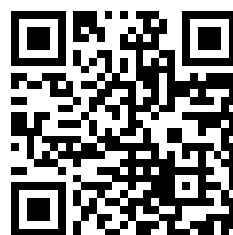

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THE COMPILED LAWS

OF THE
STATE OF NORTH DAKOTA

1913 .

TOGETHER WITH

ANNOTATIONS: (1) EXPLANATORY AND CRITICAL NOTES OF THE COMPILER;
(2) NOTES OF JUDICIAL DECISIONS BY WHICH THE VARIOUS SECTIONS
HAVE BEEN CONSTRUED; (3) REFERENCES TO PERTINENT AND IM-
PORTANT NOTES IN ANNOTATED REPORTS. ALSO THE CONSTI-
TUTION OF THE UNITED STATES AND OF THE STATE OF
NORTH DAKOTA WITH THE AMENDMENTS THERETO.

W. H. R. L. 1913. 1914

BY AUTHORITY OF THE LEGISLATIVE ASSEMBLY

VOL. I

ROCHESTER, N. Y.
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1914

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PREFACE

The preparation of these "Compiled Laws of North Dakota" for the year 1913 has been made pursuant to chapter 197 of the Laws of 1913 and the contract made in accordance therewith.

All amendments to the laws in the revised codes of 1905 have been substituted and incorporated, and all new statutes included without change or modification. Laws expressly repealed have been eliminated. Some enactments that have been declared unconstitutional are continued in the compilation, but these are in brackets, with footnote references showing that the courts have declared them invalid.

The renumbering of the sections, articles and chapters has been made where necessary to perfect and harmonize the statutes, with the result that the sections of the codes are numbered consecutively throughout the entire work. At the end of every section, in brackets, is a reference in chronological order to the laws from which the section is taken. Where the section in its present form is taken from a recent session law, that session law is cited first, and is followed by references to the previous compilations or session laws which show the development of this section, if it has been changed from time to time. This feature is the same as it was in the revised codes of 1905.

Explanatory and critical annotations have been made in a great number of instances to point out the relation of any particular section to other provisions, where there may be a question of an implied repeal or amendment, or any other question in respect to the validity or effect of the section. Some of these matters relate to what seem to be errors in the session laws or in the earlier compilations. But the policy is not to present any dogmatic opinions of the compiler in these cases, but merely to call attention to the existing facts, so as to prevent the users of the statutes from overlooking what may be of importance to them. Sometimes, reference is made to the titles of the acts of the legislature when these may have some value to elucidate obscurities in the body of the acts. Emergency sections also are quoted occasionally, when the recitals therein may assist in construing the statutory provisions. Again, vetoes of amendatory acts are usually cited, and occasionally quoted, when the reasons given in the veto message appear to be especially instructive. In all these matters, the compiler has sought merely to present everything that may throw any light upon matters of construction.

Another class of annotations to the various sections of the statutes consists of references to the decisions of the supreme courts of the several states and of all the federal courts that have construed such provisions. In addition to these references to decisions in other states, especially California, on their local statutes have been quite liberally cited, where those particular statutes are somewhat similar to provisions of the North Dakota statutes. Citations of all decisions refer, not only to the official reports, but to the National Reporter System and to various series of selected cases.

A third class of notes to the sections of the statutes consists of references to a great number of important annotations in various series of annotated reports, where they are pertinent to the subject dealt with in the sections to which they are cited. These annotations often deal with the principles involved in the statutory provisions, and bring to bear upon them the results of judicial investigation and reasoning in all the jurisdictions of this country.

PREFACE.

The greatest care has been taken to provide the most thorough and complete Table of Contents and Index for these statutes.

The constitution of the United States, the constitution of North Dakota, and the enabling act have also been included herein, with annotations thereto.

The work of comparing and critically compiling all the laws found in the previous compilations or codes and in the subsequent session laws has been done with the most extraordinary and scrutinizing care, chiefly by Mr. Charles C. Moore, author of "Moore on Facts," and also of the very valuable treatise on Statutory Construction, contained in the Federal Statutes Annotated of which he was one of the compilers. To him are due the exceptionally full and critical notes that deal with the statutory provisions themselves in their relation to each other,—a good sample of which is the note at the head of the military code, on page 568. He has worked constantly in direct association and consultation with the editorial staff of the publisher, which has been responsible for all the other annotations to the statutes, as well as for the Index to the work.

August, 1914.

PREFACE TO REVISED CODES OF 1905

In publishing this volume of the revised codes of North Dakota it is deemed proper to give briefly a sketch of the enactment and codification of the codes of the territory of Dakota and state of North Dakota.

The legislative assembly of the territory of Dakota at its first session in 1862 adopted a code of civil procedure taken from Ohio. In 1868 this code was repealed, and the code of civil procedure of New York was adopted in its place. At that session there was also adopted a code of criminal procedure. This code was repealed in 1869 and a code of criminal procedure that had been prepared by a New York commission for that state adopted in its stead. This code was again amended and re-enacted in 1875. A justices' code was adopted in 1862, which was repealed and a new code adopted in 1863. This was again repealed in 1866, and another complete code on the subject enacted. A penal code was adopted at the second session of the legislative assembly in 1863, which was repealed in 1865 and the code drafted by the New York commission for that state, adopted in its place. A probate code was adopted in 1865. A civil code taken from that prepared by the New York commission was adopted in 1865, and took effect January 12, 1866. The New York commission referred to was composed of David Dudley Field, William Curtis Noyes and Alexander W. Bradford. It was created in 1857 and reported to the New York legislature in 1865. Of these the penal code alone became a law in that state and it was not adopted until 1882. The territory of Dakota was the first English speaking community to adopt a codification of its substantive law.

In 1875 an act was passed providing for a commission of three to revise and compile the codes of the territory of Dakota, which commission consisted of P. C. Shannon, Granville G. Bennett and Bartlett Tripp. They prepared the revision of 1877. In 1887 E. W. Caldwell and Charles H. Price were appointed commissioners pursuant to chapter 83 of the laws of 1887, and prepared the compilation of 1887, known as the compiled laws. This compilation was in 1889 declared by the legislative assembly to be admissible in the courts of the territory as legal evidence of the statutes therein printed.

Upon the admission of the state of North Dakota it became necessary to adapt the laws then in force in the territory to the constitution of the state, and harmonize the various laws passed by succeeding sessions of the legislative assembly since the revision of 1887. Under chapter 82 of the laws of 1891 the governor appointed as commissioners R. M. POLLOCK, P. H. ROURKE and J. G. HAMILTON who upon organization appointed J. F. PHILBRICK secretary. This commission reported to the legislative assembly in January, 1893, showing in detail those provisions of our statutory law which should be continued in force and those which should be repealed. No legislative action was taken upon this report, but chapter 74 of the laws of 1893, passed at the same session, authorized the appointment by the governor of a new commission on codification, and CHARLES F. AMIDON, BURKE CORBET and GEORGE W. NEWTON were appointed as such commissioners. On organization they appointed CHARLES J. FISK as secretary. When the legislative assembly convened in January, 1895, this commission reported bills providing seven different codes, which comprised the entire statutory law of the state. A special joint committee of the house and senate was appointed, to whom all

PREFACE TO REVISED CODES OF 1905.

these bills, together with all other bills making changes in existing laws, were referred. Many changes were made by the committee and the legislative assembly in the reported bills of the commission. All laws in force in the state of North Dakota, previous to the taking effect of the enactments of the legislative assembly of 1895, and in conflict therewith, were specifically repealed by reference to sections and chapters. After the adjournment of the legislative assembly, the revised codes of 1895 were printed by the commission, and by virtue of the governor's proclamation, which had been provided for by law, they became the complete body of laws in force in the state of North Dakota.

The edition of the revised codes of 1895 being exhausted, the legislative assembly in 1899 provided for a new codification to be known as the revised codes of 1899, the secretary of state being authorized to supervise such codification and publication. In pursuance of this authority R. N. Stevens, a member of the Burleigh county bar, and M. H. Jewell, editor of the Bismarck Tribune, were employed to compile and edit this edition.

The edition of the revised codes of 1899 being exhausted the legislative assembly, by chapter 41, laws of 1905, authorized a new codification to be known as the revised codes of 1905, giving the secretary of state authority to supervise such codification and publication. Under the law of 1905 it was provided that this edition of the revised codes should contain, by appropriate references, annotations to each section, so far as construed by the supreme courts of the territory of Dakota and the states of North and South Dakota. This involved an enormous amount of work not included in former revisions of the codes and has required more time than originally contemplated. The contract for codification, annotation and publication, under the supervision of the secretary of state, was awarded to M. H. Jewell, who associated with him, in charge of the annotation features, R. N. Stevens, and in general codification J. G. Hamilton, member of a former revision commission, and R. D. Hoskins, clerk of the supreme court of this state. This volume is the result of their work.

An effort has been made to improve and greatly expand the index to this volume. The cross-indexing has been elaborated and by a system of sub-catch lines in boldface type it is believed that the subject desired may be located much more readily in this volume than in any other similar work published. The main subjects are printed in capital letters, the sub-titles or "catchlines" in boldface and the subdivisions thereof alphabetically arranged so as to present quickly to the eye the various divisions or minor subjects. For instance the subject of liability of directors of corporations for creating debts illegally appears in the index as follows:

CORPORATIONS.

directors, action against, for what.....	7366-7368
liability, bonds, for illegally issuing.....	4225
debts, for creating illegally.....	4221
number	4208
officers, election of	4209

The first word in each line is the "catch word" of the subject matter and relates and must be construed in connection with the line above having a different indenture. Thus, in the example cited above, line three transposed would read: "Liability of directors for illegally issuing bonds." Line three is indented to the right, and the first word, "liability," relates to "directors." Line four cites another section, but relates to the same subject, and when coupled with the "catch words" of lines preceding, rounds out the sentence: "Liability of directors of corporations for creating debts illegally." In lines five and six the "catch words" "number" and "officers, election of," relate to "directors," and are therefore indented the same as "liability" in line three, relating to the same subdivision. Thus a vast amount of verbiage and

PREFACE TO REVISED CODES OF 1905.

repetition is omitted and the scheme of the index is simplified. The "catch words" also being arranged alphabetically, obviates the necessity of looking through the entire references made under a main head to find what is desired. Where citations are made to collateral subjects the section numbers have been enumerated wherever it has been possible to do so. In some instances, however, the collateral subject referred to embraces so many different sections in different chapters of the code that it has been found impossible to give, in the index, the numbers of the sections. These citations enable one to turn immediately to the sections in the code comprising the subject matter referred to.

At the end of each section is indicated the origin and history of the provision embraced therein—the former session law, chapter and section, or code, from which the subject matter was taken or by which it was revised. Reference is made to revised codes of 1899, except where a section originated with or was changed by the revision of 1895.

Abbreviations used: "R. C.," revised codes; "Pol. C.," political code; "Civ. C.," civil code; "C. Civ. P.," code of civil procedure; "Pro. C.," probate code; "Jus. C.," justices' code; "Pen. C.," penal code; "C. Cr. P.," code of criminal procedure.

Under the provisions of the law authorizing this codification, after proclamation by the governor, the revised codes of 1905 shall be in full force and effect and be received as evidence of the laws of this state in all courts thereof. An effort has been made to avoid errors in this codification but inasmuch as codification only and not revision was authorized, there appear some conflicting provisions which as occasion may demand the courts must construe.

E. F. PORTER,
Secretary of State.

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CONSTITUTION

OF THE

UNITED STATES OF AMERICA

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the United States of America.

Preamble; purpose. 21 Wall. 162, 22 L.ed. 627.

ARTICLE 1.—THE CONGRESS.

§ 1. All legislative powers herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives.

Legislative power generally. 106 U. S. 629, 27 L.ed. 290; 129 U. S. 505, 32 L.ed. 784; 135 U. S. 1, 34 L.ed. 55; 143 U. S. 649, 36 L.ed. 294.

§ 2. The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of representatives shall not exceed one for every thirty thousand, but each state shall have at least one representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the representation from any state the executive authority thereof shall issue writs of election to fill such vacancies.

The house of representatives shall choose their speaker and other officers, and shall have the sole power of impeachment.

Cl. 1. Election of representatives. 21 Wall. 162, 22 L.ed. 627; 110 U. S. 651, 28 L.ed. 274; 134 U. S. 377, 33 L.ed. 951; 146 U. S. 1, 36 L.ed. 869; 193 U. S. 621, 48 L.ed. 817.

Cl. 2. Qualification of representatives. 143 U. S. 135, 36 L.ed. 103; 157 U. S. 429, 39 L.ed. 759; 169 U. S. 649, 42 L.ed. 890.

Cl. 3. Apportionment of representatives and taxes. 3 Dall. 171, 1 L.ed. 556; 5 Wheat. 317, 5 L.ed. 98; 5 Pet. 1, 8 L.ed. 25; 15 Pet. 449, 10 L.ed. 800; 7 How. 283, 12 L.ed. 702; 18 How. 331, 15 L.ed. 401; 7 Wall. 433, 19 L.ed. 95; 98 U. S. 517, 25 L.ed. 174; 112 U. S. 94, 28 L.ed. 643; 182 U. S. 244, 45 L.ed. 1088; 192 U. S. 363, 48 L.ed. 481; 220 U. S. 107, 55 L.ed. 389.

Cl. 4. Vacancies. 146 U. S. 1, 36 L.ed. 869.

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§ 3. The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years, and each senator shall have one vote.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the senators of the first class shall be vacated at the expiration of the second year; of the second class, at the expiration of the fourth year; and of the third class, at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen by resignation or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature which shall then fill such vacancies.

No person shall be a senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.

The vice-president of the United States shall be president of the senate, but shall have no vote, unless they be equally divided.

The senate shall choose their other officers, and also a president pro tempore in the absence of the vice-president, or when he shall exercise the office of president of the United States.

The senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the president of the United States is tried, the chief justice shall preside, and no person shall be convicted without the concurrence of two-thirds of the members present.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

CL. 1. Senate. 21 Wall. 162, 22 L.ed. 627; 134 U. S. 377, 33 L.ed. 951.

CL. 3. Qualifications of senators. 143 U. S. 135, 36 L.ed. 103; 169 U. S. 649, 42 L.ed. 890.

§ 4. The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but the congress may at any time by law make or alter such regulations, except as to the places of choosing senators.

The congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

CL. 1. Elections. 7 How. 283, 12 L.ed. 702; 19 How. 393, 15 L.ed. 691; 21 Wall. 1622, 22 L.ed. 627; 92 U. S. 214, 23 L.ed. 563; 135 U. S. 1, 34 L.ed. 55; 146 U. S. 1, 36 L.ed. 869.

CL. 2. Sessions. 175 U. S. 423, 44 L.ed. 223.

§ 5. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each house may provide.

Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one-fifth of those present, be entered on the journal.

Neither house during the session of congress shall, without the consent of

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the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

Cl. 1. Judge of elections, returns, etc. 134 U. S. 372, 33 L.ed. 949.

Cl. 2. Rules. 103 U. S. 168, 26 L.ed. 377.

Cl. 3. Legislative journals. 143 U. S. 649, 36 L.ed. 294; 144 U. S. 1, 36 L.ed. 321; 180 U. S. 506, 45 L.ed. 642.

Cl. 4. Adjournments. 175 U. S. 423, 44 L.ed. 223.

§ 6. The senators and representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.

No senator or representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

Disabilities and privileges. 196 U. S. 283, 49 L.ed. 482; 207 U. S. 425, 52 L.ed. 278.

§ 7. All bills for raising revenue shall originate in the house of representatives, but the senate may propose or concur with amendments as on other bills.

Every bill which shall have passed the house of representatives and the senate, shall, before it become a law, be presented to the president of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the president within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the congress by their adjournment, prevent its return in which case it shall not be a law.

Every order, resolution, or vote to which the concurrence of the senate and house of representatives may be necessary (except on a question of adjournment) shall be presented to the president of the United States, and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two-thirds of the senate and house of representatives, according to the rules and limitations prescribed in the case of a bill.

Cl. 1. Bills for raising revenue. 91 U. S. 566, 23 L.ed. 454; 167 U. S. 196, 42 L.ed. 134; 202 U. S. 429, 50 L.ed. 1090; 220 U. S. 107, 55 L.ed. 389.

Cl. 2. Approval and veto. 4 Wheat. 316, 4 L.ed. 579; 97 U. S. 381, 24 L.ed. 1104; 135 U. S. 1, 34 L.ed. 55; 143 U. S. 457, 36 L.ed. 226; 175 U. S. 423, 44 L.ed. 223.

Cl. 3. Joint resolutions. 129 U. S. 505, 32 L.ed. 784; 175 U. S. 423, 44 L.ed. 223; 183 U. S. 176, 46 L.ed. 138.

§ 8. The congress shall have power:

To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

To borrow money on the credit of the United States.

To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

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To establish an uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States.

To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures.

To provide for the punishment of counterfeiting the securities and current coin of the United States.

To establish post offices and post roads.

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

To constitute tribunals inferior to the supreme court.

To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.

To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years.

To provide and maintain a navy.

To make rules for the government and regulation of the land and naval forces.

To provide for calling forth the militia to execute the laws of the union, suppress insurrections, and repel invasions.

To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers and the authority of training the militia, according to the discipline prescribed by congress.

To exercise exclusive legislation, in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings; and,

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Power of congress generally. 4 Wheat. 316, 4 L.ed. 579; 112 U. S. 94, 28 L.ed. 643; 136 U. S. 313, 34 L.ed. 455; 146 U. S. 325, 36 L.ed. 991; 166 U. S. 485, 41 L.ed. 1087; 173 U. S. 509, 43 L.ed. 786; 187 U. S. 281, 47 L.ed. 178; 187 U. S. 447, 47 L.ed. 253; 192 U. S. 418, 48 L.ed. 504; 206 U. S. 41, 51 L.ed. 953.

Cl. 1. Taxes; duties; imposts; excises. 2 Dall. 294, 1 L.ed. 387; 3 Dall. 171, 1 L.ed. 556; 5 Wheat. 317, 5 L.ed. 98; 7 How. 283, 12 L.ed. 702; 9 How. 619, 13 L.ed. 282; 12 How. 299, 13 L.ed. 996; 18 How. 331, 15 L.ed. 401; 18 How. 421, 15 L.ed. 435; 5 Wall. 107, 18 L.ed. 518; 6 Wall. 632, 18 L.ed. 904; 7 Wall. 433, 19 L.ed. 95; 8 Wall. 123, 19 L.ed. 382; 23 Wall. 331, 23 L.ed. 99; 102 U. S. 586, 26 L.ed. 253; 117 U. S. 151, 29 L.ed. 845; 123 U. S. 681, 31 L.ed. 275; 143 U. S. 649, 36 L.ed. 294; 163 U. S. 427, 41 L.ed. 215; 178 U. S. 41, 44 L.ed. 969; 181 U. S. 283, 45 L.ed. 862; 182 U. S. 244, 45 L.ed. 1088; 183 U. S. 151, 46 L.ed. 128; 184 U. S. 608, 46 L.ed. 713; 190 U. S. 249, 47 L.ed. 1035; 192 U. S. 363, 48 L.ed. 481; 194 U. S. 486, 48 L.ed. 1087; 199 U. S. 437, 50 L.ed. 261; 215 U. S. 515, 54 L.ed. 307; 220 U. S. 107, 55 L.ed. 389; 228 U. S. 295, 57 L.ed. 642.

Cl. 2. Borrowing money. 2 Pet. 449, 7 L.ed. 481.

Cl. 3. Commerce clause. 5 Pet. 1, 8 L.ed. 25; 6 Pet. 515, 8 L.ed. 483; 15 Pet. 449, 10 L.ed. 800; 5 How. 504, 12 L.ed. 256; 7 How. 283, 12 L.ed. 702; 12 How. 299, 13 L.ed. 996; 19 How. 393, 15 L.ed. 691; 1 Black. 603, 17 L.ed. 191; 2 Wall. 450, 17 L.ed. 805; 15 Wall. 232, 21 L.ed. 146; 15 Wall. 284, 21 L.ed. 164; 17 Wall. 560, 21 L.ed. 710; 92 U. S. 259, 23 L.ed. 543; 92 U. S. 214, 23 L.ed. 563; 94 U. S. 113, 24 L.ed. 77; 94 U. S. 246, 24 L.ed. 122; 94 U. S. 391, 24 L.ed. 248; 95 U. S. 465, 24 L.ed. 527; 95 U. S. 485, 24 L.ed. 547; 96 U. S. 1, 24 L.ed. 708; 97 U. S. 566, 24 L.ed. 1015; 100 U. S. 676, 25 L.ed. 754; 102 U. S. 541, 26 L.ed. 224; 104 U. S. 466, 26 L.ed. 632; 107 U. S. 38, 27 L.ed. 370; 112 U. S. 69, 28 L.ed. 653; 114 U. S. 622, 29 L.ed. 257; 116 U. S. 446, 29 L.ed. 691; 118 U. S. 557, 30 L.ed. 244; 120 U. S. 479, 30 L.ed. 728; 121 U. S. 230, 30 L.ed. 888; 125 U. S. 181, 31 L.ed. 650; 128

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Cl. 4. Naturalization and bankruptcy. 4 Wheat. 122, 4 Led. 529; 4 How. 567, 11 Led. 1105; 5 How. 235, 12 Led. 159; 21 Wall. 162, 22 Led. 627; 143 U. S. 135, 36 Led. 103; 186 U. S. 181, 46 Led. 1113; 225 U. S. 227, 56 Led. 1066; 217 U. S. 509, 54 Led. 861.

Cl. 5. Coinage; weights and measures. 5 How. 410, 12 Led. 213; 9 How. 560, 13 Led. 257; 1 Wall. 512, 17 Led. 500; 12 Wall. 457, 20 Led. 287; 176 U. S. 121, 44 Led. 398.

Cl. 6. Counterfeiting. 5 How. 410, 12 Led. 213; 9 How. 560, 13 Led. 257; 118 U. S. 455, 30 Led. 237.

Cl. 7. Postoffices and post roads. 96 U. S. 1, 24 Led. 708; 203 U. S. 284, 51 Led. 184; 209 U. S. 36, 52 Led. 670; 229 U. S. 288, 57 Led. 1190.

Cl. 8. Patents and copyrights. 8 Pet. 591, 8 Led. 1055; 4 How. 646, 11 Led. 1141; 21 How. 322, 16 Led. 165; 110 U. S. 651, 28 Led. 274; 111 U. S. 53, 28 Led. 349; 112 U. S. 50, 28 Led. 656; 114 U. S. 1, 29 Led. 76; 118 U. S. 180, 30 Led. 158; 128 U. S. 244, 32 Led. 425; 128 U. S. 315, 32 Led. 450; 161 U. S. 10, 40 Led. 599; 194 U. S. 601, 48 Led. 1134; 203 U. S. 347, 51 Led. 216; 210 U. S. 405, 52 Led. 1122; 222 U. S. 55, 56 Led. 92; 229 U. S. 1, 57 Led. 1041.

Cl. 9. Inferior Federal courts. 182 U. S. 244, 45 Led. 1088.

Cl. 10. International crimes. 120 U. S. 479, 30 Led. 728.

Cl. 11. War; prize; capture. 8 Cranch, 110, 3 Led. 504; 22 Wall. 81, 22 Led. 738; 106 U. S. 315, 27 Led. 193.

Cl. 12. Military appropriation. 116 U. S. 252, 29 Led. 615.

Cl. 14. Land and naval forces. 20 How. 65, 15 Led. 838; 100 U. S. 13, 25 Led. 538; 177 U. S. 459, 44 Led. 846; 177 U. S. 496, 44 Led. 861; 183 U. S. 365, 46 Led. 236.

Cl. 15. Militia. 7 How. 1, 12 Led. 531.

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CL. 17. District of Columbia; places ceded and purchased. 4 Cranch, 384, 2 L.ed. 655; 5 Wheat. 317, 5 L.ed. 98; 6 Wheat. 264, 5 L.ed. 257; 3 How. 212, 11 L.ed. 565; 14 Wall. 676, 20 L.ed. 719; 114 U. S. 525, 29 L.ed. 264; 162 U. S. 399, 40 L.ed. 1015; 167 U. S. 324, 42 L.ed. 185; 179 U. S. 223, 45 L.ed. 162; 209 U. S. 36, 52 L.ed. 670. Jurisdiction over places purchased or ceded. 214 U. S. 274, 53 L.ed. 994.

CL. 18. Necessary powers. 18 How. 307, 15 L.ed. 421; 21 How. 506, 16 L.ed. 169; 4 Wall. 333, 18 L.ed. 366; 12 Wall. 457, 20 L.ed. 287; 100 U. S. 257, 25 L.ed. 648; 106 U. S. 371, 27 L.ed. 232; 106 U. S. 629, 27 L.ed. 290; 110 U. S. 651, 28 L.ed. 274; 120 U. S. 479, 30 L.ed. 728; 135 U. S. 1, 34 L.ed. 55; 144 U. S. 263, 36 L.ed. 429; 181 U. S. 283, 45 L.ed. 862.

§ 9. The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.

The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

No bill of attainder or ex post facto law shall be passed.

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

No tax or duty shall be laid on articles exported from any state.

No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another; nor shall vessels bound to, or from, one state, be obliged to enter, clear, or pay duties in another.

No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

Limitations on congressional powers. 4 Wheat. 316, 4 L.ed. 579.

CL. 1. Immigration. 15 Pet. 449, 10 L.ed. 800; 7 How. 283, 12 L.ed. 702; 19 How. 393, 15 L.ed. 691; 107 U. S. 59, 27 L.ed. 383.

CL. 2. Habeas corpus. 3 Cranch, 448, 2 L.ed. 495; 7 How. 1, 12 L.ed. 581; 194 U. S. 279, 48 L.ed. 979; 203 U. S. 174, 51 L.ed. 142.

CL. 3. Attainder or ex post facto laws. 7 Pet. 243, 8 L.ed. 672; 4 Wall. 333, 18 L.ed. 366; 116 U. S. 252, 29 L.ed. 615; 135 U. S. 1, 34 L.ed. 55; 195 U. S. 100, 49 L.ed. 114; 225 U. S. 227, 56 L.ed. 1066; 228 U. S. 585, 57 L.ed. 978.

CL. 4. Apportionment of taxes. 3 Dall. 171, 1 L.ed. 556; 5 Wheat. 317, 5 L.ed. 98; 173 U. S. 509, 43 L.ed. 786; 178 U. S. 41, 44 L.ed. 969; 182 U. S. 244, 45 L.ed. 1088; 192 U. S. 363, 48 L.ed. 481; 192 U. S. 418, 48 L.ed. 504; 199 U. S. 437, 50 L.ed. 261; 220 U. S. 107, 55 L.ed. 389.

CL. 5. Tax on exports. 9 How. 619, 13 L.ed. 282; 7 Wall. 433, 19 L.ed. 95; 8 Wall. 148, 19 L.ed. 387; 92 U. S. 214, 23 L.ed. 563; 173 U. S. 509, 43 L.ed. 786; 179 U. S. 270, 45 L.ed. 186; 181 U. S. 283, 45 L.ed. 862; 182 U. S. 244, 45 L.ed. 1088; 183 U. S. 151, 46 L.ed. 128; 187 U. S. 281, 47 L.ed. 178; 188 U. S. 321, 47 L.ed. 492; 192 U. S. 418, 48 L.ed. 504; 209 U. S. 56, 52 L.ed. 681; 228 U. S. 525, 57 L.ed. 950.

CL. 6. Commercial preferences. 9 Wheat. 1, 6 L.ed. 23; 7 How. 283, 12 L.ed. 702; 12 How. 299, 13 L.ed. 996; 18 How. 421, 15 L.ed. 435; 94 U. S. 113, 24 L.ed. 77; 119 U. S. 388, 30 L.ed. 447; 143 U. S. 517, 36 L.ed. 247; 156 U. S. 577, 39 L.ed. 538; 157 U. S. 459, 39 L.ed. 759; 158 U. S. 109, 39 L.ed. 914; 158 U. S. 564, 39 L.ed. 1092; 178 U. S. 41, 44 L.ed. 969; 182 U. S. 244, 45 L.ed. 1088; 187 U. S. 447, 47 L.ed. 253; 198 U. S. 310, 49 L.ed. 1064.

CL. 7. Appropriations. 6 How. 92, 12 L.ed. 357; 11 How. 272, 13 L.ed. 693; 101 U. S. 832, 25 L.ed. 973; 118 U. S. 62, 30 L.ed. 96; 124 U. S. 236, 31 L.ed. 389; 182 U. S. 244, 45 L.ed. 1088.

§ 10. No state shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts or grant any title of nobility.

No state shall, without the consent of the congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for

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executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the congress.

No state shall, without the consent of congress, lay any duty on tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state or with a foreign power or engage in war unless actually invaded, or in such imminent danger as will not admit of delay.

Restrictions on states. 6 Cranch, 87, 3 L.ed. 162; 6 Wheat. 264, 5 L.ed. 257; 5 Pet. 1, 8 L.ed. 25; 7 Pet. 243, 8 L.ed. 672; 12 Pet. 657, 9 L.ed. 1233; 14 Pet. 540, 10 L.ed. 579; 16 Pet. 539, 10 L.ed. 1060; 2 How. 591, 11 L.ed. 391; 7 How. 1, 12 L.ed. 581; 17 How. 478, 15 L.ed. 181; 4 Wall. 333, 18 L.ed. 366; 21 Wall. 162, 22 L.ed. 627; 100 U. S. 483, 25 L.ed. 628; 108 U. S. 76, 27 L.ed. 656; 136 U. S. 313, 34 L.ed. 455; 172 U. S. 82, 43 L.ed. 374; 173 U. S. 592, 43 L.ed. 823; 176 U. S. 1, 44 L.ed. 347; 178 U. S. 496, 44 L.ed. 1165; 179 U. S. 223, 45 L.ed. 162; 180 U. S. 333, 45 L.ed. 557; 182 U. S. 1, 45 L.ed. 1041; 182 U. S. 244, 45 L.ed. 1088; 185 U. S. 125, 46 L.ed. 838.

Cl. 1. Bills of credit. 4 Pet. 410, 7 L.ed. 903; 8 Wall. 533, 19 L.ed. 482; 12 Wall. 457, 20 L.ed. 287; 19 Wall. 1, 22 L.ed. 90; 117 U. S. 52, 29 L.ed. 805; 152 U. S. 191, 38 L.ed. 408; 164 U. S. 179, 41 L.ed. 395; 2 How. 29, 11 L.ed. 167; 12 Wall. 457, 20 L.ed. 287.

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Impairing contract obligations. 3 Dall. 386, 1 L.ed. 648; 6 Cranch, 87, 3 L.ed. 162; 7 Cranch, 164, 3 L.ed. 303; 4 Wheat. 122, 4 L.ed. 529; 4 Wheat. 518, 4 L.ed. 629; 12 Wheat. 213, 6 L.ed. 606; 2 Pet. 492, 7 L.ed. 496; 4 Pet. 514, 7 L.ed. 939; 1 How. 311, 11 L.ed. 143; 3 How. 133, 11 L.ed. 529; 5 How. 295, 12 L.ed. 159; 5 How. 301, 12 L.ed. 447; 6 How. 507, 12 L.ed. 535; 7 How. 738, 12 L.ed. 894; 8 How. 163, 12 L.ed. 1030; 8 How. 569, 12 L.ed. 1201; 10 How. 402, 13 L.ed. 472; 12 How. 1, 13 L.ed. 867; 15 How. 304, 14 L.ed. 705; 16 How. 369, 14 L.ed. 977; 18 How. 331, 15 L.ed. 401; 22 How. 364, 16 L.ed. 296; 1 Black, 350, 17 L.ed. 216; 4 Wall. 535, 18 L.ed. 403; 10 Wall. 511, 10 L.ed. 997; 13 Wall. 190, 20 L.ed. 550; 14 Wall. 607, 20 L.ed. 756; 15 Wall. 610, 21 L.ed. 212; 16 Wall. 314, 21 L.ed. 357; 16 Wall. 36, 21 L.ed. 394; 20 Wall. 36, 22 L.ed. 282; 92 U. S. 214, 23 L.ed. 563; 93 U. S. 116, 23 L.ed. 825; 95 U. S. 679, 24 L.ed. 558; 100 U. S. 548, 25 L.ed. 710; 101 U. S. 528, 25 L.ed. 912; 101 U. S. 791, 25 L.ed. 921; 101 U. S. 814, 25 L.ed. 1079; 102 U. S. 651, 26 L.ed. 291; 103 U. S. 358, 26 L.ed. 395; 103 U. S. 714, 26 L.ed. 602; 105 U. S. 362, 26 L.ed. 1128; 108 U. S. 514, 27 L.ed. 808; 108 U. S. 568, 27 L.ed. 823; 110 U. S. 53, 28 L.ed. 68; 111 U. S. 701, 28 L.ed. 569; 111 U. S. 746, 28 L.ed. 585; 114 U. S. 270, 29 L.ed. 185; 114 U. S. 317, 29 L.ed. 202; 117 U. S. 241, 29 L.ed. 868; 119 U. S. 387, 30 L.ed. 411; 121 U. S. 282, 30 L.ed. 960; 122 U. S. 360, 30 L.ed. 1161; 123 U. S. 443, 31 L.ed. 216; 124 U. S. 639, 31 L.ed. 553; 125 U. S. 18, 31 L.ed. 607; 127 U. S. 216, 32 L.ed. 125; 131 U. S. 405, 33 L.ed. 193; 134 U. S. 1, 33 L.ed. 842; 134 U. S. 467, 33 L.ed. 985; 134 U. S. 547, 33 L.ed. 1016; 135 U. S. 662, 34 L.ed. 304; 138 U. S. 98, 34 L.ed. 898; 140 U. S. 1, 35 L.ed. 363; 140 U. S. 76, 35 L.ed. 371; 140 U. S. 545, 35 L.ed. 572; 145 U. S. 175, 36 L.ed. 666; 145 U. S. 454, 36 L.ed. 773; 146 U. S. 162, 36 L.ed. 925; 148 U. S. 137, 37 L.ed. 397; 153 U. S. 411, 38 L.ed. 764; 153 U. S. 486, 38 L.ed. 793; 156 U. S. 649, 39 L.ed. 567; 159 U. S. 526, 40 L.ed. 247; 161 U. S. 134, 40 L.ed. 645; 161 U. S. 164, 40 L.ed. 656; 161 U. S. 256, 40 L.ed. 691; 166 U. S. 485, 41 L.ed. 1087; 166 U. S. 685, 41 L.ed. 1165; 170 U. S. 226, 42 L.ed. 1017; 175 U. S. 32, 44 L.ed. 62; 177 U. S. 332, 44 L.ed. 793; 177 U. S. 601, 44 L.ed. 905; 180 U. S. 587, 45 L.ed. 679; 183 U. S. 144, 46 L.ed. 125; 183 U. S. 278, 46 L.ed. 196; 184 U. S. 368, 46 L.ed. 592; 184 U. S. 399, 46 L.ed. 612; 185 U. S. 54, 46 L.ed. 804; 185 U. S. 336, 46 L.ed. 936; 186 U. S. 212, 46 L.ed. 1132; 187 U. S. 611, 47 L.ed. 328; 189 U. S. 154, 47 L.ed. 757; 191 U. S. 150, 48 L.ed. 127; 191 U. S. 184, 48 L.ed. 140; 192 U. S. 73, 48 L.ed. 346; 192 U. S. 201, 48 L.ed. 406; 192 U. S. 286, 48 L.ed. 448; 193 U. S. 49, 48 L.ed. 613; 193 U. S. 416, 48 L.ed. 733; 193 U. S. 561, 48 L.ed. 795; 193 U. S. 635, 48 L.ed. 823; 193 U. S. 657, 48 L.ed. 832; 194 U. S. 593, 48 L.ed. 1131; 195 U. S. 383, 49 L.ed. 245; 196 U. S. 64, 49 L.ed. 388; 194 U. S. 544, 49 L.ed. 872; 199 U. S. 1, 50 L.ed. 65; 199 U. S. 473, 50 L.ed. 274; 200 U. S. 22, 50 L.ed. 353; 200 U. S. 103, 50 L.ed. 391; 200 U. S. 148, 50 L.ed. 413; 200 U. S. 248, 50 L.ed. 464; 200 U. S. 273, 50 L.ed. 477; 201 U. S. 506, 50 L.ed. 845; 201 U. S. 543, 50 L.ed. 860; 202 U. S. 313, 50 L.ed. 1046; 202 U. S. 453, 50 L.ed. 1102; 203 U. S. 151, 51 L.ed. 132; 203 U. S. 311, 51 L.ed. 198; 203 U. S. 372, 51 L.ed. 231; 203 U. S. 379, 51 L.ed. 237; 204 U. S. 103, 51 L.ed. 393; 204 U. S. 116, 51 L.ed. 399; 205 U. S. 236, 51 L.ed. 784; 205 U. S. 466, 51 L.ed. 882; 206 U. S. 276, 51 L.ed. 1061; 206 U. S. 496, 51 L.ed. 1155; 206 U. S. 516, 51 L.ed. 1163; 206 U. S. 536, 51 L.ed. 1176; 207 U. S. 310, 52 L.ed. 222; 207 U. S. 161, 52 L.ed. 151; 207 U. S. 258, 52 L.ed. 197; 207 U. S. 382, 52 L.ed. 257; 207 U. S. 416, 52 L.ed. 274; 208 U. S. 192, 52 L.ed. 450; 208 U. S. 378, 52 L.ed. 536; 208 U. S. 489, 52 L.ed. 584; 208 U. S. 583, 52

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Led. 630; 209 U. S. 349, 52 Led. 828; 210 U. S. 187, 52 Led. 1016; 210 U. S. 266, 52 Led. 1054; 212 U. S. 322, 53 Led. 530; 214 U. S. 179, 53 Led. 958; 215 U. S. 170, 54 Led. 144; 215 U. S. 336, 54 Led. 221; 215 U. S. 373, 54 Led. 240; 215 U. S. 417, 54 Led. 259; 216 U. S. 206, 54 Led. 446; 216 U. S. 234, 54 Led. 460; 216 U. S. 261, 54 Led. 472; 216 U. S. 400, 54 Led. 536; 216 U. S. 420, 54 Led. 544; 217 U. S. 71, 54 Led. 670; 217 U. S. 443, 54 Led. 832; 218 U. S. 400, 54 Led. 1086; 218 U. S. 431, 54 Led. 1097; 218 U. S. 438, 54 Led. 1099; 218 U. S. 563, 54 Led. 1151; 218 U. S. 591, 54 Led. 1163; 219 U. S. 104, 55 Led. 112; 220 U. S. 462, 55 Led. 544; 220 U. S. 472, 55 Led. 548; 221 U. S. 400, 55 Led. 786; 221 U. S. 406, 55 Led. 789; 221 U. S. 467, 55 Led. 815; 221 U. S. 660, 55 Led. 899; 222 U. S. 187, 56 Led. 156; 223 U. S. 389, 56 Led. 481; 223 U. S. 437, 56 Led. 497; 223 U. S. 468, 56 Led. 510; 223 U. S. 635, 56 Led. 594; 224 U. S. 148, 56 Led. 703; 224 U. S. 330, 56 Led. 788; 224 U. S. 632, 56 Led. 924; 224 U. S. 649, 56 Led. 934; 225 U. S. 272, 56 Led. 1087; 226 U. S. 276, 57 Led. 221; 226 U. S. 318, 57 Led. 239; 226 U. S. 455, 57 Led. 297; 227 U. S. 278, 57 Led. 510; 227 U. S. 497, 57 Led. 611; 227 U. S. 544, 57 Led. 633; 227 U. S. 559, 57 Led. 642; 228 U. S. 1, 57 Led. 707; 228 U. S. 454, 57 Led. 915; 229 U. S. 39, 57 Led. 1056; 229 U. S. 476, 57 Led. 1286; 230 U. S. 58, 57 Led. 1389; 230 U. S. 84, 57 Led. 1400; 230 U. S. 98, 57 Led. 1409; 230 U. S. 100, 57 Led. 1410.

Cl. 2. State import or export duties; inspection laws. 2 Dall. 294, 1 Led. 387; 4 Wheat. 316, 4 Led. 579; 2 Pet. 449, 7 Led. 481; 5 How. 504, 12 Led. 256; 7 How. 283, 12 Led. 702; 12 How. 299, 13 Led. 396; 13 Wall. 29, 20 Led. 517; 15 Wall. 284, 21 Led. 164; 94 U. S. 238, 24 Led. 118; 95 U. S. 80, 24 Led. 377; 97 U. S. 566, 24 Led. 1015; 100 U. S. 434, 25 Led. 743; 100 U. S. 676, 25 Led. 754; 104 U. S. 466, 26 Led. 632; 107 U. S. 38, 27 Led. 370; 107 U. S. 59, 27 Led. 383; 114 U. S. 622, 29 Led. 257; 125 U. S. 465, 31 Led. 700; 156 U. S. 577, 39 Led. 538; 171 U. S. 345, 43 Led. 191; 183 U. S. 151, 46 Led. 128; 192 U. S. 363, 48 Led. 481; 192 U. S. 418, 48 Led. 504; 192 U. S. 500, 48 Led. 538; 203 U. S. 38, 51 Led. 78; 208 U. S. 14, 52 Led. 370; 211 U. S. 485, 53 Led. 294; 213 U. S. 200, 53 Led. 761; 228 U. S. 525, 57 Led. 950.

Cl. 3. Tonnage duties. 12 How. 299, 13 Led. 996; 12 Wall. 221, 20 Led. 376; 118 U. S. 455, 30 Led. 237; 119 U. S. 543, 30 Led. 487.

Treaty power. 120 U. S. 479, 30 Led. 728.

War. 116 U. S. 252, 29 Led. 615.

ARTICLE 2.—THE EXECUTIVE.

§ 1. The executive power shall be vested in a president of the United States of America. He shall hold his office during the term of four years, and, together with the vice-president, chosen for the same term, be elected as follows:

Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of senators and representatives to which the state may be entitled in the congress; but no senator or representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

The congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.

No person except a natural born citizen, or a citizen of the United States at the time of the adoption of this constitution shall be eligible to the office of president; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

In case of the removal of the president from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the vice-president, and the congress may by law provide for the case of removal, death, resignation, or inability, both of the president and vice-president, declaring what officer shall then act as president, and such officer shall act accordingly, until the disability be removed, or a president shall be elected.

The president shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

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Before he enters on the execution of his office, he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of president of the United States, and will, to the best of my ability, preserve, protect and defend the constitution of the United States."

Cl. 1. President and vice-president. 9 Wheat. 739, 6 L.ed. 204.

Cl. 2. Electors. 21 Wall. 162, 22 L.ed. 627; 146 U. S. 1, 36 L.ed. 869.

Cl. 3. Vote of electors. 92 U. S. 214, 23 L.ed. 563; 134 U. S. 377, 33 L.ed. 951.

Cl. 5. Qualifications for president. 19 How. 393, 15 L.ed. 691; 21 Wall. 162, 22 L.ed. 627; 143 U. S. 135, 36 L.ed. 103; 182 U. S. 244, 45 L.ed. 1088.

§ 2. The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several states when called into the actual service of the United States; he may require the opinion in writing of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

He shall have power, by and with the advice and consent of the senate, to make treaties, provided two-thirds of the senators present concur; and he shall nominate and, by and with the advice and consent of the senate, shall appoint ambassadors, other public ministers and consuls, judges of the supreme court, and all other officers of the United States whose appointments are not herein otherwise provided for, and which shall be established by law; but the congress may by law vest the appointment of such inferior officers as they think proper in the president alone, in the courts of law, or in the heads of departments.

The president shall have power to fill up all vacancies that may happen during the recess of the senate, by granting commissions which shall expire at the end of their next session.

Cl. 1. President's powers generally. 18 How. 307, 15 L.ed. 421; 20 How. 65, 15 L.ed. 838; 4 Wall. 333, 18 L.ed. 366; 97 U. S. 39, 24 L.ed. 932; 135 U. S. 1, 34 L.ed. 55; 169 U. S. 649, 42 L.ed. 890.

Cl. 2. Treaty and appointive power. 1 Cranch, 137, 2 L.ed. 60; 13 Pet. 230, 10 L.ed. 138; 17 How. 284, 15 L.ed. 102; 6 Wall. 385, 18 L.ed. 830; 95 U. S. 760, 24 L.ed. 588; 99 U. S. 508, 25 L.ed. 482; 107 U. S. 414, 27 L.ed. 542; 120 U. S. 479, 30 L.ed. 728; 135 U. S. 403, 34 L.ed. 222; 137 U. S. 310, 34 L.ed. 674; 142 U. S. 651, 35 L.ed. 1146; 143 U. S. 649, 36 L.ed. 294; 155 U. S. 591, 39 L.ed. 273; 158 U. S. 109, 39 L.ed. 914; 169 U. S. 331, 42 L.ed. 767; 180 U. S. 371, 45 L.ed. 577; 182 U. S. 1, 45 L.ed. 1041; 183 U. S. 176, 46 L.ed. 138; 208 U. S. 340, 52 L.ed. 520; 213 U. S. 138, 53 L.ed. 737, 224 U. S. 583, 56 L.ed. 894.

Cl. 3. Filling vacancies. 114 U. S. 619, 29 L.ed. 254; 116 U. S. 483, 29 L.ed. 700; 173 U. S. 452, 43 L.ed. 765.

§ 3. He shall from time to time give to the congress information of the state of the union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Duties of president. 1 Cranch. 37, 2 L.ed. 60; 135 U. S. 1, 34 L.ed. 55; 135 U. S. 403, 34 L.ed. 222; 167 U. S. 479, 42 L.ed. 243; 189 U. S. 311, 47 L.ed. 828.

§ 4. The president, vice-president, and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

Impeachment. 189 U. S. 311, 47 L.ed. 828.

ARTICLE 3.—THE JUDICIARY.

§ 1. The judicial power of the United States shall be vested in one supreme court, and in such inferior courts as the congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts,

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shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation which shall not be diminished during their continuance in office.

Federal courts generally. 4 Cranch, 75, 2 L.ed. 554; 1 Wheat. 304, 4 L.ed. 97; 1 Pet. 511, 7 L.ed. 242; 9 Pet. 632, 9 L.ed. 255; 7 How. 185, 12 L.ed. 660; 9 How. 235, 13 L.ed. 119; 14 How. 103, 14 L.ed. 345; 18 How. 272, 15 L.ed. 372; 19 How. 393, 15 L.ed. 691; 4 Wall. 333, 18 L.ed. 366; 19 Wall. 214, 22 L.ed. 68; 19 Wall. 274, 22 L.ed. 152; 98 U. S. 569, 25 L.ed. 143; 100 U. S. 257, 25 L.ed. 648; 111 U. S. 449, 28 L.ed. 482; 134 U. S. 372, 33 L.ed. 949; 141 U. S. 174, 35 L.ed. 693; 143 U. S. 472, 36 L.ed. 232; 147 U. S. 150, 37 L.ed. 118; 155 U. S. 76, 39 L.ed. 76; 156 U. S. 51, 39 L.ed. 343; 157 U. S. 229, 39 L.ed. 683; 157 U. S. 429, 39 L.ed. 759; 165 U. S. 275, 41 L.ed. 715; 170 U. S. 511, 42 L.ed. 1126; 182 U. S. 244, 45 L.ed. 1088; 186 U. S. 181, 46 L.ed. 1113; 189 U. S. 25, 47 L.ed. 697; 194 U. S. 279, 48 L.ed. 979; 202 U. S. 401, 50 L.ed. 1079; 203 U. S. 449, 51 L.ed. 264; 206 U. S. 46, 51 L.ed. 356; 206 U. S. 536, 51 L.ed. 1176; 208 U. S. 393, 52 L.ed. 543; 209 U. S. 490, 52 L.ed. 904; 210 U. S. 281, 52 L.ed. 1061; 217 U. S. 509, 54 L.ed. 861; 219 U. S. 346, 55 L.ed. 246; 220 U. S. 277, 55 L.ed. 465; 220 U. S. 290, 55 L.ed. 469.

§ 2. The judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority; to all cases affecting ambassadors, other public ministers, and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states; between a state and citizens of another state; between citizens of different states; between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the supreme court shall have original jurisdiction. In all the other cases before mentioned, the supreme court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the congress shall make.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crime shall have been committed; but when not committed within any state, the trial shall be at such place or places as the congress may by law have directed.

Cl. 1. Jurisdiction. 2 Dall. 419, 1 L.ed. 440; 4 Dall. 12, 1 L.ed. 720; 5 Cranch, 303, 3 L.ed. 108; 9 Cranch, 292, 3 L.ed. 735; 1 Wheat. 304, 4 L.ed. 97; 6 Wheat. 264, 5 L.ed. 257; 9 Wheat. 739, 6 L.ed. 204; 1 Pet. 110, 7 L.ed. 73; 1 Pet. 655, 7 L.ed. 302; 3 Pet. 433, 7 L.ed. 732; 5 Pet. 1, 8 L.ed. 25; 6 Pet. 515, 8 L.ed. 483; 3 How. 236, 11 L.ed. 576; 3 How. 464, 11 L.ed. 681; 5 How. 504, 12 L.ed. 256; 6 How. 344, 12 L.ed. 465; 7 How. 1, 12 L.ed. 581; 7 How. 660, 12 L.ed. 861; 8 How. 441, 12 L.ed. 1147; 10 How. 72, 13 L.ed. 333; 10 How. 586, 13 L.ed. 551; 12 How. 284, 13 L.ed. 990; 13 How. 518, 14 L.ed. 249; 14 How. 80, 14 L.ed. 335; 14 How. 468, 14 L.ed. 502; 15 How. 233, 14 L.ed. 674; 16 How. 314, 14 L.ed. 953; 17 How. 369, 15 L.ed. 80; 18 How. 71, 15 L.ed. 269; 18 How. 272, 15 L.ed. 372; 18 How. 331, 15 L.ed. 401; 20 How. 558, 15 L.ed. 994; 21 How. 481, 16 L.ed. 198; 4 Wall. 411, 18 L.ed. 397; 6 Wall. 50, 18 L.ed. 721; 6 Wall. 280, 18 L.ed. 825; 11 Wall. 65, 20 L.ed. 60; 13 Wall. 581, 20 L.ed. 638; 14 Wall. 69, 20 L.ed. 762; 17 Wall. 211, 21 L.ed. 523; 18 Wall. 272, 21 L.ed. 841; 19 Wall. 214, 22 L.ed. 68; 20 Wall. 445, 22 L.ed. 365; 20 Wall. 590, 22 L.ed. 429; 92 U. S. 214, 23 L.ed. 563; 93 U. S. 199, 23 L.ed. 829; 97 U. S. 13, 24 L.ed. 917; 98 U. S. 569, 25 L.ed. 143; 100 U. S. 257, 25 L.ed. 648; 101 U. S. 453, 25 L.ed. 1061; 104 U. S. 515, 26 L.ed. 814; 105 U. S. 189, 26 L.ed. 975; 105 U. S. 647, 26 L.ed. 1200; 108 U. S. 76, 27 L.ed. 656; 111 U. S. 449, 28 L.ed. 482; 120 U. S. 450, 30 L.ed. 743; 127 U. S. 265, 32 L.ed. 239; 130 U. S. 167, 32 L.ed. 895; 135 U. S. 403, 34 L.ed. 222; 139 U. S. 240, 35 L.ed. 159; 142 U. S. 479, 35 L.ed. 1087; 154 U. S. 447, 38 L.ed. 1047; 167 U. S. 606, 42 L.ed. 236; 173 U. S. 452, 43 L.ed. 765; 175 U. S. 423, 44 L.ed. 223; 176 U. S. 1, 44 L.ed. 347; 177 U. S. 505, 44 L.ed. 864; 177 U. S. 638, 44 L.ed. 921; 178 U. S. 436, 44 L.ed. 1140; 179 U. S. 58, 45 L.ed. 84; 179 U. S. 552, 45 L.ed. 314; 182 U. S. 244, 45 L.ed. 1088; 184 U. S. 199, 46 L.ed. 499; 185 U. S. 373, 46 L.ed. 954; 187 U. S. 327, 47 L.ed. 200; 187 U. S. 447, 47 L.ed. 253; 187 U. S. 585, 47 L.ed. 314; 190 U. S. 524, 47 L.ed. 1159; 192 U. S. 286, 48 L.ed. 448; 195 U. S. 165, 49 L.ed. 142; 196 U. S. 432, 49 L.ed. 540; 207 U. S. 398, 52 L.ed. 264.

Cl. 2. Supreme Court. 4 Cranch, 75, 2 L.ed. 554; 4 Cranch, 382, 2 L.ed. 654; 1 Wheat. 304, 4 L.ed. 97; 6 Wheat. 264, 5 L.ed. 257; 9 Wheat. 739, 6 L.ed. 204; 11 Wheat. 467, 6 L.ed. 521; 1 Pet. 110, 7 L.ed. 73; 5 Pet. 190, 8 L.ed. 92; 9 Pet. 483, 9 L.ed. 201; 13 How. 518, 14 L.ed. 249; 18 How. 570, 15 L.ed. 515; 1 Wall. 243, 17 L.ed. 589; 2 Wall. 160, 17 L.ed. 922; 3 Wall. 673, 18 L.ed. 111; 7 Wall. 364, 19 L.ed. 214; 10 Wall. 553, 19 L.ed. 998;

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98 U. S. 569, 25 L.ed. 143; 143 U. S. 621, 36 L.ed. 285; 150 U. S. 653, 37 L.ed. 1211; 180 U. S. 208, 45 L.ed. 497; 202 U. S. 60, 50 L.ed. 935; 228 U. S. 364, 57 L.ed. 879.

CL 3. Criminal trials. 4 Dall. 342, 1 L.ed. 859; 15 How. 467, 14 L.ed. 775; 1 Black, 484, 17 L.ed. 225; 134 U. S. 31, 33 L.ed. 801; 136 U. S. 256, 34 L.ed. 514; 138 U. S. 157, 34 L.ed. 906; 140 U. S. 118, 35 L.ed. 377; 143 U. S. 207, 36 L.ed. 126; 158 U. S. 564, 39 L.ed. 1092; 168 U. S. 382, 42 L.ed. 509; 169 U. S. 218, 42 L.ed. 723; 170 U. S. 343, 42 L.ed. 1061; 174 U. S. 1, 43 L.ed. 873; 195 U. S. 65, 49 L.ed. 99; 195 U. S. 138, 49 L.ed. 128; 196 U. S. 276, 49 L.ed. 477; 198 U. S. 253, 49 L.ed. 1040; 199 U. S. 521, 50 L.ed. 292; 202 U. S. 339, 50 L.ed. 1055; 205 U. S. 20, 51 L.ed. 689; 216 U. S. 462, 54 L.ed. 569; 225 U. S. 347, 56 L.ed. 1114.

§ 3. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

CL 1. Treason. 97 U. S. 39, 24 L.ed. 992.

CL 2. Punishment of treason. 4 Wall. 333, 18 L.ed. 366; 92 U. S. 202, 23 L.ed. 473; 145 U. S. 546, 36 L.ed. 812.

ARTICLE 4.—THE STATES AND TERRITORIES.

§ 1. Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

Full faith and credit. 7 Cranch, 481, 3 L.ed. 411; 2 Pet. 586, 7 L.ed. 528; 13 Pet. 312, 10 L.ed. 177; 14 Pet. 49, 10 L.ed. 349; 6 How. 41, 12 L.ed. 335; 9 How. 522, 13 L.ed. 242; 17 How. 322, 15 L.ed. 164; 1 Black, 518, 17 L.ed. 65; 5 Wall. 290, 18 L.ed. 475; 5 Wall. 307, 18 L.ed. 599; 9 Wall. 108, 19 L.ed. 604; 16 Wall. 610, 21 L.ed. 430; 21 Wall. 130, 22 L.ed. 588; 92 U. S. 214, 23 L.ed. 563; 95 U. S. 418, 24 L.ed. 437; 104 U. S. 592, 26 L.ed. 845; 107 U. S. 3, 27 L.ed. 346; 116 U. S. 54, 29 L.ed. 535; 127 U. S. 265, 32 L.ed. 239; 133 U. S. 107, 33 L.ed. 538; 137 U. S. 287, 34 L.ed. 670; 146 U. S. 657, 36 L.ed. 1123; 155 U. S. 222, 39 L.ed. 128; 156 U. S. 518, 39 L.ed. 517; 159 U. S. 113, 40 L.ed. 95; 160 U. S. 531, 40 L.ed. 525; 162 U. S. 329, 40 L.ed. 986; 176 U. S. 640, 44 L.ed. 619; 178 U. S. 186, 44 L.ed. 1028; 179 U. S. 322, 45 L.ed. 210; 181 U. S. 155, 45 L.ed. 794; 182 U. S. 583, 45 L.ed. 1241; 185 U. S. 114, 46 L.ed. 830; 188 U. S. 14, 47 L.ed. 366; 188 U. S. 291, 47 L.ed. 480; 188 U. S. 567, 47 L.ed. 598; 189 U. S. 122, 47 L.ed. 735; 191 U. S. 373, 48 L.ed. 225; 192 U. S. 29, 48 L.ed. 328; 193 U. S. 635, 48 L.ed. 823; 195 U. S. 257, 49 L.ed. 184; 196 U. S. 458, 49 L.ed. 551; 198 U. S. 144, 49 L.ed. 988; 201 U. S. 562, 50 L.ed. 867; 202 U. S. 584, 50 L.ed. 1155; 203 U. S. 106, 51 L.ed. 109; 204 U. S. 8, 51 L.ed. 345; 207 U. S. 43, 52 L.ed. 95; 207 U. S. 93, 52 L.ed. 118; 210 U. S. 82, 52 L.ed. 966; 210 U. S. 230, 52 L.ed. 1039; 212 U. S. 311, 53 L.ed. 525; 212 U. S. 477, 53 L.ed. 605; 213 U. S. 55, 53 L.ed. 695; 214 U. S. 19, 53 L.ed. 892; 215 U. S. 1, 54 L.ed. 65; 215 U. S. 203, 54 L.ed. 158; 215 U. S. 252, 54 L.ed. 179; 216 U. S. 386, 54 L.ed. 530; 218 U. S. 1, 54 L.ed. 905; 218 U. S. 36, 54 L.ed. 921; 219 U. S. 92, 55 L.ed. 107; 221 U. S. 408, 55 L.ed. 789; 223 U. S. 185, 56 L.ed. 398; 224 U. S. 243, 56 L.ed. 749; 225 U. S. 111, 56 L.ed. 1009; 225 U. S. 246, 56 L.ed. 1074; 226 U. S. 551, 57 L.ed. 347; 228 U. S. 346, 57 L.ed. 867; 228 U. S. 559, 57 L.ed. 966.

§ 2. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall, on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.

No person held to service or labor in one state under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.

CL 1. Privileges and immunities. 13 Pet. 519, 10 L.ed. 274; 15 Pet. 449, 10 L.ed. 800; 7 How. 283, 12 L.ed. 702; 18 How. 331, 15 L.ed. 401; 18 How. 591, 15 L.ed. 497; 19 How. 393, 15 L.ed. 691; 10 Wall. 566, 19 L.ed. 1029; 12 Wall. 418, 20 L.ed. 449; 16 Wall. 36, 21 L.ed. 394; 16 Wall. 130, 21 L.ed. 442; 20 Wall. 137, 22 L.ed. 331; 21 Wall. 162, 22 L.ed. 627; 93 U. S. 72, 23 L.ed. 806; 94 U. S. 391, 24 L.ed. 248; 92 U. S. 1, 24 L.ed. 708; 100 U. S. 339, 25 L.ed. 676; 104 U. S. 5, 26 L.ed. 643; 106 U. S. 629, 27 L.ed. 290; 114 U. S. 622, 29 L.ed. 257; 125 U. S. 181, 31 L.ed. 650; 133 U. S. 107, 33 L.ed. 538; 135 U. S. 100,

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34 L.ed. 128; 136 U. S. 348, 34 L.ed. 360; 136 U. S. 114, 34 L.ed. 394; 136 U. S. 313, 34 L.ed. 455; 143 U. S. 135, 36 L.ed. 103; 154 U. S. 118, 38 L.ed. 930; 156 U. S. 577, 39 L.ed. 538; 160 U. S. 128, 40 L.ed. 365; 164 U. S. 367, 41 L.ed. 472; 169 U. S. 613, 42 L.ed. 878; 172 U. S. 239, 43 L.ed. 432; 176 U. S. 59, 44 L.ed. 371; 176 U. S. 581, 44 L.ed. 597; 177 U. S. 28, 44 L.ed. 657; 178 U. S. 289, 44 L.ed. 1072; 179 U. S. 270, 45 L.ed. 186; 183 U. S. 300, 46 L.ed. 207; 185 U. S. 364, 46 L.ed. 949; 187 U. S. 540, 47 L.ed. 293; 187 U. S. 547, 47 L.ed. 296; 187 U. S. 569, 47 L.ed. 307; 187 U. S. 611, 47 L.ed. 328; 188 U. S. 321, 47 L.ed. 492; 191 U. S. 373, 48 L.ed. 225; 192 U. S. 29, 48 L.ed. 328; 207 U. S. 142, 52 L.ed. 143; 227 U. S. 308, 57 L.ed. 523.

CL 2. Extradition. 6 Wheat. 264, 5 L.ed. 257; 14 Pet. 540, 10 L.ed. 579; 16 Pet. 539, 10 L.ed. 1060; 5 How. 215, 12 L.ed. 122; 16 Wall. 366, 21 L.ed. 287; 111 U. S. 624, 28 L.ed. 542; 114 U. S. 642, 29 L.ed. 250; 116 U. S. 80, 29 L.ed. 544; 146 U. S. 183, 36 L.ed. 934; 148 U. S. 537, 37 L.ed. 549; 188 U. S. 691, 47 L.ed. 657; 196 U. S. 364, 49 L.ed. 515; 197 U. S. 324, 49 L.ed. 774; 203 U. S. 192, 51 L.ed. 148; 203 U. S. 222, 51 L.ed. 161; 208 U. S. 386, 52 L.ed. 540; 210 U. S. 387, 52 L.ed. 1113; 211 U. S. 468, 53 L.ed. 286.

CL 3. Fugitives from service or labor. 15 Pet. 449, 10 L.ed. 800; 7 How. 283, 12 L.ed. 702; 92 U. S. 214, 23 L.ed. 563; 109 U. S. 3, 27 L.ed. 836.

§ 3. New states may be admitted by the congress into this union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the congress.

The congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

CL 1. New states. 3 How. 212, 11 L.ed. 565; 5 How. 343, 12 L.ed. 181; 143 U. S. 135, 36 L.ed. 103; 187 U. S. 87, 47 L.ed. 86; 192 U. S. 573, 48 L.ed. 570; 202 U. S. 1, 50 L.ed. 913; 221 U. S. 559, 55 L.ed. 853.

CL 2. Government of territories. 4 Wheat. 316, 4 L.ed. 579; 5 Pet. 1, 8 L.ed. 25; 14 Pet. 526, 10 L.ed. 573; 19 How. 393, 15 L.ed. 691; 18 Wall. 317, 21 L.ed. 784; 112 U. S. 76, 28 L.ed. 673; 121 U. S. 325, 30 L.ed. 949; 128 U. S. 315, 32 L.ed. 450; 136 U. S. 1, 34 L.ed. 478; 177 U. S. 505, 44 L.ed. 864; 182 U. S. 1, 45 L.ed. 1041; 182 U. S. 244, 45 L.ed. 1088; 190 U. S. 452, 47 L.ed. 1134; 195 U. S. 138, 49 L.ed. 128; 196 U. S. 119, 49 L.ed. 409; 197 U. S. 516, 49 L.ed. 862; 206 U. S. 46, 51 L.ed. 956; 215 U. S. 278, 54 L.ed. 195. Control over government property. 220 U. S. 523, 55 L.ed. 570.

§ 4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion, and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

Guaranty to states. 7 How. 1, 12 L.ed. 581; 17 How. 478, 15 L.ed. 181; 7 Wall. 700, 19 L.ed. 227; 21 Wall. 162, 22 L.ed. 627; 92 U. S. 542, 23 L.ed. 588; 143 U. S. 135, 36 L.ed. 103; 166 U. S. 506, 41 L.ed. 1095; 177 U. S. 505, 44 L.ed. 864; 182 U. S. 244, 45 L.ed. 1088; 199 U. S. 233, 50 L.ed. 167; 199 U. S. 437, 50 L.ed. 261; 204 U. S. 85, 51 L.ed. 381; 213 U. S. 175, 53 L.ed. 753; 221 U. S. 559, 55 L.ed. 853; 223 U. S. 118, 56 L.ed. 377; 223 U. S. 151, 56 L.ed. 386; 229 U. S. 123, 57 L.ed. 1101.

ARTICLE 5.—AMENDMENTS.

The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this constitution, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for proposing amendments, which in either case, shall be valid to all intents and purposes as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight, shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the senate.

Amendments. 18 How. 331, 15 L.ed. 401; 12 Wall. 457, 20 L.ed. 287.

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ARTICLE 6.— MISCELLANEOUS PROVISIONS.

All debts contracted and engagements entered into, before the adoption of this constitution, shall be as valid against the United States under this constitution as under the confederation.

This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

The senators and representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Cl. 1. Public debt. 14 Pet. 353, 10 L.ed. 490; 18 How. 331, 15 L.ed. 401; 19 How. 393, 15 L.ed. 691; 182 U. S. 244, 45 L.ed. 1088.

Cl. 2. Supremacy of Constitution. 3 Dall. 199, 1 L.ed. 568; 6 Wheat. 264, 5 L.ed. 257; 5 Pet. 1, 8 L.ed. 25; 5 How. 410, 12 L.ed. 213; 5 How. 504, 12 L.ed. 256; 7 How. 283, 12 L.ed. 702; 6 Wall. 247, 18 L.ed. 851; 6 Wall. 594, 18 L.ed. 897; 11 Wall. 616, 20 L.ed. 227; 12 Wall. 457, 20 L.ed. 287; 91 U. S. 29, 23 L.ed. 196; 92 U. S. 90, 23 L.ed. 678; 96 U. S. 1, 24 L.ed. 708; 100 U. S. 483, 25 L.ed. 628; 135 U. S. 1, 34 L.ed. 55; 144 U. S. 323, 36 L.ed. 450; 158 U. S. 98, 39 L.ed. 910; 161 U. S. 591, 40 L.ed. 819; 177 U. S. 505, 44 L.ed. 864; 182 U. S. 1, 45 L.ed. 1041; 182 U. S. 244, 45 L.ed. 1088; 183 U. S. 138, 46 L.ed. 120; 199 U. S. 437, 50 L.ed. 261; 224 U. S. 583, 56 L.ed. 894.

Oath of office; religious test. 22 Wall. 99, 22 L.ed. 816.

ARTICLE 7.— RATIFICATION.

The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between the states so ratifying the same.

ARTICLES

IN ADDITION TO, AND AMENDMENT OF, THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

ARTICLE 1.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

Freedom of religion. 135 U. S. 1, 34 L.ed. 55; 143 U. S. 457, 36 L.ed. 226; 175 U. S. 291, 44 L.ed. 168; 176 U. S. 581, 44 L.ed. 597; 182 U. S. 244, 45 L.ed. 1088.

Freedom of speech or press. 143 U. S. 207, 36 L.ed. 126; 165 U. S. 275, 41 L.ed. 715; 182 U. S. 244, 45 L.ed. 1088; 194 U. S. 279, 48 L.ed. 979; 211 U. S. 78, 53 L.ed. 97; 229 U. S. 288, 57 L.ed. 1190.

Right to assemble and petition. 92 U. S. 542, 25 L.ed. 588.

ARTICLE 2.

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be infringed.

Keeping and bearing arms. 144 U. S. 263, 36 L.ed. 429; 153 U. S. 535, 38 L.ed. 812; 165 U. S. 275, 41 L.ed. 715; 211 U. S. 78, 53 L.ed. 97.

ARTICLE 3.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

Quartering troops. 7 How. 1, 12 L.ed. 581; 176 U. S. 581, 44 L.ed. 597.

ARTICLE 4.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Searches and seizures. 7 How. 1, 12 L.ed. 581; 18 How. 272, 15 L.ed. 372; 116 U. S. 616, 29 L.ed. 746; 123 U. S. 131, 31 L.ed. 80; 142 U. S. 547, 35 L.ed. 1110; 153 U. S. 78, 38 L.ed. 643; 153 U. S. 535, 38 L.ed. 812; 161 U. S. 475, 40 L.ed. 777; 161 U. S. 591, 40 L.ed. 819; 167 U. S. 178, 42 L.ed. 127; 168 U. S. 532, 42 L.ed. 568; 176 U. S. 581, 44 L.ed. 597; 181 U. S. 283, 45 L.ed. 862; 187 U. S. 94, 47 L.ed. 90; 192 U. S. 585, 48 L.ed. 575; 194 U. S. 25, 48 L.ed. 860; 194 U. S. 384, 48 L.ed. 1030; 201 U. S. 43, 50 L.ed. 652; 201 U. S. 92, 50 L.ed. 673; 207 U. S. 284, 52 L.ed. 208; 207 U. S. 541, 52 L.ed. 327; 211 U. S. 78, 53 L.ed. 97; 220 U. S. 107, 55 L.ed. 389; 220 U. S. 549, 55 L.ed. 579; 220 U. S. 556, 55 L.ed. 581; 221 U. S. 361, 55 L.ed. 771; 221 U. S. 603, 55 L.ed. 873; 221 U. S. 612, 55 L.ed. 878; 226 U. S. 478, 57 L.ed. 309; 227 U. S. 74, 57 L.ed. 423.

ARTICLE 5.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled, in any

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criminal case, to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Criminal prosecutions. 5 Wheat. 1, 5 Led. 19; 12 How. 361, 13 Led. 1023; 20 How. 65, 15 Led. 838; 7 Wall. 321, 19 Led. 223; 100 U. S. 13, 25 Led. 538; 105 U. S. 696, 26 Led. 1213; 114 U. S. 417, 29 Led. 89; 116 U. S. 616, 29 Led. 746; 121 U. S. 281, 30 Led. 959; 134 U. S. 31, 33 Led. 801; 140 U. S. 200, 35 Led. 409; 142 U. S. 547, 35 Led. 1110; 144 U. S. 323, 36 Led. 450; 150 U. S. 65, 37 Led. 999; 158 U. S. 109, 39 Led. 914; 161 U. S. 591, 40 Led. 819; 163 U. S. 228, 41 Led. 140; 163 U. S. 376, 41 Led. 196; 163 U. S. 662, 41 Led. 300; 164 U. S. 112, 41 Led. 369; 164 U. S. 578, 41 Led. 560; 165 U. S. 275, 41 Led. 715; 166 U. S. 269, 41 Led. 996; 166 U. S. 661, 41 Led. 1154; 167 U. S. 178, 42 Led. 127; 168 U. S. 532, 42 Led. 568; 170 U. S. 343, 42 Led. 1061; 175 U. S. 184, 44 Led. 124; 176 U. S. 83, 44 Led. 382; 176 U. S. 581, 44 Led. 597; 190 U. S. 197, 47 Led. 1016; 192 U. S. 585, 48 Led. 575; 194 U. S. 25, 48 Led. 860; 194 U. S. 73, 48 Led. 882; 194 U. S. 279, 48 Led. 979; 197 U. S. 516, 49 Led. 862; 199 U. S. 372, 50 Led. 234; 199 U. S. 521, 50 Led. 292; 201 U. S. 43, 50 Led. 652; 201 U. S. 90, 50 Led. 671; 201 U. S. 92, 50 Led. 673; 203 U. S. 96, 51 Led. 105; 205 U. S. 483, 51 Led. 890; 211 U. S. 78, 53 Led. 97; 221 U. S. 325, 55 Led. 753; 226 U. S. 1, 57 Led. 97; 227 U. S. 592, 57 Led. 658.

Former jeopardy. 5 How. 410, 12 Led. 213; 18 Wall. 163, 21 Led. 872; 113 U. S. 328, 28 Led. 1005; 118 U. S. 231, 30 Led. 71; 125 U. S. 692, 31 Led. 854; 142 U. S. 148, 35 Led. 968; 155 U. S. 271, 39 Led. 146; 183 U. S. 365, 46 Led. 236; 195 U. S. 100, 49 Led. 114; 199 U. S. 521, 50 Led. 292; 202 U. S. 344, 50 Led. 1057; 204 U. S. 470, 51 Led. 571; 206 U. S. 333, 51 Led. 1084; 217 U. S. 284, 54 Led. 768; 224 U. S. 616, 56 Led. 917.

Self-incrimination. 207 U. S. 541, 52 Led. 327; 211 U. S. 78, 53 Led. 97; 218 U. S. 245, 54 Led. 1021; 220 U. S. 107, 55 Led. 389; 221 U. S. 274, 55 Led. 732; 221 U. S. 361, 55 Led. 771; 221 U. S. 394, 55 Led. 784; 221 U. S. 603, 55 Led. 873; 221 U. S. 612, 55 Led. 878; 222 U. S. 139, 56 Led. 128; 223 U. S. 303, 56 Led. 448; 226 U. S. 478, 57 Led. 309; 227 U. S. 74, 57 Led. 423; 227 U. S. 131, 57 Led. 450.

Due process of law. 14 Pet. 540, 10 Led. 579; 15 Pet. 449, 10 Led. 800; 7 How. 1, 12 Led. 581; 14 How. 538, 14 Led. 532; 18 How. 272, 15 Led. 372; 19 How. 393, 15 Led. 691; 1 Wall. 512, 17 Led. 500; 12 Wall. 457, 20 Led. 287; 16 Wall. 36, 21 Led. 394; 21 Wall. 162, 22 Led. 627; 96 U. S. 97, 24 Led. 616; 99 U. S. 727, 25 Led. 504; 102 U. S. 651, 26 Led. 291; 104 U. S. 78, 26 Led. 658; 106 U. S. 196, 27 Led. 171; 107 U. S. 265, 27 Led. 552; 113 U. S. 328, 28 Led. 1005; 118 U. S. 455, 30 Led. 237; 123 U. S. 131, 31 Led. 80; 124 U. S. 200, 31 Led. 402; 127 U. S. 540, 32 Led. 223; 128 U. S. 96, 32 Led. 352; 133 U. S. 186, 33 Led. 582; 143 U. S. 301, 36 Led. 313; 146 U. S. 314, 36 Led. 986; 147 U. S. 1, 37 Led. 60; 149 U. S. 698, 37 Led. 905; 156 U. S. 51, 39 Led. 343; 167 U. S. 407, 42 Led. 215; 171 U. S. 505, 43 Led. 259; 172 U. S. 82, 43 Led. 374; 172 U. S. 602, 43 Led. 569; 173 U. S. 443, 43 Led. 762; 174 U. S. 1, 43 Led. 873; 176 U. S. 581, 44 Led. 597; 179 U. S. 127, 45 Led. 119; 181 U. S. 283, 45 Led. 862; 181 U. S. 324, 45 Led. 879; 181 U. S. 371, 45 Led. 900; 181 U. S. 389, 45 Led. 908; 181 U. S. 396, 45 Led. 914; 181 U. S. 399, 45 Led. 917; 182 U. S. 244, 45 Led. 1088; 183 U. S. 238, 46 Led. 171; 183 U. S. 365, 46 Led. 236; 185 U. S. 308, 46 Led. 922; 185 U. S. 505, 46 Led. 1012; 186 U. S. 181, 46 Led. 1113; 187 U. S. 94, 47 Led. 90; 188 U. S. 410, 47 Led. 525; 191 U. S. 310, 48 Led. 195; 192 U. S. 217, 48 Led. 414; 193 U. S. 53, 48 Led. 614; 194 U. S. 25, 48 Led. 860; 194 U. S. 445, 48 Led. 1062; 195 U. S. 276, 49 Led. 193; 195 U. S. 540, 49 Led. 312; 197 U. S. 299, 49 Led. 765; 198 U. S. 253, 49 Led. 1040; 199 U. S. 182, 50 Led. 143; 199 U. S. 437, 50 Led. 261; 202 U. S. 429, 50 Led. 1090; 206 U. S. 370, 51 Led. 1098; 207 U. S. 161, 52 Led. 151; 207 U. S. 284, 52 Led. 208; 207 U. S. 463, 52 Led. 297; 208 U. S. 161, 52 Led. 436; 208 U. S. 423, 52 Led. 556; 211 U. S. 149, 53 Led. 126; 213 U. S. 366, 53 Led. 836; 214 U. S. 138, 53 Led. 941; 214 U. S. 320, 53 Led. 1013; 218 U. S. 88, 54 Led. 946; 218 U. S. 113, 54 Led. 959; 218 U. S. 336, 54 Led. 1060; 219 U. S. 186, 55 Led. 167; 219 U. S. 210, 55 Led. 184; 219 U. S. 296, 55 Led. 225; 219 U. S. 467, 55 Led. 297; 220 U. S. 107, 55 Led. 389; 221 U. S. 1, 55 Led. 619; 221 U. S. 194, 55 Led. 699; 221 U. S. 547, 55 Led. 848; 222 U. S. 204, 56 Led. 165; 223 U. S. 1, 56 Led. 327; 224 U. S. 603, 56 Led. 911; 224 U. S. 616, 56 Led. 917; 224 U. S. 640, 56 Led. 928; 224 U. S. 665, 56 Led. 941; 225 U. S. 282, 56 Led. 1091; 225 U. S. 460, 56 Led. 1165; 226 U. S. 272, 57 Led. 218; 226 U. S. 478, 57 Led. 309; 227 U. S. 303, 57 Led. 520; 228 U. S. 225, 57 Led. 812; 228 U. S. 593, 57 Led. 980; 229 U. S. 288, 57 Led. 1190; 230 U. S. 139, 57 Led. 1427.

Taking property without compensation. 7 Pet. 243, 8 Led. 672; 6 How. 507, 12 Led. 535; 20 How. 84, 15 Led. 816; 8 Wall. 603, 19 Led. 513; 20 Wall. 36, 22 Led. 282; 91 U. S. 367, 23 Led. 449; 109 U. S. 513, 27 Led. 1015; 143 U. S. 517, 36 Led. 247; 146 U. S. 646, 36 Led. 1119; 148 U. S. 312, 37 Led. 463; 149 U. S. 593, 37 Led. 862; 156 U. S. 649, 39 Led. 567; 161 U. S. 475, 40 Led. 777; 161 U. S. 591, 40 Led. 819; 167 U. S. 548, 42 Led. 270; 168 U. S. 430, 42 Led. 531; 168 U. S. 611, 42 Led. 599; 175 U. S. 32, 44 Led. 62; 179 U. S. 141, 45 Led. 126; 81 U. S. 371, 45 Led. 900; 181 U. S. 399, 45 Led. 917; 188 U. S. 410, 47 Led. 525; 188 U. S. 445, 47 Led. 539; 188 U. S. 491, 47 Led. 559; 193 U. S. 189, 48 Led. 675; 194 U. S. 384, 48 Led. 1030; 194 U. S. 553, 48 Led. 1115; 195 U. S. 27, 49 Led. 78; 212 U. S. 297, 53 Led. 520; 219 U. S. 180, 55 Led. 165; 219 U. S.

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186, 55 L.ed. 167; 229 U. S. 53, 57 L.ed. 1063; 229 U. S. 82, 57 L.ed. 1083; 230 U. S. 1, 57 L.ed. 1363; 230 U. S. 24, 57 L.ed. 1374.

ARTICLE 6.

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

Criminal prosecutions. 12 How. 361, 13 L.ed. 1023; 15 How. 467, 14 L.ed. 775; 18 How. 272, 15 L.ed. 372; 7 Wall. 321, 19 L.ed. 223; 92 U. S. 542, 23 L.ed. 588; 98 U. S. 569, 25 L.ed. 143; 98 U. S. 145, 25 L.ed. 244; 100 U. S. 339, 25 L.ed. 676; 108 U. S. 401, 27 L.ed. 764; 123 U. S. 131, 31 L.ed. 80; 124 U. S. 200, 31 L.ed. 402; 127 U. S. 540, 32 L.ed. 223; 134 U. S. 31, 33 L.ed. 801; 136 U. S. 256, 34 L.ed. 514; 138 U. S. 157, 34 L.ed. 906; 140 U. S. 118, 35 L.ed. 377; 140 U. S. 169, 35 L.ed. 399; 143 U. S. 207, 36 L.ed. 126; 149 U. S. 698, 37 L.ed. 905; 150 U. S. 65, 37 L.ed. 999; 156 U. S. 51, 39 L.ed. 343; 157 U. S. 655, 39 L.ed. 845; 161 U. S. 29, 40 L.ed. 606; 161 U. S. 475, 40 L.ed. 777; 163 U. S. 228, 41 L.ed. 140; 166 U. S. 464, 41 L.ed. 1079; 169 U. S. 218, 42 L.ed. 723; 170 U. S. 343, 42 L.ed. 1061; 174 U. S. 1, 43 L.ed. 873; 174 U. S. 47, 43 L.ed. 890; 175 U. S. 184, 44 L.ed. 124; 176 U. S. 581, 44 L.ed. 597; 178 U. S. 458, 44 L.ed. 1150; 179 U. S. 127, 45 L.ed. 119; 190 U. S. 197, 47 L.ed. 1016; 194 U. S. 161, 48 L.ed. 917; 194 U. S. 258, 48 L.ed. 965; 194 U. S. 279, 48 L.ed. 979; 194 U. S. 445, 48 L.ed. 1062; 195 U. S. 65, 49 L.ed. 90; 195 U. S. 138, 49 L.ed. 128; 196 U. S. 283, 49 L.ed. 482; 197 U. S. 516, 49 L.ed. 862; 202 U. S. 344, 50 L.ed. 1057; 204 U. S. 470, 51 L.ed. 571; 205 U. S. 20, 51 L.ed. 689; 208 U. S. 481, 52 L.ed. 582; 209 U. S. 56, 52 L.ed. 681; 211 U. S. 78, 53 L.ed. 97; 216 U. S. 462, 54 L.ed. 569; 221 U. S. 325, 55 L.ed. 753; 221 U. S. 361, 55 L.ed. 771; 223 U. S. 178, 56 L.ed. 394; 225 U. S. 347, 56 L.ed. 1114; 225 U. S. 392, 56 L.ed. 1136; 225 U. S. 405, 56 L.ed. 1142; 226 U. S. 272, 57 L.ed. 218; 227 U. S. 427, 57 L.ed. 583.

ARTICLE 7.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved; and no fact, tried by a jury, shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

Trial by jury. 4 Wheat. 235, 4 L.ed. 559; 2 Pet. 492, 7 L.ed. 496; 3 Pet. 413, 7 L.ed. 724; 3 Pet. 433, 7 L.ed. 732; 7 Pet. 469, 8 L.ed. 751; 12 Pet. 345, 9 L.ed. 1111; 3 How. 236, 11 L.ed. 576; 5 How. 441, 12 L.ed. 226; 6 How. 344, 12 L.ed. 465; 7 How. 1, 12 L.ed. 581; 18 Wall. 657, 12 L.ed. 968; 11 How. 437, 13 L.ed. 761; 18 How. 253, 15 L.ed. 368; 18 How. 272, 15 L.ed. 372; 18 How. 331, 15 L.ed. 401; 19 How. 393, 15 L.ed. 691; 20 How. 296, 15 L.ed. 909; 6 Wall. 484, 18 L.ed. 920; 9 Wall. 248, 19 L.ed. 648; 9 Wall. 274, 19 L.ed. 658; 12 Wall. 457, 20 L.ed. 287; 12 Wall. 275, 20 L.ed. 395; 18 Wall. 163, 21 L.ed. 872; 19 Wall. 214, 22 L.ed. 68; 20 Wall. 36, 22 L.ed. 282; 92 U. S. 90, 23 L.ed. 678; 95 U. S. 117, 24 L.ed. 395; 95 U. S. 294, 24 L.ed. 436; 98 U. S. 440, 25 L.ed. 168; 100 U. S. 339, 25 L.ed. 676; 102 U. S. 426, 26 L.ed. 189; 103 U. S. 90, 26 L.ed. 310; 105 U. S. 189, 26 L.ed. 975; 105 U. S. 381, 26 L.ed. 1100; 112 U. S. 670, 28 L.ed. 862; 114 U. S. 417, 29 L.ed. 89; 131 U. S. 220, 33 L.ed. 110; 137 U. S. 310, 34 L.ed. 674; 138 U. S. 146, 34 L.ed. 873; 151 U. S. 436, 38 L.ed. 225; 156 U. S. 51, 39 L.ed. 343; 162 U. S. 197, 40 L.ed. 940; 163 U. S. 468, 41 L.ed. 230; 165 U. S. 593, 41 L.ed. 837; 166 U. S. 226, 41 L.ed. 979; 166 U. S. 464, 41 L.ed. 1079; 166 U. S. 707, 41 L.ed. 1172; 170 U. S. 343, 42 L.ed. 1061; 173 U. S. 528, 43 L.ed. 796; 174 U. S. 1, 43 L.ed. 873; 176 U. S. 581, 44 L.ed. 597; 177 U. S. 349, 44 L.ed. 801; 179 U. S. 127, 45 L.ed. 119; 182 U. S. 244, 45 L.ed. 1088; 187 U. S. 327, 47 L.ed. 200; 197 U. S. 516, 49 L.ed. 862; 207 U. S. 463, 52 L.ed. 297; 208 U. S. 423, 52 L.ed. 556; 210 U. S. 246, 52 L.ed. 1046; 211 U. S. 78, 53 L.ed. 97; 228 U. S. 364, 57 L.ed. 879; 229 U. S. 146, 57 L.ed. 1125; 229 U. S. 139, 57 L.ed. 1148.

ARTICLE 8.

Excessive bail shall not be required, nor excessive fines imposed nor cruel and unusual punishments inflicted.

Excessive bail or fines. 4 Dall. 342, 1 L.ed. 859; 7 Pet. 568, 8 L.ed. 786; 134 U. S. 31, 33 L.ed. 801; 176 U. S. 581, 44 L.ed. 597; 212 U. S. 86, 53 L.ed. 417.

Cruel and unusual punishment. 99 U. S. 130, 25 L.ed. 345; 133 U. S. 186, 33 L.ed. 582; 136 U. S. 436, 34 L.ed. 519; 142 U. S. 155, 35 L.ed. 971; 144 U. S. 323, 36 L.ed. 450; 158 U. S. 109, 39 L.ed. 914; 208 U. S. 481, 52 L.ed. 582; 211 U. S. 78, 53 L.ed. 97; 217 U. S. 349, 54 L.ed. 733.

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ARTICLE 9.

The enumeration, in the constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Enumeration of rights not exclusive. 4 Dall. 342, 1 L.ed. 859; 19 How. 393, 15 L.ed. 691; 1 Wall. 512, 17 L.ed. 500; 227 U. S. 308, 57 L.ed. 523.

ARTICLE 10.

The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Reserved powers of states. 4 Wheat. 316, 4 L.ed. 579; 7 How. 283, 12 L.ed. 702; 18 How. 331, 15 L.ed. 401; 19 How. 393, 15 L.ed. 691; 1 Wall. 512, 17 L.ed. 500; 8 Wall. 533, 19 L.ed. 482; 8 Wall. 603, 19 L.ed. 513; 12 Wall. 457, 20 L.ed. 287; 14 Wall. 10, 20 L.ed. 826; 94 U. S. 238, 24 L.ed. 118; 100 U. S. 339, 25 L.ed. 676; 106 U. S. 629, 27 L.ed. 290; 109 U. S. 3, 27 L.ed. 836; 135 U. S. 100, 34 L.ed. 128; 149 U. S. 368, 37 L.ed. 772; 149 U. S. 698, 37 L.ed. 905; 157 U. S. 429, 39 L.ed. 759; 182 U. S. 244, 45 L.ed. 1088; 188 U. S. 321, 47 L.ed. 492; 193 U. S. 197, 48 L.ed. 679; 194 U. S. 25, 48 L.ed. 860; 195 U. S. 27, 49 L.ed. 78; 206 U. S. 46, 51 L.ed. 956; 227 U. S. 308, 57 L.ed. 523.

ARTICLE 11.

The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

Suits against states. 6 Wheat. 264, 5 L.ed. 257; 9 Wheat. 739, 6 L.ed. 204; 9 Wheat. 904, 6 L.ed. 244; 1 Pet. 110, 7 L.ed. 73; 5 Pet. 1, 8 L.ed. 25; 5 Pet. 284, 8 L.ed. 127; 7 Pet. 627, 8 L.ed. 808; 11 Pet. 351, 9 L.ed. 746; 16 Pet. 539, 10 L.ed. 1060; 20 How. 9, 11 L.ed. 159; 7 How. 1, 12 L.ed. 581; 13 How. 381, 14 L.ed. 189; 17 How. 478, 15 L.ed. 181; 102 U. S. 135, 26 L.ed. 96; 106 U. S. 196, 27 L.ed. 171; 107 U. S. 711, 27 L.ed. 448; 111 U. S. 449, 28 L.ed. 482; 114 U. S. 325, 29 L.ed. 205; 123 U. S. 443, 31 L.ed. 216; 133 U. S. 529, 33 L.ed. 766; 134 U. S. 1, 33 L.ed. 842; 140 U. S. 1, 35 L.ed. 363; 143 U. S. 621, 36 L.ed. 285; 149 U. S. 164, 37 L.ed. 689; 154 U. S. 362, 38 L.ed. 1020; 165 U. S. 107, 41 L.ed. 648; 167 U. S. 204, 42 L.ed. 137; 169 U. S. 466, 42 L.ed. 819; 172 U. S. 516, 43 L.ed. 535; 176 U. S. 1, 44 L.ed. 347; 177 U. S. 370, 44 L.ed. 810; 180 U. S. 28, 45 L.ed. 410; 188 U. S. 537, 47 L.ed. 584; 192 U. S. 286, 48 L.ed. 448; 193 U. S. 430, 48 L.ed. 737; 194 U. S. 601, 48 L.ed. 1134; 196 U. S. 239, 49 L.ed. 462; 197 U. S. 463, 49 L.ed. 836; 200 U. S. 248, 50 L.ed. 464; 200 U. S. 273, 50 L.ed. 477; 206 U. S. 290, 51 L.ed. 1068; 209 U. S. 123, 52 L.ed. 714; 209 U. S. 211, 52 L.ed. 754; 209 U. S. 481, 52 L.ed. 899; 213 U. S. 151, 53 L.ed. 742; 216 U. S. 146, 54 L.ed. 423; 216 U. S. 165, 54 L.ed. 430; 220 U. S. 191, 55 L.ed. 431; 220 U. S. 210, 55 L.ed. 436; 221 U. S. 636, 55 L.ed. 890.

ARTICLE 12.

The electors shall meet in their respective states, and vote by ballot for president and vice-president, one of whom, at least, shall not be an inhabitant of the same state with themselves. They shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; and they shall make distinct lists of all persons voted for as president, and of all persons voted for as vice-president, and of the number of votes for each; which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the president of the senate. The president of the senate shall, in the presence of the senate and house of representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes for president, shall be the president, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as president, the house of representatives shall choose immediately, by ballot, the president. But in choosing the president, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice.

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And if the house of representatives shall not choose a president whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the vice-president shall act as president, as in the case of the death or other constitutional disability of the president.

The person having the greatest number of votes as vice-president shall be the vice-president, if such number be a majority of the whole number of electors appointed; and if no person have a majority, then from the two highest numbers on the list the senate shall choose the vice-president. A quorum for the purpose shall consist of two-thirds of the whole number of senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of president shall be eligible to that of vice-president of the United States.

Election of president. 134 U. S. 377, 33 L.ed. 951; 146 U. S. 1, 36 L.ed. 869; 182 U. S. 244, 45 L.ed. 1088.

ARTICLE 13.

§ 1. Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Abolishing slavery. 13 Wall. 654, 20 L.ed. 689; 16 Wall. 36, 21 L.ed. 394; 18 Wall. 546, 21 L.ed. 757; 92 U. S. 214, 23 L.ed. 563; 100 U. S. 339, 25 L.ed. 676; 103 U. S. 370, 26 L.ed. 567; 106 U. S. 629, 27 L.ed. 290; 109 U. S. 3, 27 L.ed. 836; 112 U. S. 94, 28 L.ed. 643; 114 U. S. 417, 29 L.ed. 89; 120 U. S. 678, 30 L.ed. 766; 144 U. S. 263, 36 L.ed. 429; 163 U. S. 228, 41 L.ed. 140; 163 U. S. 537, 41 L.ed. 256; 165 U. S. 275, 41 L.ed. 715; 169 U. S. 649, 42 L.ed. 890; 176 U. S. 581, 44 L.ed. 597; 182 U. S. 244, 45 L.ed. 1088; 190 U. S. 169, 47 L.ed. 1002; 193 U. S. 115, 48 L.ed. 640; 195 U. S. 100, 49 L.ed. 114; 197 U. S. 207, 49 L.ed. 726; 203 U. S. 1, 51 L.ed. 65; 211 U. S. 452, 53 L.ed. 278; 218 U. S. 161, 54 L.ed. 980; 219 U. S. 219, 55 L.ed. 191.

§ 2. Congress shall have power to enforce this article by appropriate legislation.

ARTICLE 14.

§ 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Civil rights. 18 Wall. 648, 21 L.ed. 966; 100 U. S. 303, 25 L.ed. 644; 100 U. S. 339, 25 L.ed. 676; 103 U. S. 370, 26 L.ed. 567; 106 U. S. 629, 27 L.ed. 290.

Citizenship. 16 Wall. 36, 21 L.ed. 394; 92 U. S. 214, 23 L.ed. 563; 97 U. S. 646, 24 L.ed. 1057; 104 U. S. 5, 26 L.ed. 643; 112 U. S. 94, 28 L.ed. 643; 118 U. S. 375, 30 L.ed. 228; 120 U. S. 678, 30 L.ed. 766; 127 U. S. 265, 32 L.ed. 239; 138 U. S. 694, 34 L.ed. 1078; 143 U. S. 135, 36 L.ed. 103; 145 U. S. 444, 36 L.ed. 768; 149 U. S. 698; 37 L.ed. 905; 155 U. S. 648, 39 L.ed. 297; 169 U. S. 649, 42 L.ed. 890; 172 U. S. 239, 43 L.ed. 432; 172 U. S. 557, 43 L.ed. 552; 182 U. S. 244, 45 L.ed. 1088; 193 U. S. 146, 48 L.ed. 655; 193 U. S. 621, 48 L.ed. 817; 194 U. S. 377, 48 L.ed. 1027.

Privileges and immunities. 13 Wall. 686, 20 L.ed. 685; 16 Wall. 36, 21 L.ed. 394; 16 Wall. 130, 21 L.ed. 442; 18 Wall. 129, 21 L.ed. 929; 95 U. S. 485, 24 L.ed. 547; 96 Wall. 97, 24 L.ed. 616; 100 U. S. 313, 25 L.ed. 667; 108 U. S. 514, 27 L.ed. 808; 109 U. S. 3, 27 L.ed. 836; 109 U. S. 65, 27 L.ed. 857; 111 U. S. 746, 28 L.ed. 585; 116 U. S. 252, 29 L.ed. 615; 119 U. S. 110, 30 L.ed. 342; 120 U. S. 678, 30 L.ed. 766; 128 U. S. 1, 32 L.ed. 346; 135 U. S. 244, 34 L.ed. 124; 135 U. S. 100, 34 L.ed. 123; 136 U. S. 436, 34 L.ed. 519; 137 U. S. 691, 34 L.ed. 816; 140 U. S. 278, 35 L.ed. 505; 143 U. S. 135, 36 L.ed. 103; 143 U. S. 301, 36 L.ed. 313; 144 U. S. 323, 36 L.ed. 450; 144 U. S. 573, 36 L.ed. 546; 146 U. S. 314, 36 L.ed. 986; 148 U. S. 657, 37 L.ed. 599; 149 U. S. 580, 37 L.ed. 856; 152 U. S. 377, 38 L.ed. 485; 152 U. S. 535, 38 L.ed. 812; 154 U. S. 116, 38 L.ed. 929; 159 U. S. 74, 40 L.ed. 80; 159 U. S. 673, 40 L.ed. 301; 162 U. S. 565, 40 L.ed. 1075; 163 U. S. 63, 41 L.ed. 72; 163 U. S. 101, 41 L.ed. 87; 163 U. S. 537, 41 L.ed. 256; 166 U. S. 648, 41 L.ed. 1149; 169 U. S. 366, 42 L.ed. 780; 170 U. S. 213, 42 L.ed. 1012; 170 U. S. 226, 42 L.ed. 1017; 172 U. S. 239, 43 L.ed. 432; 172 U. S. 465, 43 L.ed. 517; 172 U. S. 357, 43 L.ed. 552; 175 U. S. 184, 44 L.ed. 124; 175 U. S. 528, 44 L.ed. 262; 176 U. S. 581, 44 L.ed. 597; 177 U. S. 28, 44 L.ed. 637; 178 U. S. 289, 44 L.ed. 1072; 179 U. S. 270, 45 L.ed. 186; 179 U. S. 388, 45 L.ed. 244; 181 U. S. 539, 45 L.ed. 1015; 183 U. S. 185, 46

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Led. 144; 183 U. S. 559, 46 Led. 328; 185 U. S. 149, 46 Led. 847; 185 U. S. 497, 46 Led. 1005; 187 U. S. 155, 47 Led. 117; 187 U. S. 540, 47 Led. 293; 187 U. S. 547, 47 Led. 296; 187 U. S. 569, 47 Led. 307; 189 U. S. 475, 47 Led. 909; 192 U. S. 29, 48 Led. 328; 192 U. S. 585, 48 Led. 575; 193 U. S. 504, 48 Led. 767; 202 U. S. 446, 50 Led. 1099; 203 U. S. 1, 51 Led. 65; 203 U. S. 284, 51 Led. 184; 203 U. S. 553, 51 Led. 314; 204 U. S. 241, 51 Led. 461; 204 U. S. 311, 51 Led. 499; 205 U. S. 33, 51 Led. 696; 205 U. S. 60, 51 Led. 708; 205 U. S. 454, 51 Led. 879; 207 U. S. 67, 52 Led. 106; 207 U. S. 310, 52 Led. 222; 209 U. S. 349, 52 Led. 828; 211 U. S. 78, 53 Led. 97; 218 U. S. 406, 54 Led. 1088; 224 U. S. 541, 56 Led. 875; 224 U. S. 616, 56 Led. 917; 226 U. S. 112, 57 Led. 146; 226 U. S. 260, 57 Led. 212.

Due process of law. 18 Wall. 129, 21 Led. 929; 92 U. S. 214, 23 Led. 563; 92 U. S. 542, 23 Led. 588; 92 U. S. 90, 23 Led. 678; 94 U. S. 113, 24 Led. 77; 95 U. S. 37, 24 Led. 335; 95 U. S. 485, 24 Led. 547; 95 U. S. 714, 24 Led. 565; 96 U. S. 97, 24 Led. 616; 100 U. S. 313, 25 Led. 667; 104 U. S. 78, 26 Led. 658; 108 U. S. 477, 27 Led. 795; 109 U. S. 3, 27 Led. 836; 109 U. S. 285, 27 Led. 936; 110 U. S. 516, 28 Led. 232; 111 U. S. 701, 28 Led. 569; 111 U. S. 746, 28 Led. 585; 114 U. S. 606, 29 Led. 229; 115 U. S. 321, 29 Led. 414; 115 U. S. 512, 29 Led. 463; 116 U. S. 252, 29 Led. 615; 118 U. S. 356, 30 Led. 220; 119 U. S. 436, 30 Led. 421; 123 U. S. 131, 31 Led. 80; 123 U. S. 623, 31 Led. 205; 124 U. S. 200, 31 Led. 402; 125 U. S. 345, 31 Led. 763; 127 U. S. 205, 32 Led. 107; 127 U. S. 210, 32 Led. 109; 127 U. S. 678, 32 Led. 253; 127 U. S. 700, 32 Led. 283; 128 U. S. 1, 32 Led. 346; 128 U. S. 96, 32 Led. 352; 128 U. S. 578, 32 Led. 544; 129 U. S. 26, 32 Led. 585; 129 U. S. 114, 32 Led. 623; 131 U. S. 405, 33 Led. 193; 133 U. S. 660, 33 Led. 772; 134 U. S. 31, 33 Led. 801; 134 U. S. 232, 33 Led. 892; 134 U. S. 467, 33 Led. 985; 135 U. S. 244, 34 Led. 124; 135 U. S. 100, 34 Led. 128; 136 U. S. 436, 34 Led. 519; 137 U. S. 624, 34 Led. 796; 137 U. S. 691, 34 Led. 816; 138 U. S. 285, 34 Led. 962; 143 U. S. 452, 36 Led. 224; 143 U. S. 517, 36 Led. 247; 143 U. S. 301, 36 Led. 313; 144 U. S. 263, 36 Led. 429; 145 U. S. 175, 36 Led. 666; 145 U. S. 454, 36 Led. 773; 146 U. S. 162, 36 Led. 925; 146 U. S. 202, 36 Led. 942; 146 U. S. 314, 36 Led. 986; 146 U. S. 646, 36 Led. 1119; 148 U. S. 657, 37 Led. 599; 149 U. S. 70, 37 Led. 653; 149 U. S. 194, 37 Led. 699; 149 U. S. 580, 37 Led. 856; 149 U. S. 698, 37 Led. 905; 150 U. S. 433, 37 Led. 1134; 151 U. S. 137, 38 Led. 102; 151 U. S. 556, 38 Led. 269; 152 U. S. 160, 38 Led. 398; 152 U. S. 191, 38 Led. 408; 152 U. S. 377, 38 Led. 485; 153 U. S. 380, 38 Led. 751; 153 U. S. 391, 38 Led. 757; 154 U. S. 34, 38 Led. 896; 156 U. S. 649, 39 Led. 567; 157 U. S. 655, 39 Led. 845; 159 U. S. 74, 40 Led. 80; 159 U. S. 526, 40 Led. 247; 159 U. S. 673, 40 Led. 301; 160 U. S. 293, 40 Led. 432; 160 U. S. 389, 40 Led. 467; 160 U. S. 452, 40 Led. 491; 163 U. S. 81, 41 Led. 78; 163 U. S. 376, 41 Led. 196; 163 U. S. 537, 41 Led. 256; 164 U. S. 112, 41 Led. 369; 164 U. S. 403, 41 Led. 489; 164 U. S. 454, 41 Led. 511; 164 U. S. 578, 41 Led. 560; 165 U. S. 1, 41 Led. 611; 165 U. S. 578, 41 Led. 832; 165 U. S. 628, 41 Led. 853; 166 U. S. 226, 41 Led. 979; 166 U. S. 269, 41 Led. 996; 166 U. S. 481, 41 Led. 1085; 166 U. S. 648, 41 Led. 1149; 166 U. S. 685, 41 Led. 1165; 166 U. S. 698, 41 Led. 1169; 167 U. S. 43, 42 Led. 71; 167 U. S. 461, 42 Led. 236; 168 U. S. 131, 42 Led. 409; 168 U. S. 262, 42 Led. 461; 168 U. S. 393, 42 Led. 515; 168 U. S. 674, 42 Led. 622; 169 U. S. 366, 42 Led. 780; 169 U. S. 421, 42 Led. 803; 169 U. S. 466, 42 Led. 819; 169 U. S. 577, 42 Led. 853; 169 U. S. 586, 42 Led. 865; 170 U. S. 189, 42 Led. 1002; 171 U. S. 404, 43 Led. 214; 172 U. S. 239, 43 Led. 432; 172 U. S. 269, 43 Led. 443; 172 U. S. 314, 43 Led. 460; 172 U. S. 334, 43 Led. 467; 172 U. S. 557, 43 Led. 552; 172 U. S. 602, 43 Led. 569; 172 U. S. 636, 43 Led. 581; 173 U. S. 32, 43 Led. 603; 173 U. S. 84, 43 Led. 623; 173 U. S. 193, 43 Led. 665; 173 U. S. 404, 43 Led. 746; 173 U. S. 443, 43 Led. 762; 173 U. S. 592, 43 Led. 823; 173 U. S. 684, 43 Led. 858; 175 U. S. 172, 44 Led. 119; 175 U. S. 184, 44 Led. 124; 175 U. S. 396, 44 Led. 211; 175 U. S. 409, 44 Led. 217; 175 U. S. 528, 44 Led. 262; 176 U. S. 83, 44 Led. 382; 176 U. S. 398, 44 Led. 520; 176 U. S. 581, 44 Led. 597; 177 U. S. 28, 44 Led. 657; 177 U. S. 183, 44 Led. 725; 177 U. S. 190, 44 Led. 729; 177 U. S. 230, 44 Led. 747; 177 U. S. 318, 44 Led. 786; 177 U. S. 332, 44 Led. 793; 178 U. S. 22, 44 Led. 961; 178 U. S. 289, 44 Led. 1072; 178 U. S. 321, 44 Led. 1085; 178 U. S. 389, 44 Led. 1116; 178 U. S. 548, 44 Led. 1187; 179 U. S. 127, 45 Led. 119; 179 U. S. 287, 45 Led. 194; 179 U. S. 388, 45 Led. 244; 179 U. S. 399, 45 Led. 249; 179 U. S. 405, 45 Led. 252; 180 U. S. 276, 45 Led. 527; 180 U. S. 452, 45 Led. 619; 181 U. S. 33, 45 Led. 731; 181 U. S. 324, 45 Led. 879; 181 U. S. 371, 45 Led. 900; 181 U. S. 389, 45 Led. 908; 181 U. S. 394, 45 Led. 912; 181 U. S. 396, 45 Led. 914; 181 U. S. 402, 45 Led. 922; 181 U. S. 589, 45 Led. 1015; 182 U. S. 398, 45 Led. 1151; 182 U. S. 427, 45 Led. 1165; 183 U. S. 139, 46 Led. 120; 183 U. S. 216, 46 Led. 157; 183 U. S. 249, 46 Led. 177; 183 U. S. 278, 46 Led. 196; 183 U. S. 483, 46 Led. 289; 183 U. S. 503, 46 Led. 298; 183 U. S. 559, 46 Led. 328; 183 U. S. 582, 46 Led. 339; 184 U. S. 61, 46 Led. 431; 184 U. S. 115, 46 Led. 459; 184 U. S. 432, 46 Led. 627; 184 U. S. 540, 46 Led. 679; 185 U. S. 203, 46 Led. 872; 185 U. S. 336, 46 Led. 936; 186 U. S. 380, 46 Led. 1209; 187 U. S. 51, 47 Led. 70; 187 U. S. 71, 47 Led. 79; 187 U. S. 94, 47 Led. 90; 187 U. S. 356, 47 Led. 214; 187 U. S. 547, 47 Led. 296; 188 U. S. 491, 47 Led. 559; 189 U. S. 154, 47 Led. 757; 189 U. S. 255, 47 Led. 793; 189 U. S. 434, 47 Led. 887; 191 U. S. 60, 48 Led. 94; 191 U. S. 150, 48 Led. 127; 191 U. S. 165, 48 Led. 133; 191 U. S. 184, 48 Led. 140; 191 U. S. 207, 48 Led. 148; 191 U. S. 310, 48 Led. 195; 193 U. S. 17, 48 Led. 598; 193 U. S. 30,

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48 Led. 604; 193 U. S. 53, 48 Led. 614; 193 U. S. 79, 48 Led. 623; 193 U. S. 197, 48 Led. 679; 193 U. S. 430, 48 Led. 737; 193 U. S. 460, 48 Led. 749; 193 U. S. 561, 48 Led. 795; 194 U. S. 136, 48 Led. 907; 194 U. S. 258, 48 Led. 965; 194 U. S. 361, 48 Led. 1018; 194 U. S. 517, 48 Led. 1102; 194 U. S. 553, 48 Led. 1115; 194 U. S. 590, 48 Led. 1129; 194 U. S. 618, 48 Led. 1142; 195 U. S. 27, 49 Led. 78; 195 U. S. 223, 49 Led. 169; 195 U. S. 243, 49 Led. 178; 195 U. S. 276, 49 Led. 193; 195 U. S. 332, 49 Led. 224; 195 U. S. 351, 49 Led. 232; 195 U. S. 383, 49 Led. 245; 196 U. S. 78, 49 Led. 394; 196 U. S. 239, 49 Led. 462; 196 U. S. 466, 49 Led. 556; 196 U. S. 611, 49 Led. 619; 197 U. S. 11, 49 Led. 643; 197 U. S. 115, 49 Led. 689; 197 U. S. 453, 49 Led. 831; 197 U. S. 463, 49 Led. 836; 198 U. S. 292, 49 Led. 1056; 198 U. S. 341, 49 Led. 1077; 198 U. S. 458, 49 Led. 1125; 199 U. S. 1, 50 Led. 65; 199 U. S. 89, 50 Led. 101; 199 U. S. 182, 50 Led. 143; 199 U. S. 194, 50 Led. 150; 199 U. S. 212, 50 Led. 157; 199 U. S. 233, 50 Led. 167; 199 U. S. 274, 50 Led. 189; 199 U. S. 306, 50 Led. 204; 199 U. S. 325, 50 Led. 212; 199 U. S. 372, 50 Led. 234; 199 U. S. 401, 50 Led. 246; 199 U. S. 425, 50 Led. 256; 199 U. S. 473, 50 Led. 274; 199 U. S. 547, 50 Led. 303; 200 U. S. 38, 50 Led. 361; 200 U. S. 148, 50 Led. 413; 200 U. S. 164, 50 Led. 421; 200 U. S. 561, 50 Led. 596; 201 U. S. 1, 50 Led. 633; 201 U. S. 123, 50 Led. 689; 201 U. S. 140, 50 Led. 696; 201 U. S. 245, 50 Led. 744; 201 U. S. 359, 50 Led. 788; 201 U. S. 506, 50 Led. 845; 201 U. S. 562, 50 Led. 867; 201 U. S. 633, 50 Led. 896; 201 U. S. 638, 50 Led. 899; 202 U. S. 275, 50 Led. 1026; 202 U. S. 313, 50 Led. 1046; 202 U. S. 584, 50 Led. 1155; 202 U. S. 1, 51 Led. 65; 203 U. S. 151, 51 Led. 132; 203 U. S. 183, 51 Led. 144; 203 U. S. 243, 51 Led. 168; 203 U. S. 256, 51 Led. 174; 203 U. S. 261, 51 Led. 175; 203 U. S. 284, 51 Led. 184; 203 U. S. 323, 51 Led. 204; 203 U. S. 372, 51 Led. 231; 203 U. S. 379, 51 Led. 237; 203 U. S. 531, 51 Led. 305; 203 U. S. 543, 51 Led. 310; 204 U. S. 8, 51 Led. 345; 204 U. S. 116, 51 Led. 399; 204 U. S. 152, 51 Led. 415; 204 U. S. 241, 51 Led. 461; 204 U. S. 311, 51 Led. 499; 204 U. S. 320, 51 Led. 503; 204 U. S. 359, 51 Led. 520; 204 U. S. 470, 51 Led. 571; 204 U. S. 585, 51 Led. 636; 204 U. S. 659, 51 Led. 666; 205 U. S. 33, 51 Led. 696; 205 U. S. 60, 51 Led. 708; 205 U. S. 141, 51 Led. 745; 205 U. S. 170, 51 Led. 755; 205 U. S. 179, 51 Led. 760; 205 U. S. 335, 51 Led. 853; 205 U. S. 466, 51 Led. 882; 206 U. S. 1, 51 Led. 933; 206 U. S. 392, 51 Led. 1106; 206 U. S. 516, 51 Led. 1163; 206 U. S. 536, 51 Led. 1176; 207 U. S. 20, 52 Led. 78; 207 U. S. 67, 52 Led. 106; 207 U. S. 79, 52 Led. 111; 207 U. S. 93, 52 Led. 118; 207 U. S. 127, 52 Led. 134; 207 U. S. 161, 52 Led. 151; 207 U. S. 310, 52 Led. 222; 207 U. S. 338, 52 Led. 236; 207 U. S. 359, 52 Led. 246; 207 U. S. 541, 52 Led. 327; 208 U. S. 226, 52 Led. 464; 208 U. S. 378, 52 Led. 536; 208 U. S. 481, 52 Led. 582; 208 U. S. 570, 52 Led. 625; 208 U. S. 598, 52 Led. 637; 209 U. S. 123, 52 Led. 714; 209 U. S. 205, 52 Led. 747; 209 U. S. 258, 52 Led. 782; 209 U. S. 340, 52 Led. 822; 209 U. S. 349, 52 Led. 828; 209 U. S. 414, 52 Led. 859; 209 U. S. 417, 52 Led. 863; 209 U. S. 473, 52 Led. 896; 210 U. S. 177, 52 Led. 1012; 210 U. S. 266, 52 Led. 1054; 210 U. S. 324, 52 Led. 1080; 210 U. S. 373, 52 Led. 1103; 211 U. S. 31, 53 Led. 75; 211 U. S. 45, 53 Led. 81; 211 U. S. 78, 53 Led. 97; 211 U. S. 210, 53 Led. 150; 211 U. S. 265, 53 Led. 176; 211 U. S. 306, 53 Led. 195; 211 U. S. 432, 53 Led. 269; 211 U. S. 446, 53 Led. 275; 211 U. S. 452, 53 Led. 278; 211 U. S. 489, 53 Led. 295; 211 U. S. 526, 53 Led. 312; 212 U. S. 1, 53 Led. 371; 212 U. S. 19, 53 Led. 382; 212 U. S. 86, 53 Led. 417; 212 U. S. 112, 53 Led. 431; 212 U. S. 132, 53 Led. 441; 212 U. S. 152, 53 Led. 449; 212 U. S. 322, 53 Led. 530; 212 U. S. 414, 53 Led. 577; 212 U. S. 481, 53 Led. 613; 213 U. S. 135, 53 Led. 734; 213 U. S. 175, 53 Led. 753; 213 U. S. 200, 53 Led. 761; 214 U. S. 71, 53 Led. 914; 214 U. S. 91, 53 Led. 923; 214 U. S. 179, 53 Led. 958; 215 U. S. 70, 54 Led. 95; 215 U. S. 336, 54 Led. 221; 216 U. S. 1, 54 Led. 355; 216 U. S. 56, 54 Led. 378; 216 U. S. 92, 54 Led. 396; 216 U. S. 206, 54 Led. 446; 216 U. S. 261, 54 Led. 472; 216 U. S. 285, 54 Led. 482; 216 U. S. 358, 54 Led. 515; 216 U. S. 396, 54 Led. 534; 216 U. S. 400, 54 Led. 536; 216 U. S. 517, 54 Led. 597; 216 U. S. 579, 54 Led. 624; 217 U. S. 79, 54 Led. 673; 217 U. S. 114, 54 Led. 688; 217 U. S. 136, 54 Led. 698; 217 U. S. 189, 54 Led. 725; 217 U. S. 196, 54 Led. 727; 217 U. S. 217, 54 Led. 736; 217 U. S. 443, 54 Led. 832; 217 U. S. 461, 54 Led. 839; 218 U. S. 57, 54 Led. 930; 218 U. S. 161, 54 Led. 980; 218 U. S. 173, 54 Led. 987; 218 U. S. 336, 54 Led. 1060; 218 U. S. 400, 54 Led. 1086; 218 U. S. 406, 54 Led. 1088; 218 U. S. 532, 54 Led. 1139; 218 U. S. 551, 54 Led. 1147; 218 U. S. 591, 54 Led. 1163; 218 U. S. 624, 54 Led. 1185; 219 U. S. 35, 55 Led. 78; 219 U. S. 47, 55 Led. 82; 219 U. S. 104, 55 Led. 112; 219 U. S. 128, 55 Led. 128; 219 U. S. 140, 55 Led. 137; 219 U. S. 219, 55 Led. 191; 219 U. S. 270, 55 Led. 213; 219 U. S. 285, 55 Led. 219; 219 U. S. 307, 55 Led. 229; 219 U. S. 453, 55 Led. 290; 220 U. S. 61, 55 Led. 369; 220 U. S. 462, 55 Led. 544; 220 U. S. 502, 55 Led. 561; 221 U. S. 229, 55 Led. 716; 221 U. S. 346, 55 Led. 762; 221 U. S. 358, 55 Led. 769; 221 U. S. 467, 55 Led. 815; 221 U. S. 524, 55 Led. 838; 221 U. S. 636, 55 Led. 890; 221 U. S. 660, 55 Led. 899; 222 U. S. 1, 56 Led. 65; 222 U. S. 63, 56 Led. 96; 222 U. S. 225, 56 Led. 175; 222 U. S. 313, 56 Led. 215; 222 U. S. 380, 56 Led. 240; 222 U. S. 522, 56 Led. 294; 222 U. S. 525, 56 Led. 299; 222 U. S. 541, 56 Led. 308; 223 U. S. 151, 56 Led. 386; 223 U. S. 261, 56 Led. 429; 223 U. S. 280, 56 Led. 436; 223 U. S. 288, 56 Led. 439; 223 U. S. 298, 56 Led. 445; 223 U. S. 335, 56 Led. 459; 223 U. S. 349, 56 Led. 466; 223 U. S. 437, 56 Led. 497; 223 U. S. 468, 56 Led. 510; 223 U. S. 543, 56 Led. 544; 223 U. S. 655, 56 Led. 594; 224 U. S. 148, 56 Led. 703; 224 U. S. 160, 56 Led. 710; 224 U. S. 270, 56 Led. 760; 224 U. S. 354, 56 Led. 799; 224 U. S. 503, 56 Led. 860; 224

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U. S. 510, 56 Led. 863; 224 U. S. 541, 56 Led. 875; 224 U. S. 558, 56 Led. 883; 224 U. S. 616, 56 Led. 917; 224 U. S. 649, 56 Led. 934; 225 U. S. 167, 56 Led. 1038; 225 U. S. 264, 56 Led. 1082; 225 U. S. 623, 56 Led. 1229; 226 U. S. 112, 57 Led. 146; 226 U. S. 137, 57 Led. 156; 226 U. S. 217, 57 Led. 193; 226 U. S. 260, 57 Led. 212; 226 U. S. 447, 57 Led. 293; 226 U. S. 578, 57 Led. 364; 227 U. S. 150, 57 Led. 458; 227 U. S. 278, 57 Led. 510; 227 U. S. 303, 57 Led. 520; 227 U. S. 477, 57 Led. 603; 227 U. S. 559, 57 Led. 642; 228 U. S. 1, 57 Led. 707; 228 U. S. 61, 57 Led. 730; 228 U. S. 70, 57 Led. 734; 228 U. S. 148, 57 Led. 773; 228 U. S. 326, 57 Led. 857; 228 U. S. 346, 57 Led. 867; 228 U. S. 454, 57 Led. 915; 228 U. S. 572, 57 Led. 971; 228 U. S. 596, 57 Led. 982; 228 U. S. 652, 57 Led. 1010; 229 U. S. 26, 57 Led. 1050; 229 U. S. 39, 57 Led. 1056; 229 U. S. 123, 57 Led. 1101; 229 U. S. 353, 57 Led. 1224; 229 U. S. 363, 57 Led. 1228; 229 U. S. 397, 57 Led. 1248; 229 U. S. 476, 57 Led. 1286; 229 U. S. 586, 57 Led. 1340; 230 U. S. 98, 57 Led. 1409; 230 U. S. 340, 57 Led. 1507; 230 U. S. 352, 57 Led. 1511; 230 U. S. 474, 57 Led. 1571; 230 U. S. 513, 57 Led. 1597; 230 U. S. 537, 57 Led. 1610; 230 U. S. 553, 57 Led. 1625.

Equal protection of the laws. 16 Wall. 36, 21 Led. 394; 92 U. S. 214, 23 Led. 563; 94 U. S. 113, 24 Led. 77; 101 U. S. 22, 25 Led. 989; 106 U. S. 593, 27 Led. 207; 107 U. S. 110, 27 Led. 354; 109 U. S. 3, 27 Led. 836; 111 U. S. 746, 28 Led. 585; 113 U. S. 27, 28 Led. 923; 114 U. S. 606, 29 Led. 229; 115 U. S. 321, 29 Led. 414; 115 U. S. 512, 29 Led. 463; 118 U. S. 356, 30 Led. 220; 119 U. S. 110, 30 Led. 342; 123 U. S. 623, 31 Led. 205; 125 U. S. 181, 31 Led. 650; 125 U. S. 60, 31 Led. 689; 127 U. S. 205, 32 Led. 107; 127 U. S. 210, 32 Led. 109; 127 U. S. 1, 32 Led. 150; 127 U. S. 678, 32 Led. 253; 128 U. S. 578, 32 Led. 544; 129 U. S. 26, 32 Led. 585; 134 U. S. 31, 33 Led. 80; 134 U. S. 232, 33 Led. 892; 134 U. S. 594, 33 Led. 1025; 135 U. S. 244, 34 Led. 124; 135 U. S. 100, 34 Led. 128; 136 U. S. 114, 34 Led. 394; 137 U. S. 691, 34 Led. 816; 140 U. S. 278, 35 Led. 505; 142 U. S. 339, 35 Led. 1035; 143 U. S. 452, 36 Led. 224; 143 U. S. 517, 36 Led. 247; 144 U. S. 263, 36 Led. 429; 146 U. S. 646, 36 Led. 1119; 148 U. S. 657, 37 Led. 599; 149 U. S. 308, 37 Led. 747; 151 U. S. 470, 38 Led. 238; 151 U. S. 556, 38 Led. 269; 152 U. S. 377, 38 Led. 485; 153 U. S. 380, 38 Led. 751; 153 U. S. 391, 38 Led. 757; 157 U. S. 655, 39 Led. 845; 159 U. S. 673, 40 Led. 301; 160 U. S. 293, 40 Led. 432; 160 U. S. 452, 40 Led. 491; 162 U. S. 365, 40 Led. 1075; 163 U. S. 81, 41 Led. 78; 163 U. S. 101, 41 Led. 87; 163 U. S. 537, 41 Led. 256; 164 U. S. 112, 41 Led. 369; 164 U. S. 578, 41 Led. 560; 165 U. S. 1, 41 Led. 611; 165 U. S. 150, 41 Led. 666; 165 U. S. 628, 41 Led. 853; 166 U. S. 226, 41 Led. 979; 166 U. S. 440, 41 Led. 1069; 166 U. S. 709, 41 Led. 1173; 167 U. S. 175, 42 Led. 126; 167 U. S. 461, 42 Led. 236; 168 U. S. 131, 42 Led. 409; 168 U. S. 262, 42 Led. 461; 169 U. S. 366, 42 Led. 780; 169 U. S. 421, 42 Led. 803; 169 U. S. 466, 42 Led. 819; 169 U. S. 577, 42 Led. 853; 169 U. S. 586, 42 Led. 865; 170 U. S. 213, 42 Led. 1012; 170 U. S. 283, 42 Led. 1037; 172 U. S. 239, 43 Led. 432; 172 U. S. 334, 43 Led. 467; 172 U. S. 557, 43 Led. 552; 173 U. S. 32, 43 Led. 603; 173 U. S. 84, 43 Led. 623; 173 U. S. 404, 43 Led. 746; 173 U. S. 636, 43 Led. 840; 173 U. S. 684, 43 Led. 858; 174 U. S. 96, 43 Led. 909; 175 U. S. 172, 44 Led. 119; 175 U. S. 184, 44 Led. 124; 175 U. S. 348, 44 Led. 192; 175 U. S. 528, 44 Led. 262; 177 U. S. 183, 44 Led. 725; 177 U. S. 584, 44 Led. 897; 178 U. S. 289, 44 Led. 1072; 179 U. S. 89, 45 Led. 102; 179 U. S. 270, 45 Led. 186; 179 U. S. 287, 45 Led. 194; 179 U. S. 328, 45 Led. 214; 179 U. S. 388, 45 Led. 244; 179 U. S. 602, 45 Led. 337; 181 U. S. 33, 45 Led. 731; 181 U. S. 399, 45 Led. 917; 181 U. S. 589, 45 Led. 1015; 182 U. S. 398, 45 Led. 1151; 183 U. S. 79, 46 Led. 92; 183 U. S. 138, 46 Led. 120; 183 U. S. 144, 46 Led. 125; 183 U. S. 471, 46 Led. 253; 183 U. S. 483, 46 Led. 289; 183 U. S. 559, 46 Led. 328; 184 U. S. 329, 46 Led. 569; 184 U. S. 540, 46 Led. 679; 185 U. S. 203, 46 Led. 872; 185 U. S. 308, 46 Led. 922; 185 U. S. 364, 46 Led. 949; 186 U. S. 380, 46 Led. 1209; 187 U. S. 51, 47 Led. 70; 187 U. S. 155, 47 Led. 117; 187 U. S. 356, 47 Led. 214; 187 U. S. 547, 47 Led. 296; 188 U. S. 97, 47 Led. 400; 188 U. S. 519, 47 Led. 572; 188 U. S. 730, 47 Led. 669; 189 U. S. 154, 47 Led. 757; 189 U. S. 601, 47 Led. 821; 191 U. S. 17, 48 Led. 73; 191 U. S. 165, 48 Led. 133; 191 U. S. 207, 48 Led. 148; 191 U. S. 310, 48 Led. 195; 191 U. S. 388, 48 Led. 232; 191 U. S. 405, 48 Led. 239; 192 U. S. 226, 48 Led. 417; 193 U. S. 17, 48 Led. 598; 193 U. S. 30, 48 Led. 604; 193 U. S. 504, 48 Led. 767; 193 U. S. 621, 48 Led. 817; 193 U. S. 635, 48 Led. 823; 194 U. S. 161, 48 Led. 917; 194 U. S. 267, 48 Led. 971; 194 U. S. 445, 48 Led. 1062; 194 U. S. 579, 48 Led. 1124; 195 U. S. 332, 49 Led. 224; 196 U. S. 599, 49 Led. 615; 197 U. S. 11, 49 Led. 643; 197 U. S. 60, 49 Led. 663; 197 U. S. 115, 49 Led. 689; 197 U. S. 299, 49 Led. 765; 197 U. S. 430, 49 Led. 819; 198 U. S. 392, 49 Led. 1097; 198 U. S. 500, 49 Led. 1142; 199 U. S. 1, 50 Led. 65; 199 U. S. 401, 50 Led. 246; 199 U. S. 547, 50 Led. 303; 199 U. S. 593, 50 Led. 322; 200 U. S. 87, 50 Led. 382; 200 U. S. 164, 50 Led. 421; 200 U. S. 316, 50 Led. 497; 200 U. S. 561, 50 Led. 596; 201 U. S. 245, 50 Led. 744; 202 U. S. 446, 50 Led. 1099; 203 U. S. 1, 51 Led. 65; 203 U. S. 243, 51 Led. 168; 203 U. S. 256, 51 Led. 174; 203 U. S. 284, 51 Led. 184; 203 U. S. 531, 51 Led. 305; 203 U. S. 543, 51 Led. 310; 203 U. S. 553, 51 Led. 314; 204 U. S. 36, 51 Led. 357; 204 U. S. 152, 51 Led. 415; 204 U. S. 241, 51 Led. 461; 204 U. S. 311, 51 Led. 499; 204 U. S. 320, 51 Led. 503; 204 U. S. 359, 51 Led. 520; 204 U. S. 470, 51 Led. 571; 204 U. S. 585, 51 Led. 636; 205 U. S. 60, 51 Led. 708; 206 U. S. 1, 51 Led. 933; 207 U. S. 20, 52 Led. 78; 207 U. S. 67, 52 Led. 106; 207 U. S. 73, 52 Led. 108; 207 U. S. 79, 52 Led. 111; 207 U. S. 244, 52 Led.

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191; 207 U. S. 339, 52 L.ed. 236; 207 U. S. 541, 52 L.ed. 327; 208 U. S. 113, 52 L.ed. 413; 208 U. S. 481, 52 L.ed. 582; 209 U. S. 123, 52 L.ed. 714; 209 U. S. 305, 52 L.ed. 747; 209 U. S. 340, 52 L.ed. 822; 209 U. S. 349, 52 L.ed. 828; 209 U. S. 467, 52 L.ed. 894; 210 U. S. 177, 52 L.ed. 1012; 211 U. S. 265, 53 L.ed. 176; 211 U. S. 446, 53 L.ed. 275; 211 U. S. 452, 53 L.ed. 278; 211 U. S. 477, 53 L.ed. 290; 211 U. S. 459, 53 L.ed. 295; 211 U. S. 526, 53 L.ed. 312; 211 U. S. 539, 53 L.ed. 315; 212 U. S. 112, 53 L.ed. 431; 212 U. S. 278, 53 L.ed. 512; 212 U. S. 322, 53 L.ed. 530; 213 U. S. 175, 53 L.ed. 753; 214 U. S. 91, 53 L.ed. 923; 214 U. S. 138, 53 L.ed. 941; 216 U. S. 396, 54 L.ed. 534; 216 U. S. 400, 54 L.ed. 536; 217 U. S. 79, 54 L.ed. 673; 217 U. S. 114, 54 L.ed. 688; 217 U. S. 413, 54 L.ed. 817; 217 U. S. 461, 54 L.ed. 839; 217 U. S. 563, 54 L.ed. 883; 218 U. S. 36, 54 L.ed. 921; 218 U. S. 135, 54 L.ed. 970; 218 U. S. 173, 54 L.ed. 987; 218 U. S. 400, 54 L.ed. 1086; 218 U. S. 406, 54 L.ed. 1088; 218 U. S. 532, 54 L.ed. 1139; 218 U. S. 551, 54 L.ed. 1147; 218 U. S. 563, 54 L.ed. 1151; 219 U. S. 35, 55 L.ed. 78; 219 U. S. 121, 55 L.ed. 123; 219 U. S. 128, 55 L.ed. 128; 219 U. S. 140, 55 L.ed. 137; 219 U. S. 219, 55 L.ed. 191; 219 U. S. 307, 55 L.ed. 229; 219 U. S. 453, 55 L.ed. 290; 219 U. S. 549, 55 L.ed. 328; 220 U. S. 61, 55 L.ed. 369; 220 U. S. 107, 55 L.ed. 389; 221 U. S. 467, 55 L.ed. 815; 221 U. S. 660, 55 L.ed. 899; 222 U. S. 28, 56 L.ed. 75; 222 U. S. 225, 56 L.ed. 175; 222 U. S. 251, 56 L.ed. 185; 222 U. S. 313, 56 L.ed. 215; 222 U. S. 525, 56 L.ed. 299; 223 U. S. 1, 56 L.ed. 327; 223 U. S. 59, 56 L.ed. 350; 223 U. S. 118, 56 L.ed. 377; 223 U. S. 288, 56 L.ed. 439; 223 U. S. 468, 56 L.ed. 510; 224 U. S. 270, 56 L.ed. 760; 224 U. S. 503, 56 L.ed. 860; 224 U. S. 541, 56 L.ed. 875; 224 U. S. 616, 56 L.ed. 917; 225 U. S. 272, 56 L.ed. 1087; 225 U. S. 540, 56 L.ed. 1197; 225 U. S. 623, 56 L.ed. 1229; 226 U. S. 112, 57 L.ed. 146; 226 U. S. 137, 57 L.ed. 156; 226 U. S. 157, 57 L.ed. 164; 226 U. S. 184, 57 L.ed. 180; 226 U. S. 217, 57 L.ed. 193; 226 U. S. 260, 57 L.ed. 212; 226 U. S. 390, 57 L.ed. 267; 227 U. S. 303, 57 L.ed. 520; 227 U. S. 477, 57 L.ed. 603; 228 U. S. 454, 57 L.ed. 915; 228 U. S. 559, 57 L.ed. 966; 228 U. S. 572, 57 L.ed. 971; 228 U. S. 680, 57 L.ed. 1202; 229 U. S. 26, 57 L.ed. 1050; 229 U. S. 123, 57 L.ed. 1101; 229 U. S. 322, 57 L.ed. 1206; 229 U. S. 353, 57 L.ed. 1224; 230 U. S. 352, 57 L.ed. 1511; 230 U. S. 513, 57 L.ed. 1597.

Freedom to contract. 155 U. S. 648, 39 L.ed. 297; 165 U. S. 578, 41 L.ed. 832; 169 U. S. 366, 42 L.ed. 780; 171 U. S. 505, 43 L.ed. 259; 178 U. S. 389, 44 L.ed. 1116; 179 U. S. 287, 45 L.ed. 194; 180 U. S. 452, 45 L.ed. 619; 183 U. S. 23, 46 L.ed. 61; 183 U. S. 553, 46 L.ed. 324; 184 U. S. 425, 46 L.ed. 623; 187 U. S. 611, 47 L.ed. 325; 191 U. S. 207, 48 L.ed. 148; 193 U. S. 416, 48 L.ed. 733; 194 U. S. 112, 38 L.ed. 896; 195 U. S. 194, 49 L.ed. 154; 196 U. S. 447, 49 L.ed. 546; 197 U. S. 11, 49 L.ed. 643; 197 U. S. 197, 49 L.ed. 723; 197 U. S. 207, 49 L.ed. 726; 197 U. S. 488, 49 L.ed. 848; 197 U. S. 544, 49 L.ed. 872; 198 U. S. 45, 49 L.ed. 937; 199 U. S. 241, 50 L.ed. 170; 199 U. S. 401, 50 L.ed. 246; 203 U. S. 1, 51 L.ed. 65; 207 U. S. 187, 52 L.ed. 163; 208 U. S. 412, 52 L.ed. 551; 211 U. S. 539, 53 L.ed. 315; 215 U. S. 452, 54 L.ed. 280; 217 U. S. 433, 54 L.ed. 826; 218 U. S. 406, 54 L.ed. 1088; 219 U. S. 270, 55 L.ed. 213; 219 U. S. 285, 55 L.ed. 219; 219 U. S. 549, 55 L.ed. 328; 226 U. S. 157, 57 L.ed. 164; 226 U. S. 578, 57 L.ed. 364.

§ 2. Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for president and vice-president of the United States, representatives in congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Apportionment of representatives and taxes. 21 Wall. 162, 22 L.ed. 627; 92 U. S. 214, 23 L.ed. 563; 146 U. S. 1, 36 L.ed. 869; 157 U. S. 429, 39 L.ed. 759.

§ 3. No person shall be a senator or representative in congress, or elector of president and vice-president, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath as a member of congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But congress may, by a vote of two-thirds of each house, remove such disability.

Disabilities. 9 Wall. 611, 19 L.ed. 565.

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§ 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States, nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Public debt. 97 U. S. 454, 24 Led. 1071.

§ 5. The congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Enforcement. 100 U. S. 313, 25 Led. 667; 100 U. S. 339, 25 Led. 676; 106 U. S. 629, 27 Led. 290.

ARTICLE 15.

§ 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of race, color or previous condition of servitude.

Right to vote. 13 Wall. 646, 20 Led. 685; 16 Wall. 36, 21 Led. 394; 18 Wall. 648, 21 Led. 966; 21 Wall. 162, 22 Led. 627; 92 U. S. 214, 23 Led. 563; 92 U. S. 542, 23 Led. 588; 100 U. S. 339, 25 Led. 676; 103 U. S. 370, 26 Led. 567; 106 U. S. 629, 27 Led. 290; 109 U. S. 3, 27 Led. 836; 112 U. S. 94, 28 Led. 643; 120 U. S. 678, 30 Led. 766; 120 U. S. 600, 30 Led. 798; 144 U. S. 263, 36 Led. 429; 146 U. S. 1, 36 Led. 869; 169 U. S. 649, 42 Led. 890; 176 U. S. 581, 44 Led. 597; 182 U. S. 244, 45 Led. 1088; 189 U. S. 475, 47 Led. 909; 190 U. S. 127, 47 Led. 979; 193 U. S. 146, 48 Led. 655; 197 U. S. 207, 49 Led. 726.

§ 2. The congress shall have power to enforce this article by appropriate legislation.

ARTICLE 16.

The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

ARTICLE 17.

The senate of the United States shall be composed of two senators from each state, elected by the people thereof, for six years; and each senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any senator chosen before it becomes valid as part of the constitution.

NOTE:—The constitution was adopted September 17, 1787, by the unanimous consent of the states present in the convention appointed in pursuance of the resolution of the congress of the confederation, of February 21, 1787, and was ratified by the conventions of the several states, as follows, viz: By convention of Delaware, December 7, 1787; Pennsylvania, December 12, 1787; New Jersey, December 18, 1787; Georgia, January 2, 1788; Connecticut, January 9, 1788; Massachusetts, February 6, 1788; Maryland, April 28, 1788; South Carolina, May 23, 1788; New Hampshire, June 21, 1788; Virginia, June 26, 1788; New York, July 26, 1788; North Carolina, November 21, 1789; Rhode Island, May 29, 1790.

The first ten of the amendments were proposed at the first session of the first congress of the United States, September 25, 1789, and were finally ratified by the constitutional number of states, December 15, 1791.

The eleventh amendment was proposed at the first session of the third congress, March 5, 1794, and was declared in a message from the president of the United States to both houses of congress, dated January 8, 1798, to have been adopted by the constitutional number of states.

The twelfth amendment was proposed at the first session of the eighth congress, December 12, 1803, and was adopted by the constitutional number of states in 1804, according to a public notice thereof by the secretary of state, dated September 25, 1804.

The thirteenth amendment was proposed at the second session of the thirty-eighth congress, February 1, 1865, and was adopted by the constitutional number of states in 1865, according to a public notice thereof by the secretary of state, dated December 18, 1865.

The fourteenth amendment took effect July 28, 1868. The fifteenth amendment took effect March 30, 1870. The sixteenth amendment took effect February 25, 1913. The seventeenth amendment took effect May 31, 1913.

THE ENABLING ACT

[Approved Feb. 22, 1889.]

AN ACT to Provide for the Division of Dakota Into Two States, and to Enable the People of North Dakota, South Dakota, Montana and Washington to Form Constitutions and State Governments, and to be Admitted Into the Union on an Equal Footing With the Original States, and to Make Donations of Public Lands to such States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the inhabitants of all that part of the area of the United States now constituting the territories of Dakota, Montana and Washington, as at present described may become the states of North Dakota, South Dakota, Montana and Washington respectively, as hereinafter provided.

§ 2. The area comprising the territory of Dakota shall, for the purposes of this act, be divided on the line of the seventh standard parallel produced due west to the western boundary of said territory; and the delegates elected as hereinafter provided to the constitutional convention in districts north of said parallel shall assemble in convention, at the time prescribed in this act, at the city of Bismarck; and the delegates elected in districts south of said parallel shall, at the same time, assemble in convention at the city of Sioux Falls.

§ 3. That all persons who are qualified by the laws of said territories to vote for representatives to the legislative assemblies thereof, are hereby authorized to vote for and choose delegates to form conventions in said proposed states; and the qualifications for delegates to such conventions shall be such as by the laws of said territories, respectively, persons are required to possess to be eligible to the legislative assemblies thereof, and the aforesaid delegates to form said conventions shall be apportioned within the limits of the proposed states in such districts as may be established as herein provided, in proportion to the population in each of said counties and districts, as near as may be, to be ascertained at the time of making said apportionments by the persons hereinafter authorized to make the same, from the best information obtainable, in each of which districts three delegates shall be elected, but no elector shall vote for more than two persons for delegates to such conventions; that said apportionments shall be made by the governor, the chief justice and the secretary of said territories; and the governors of said territories shall, by proclamation, order an election of the delegates aforesaid in each of said proposed states, to be held on the Tuesday after the second Monday in May, 1889, which proclamation shall be issued on the fifteenth day of April, 1889; and such election shall be conducted, the returns made, the result ascertained and the certificates to persons elected to such convention issued in the same manner as is prescribed by the laws of the said territories regulating elections therein for delegates to congress; and the number of votes cast for delegates in each precinct shall also be returned. The number of delegates to said conventions respectively, shall be seventy-five; and all persons resident in said proposed states, who are qualified voters of said territories as herein provided, shall be entitled to vote upon the election of delegates, and under such rules and regulations as said conventions may prescribe not in conflict with this act, upon the ratification or rejection of the constitutions.

§ 4. That the delegates to the conventions elected as provided for in this act shall meet at the seat of government of each of said territories, except the

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delegates elected in South Dakota, who shall meet at the city of Sioux Falls, on the fourth day of July, 1889, and, after organization, shall declare on behalf of the people of said proposed states that they adopt the constitution of the United States; whereupon the said conventions shall be, and are hereby authorized to form constitutions and state governments for said proposed states, respectively. The constitution shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the constitution of the United States and the principles of the declaration of independence. And said convention shall provide by ordinances irrevocable without the consent of the United States and the people of said states:

First. That the perfect toleration of religious sentiment shall be secured, and that no inhabitant of said states shall ever be molested in person or property on account of his or her mode of religious worship.

Second. That the people inhabiting said proposed states do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that the lands belonging to citizens of the United States residing without the said states shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the states on lands or property therein belonging to or which may hereafter be purchased by the United States or reserved for its use. But nothing herein, or in the ordinances herein provided for, shall preclude the said states from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said states so long and to such extent as such act of congress may prescribe.

Third. That the debts and liabilities of said territories shall be assumed and paid by said states, respectively.

Fourth. That provision shall be made for the establishment and maintenance of systems of public schools, which shall be open to all the children of said states, and free from sectarian control.

§ 5. That the convention which shall assemble at Bismarck shall form a constitution and state government for a state to be known as North Dakota, and the convention which shall assemble at Sioux Falls shall form a constitution and state government for a state to be known as South Dakota; provided, that at the election for delegates to the constitutional convention in South Dakota, as hereinbefore provided, each elector may have written or printed on his ballot, the words, "For the Sioux Falls Constitution," or the words, "Against the Sioux Falls Constitution," and the votes on this question shall be returned and canvassed in the same manner as for the election provided for in section 3 of this act; and if a majority of all votes cast on this question shall be "For the Sioux Falls Constitution" it shall be the duty of the convention which may assemble at Sioux Falls, as herein provided, to resubmit to the people of South Dakota, for ratification or rejection at the election hereinafter provided for in this act, the constitution framed at Sioux Falls, and adopted November 3, 1885, and also the articles and propositions separately submitted at that election, including the question of locating the temporary seat of government, with such changes only as relate to the name and

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boundary of the proposed state, to the reapportionment of the judicial and legislative districts, and such amendments as may be necessary in order to comply with the provisions of this act; and if a majority of the votes cast on the ratification or rejection of the constitution shall be for the constitution irrespective of the articles separately submitted, the state of South Dakota shall be admitted as a state in the union under said constitution as hereinafter provided; but the archives, records and books of the territory of Dakota shall remain at Bismarek, the capital of North Dakota, until an agreement in reference thereto is reached by said states. But if at the election for delegates to the constitutional convention in South Dakota a majority of all the votes cast at that election shall be "Against the Sioux Falls Constitution," then, and in that event, it shall be the duty of the convention which will assemble at the city of Sioux Falls on the Fourth day of July, 1889, to proceed to form a constitution and state government as provided in this act the same as if that question had not been submitted to a vote of the people of South Dakota.

§ 6. It shall be the duty of the constitutional conventions of North Dakota and South Dakota to appoint a joint commission, to be composed of not less than three members of each convention, whose duty it shall be to assemble at Bismarek, the present seat of government of said territory, and agree upon an equitable division of all property belonging to the territory of Dakota, the disposition of all public records, and also adjust and agree upon the amount of the debts and liabilities of the territory, which shall be assumed and paid by each of the proposed states of North and South Dakota; and the agreement reached respecting the territorial debts and liabilities shall be incorporated in the respective constitutions, and each of said states shall obligate itself to pay its proportion of such debts and liabilities the same as if they had been created by such states respectively.

§ 7. If the constitutions formed for both North Dakota and South Dakota shall be rejected by the people at the elections for the ratification or rejection of their respective constitutions as provided for in this act, the territorial government of Dakota shall continue in existence the same as if this act had not been passed. But if the constitution formed for either North Dakota or South Dakota shall be rejected by the people, that part of the territory so rejecting its proposed constitution shall continue under the territorial government of the present territory of Dakota, but shall, after the state adopting its constitution is admitted into the union, be called by the name of the territory of North Dakota or South Dakota, as the case may be; provided, that if either of the proposed states provided for in this act shall reject the constitution which may be submitted for ratification or rejection at the election provided therefor, the governor of the territory in which such proposed constitution was rejected shall issue his proclamation reconvening the delegates elected to the convention which formed such rejected constitution, fixing the time and place at which said delegates shall assemble; and when so assembled they shall proceed to form another constitution or to amend the rejected constitution and shall submit such new constitution or amended constitution to the people of the proposed state for ratification or rejection, at such time as said convention may determine; and all the provisions of this act, so far as applicable, shall apply to such convention so reassembled and to the constitution which may be formed, its ratification or rejection, and to the admission of the proposed state.

§ 8. That the constitutional convention which may assemble in South Dakota shall provide by ordinance for resubmitting the Sioux Falls constitution of 1885, after having amended the same as provided in section 5 of this act, to the people of South Dakota for ratification or rejection at an election to be held therein on the first Tuesday in October, 1889; but if said constitutional convention is authorized and required to form a new constitution for South Dakota, it shall provide for submitting the same in like manner to the

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people of South Dakota for ratification or rejection at an election to be held in said proposed state on the said first Tuesday in October. And the constitutional conventions which may assemble in North Dakota, Montana and Washington, shall provide in like manner for submitting the constitutions formed by them to the people of said proposed states respectively, for ratification or rejection, at elections to be held in said proposed states on the first Tuesday in October. At the elections provided for in this section the qualified voters of said proposed states shall vote directly for or against the proposed constitutions, and for or against any articles or propositions separately submitted. The returns of said elections shall be made to the secretary of each of said territories, who, with the governor and chief justice thereof, or any two of them, shall canvass the same; and if a majority of the legal votes cast shall be for the constitution, the governor shall certify the result to the president of the United States, together with a statement of the votes cast thereon and upon separate articles or propositions, and a copy of the said constitution, articles, propositions and ordinances. And if the constitutions and governments of said proposed states are republican in form, and if all the provisions of this act have been complied with in the formation thereof, it shall be the duty of the president of the United States to issue his proclamation announcing the result of the election in each, and thereupon the proposed states which have adopted constitutions and formed state governments, as herein provided, shall be deemed admitted by congress into the union, under and by virtue of this act, on an equal footing with the original states from and after the date of said proclamation.

§ 9. That until the next general census, or until otherwise provided by law, said states shall be entitled to one representative in the house of representatives of the United States, except South Dakota which shall be entitled to two; and the representatives to the fifty-first congress, together with the governors and other officers provided for in said constitutions, may be elected on the same day of the election for the ratification or rejection of the constitutions; and until said state officers are elected and qualified under the provisions of each constitution and the states, respectively, are admitted into the union, the territorial officers shall continue to discharge the duties of their respective offices in each of said territories.

§ 10. That upon the admission of each of said states into the union, sections numbered sixteen and thirty-six in every township of said proposed states, and where such sections or any parts thereof have been sold or otherwise disposed of by or under the authority of any act of congress, other lands equivalent thereto, in legal subdivisions of not less than one-quarter section, and as contiguous as may be to the section in lieu of which the same is taken, are hereby granted to said states for the support of common schools, such indemnity lands to be selected within said states in such manner as the legislature may provide, with the approval of the secretary of the interior; provided, that the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, nor shall any lands embraced in Indian, military or other reservations of any character, be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to, and become a part of, the public domain.

§ 11. That all lands herein granted for educational purposes shall be disposed of only at public sale, and at a price not less than \$10 per acre, the proceeds to constitute a permanent school fund, the interest of which only shall be expended in the support of said schools. But said lands may, under such regulations as the legislature shall prescribe, be leased for periods of not more than five years, in quantities not exceeding one section to any one person or company; and such land shall not be subject to pre-emption, home-

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stead entry, or any other entry under the land laws of the United States, whether surveyed or unsurveyed, but shall be reserved for school purposes only.

§ 12. That upon the admission of each of said states into the union, in accordance with the provisions of this act, fifty sections of the unappropriated public lands within said states, to be selected and located in legal subdivisions as provided in section 10 of this act, shall be, and are hereby, granted to said states for the purpose of erecting public buildings at the capital of said states for legislative, executive and judicial purposes.

See veto message in N. D. Laws 1911, chap. 320, p. 570, citing *State ex rel. University & School Lands v. McMillan*, 12 N. D. 280, 96 N. W. 310; *State ex rel. Rusk v. Budge*, 14 N. D. 532, 105 N. W. 724; *State ex rel. Bickford v. Cook*, 17 Mont. 529, 43 Pac. 928; *State ex rel. Haire v. Rice*, 33 Mont. 365, 83 Pac. 874; *Allen v. Grimes*, 9 Wash. 424, 37 Pac. 662; *State ex rel. Houston v. Maynard*, 31 Wash. 132, 71 Pac. 775; *Re Internal Improv. Fund*, 24 Colo. 247, 48 Pac. 807; *Re Internal Improvements*, 18 Colo. 317, 32 Pac. 611.

§ 13. That five per centum of the proceeds of the sales of public lands lying within said states which shall be sold by the United States subsequent to the admission of said states into the union, after deducting all the expenses incident to the same, shall be paid to the said states, to be used as a permanent fund, the interest of which only shall be expended for the support of common schools within said states, respectively.

§ 14. That the lands granted to the territories of Dakota and Montana by the act of February 18, 1881, entitled "An act to grant lands to Dakota, Montana, Arizona, Idaho and Wyoming for university purposes," are hereby vested in the states of South Dakota, North Dakota and Montana respectively, if such states are admitted into the union as provided in this act, to the extent of the full quantity of seventy-two sections to each of said states, and any portion of said lands that may not have been selected by either of said territories of Dakota or Montana may be selected by the respective states aforesaid, but said act of February 18, 1881, shall be so amended as to provide that none of said lands shall be sold for less than \$10 per acre, and the proceeds shall constitute a permanent fund to be safely invested and held by said states severally, and the income thereof be used exclusively for university purposes and such quantity of the lands authorized by the fourth section of the act of July 17, 1854, to be reserved for university purposes in the territory of Washington, as, together with the lands confirmed to the vendees of the territory by the act of March 14, 1864, will make the full quantity of seventy-two entire sections, are hereby granted in like manner to the state of Washington for the purposes of a university in said state. None of the lands granted in this section shall be sold at less than \$10 per acre; but said lands may be leased in the same manner as provided in section 11 of this act. The schools, colleges and universities provided for in this act shall forever remain under the exclusive control of the said states, respectively, and no part of the proceeds arising from the sale or disposal of any lands herein granted for educational purposes shall be used for the support of any sectarian or denominational school, college, or university. The section of land granted by the act of June 16, 1880, to the territory of Dakota, for an asylum for the insane shall, upon the admission of said state of South Dakota into the union, become the property of said state.

§ 15. That so much of the lands belonging to the United States as have been acquired and set apart for the purpose mentioned in "An act appropriating money for the erection of a penitentiary in the territory of Dakota," approved March 2, 1881, together with the buildings thereon, be, and the same is hereby granted, together with any unexpended balances of the moneys appropriated therefor by said act to said state of South Dakota, for the purposes therein designated; and the states of North Dakota and Washington shall, respectively, have like grants for the same purpose, and subject to like

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terms and conditions as provided in said act of March 2, 1831, for the territory of Dakota. The penitentiary at Deer Lodge City, Montana, and all lands connected therewith and set apart and reserved therefor, are hereby granted to the state of Montana.

§ 16. That 90,000 acres of land, to be selected and located as provided in section 10 of this act, are hereby granted to each of said states except to the state of South Dakota, to which 120,000 acres are granted for the use and support of agricultural colleges in said states, as provided in the acts of congress making donations of lands for such purposes.

§ 17. That in lieu of the grant of land for purposes of internal improvement made to new states by the eighth section of the act of September 4, 1841, which act is hereby repealed as to the states provided for by this act, and in lieu of any claim or demand by the said states, or either of them, under the act of September 28, 1850, and section 2479 of the revised statutes, making a grant of swamp and overflowed lands to certain states, which grant it is hereby declared is not extended to the states provided for in this act, and in lieu of any grant of saline lands to said states, the following grants of land are hereby made, to wit:

To the state of South Dakota: For the school of mines, 40,000 acres; for the reform school, 40,000 acres; for the deaf and dumb asylum, 40,000 acres; for the agricultural college, 40,000 acres; for the university, 40,000 acres; for state normal schools, 80,000 acres; for public buildings at the capital of said state, 50,000 acres, and for such other educational and charitable purposes as the legislature of said state may determine, 170,000 acres; in all, 500,000 acres.

To the state of North Dakota a like quantity of land as is in this section granted to the State of South Dakota, and to be for like purposes, and in like proportion as far as practicable.

To the state of Montana: For the establishment and maintenance of a school of mines, 100,000 acres; for state normal schools, 100,000 acres; for agricultural colleges, in addition to the grant hereinbefore made for that purpose, 50,000 acres; for the establishment of a state reform school, 50,000 acres; for the establishment of a deaf and dumb asylum, 50,000 acres; for public buildings at the capital of the state, in addition to the grant hereinbefore made for that purpose, 150,000 acres.

To the state of Washington: For the establishment and maintenance of a scientific school, 100,000 acres; for state normal schools, 100,000 acres; for public buildings at the state capital in addition to the grant hereinbefore made for that purpose, 100,000 acres; for state, charitable, educational, penal and reformatory institutions, 200,000 acres.

That the states provided for in this act shall not be entitled to any further or other grants of land for any purpose than as expressly provided in this act. And the lands granted by this section shall be held, appropriated and disposed of exclusively for the purposes herein mentioned, in such manner as the legislatures of the respective states may severally provide.

See veto message in N. D. Laws, 1911, chap. 320, p. 570, citing *State ex rel. University & School Lands v. McMillan*, 12 N. D. 280, 96 N. W. 310; *State ex rel. Rusk v. Budge*, 14 N. D. 532, 105 N. W. 724; *State ex rel. Bickford v. Cook*, 17 Mont. 529, 43 Pac. 923; *State ex rel. Haire v. Rice*, 33 Mont. 365, 83 Pac. 874; *Allen v. Grimes*, 9 Wash. 424, 37 Pac. 662; *State ex rel. Houston v. Maynard*, 31 Wash. 132, 71 Pac. 775; *Re Internal Improvements*, 18 Colo. 317, 32 Pac. 611; *Re Internal Improv. Fund*, 24 Colo. 247, 48 Pac. 807.

§ 18. That all mineral lands shall be exempted from the grants made by this act. But if sections sixteen and thirty-six, or any subdivision or portion of any smallest subdivision thereof in any township shall be found by the department of the interior to be mineral lands, said states are hereby authorized and empowered to select, in legal subdivisions, an equal quantity

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of other unappropriated lands in said states, in lieu thereof, for the use and benefit of the common schools of said states.

§ 19. That all lands granted in quantity or as indemnity by this act shall be selected, under the direction of the secretary of the interior, from the surveyed, unreserved and unappropriated public lands of the United States within the limits of the respective states entitled thereto. And there shall be deducted from the number of acres of land donated by this act for specific objects to said states the number of acres in each heretofore donated by congress to said territories for similar objects.

§ 20. That the sum of \$20,000 or so much thereof as may be necessary, is hereby appropriated, out of any money in the treasury not otherwise appropriated, to each of said territories for defraying the expenses of the said conventions, except to Dakota for which the sum of \$40,000 is so appropriated, \$20,000 each for South Dakota and North Dakota, and for the payment of the members thereof, under the same rules and regulations and at the same rates as are now provided by law for the payment of the territorial legislatures. Any money hereby appropriated not necessary for such purpose shall be covered into the treasury of the United States.

§ 21. That each of said states, when admitted as aforesaid, shall constitute one judicial district, the names thereof to be the same as the names of the states, respectively; and the circuit and district courts therefor shall be held at the capital of such state for the time being, and each of said districts shall, for judicial purposes, until otherwise provided, be attached to the eighth judicial circuit, except Washington and Montana, which shall be attached to the ninth judicial circuit. There shall be appointed for each of said districts one district judge, one United States attorney and one United States marshal. The judge of each of said districts shall receive a yearly salary of three thousand five hundred dollars payable in four equal installments, on the first days of January, April, July and October of each year, and shall reside in the district. There shall be appointed clerks of said courts in each district, who shall keep their offices at the capital of said state. The regular terms of said courts shall be held in each district, at the place aforesaid on the first Monday in April and the first Monday in November of each year, and only one grand jury and one petit jury shall be summoned in both said circuit and district courts. The circuit and district courts for each of said districts and the judges thereof, respectively, shall possess the same powers and jurisdiction, and perform the same duties required to be performed by the other circuit and district courts and judges of the United States, and shall be governed by the same laws and regulations. The marshal, district attorney, and clerks of the circuit and district courts of each of said districts, and all other officers and persons performing duties in the administration of justice therein, shall severally possess the powers and perform the duties lawfully possessed and required to be performed by similar officers in other districts of the United States; and shall, for the services they may perform, receive the fees and compensation allowed by law to other similar officers and persons performing similar duties in the state of Nebraska.

§ 22. That all cases of appeal or writ of error heretofore prosecuted and now pending in the supreme court of the United States upon any record from the supreme court of either of the territories mentioned in this act, or that may hereafter lawfully be prosecuted upon any record from either of said courts, may be heard and determined by said supreme court of the United States. And the mandate of execution or of further proceedings shall be directed by the supreme court of the United States to the circuit or district court hereby established within the state succeeding the territory from which such record is or may be pending, or to the supreme court of such state, as the nature of the case may require; provided, that the mandate of execution or of further proceedings shall, in cases arising in the territory of Dakota, be

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directed by the supreme court of the United States to the circuit or district court of the district of South Dakota, or to the supreme court of the state of South Dakota, or to the circuit or district court of the district of North Dakota, or to the supreme court of the State of North Dakota, or to the supreme court of the territory of North Dakota, as the nature of the case may require. And each of the circuit, district and state courts, herein named, shall, respectively, be the successor of the supreme court of the territory, as to all such cases arising within the limits embraced within the jurisdiction of such courts respectively, with full power to proceed with the same, and award mesne or final process therein; and that from all judgments and decrees of the supreme court of either of the territories mentioned in this act, in any case arising within the limits of any of the proposed states prior to admission, the parties to such judgment shall have the same right to prosecute appeals and writs of error to the supreme court of the United States as they shall have had by law prior to the admission of said state into the union.

§ 23. That in respect to all cases, proceedings, and matters now pending in the supreme or district courts of either of the territories mentioned in this act at the time of the admission into the union of either of the states mentioned in this act, and arising within the limits of any such state, whereof the circuit or district courts by this act established might have had jurisdiction under the laws of the United States had such courts existed at the time of the commencement of such cases, the said circuit and district courts, respectively, shall be the successors of said supreme and district courts of said territory; and in respect to all other cases, proceedings and matters pending in the supreme or district courts of any of the territories mentioned in this act at the time of the admission of such territory into the union, arising within the limits of said proposed state, the courts established by such state shall, respectively, be the successors of said supreme and district territorial courts; and all the files, records, indictments and proceedings relating to any such cases, shall be transferred to such circuit, district and state courts, respectively, and the same shall be proceeded with therein in due course of law; but no writ, action, indictment, cause or proceeding now pending, or that prior to the admission of any of the states mentioned in this act, shall be pending in any territorial court in any of the territories mentioned in this act, shall abate by the admission of any such state into the union, but the same shall be transferred and proceeded with, in the proper United States circuit, district or state court, as the case may be; provided, however, that in all civil actions, causes and proceedings, in which the United States is not a party, transfers shall not be made to the circuit and district courts of the United States except upon written request of one of the parties to such action or proceeding filed in the proper court; and in the absence of such request, such cases shall be proceeded with in the proper state courts.

Miller v. Sunde, 1 N. D. 1, 44 N. W. 301; *Gull River Lumber Co. v. School District*, 1 N. D. 408, 48 N. W. 427.

§ 24. That the constitutional conventions may, by ordinance, provide for the election of officers for full state governments, including members of the legislatures and representatives in the fifty-first congress; but said state governments shall remain in abeyance until the states shall be admitted into the union, respectively, as provided in this act. In case the constitution of any of said proposed states shall be ratified by the people, but not otherwise, the legislature thereof may assemble, organize and elect two senators of the United States; and the governor and secretary of state of such proposed state shall certify the election of the senators and representatives in the manner required by law; and when such state is admitted into the union, the senators and representatives shall be entitled to be admitted to seats in congress, and to all the rights and privileges of senators and representatives of other states in the congress of the United States; and the officers of the state governments

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formed in pursuance of said constitutions, as provided by the constitutional conventions, shall proceed to exercise all the functions of such state officers; and all laws in force made by said territories, at the time of their admission into the union, shall be in force in said states, except as modified or changed by this act, or by the constitutions of the states, respectively.

§ 25. That all acts or parts of acts in conflict with the provisions of this act, whether passed by the legislatures of said territories or by congress, are hereby repealed.

CONSTITUTION

OF THE

STATE OF NORTH DAKOTA

[Adopted Oct. 1, 1889; yeas, 27,441; nays, 8,107.]

We, the people of North Dakota, grateful to Almighty God for the blessings of civil and religious liberty, do ordain and establish this constitution.

ARTICLE 1.—DECLARATION OF RIGHTS.

§ 1. All men are by nature equally free and independent and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing and protecting property and reputation; and pursuing and obtaining safety and happiness.

Primary election law must be reasonable, uniform in operation, and must bear with substantial equality upon all parties and candidates. State ex rel. Dorval v. Hamilton, 20 N. D. 597, 129 N. W. 916.

A law prohibiting sale of liquor not intoxicating or otherwise harmful, valid as an exercise of the police power. State v. Fargo Bottling Works Co., 19 N. D. 396, 26 L.R.A. (N.S.) 872, 124 N. W. 387.

§ 2. All political power is inherent in the people. Government is instituted for the protection, security and benefit of the people, and they have a right to alter or reform the same whenever the public good may require.

Constitutions are means employed by sovereign people to limit powers of their agents. State ex rel. Miller v. Taylor, 22 N. D. 362, 133 N. W. 1046.

§ 3. The state of North Dakota is an inseparable part of the American union, and the constitution of the United States is the supreme law of the land.

§ 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to be a witness or juror on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

Act making it unlawful to run or permit to be run theaters, etc., on Sunday, not invalid as interference with religious liberty, being valid under police power. State ex rel. Temple v. Barnes, 22 N. D. 18, 37 L.R.A. (N.S.) 114, 132 N. W. 215, Ann. Cas. 1913E, 930.

Constitutionality of statutes making witness incompetent because of religious belief, race, or previous condition, 92 Am. Dec. 473.

§ 5. The privilege of the writ of habeas corpus shall not be suspended unless when in case of rebellion or invasion, the public safety may require.

Extent and effect of suspension of writ. 45 L.R.A. 834.

Continuance of constitutional guaranties during war or insurrection. 45 L.R.A. (N.S.) 996.

§ 6. All persons shall be bailable by sufficient sureties, unless for capital offenses when the proof is evident or the presumption great. Excessive bail shall not be required, nor excessive fines imposed, nor shall cruel or unusual punishments be inflicted. Witnesses shall not be unreasonably detained, nor be confined in any room where criminals are actually imprisoned.

One charged with murder not entitled to bail as a strict legal right, where the proof of guilt is evident or presumption thereof great. State v. Hartzell, 13 N. D. 356, 100 N. W. 745.

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A defendant has right to bail in a capital case, unless the proof of the commission of the offense, or the presumption thereof, is great. *State ex rel. West v. Collins*, 10 N. D. 464, 88 N. W. 88, 12 Am. Crim. Rep. 41.

Admission to bail after indictment for murder. 81 Am. Dec. 87.

Bail in capital case as a matter of right. 39 L.R.A.(N.S.) 752.

Deposit of cash in lieu of bail. 44 L.R.A.(N.S.) 1150.

Validity of statutes and ordinances enhancing penalty when crime committed by habitual criminals or prior offenders. 34 L.R.A. 398; 24 L.R.A.(N.S.) 432; 48 L.R.A.(N.S.) 204.

Constitutional and statutory provisions as to cruel and unusual punishment. 35 L.R.A. 561.

Detention of one as witness as false imprisonment. 39 L.R.A.(N.S.) 503.

§ 7. The right of trial by jury shall be secured to all, and remain inviolate; but a jury in civil cases, in courts not of record, may consist of less than twelve men, as may be prescribed by law.

Preserves right of trial by jury as it existed prior to the adoption of the constitution, and allows a reference where long account is involved. *Smith v. Kunert*, 17 N. D. 120, 115 N. W. 76.

Issues of fact in an equitable action to foreclose a mortgage are not triable before a jury as a matter of right. *Avery Mfg. Co. v. Crumb*, 14 N. D. 57, 103 N. W. 410.

Gives prosecution right to change the place of trial when necessary to secure a fair and impartial trial. *Barry v. Traux*, 13 N. D. 131, 65 L.R.A. 762, 112 Am. St. Rep. 662, 99 N. W. 769, 3 Ann. Cas. 191.

Power of legislature to regulate or dispense with trial by jury. 48 Am. Dec. 185; 58 Am. Dec. 791.

Conditions and restrictions which may be imposed upon trial by jury by the legislature. 98 Am. St. Rep. 538.

Question whether suit for statutory penalty is a civil or criminal prosecution as affecting right to jury. 27 L.R.A.(N.S.) 745.

Right upon plea of guilty to sentence accused without intervention of jury. 35 L.R.A.(N.S.) 1146.

Effect of statutory declaration that murder committed by certain means, or while engaged in commission of felony, shall be murder in the first degree, upon right of jury to pass upon degree. 12 L.R.A.(N.S.) 935.

Restraint on freedom of child as deprivation of right to jury trial. 18 L.R.A.(N.S.) 890.

Validity of waiver of jury trial in criminal action. 11 L.R.A.(N.S.) 1136.

Right to trial by jury in equitable cases on account of demand for damages. 15 L.R.A. 287.

Right to jury for assessment of damages on default. 15 L.R.A. 614; 20 L.R.A.(N.S.) 1.

Denial of jury trial simply because matters in issue are complicated. 39 L.R.A.(N.S.) 45.

Compulsory reference as affected by constitutional right to jury. 25 L.R.A. 67; 13 L.R.A.(N.S.) 146.

Civil service laws as violating constitutional right of trial by jury. 34 L.R.A.(N.S.) 482.

Constitutionality of provision for separate trial of different issues in same case. 40 L.R.A.(N.S.) 138.

Right to jury in quo warranto proceedings. 24 L.R.A. 806; 24 L.R.A.(N.S.) 639.

Right to jury as affected by compulsory evidence against one's self. 29 L.R.A. 819.

Right of property owner to have amount of assessment for public improvement fixed by jury. 60 L.R.A. 236.

Right to jury in proceedings for registration of land titles. 41 L.R.A.(N.S.) 1044.

Effect of provision that jury shall determine the law and the facts in libel cases. 33 L.R.A.(N.S.) 207.

Jury trial on appeal as satisfying the constitutional right to trial by jury. 15 L.R.A. 441.

Number and agreement of jurors necessary to verdict. 24 L.R.A. 272; 43 L.R.A. 34.

§ 8. Until otherwise provided by law, no person shall, for a felony, be proceeded against criminally, otherwise than by indictment, except in cases arising in the land or naval forces, or in the militia when in actual service in time of war or public danger. In all other cases, offenses shall be prosecuted criminally by indictment or information. The legislative assembly may change, regulate or abolish the grand jury system.

Prosecution may amend information in county to which trial removed by leave of court, where no new offense charged. *State v. Woods*, 24 N. D. 156, 139 N. W. 321.

Forbids prosecutions of militiamen for felonies by court-martial except when in actual

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service in time of war or public danger, until provided by statute. *State ex rel. Poole v. Peake*, 22 N. D. 457, 40 L.R.A.(N.S.) 354, 135 N. W. 197.

§ 9. Every man may freely write, speak and publish his opinions on all subjects, being responsible for the abuse of that privilege. In all civil and criminal trials for libel the truth may be given in evidence, and shall be a sufficient defense when the matter is published with good motives and for justifiable ends; and the jury shall have the same power of giving a general verdict as in other cases; and in all indictments or informations for libels the jury shall have the right to determine the law and the facts under the direction of the court as in other cases.

Merely vests in jury right to render general verdict in libel cases, and to determine law as in cases where general verdict is returned. *State v. Tolley*, 23 N. D. 284, 136 N. W. 784.

Truth as a defense in criminal prosecution for libel. 21 L.R.A. 509; 31 L.R.A.(N.S.) 132.

Instigation of criminal libel as defense to prosecution. 30 L.R.A.(N.S.) 953.

Province of judge and jury in prosecutions for libel. 13 Am. St. Rep. 625.

Constitutional freedom of speech and of the press. 32 L.R.A. 829.

Constitutional guaranty of freedom of speech or press as affecting civil service laws. 34 L.R.A.(N.S.) 482.

Prohibition against mailing of obscene and indecent publications. 24 L.R.A. 112.

§ 10. The citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the powers of government for the redress of grievances, or for other proper purposes, by petition, address or remonstrance.

Legislature has power to require nomination to be made at primary elections by use of ballot, and may provide that such elections shall be conducted within organized political parties. *State ex rel. Miller v. Flaherty*, 23 N. D. 313, 41 L.R.A.(N.S.) 132, 136 N. W. 76.

§ 11. All laws of a general nature shall have a uniform operation.

Chapter 285 of Laws of 1911, relating to Sunday theaters, is not special legislation. *State ex rel. Temple v. Barnes*, 22 N. D. 18, 37 L.R.A.(N.S.) 114, 132 N. W. 215, Ann. Cas. 1913E, 930.

Act requiring county treasurer to transfer to city treasurer bridge funds collected from city property where bridge constructed in city, valid. *State ex rel. Hagen v. Anderson*, 22 N. D. 65, 132 N. W. 433.

Act conferring upon boards of county commissioners of every county authority to enforce payment of taxes on unredeemed tax sale property, valid. *Picton v. Cass County*, 13 N. D. 242, 100 N. W. 711, 3 Ann. Cas. 345.

Act requiring registration and publication of internal revenue tax receipts, and applying to all paying tax and having receipts, valid. *State ex rel. Flaherty v. Hanson*, 16 N. D. 347, 113 N. W. 371.

A general law assessing and taxing grain in elevators to the possessor, and providing for a lien as security for reimbursement, if not the owner, is valid. *Minneapolis & N. Elevator Co. v. Traill County*, 9 N. D. 213, 50 L.R.A. 266, 82 N. W. 727.

A law regulating relocation of county seats must not arbitrarily classify counties. *Edmonds v. Herbrandson*, 2 N. D. 270, 14 L.R.A. 725, 50 N. W. 790.

Law allowing unorganized school township containing a city of 800 inhabitants or more to organize distinct school township, void. *Plummer v. Borsheim*, 8 N. D. 565, 80 N. W. 690.

Provision in primary law that no nomination is made unless vote cast is at least 30 per cent of total number cast for candidate for secretary of state at last general election, invalid. *State ex rel. Dowal v. Hamilton*, 20 N. D. 592, 129 N. W. 916.

Act giving to materialmen and laborers a lien upon buildings erected upon government lands held under the laws of United States valid. *Powers Elevator Co. v. Pottner*, 16 N. D. 359, 113 N. W. 703.

Laws of 1907, chap. 203, purporting to make every common carrier liable to any of its employees, valid. *Majavis v. Great Northern R. Co.*, 121 Minn. 431, 141 N. W. 806.

§ 12. The military shall be subordinate to the civil power. No standing army shall be maintained by this state in time of peace, and no soldiers shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, except in the manner prescribed by law.

§ 13. In criminal prosecutions in any court whatever, the party accused shall have the right to a speedy and public trial; to have the process of the court to compel the attendance of witnesses in his behalf; and to appear and defend in person and with counsel. No person shall be twice put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness

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against himself, nor be deprived of life, liberty or property without due process of law.

Unconditional immunity from prosecution so as to compel witness to testify, not granted by act providing that testimony shall not be used against him. *Re Beer*, 17 N. D. 184, 115 N. W. 672, 17 Ann. Cas. 126.

Admission in evidence over objection, of public record of sales of liquor of a druggist, not erroneous as compelling him to be a witness against himself. *State ex rel. McClory v. Donovan*, 10 N. D. 203, 86 N. W. 709.

Act making posted internal revenue tax receipts prima facie evidence of violation of liquor law valid. *State ex rel. Flaherty v. Hanson*, 16 N. D. 347, 113 N. W. 371.

A law prohibiting sale of liquor not intoxicating or otherwise harmful is valid as an exercise of the police power. *State v. Fargo Bottling Works Co.*, 19 N. D. 396, 26 L.R.A. (N.S.) 872, 124 N. W. 387.

Legislature may invest drainage boards with judicial powers to determine benefits after due notice and hearing. *Soliah v. Cormack*, 17 N. D. 393, 117 N. W. 125.

Rate fixed by railroad commission on coal not invalid because if applied to all freight road would be operated at a loss, test-earning of fair profit on all interstate business. *State ex rel. McCue v. Northern P. R. Co.*, 19 N. D. 45, 25 L.R.A. (N.S.) 1001, 120 N. W. 869.

Violation of the rights of accused for the court to instruct the jury to "pay no attention to any remarks or statements made by counsel." *State v. Gutterman*, 20 N. D. 432, 128 N. W. 307, Ann. Cas. 1912 C, 816.

Right of defendant to public trial. 14 L.R.A. 809; 28 Am. St. Rep. 308.

Right of court to exclude public from court room during criminal trial. 9 L.R.A. (N.S.) 277; 27 L.R.A. (N.S.) 487; 44 L.R.A. (N.S.) 583.

Right to speedy trial. 41 Am. Dec. 604; 85 Am. St. Rep. 187.

Delay of prosecution as ground of discharge. 56 L.R.A. 513.

Failure to demand trial as waiver of right to speedy trial. 44 L.R.A. (N.S.) 871.

Necessity for presence of accused at trial. 28 Am. Dec. 629; 68 Am. Dec. 219.

Presence of accused at view by jury. 42 L.R.A. 378.

—at time of making of dying declaration. 56 L.R.A. 453.

Waiver of presence of one charged with misdemeanor at time of receiving verdict. 21 L.R.A. (N.S.) 56.

Right of accused to waive his presence at time of receiving verdict upon trial for felony. 14 L.R.A. (N.S.) 603; 32 L.R.A. (N.S.) 306.

Power to regulate or restrict right of defendant in criminal cases to compulsory process to procure attendance of witnesses in his behalf. 8 L.R.A. (N.S.) 509.

Constitutional right of an accused to be confronted by the witnesses, and what is an invasion of that right. 129 Am. St. Rep. 23.

Admissibility of testimony given on preliminary examination as affected by right of accused to be confronted with witnesses against him. 25 L.R.A. (N.S.) 868.

Former acquittal or conviction as a defense. 11 Am. St. Rep. 228.

Waiver and estoppel of defendant to plead former jeopardy. 135 Am. St. Rep. 70.

Former jeopardy in retrial for substantive offense after setting aside verdict for attempt. 44 L.R.A. (N.S.) 1047.

Question whether suit for statutory penalty is a civil or criminal prosecution as affecting former jeopardy. 27 L.R.A. (N.S.) 752.

Trial under erroneous theory as to crime charged as former jeopardy. 24 L.R.A. (N.S.) 481.

Acquittal of crime as a bar to a subsequent prosecution of defendant for perjury committed on the former trial. 39 L.R.A. (N.S.) 385.

Conviction under municipal ordinance as bar to prosecution under state statutes, and vice versa. 17 L.R.A. (N.S.) 69.

Conviction or acquittal of marital offense as bar to a subsequent prosecution. 40 L.R.A. (N.S.) 615.

Does impaneling jury and proceeding with the trial, without arraigning defendant, place him in jeopardy? 27 L.R.A. (N.S.) 137.

Does jeopardy attach where trial is begun with unsworn jury? 40 L.R.A. (N.S.) 1213.

Trial of insane person as former jeopardy. 35 L.R.A. (N.S.) 470.

Right to have claim of former jeopardy determined in habeas corpus proceeding. 15 L.R.A. (N.S.) 227.

Identity of offenses in plea of former jeopardy, 92 Am. St. Rep. 89.

Conviction or acquittal of offenses as a bar to prosecution for homicide in commission of the offense. 63 L.R.A. 405.

Conviction on charge of assault as bar to subsequent prosecution for homicide following death of victim. 14 L.R.A. (N.S.) 209.

Acquittal of larceny as bar to prosecution for forgery in same transaction. 4 L.R.A. (N.S.) 402.

Conviction or acquittal of sale of liquor as bar to prosecution for sales made prior to first indictment. 45 L.R.A. (N.S.) 977.

Former jeopardy when trial is stopped for purpose of prosecution of higher or different offense. 44 L.R.A. (N.S.) 617.

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Former jeopardy in retrial on higher charge after setting aside verdict for lower charge. 5 L.R.A.(N.S.) 571; 22 L.R.A.(N.S.) 959; 4 Am. St. Rep. 117.

Effect of conviction of lower degree in prosecution for homicide as acquittal of higher degree. 21 L.R.A.(N.S.) 20.

Former jeopardy by reason of the discharge of the jury in the prisoner's absence. 44 L.R.A. 694.

Effect of discharge of jury upon the discovery of prejudice, disqualification, or misconduct of one or more of their number, to sustain a plea of former jeopardy. 14 L.R.A.(N.S.) 548.

Effect of second indictment or information for same offense after accused is entitled to discharge for want of prosecution under first. 11 L.R.A.(N.S.) 257.

Whether appeal by state after acquittal may be authorized without violating the prohibitions against placing the accused twice in jeopardy. 28 Am. St. Rep. 213.

Constitutional guaranty against self-incrimination; equivalent exemption to witness. 1 L.R.A.(N.S.) 167.

Self-incrimination by experiment in presence of jury. 15 L.R.A. 223.

Merely demanding that accused produce incriminating document as violation of his privilege. 35 L.R.A.(N.S.) 1171.

Incriminating evidence furnished by defendant acting under compulsion. 32 L.R.A.(N.S.) 772.

Admissibility of schedules filed in Federal bankruptcy proceedings, in prosecution of bankrupt for concealment of property. 18 L.R.A.(N.S.) 1194.

Use in criminal proceeding of books which one has been required to produce in another proceeding. 47 L.R.A.(N.S.) 263.

May records of sales of liquor which a druggist is required by law to keep be used as evidence against him in a criminal prosecution? 25 L.R.A.(N.S.) 818.

Conclusiveness of witness's statement that the answer to questions against which he pleads his privilege would tend to criminate him. 24 L.R.A.(N.S.) 165.

Necessity of claiming constitutional protection against being compelled to give incriminating evidence. 4 L.R.A.(N.S.) 1144.

Admissibility against accused of documents or things taken from him. 59 L.R.A. 465;

8 L.R.A.(N.S.) 762; 34 L.R.A.(N.S.) 58.

Right to compel accused to exhibit himself for identification. 28 L.R.A. 699.

Power to require one who has caused injury to identify himself. 40 L.R.A.(N.S.) 622.

Compelling an accused to perform acts or submit his person to inspection. 94 Am. St. Rep. 336.

Compelling accused to submit to physical examination. 68 Am. St. Rep. 251.

Due process of law, what is. 24 Am. Dec. 538; 20 Am. St. Rep. 554.

Argument of counsel, limitations upon the right of. 46 Am. St. Rep. 23; 25 L.R.A.(N.S.) 1027; 42 L.R.A.(N.S.) 209.

Validity of sentences differing from those allowed by law. 55 Am. St. Rep. 264.

§ 14. Private property shall not be taken or damaged for public use without just compensation having been first made to, or paid into court for the owner, and no right of way shall be appropriated to the use of any corporation, other than municipal, until full compensation therefor be first made in money or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived.

Requires payment of just compensation in money to property owner or into court. *Martin v. Tyler*, 4 N. D. 278, 25 L.R.A. 838, 60 N. W. 392.

The owner of property condemned for public use is entitled to costs incurred as part of his compensation. *Petersburg School Dist. v. Peterson*, 14 N. D. 344, 103 N. W. 756.

Legislature may provide for condemnation of land for public use and may prescribe rules of evidence as presumption of dedication by lapse of time. *Burleigh County v. Rhud*, 23 N. D. 362, 136 N. W. 1082.

Right to assert unconstitutionality of a statute in force prior to the adoption of the constitution waived by participation in proceedings. *Minneapolis, St. P. & S. Ste. M. R. Co. v. Neeter*, 3 N. D. 480, 57 N. W. 510.

Railroad not entitled to damages for structural changes when city condemns part of right of way for street. *Grafton v. St. Paul, M. & M. R. Co.*, 16 N. D. 313, 22 L.R.A.(N.S.) 1, 113 N. W. 593, 15 Ann. Cas. 10.

Public use, taking property for, what is a. 16 Am. St. Rep. 610.

Public use, power of the legislature to determine what is a. 88 Am. St. Rep. 926.

Public use, power to regulate charges. 62 Am. St. Rep. 290.

Public use, taking property for, without compensation by municipal corporation. 84 Am. St. Rep. 924.

Are counties within constitutional provision requiring "municipal and other corporations" to make just compensation for property injured by public work. 18 L.R.A.(N.S.) 884.

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Self-executing effect of constitutional provision that private property shall not be taken or damaged for public use without compensation. 16 L.R.A. 283.

Right to take private property for public use without compensation on the theory that it has been abandoned. 39 L.R.A.(N.S.) 1029.

Distinction between taking or damaging property and consequential injuries. 47 L.R.A.(N.S.) 462.

What constitutes a "taking." 18 L.R.A. 166.

What is a "damaging." 36 L.R.A.(N.S.) 1194; 109 Am. St. Rep. 904.

Taking or damaging property by discharging sewers into waters. 48 L.R.A. 698.

Laying pipe through land as a taking for which compensation must be made. 24 L.R.A.(N.S.) 230.

Injury to riparian property by deflection of water by structure erected under statutory authority as a taking. 38 L.R.A.(N.S.) 1040.

Right under constitutional provision against "damaging" private property for public use without compensation, to compensation for consequential damages to property, no part of which is taken, from smoke, noise, dust, etc., incident to ordinary operation of railroads. 17 L.R.A.(N.S.) 1054; 40 L.R.A.(N.S.) 48.

Removal of lateral support as constituting damage or injury within meaning of constitutional provision against taking, damaging or injuring property for public use without compensation. 68 L.R.A. 699; 5 L.R.A.(N.S.) 1086.

Railroad in street as a taking of property. 14 L.R.A. 382.

Cutting off access to a highway as a taking or injury. 15 L.R.A.(N.S.) 49.

Grading of street as a "damaging" of property. 30 Am. St. Rep. 837.

Liability of municipality for injury to abutting property from bringing street to the grade established in the first instance, under constitutional provision against "damaging" private property for public use without compensation. 7 L.R.A.(N.S.) 108.

Municipal liability for injury to abutting property from changing street grade under constitutional provision against "damaging" private property for public use without compensation. 36 L.R.A.(N.S.) 1194.

Right of landowner to damages for obstruction of street or highway by railroad not adjacent to his property. 46 L.R.A.(N.S.) 615.

Necessity of making compensation on laying out street across railroad property. 24 L.R.A.(N.S.) 1226.

Right of railroad company to compensation for the crossing of its track, where it intersects a street or highway, by an electric road. 29 L.R.A. 485; 13 L.R.A.(N.S.) 916.

Power to authorize construction of telegraph or telephone line along railroad right of way, without compensation to railroad company. 29 L.R.A.(N.S.) 703.

Government's right to divert water from nontidal stream without compensation to riparian owner. 37 L.R.A.(N.S.) 307.

Right of riparian owner to compensation for damages to his property by construction, under legislative authority, of dams or booms for floating or storing logs. 22 L.R.A.(N.S.) 641.

Right to compensation for appropriation of land for drain or sewer. 60 L.R.A. 199.

Right to obstruct or destroy wharf rights in navigable waters for public purposes, without compensation. 34 L.R.A.(N.S.) 423.

Right of property owner to compensation for interference with light or air by railroad structure on company's own property. 20 L.R.A.(N.S.) 1061.

Right of landowner to damages for obstruction of street or highway by railroad not adjacent to his property. 9 L.R.A.(N.S.) 496.

Right of abutting owner to damages for special injuries where street railway is not considered an additional burden. 25 L.R.A.(N.S.) 1265.

Right of abutting owner to compensation where street railway is located on the side, rather than in the center, of the street. 25 L.R.A.(N.S.) 1278.

§ 15. No person shall be imprisoned for debt unless upon refusal to deliver up his estate for the benefit of his creditors, in such manner as shall be prescribed by law; or in cases of tort; or where there is strong presumption of fraud.

Constitutionality of imprisonment for debt. 34 L.R.A. 634.

—of statute providing for imprisonment for breach of contract of labor or rental. 21 L.R.A.(N.S.) 242.

—of statute providing for imprisonment for beating board bill. 21 L.R.A.(N.S.) 259.

What statutes violate prohibitions against imprisonment for debt. 37 Am. St. Rep. 758.

§ 16. No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall ever be passed.

Ex post facto laws, what are and when valid. 37 Am. St. Rep. 582.

Statute affecting challenges to the jury as ex post facto. 31 L.R.A.(N.S.) 820.

Constitutionality of statute providing for increased punishment because of prior conviction. 34 L.R.A. 399.

Impairment of contract obligation by application to existing judgments of statute abolishing or diminishing exemptions. 25 L.R.A.(N.S.) 189.

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Applicability to existing contracts of statute avoiding contractual stipulations limiting time for action. 38 L.R.A.(N.S.) 1016.

Privilege of using streets as a contract. 50 L.R.A. 142.

Contract as to extent of street railway company's liability for paving assessment. 46 L.R.A. 203.

Police regulation of electric companies. 31 L. R. A. 804.

Power of municipality to prevent laying an additional track under a franchise to lay double tracks. 36 L.R.A.(N.S.) 850.

Change of law as to effect of tax certificates as evidence of title. 4 L.R.A.(N.S.) 1074.

Constitutionality of succession tax. 33 L.R.A.(N.S.) 592.

Impairment of third person's rights on legalizing invalid private contract. 22 L.R.A. 385.

Contract exemptions against power of legislature to fix tolls, rates or price. 33 L.R.A. 186.

Statute limiting hours of labor. 65 L.R.A. 42.

Effect of legislation limiting cost of new insurance on existing contracts with agents. 19 L.R.A.(N.S.) 946.

Right under reserved power to amend or repeal charter of corporation to change the rights of stockholders as to voting the stock. 22 L.R.A.(N.S.) 420.

Statutes requiring railroad company to fence tracks and build cattle guards. 31 L.R.A.(N.S.) 866.

Validity of act changing remedy to enforce stockholder's liability. 3 L.R.A.(N.S.) 954; 33 L.R.A.(N.S.) 909.

Change of remedy of creditor of corporation against stockholder. 1 L.R.A.(N.S.) 1171.

Effect of change of judicial decision to impair the obligation of a contract. 16 L.R.A. 646; 5 L.R.A.(N.S.) 860; 23 L.R.A.(N.S.) 500.

§ 17. Neither slavery nor involuntary servitude, unless for the punishment of crime, shall ever be tolerated in this state.

First legislature, convened to elect senators, had authority to pass laws. *State ex rel. Larabee v. Barnes*, 3 N. D. 319, 55 N. W. 883.

§ 18. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

Confers no right to a preliminary examination in a criminal case. *State v. Gottlieb*, 21 N. D. 179, 129 N. W. 460.

No issuance of warrant of arrest without probable cause in bastardy proceedings, where issued after filing of a verified complaint. *State v. McKnight*, 7 N. D. 444, 75 N. W. 790.

Description of premises in search warrant as a certain lot in a certain block sufficient where only one building thereon. *State v. Markuson*, 7 N. D. 155, 73 N. W. 82.

Search of premises of private persons. 101 Am. St. Rep. 328.

Searches and seizures, what deemed unreasonable offense. 32 Am. St. Rep. 643.

Gambling device as property within constitutional protection against. 13 L.R.A.(N.S.) 394.

Right of officer, in executing criminal process, to take possession of evidentiary articles. 18 L.R.A.(N.S.) 253.

Admissibility in evidence against accused of articles obtained by search. 59 L.R.A. 466.

To what extent may premises be damaged in executing search warrant. 22 L.R.A.(N.S.) 819.

Malicious prosecution for wrongful search of premises. 39 L.R.A.(N.S.) 205.

Right to compel public employee to submit to physical examination to determine fitness. 33 L.R.A.(N.S.) 259.

Constitutionality of statute authorizing seizure of animals by humane officers. 15 L.R.A.(N.S.) 554.

§ 19. Treason against the state shall consist only in levying war against it, adhering to its enemies or giving them aid and comfort. No person shall be convicted of treason unless on the evidence of two witnesses to the same overt act, or confession in open court.

Treason; criminal responsibility of corporation for. 2 B. R. C. 253.

—criminal liability of children for. 36 L.R.A. 208.

—evidence of other crimes in prosecution for. 62 L.R.A. 325.

—proof of corpus delicti in prosecution for. 68 L.R.A. 56.

§ 20. No special privileges or immunities shall ever be granted which may not be altered, revoked or repealed by the legislative assembly; nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens.

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Legislative classification provided as basis for distinctive or special operation of law, must be natural, not artificial. *State ex rel. Dorval v. Hamilton*, 20 N. D. 597, 129 N. W. 916.

Statute authorizing boards of county commissioners to grant exclusive ferry franchises for a term of years to highest bidders valid. *Patterson v. Wollmann*, 5 N. D. 608, 33 L.R.A. 536, 67 N. W. 1040.

Act requiring county treasurer to transfer bridge funds collected from city property to city treasurer where bridge constructed in city, valid. *State ex rel. Hagen v. Anderson*, 22 N. D. 65, 132 N. W. 433.

Laws of 1907, chap. 203, purporting to make every common carrier liable to any of its employees, valid. *Majavis v. Great N. R. Co.*, 121 Minn. 431, 141 N. W. 806.

Chapter 285 of Laws of 1911, relating to Sunday theaters, is not special legislation. *State ex rel. Temple v. Barnes*, 22 N. D. 18, 37 L.R.A.(N.S.) 114, 132 N. W. 215, Ann. Cas. 1913 E. 930.

Equal privileges and immunities. 14 L.R.A. 579; 34 L.R.A.(N.S.) 481.

Constitutionality of statutes making railroad companies absolutely liable for damage to stock irrespective of negligence. 35 L.R.A.(N.S.) 1018.

§ 21. The provisions of this constitution are mandatory and prohibitory unless, by express words, they are declared to be otherwise.

Section 109 of constitution is not mandatory, but merely permissive. *Kermott v. Bagley*, 19 N. D. 347, 124 N. W. 397.

§ 22. All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. Suits may be brought against the state in such manner, in such courts, and in such cases, as the legislative assembly may, by law, direct.

§ 23. Every citizen of this state shall be free to obtain employment wherever possible, and any person, corporation, or agent thereof, maliciously interfering or hindering in any way, any citizen from obtaining or enjoying employment already obtained, from any other corporation or person, shall be deemed guilty of a misdemeanor.

§ 24. To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

ARTICLE 2.—THE LEGISLATIVE DEPARTMENT.

§ 25. The legislative power shall be vested in a senate and house of representatives.

Act not invalid which authorizes the board of drain commissioners to make assessments for local improvements. *Soliah v. Cormack*, 17 N. D. 393, 117 N. W. 125.

§ 26. The senate shall be composed of not less than thirty nor more than fifty members.

Senate must be composed at all times of two classes of senators, as nearly equal in number as practicable. *State ex rel. Williams v. Meyer*, 20 N. D. 629, 127 N. W. 834.

§ 27. Senators shall be elected for the term of four years, except as hereinafter provided.

Governing principle that there be two classes of senators, as equal in number as possible, expiration of terms being based upon original classification in 1891. *State ex rel. Williams v. Meyer*, 20 N. D. 628, 127 N. W. 834.

§ 28. No person shall be a senator who is not a qualified elector in the district in which he may be chosen, and who shall not have attained the age of twenty-five years, and have been a resident of the state or territory for two years next preceding his election.

Qualified electors are male persons only, possessing other qualifications enumerated in section 121 of constitution. *Wagar v. Prindeville*, 21 N. D. 245, 130 N. W. 224.

§ 29. The legislative assembly shall fix the number of senators, and divide the state into as many senatorial districts as there are senators, which districts as nearly as may be, shall be equal to each other in the number of inhabitants entitled to representation. Each district shall be entitled to one senator and no more, and shall be composed of compact and contiguous territory; and no portion of any county shall be attached to any other county, or part thereof,

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so as to form a district. The districts as thus ascertained and determined shall continue until changed by law.

Governing principle that there be two classes of senators, as equal in number as possible, expiration of terms being based upon original classification in 1891. *State ex rel. Williams v. Meyer*, 20 N. D. 628, 127 N. W. 834.

§ 30. The senatorial districts shall be numbered consecutively from one upwards, according to the number of districts prescribed, and the senators shall be divided into two classes. Those elected in the districts designated by even numbers shall constitute one class, and those elected in districts designated by odd numbers shall constitute the other class. The senators of one class elected in the year 1890 shall hold their office for two years, those of the other class shall hold their office four years, and the determination of the two classes shall be by lot, so that one-half of the senators, as nearly as practicable, may be elected biennially.

Governing principle that there be two classes of senators, as equal in number as possible, expiration of terms being based upon original classification in 1891. *State ex rel. Williams v. Meyer*, 20 N. D. 628, 127 N. W. 834.

§ 31. The senate, at the beginning and close of each regular session, and at such other times as may be necessary, shall elect one of its members president pro tempore, who may take the place of the lieutenant governor under rules prescribed by law.

§ 32. The house of representatives shall be composed of not less than sixty, nor more than one hundred and forty members.

§ 33. Representatives shall be elected for the term of two years.

§ 34. No person shall be a representative who is not a qualified elector in the district from which he may be chosen, and who shall not have attained the age of twenty-one years, and have been a resident of the state or territory for two years next preceding his election.

Qualified electors are male persons only, possessing other qualifications enumerated in section 121 of constitution. *Wagar v. Prindle*, 21 N. D. 245, 130 N. W. 224.

Members of state legislature as public officers. 17 L.R.A. 247.

Right of women to legislative office. 38 L.R.A. 210.

§ 35. The members of the house of representatives shall be apportioned to and elected at large from each senatorial district. The legislative assembly shall, in the year 1895, and every tenth year, cause an enumeration to be made of all the inhabitants of this state, and shall at its first regular session after each enumeration, and also after each federal census, proceed to fix by law the number of senators, which shall constitute the senate of North Dakota, and the number of representatives which shall constitute the house of representatives of North Dakota, within the limits prescribed by this constitution and at the same session shall proceed to reapportion the state into senatorial districts, as prescribed by this constitution, and to fix the number of members of the house of representatives to be elected from the several senatorial districts; provided, that the legislative assembly may at any regular session, redistrict the state into senatorial districts, and apportion the senators and representatives respectively.

Governing principle that there be two classes of senators, as equal in number as possible, expiration of terms being based upon original classification in 1891. *State ex rel. Williams v. Meyer*, 20 N. D. 628, 127 N. W. 834.

Election districts; validity of apportionment. 15 L.R.A. 561.

—interference with, by annexation of property to municipality. 27 L.R.A. 744.

—effect of laches in questioning unconstitutional apportionment of. 10 L.R.A. (N.S.) 1184.

§ 36. The house of representatives shall elect one of its members as speaker.

§ 37. No judge or clerk of any court, secretary of state, attorney general, register of deeds, sheriff or person holding any office of profit under this state, except in the militia or the office of attorney at law, notary public or justice of the peace, and no person holding any office of profit or honor under any foreign government, or under the government of the United States, except postmasters whose annual compensation does not exceed the sum of three

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hundred dollars, shall hold any office in either branch of the legislative assembly or become a member thereof.

§ 38. No member of the legislative assembly, expelled for corruption, and no person convicted of bribery, perjury or other infamous crime, shall be eligible to the legislative assembly, or to any office in either branch thereof.

§ 39. No member of the legislative assembly shall, during the term for which he was elected, be appointed or elected to any civil office in this state, which shall have been created, or the emoluments of which shall have been increased, during the term for which he was elected; nor shall any member receive any civil appointment from the governor, or governor and senate, during the term for which he shall have been elected.

§ 40. If any person elected to either house of the legislative assembly shall offer or promise to give his vote or influence, in favor of, or against any measures or proposition pending or proposed to be introduced into the legislative assembly, in consideration, or upon conditions, that any other person elected to the same legislative assembly will give, or will promise or assent to give, his vote or influence in favor of or against any other measure or proposition, pending or proposed to be introduced into such legislative assembly, the person making such offer or promise shall be deemed guilty of solicitation of bribery. If any member of the legislative assembly shall give his vote or influence for or against any measure or proposition, pending or proposed to be introduced into such legislative assembly, or offer, promise or assent so to do upon condition that any other member will give, promise or assent to give his vote or influence in favor of or against any other such measure or proposition pending or proposed to be introduced into such legislative assembly, or in consideration that any other member hath given his vote or influence, for or against any other measure or proposition in such legislative assembly, he shall be deemed guilty of bribery. And any person member of the legislative assembly or person elected thereto, who shall be guilty of either such offenses, shall be expelled, and shall not thereafter be eligible to the legislative assembly, and, on the conviction thereof in the civil courts, shall be liable to such further penalty as may be prescribed by law.

§ 41. The term of service of the members of the legislative assembly shall begin on the first Tuesday in January, next after their election.

Applies only to legislatures subsequent to the first, elected in the regular manner, and at regular time. State ex rel. Larabee v. Barnes, 3 N. D. 319, 55 N. W. 883.

§ 42. The members of the legislative assembly shall in all cases except treason, felony and breach of the peace, be privileged from arrest during their attendance at the sessions of their respective houses, and in going to or returning from the same. For words used in any speech or debate in either house, they shall not be questioned in any other place.

Privileges of members as to service of process. 23 L.R.A. 632.

§ 43. Any member who has a personal or private interest in any measure or bill proposed or pending before the legislative assembly, shall disclose the fact to the house of which he is a member, and shall not vote thereon without the consent of the house.

§ 44. The governor shall issue writs of election to fill such vacancies as may occur in either house of the legislative assembly.

§ 45. Each member of the legislative assembly shall receive as a compensation for his services for each session, five dollars per day, and ten cents for every mile of necessary travel in going to and returning from the place of the meeting of the legislative assembly on the most usual route.

§ 46. A majority of the members of each house shall constitute a quorum, but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such a manner, and under such a penalty, as may be prescribed by law.

§ 47. Each house shall be the judge of the election returns and qualifications of its own members.

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Direction by court that county auditor put names of candidates for senator on primary election ballot, not infringement on right of senate to judge of qualifications of its members. *State ex rel. Williams v. Meyer*, 20 N. D. 628, 127 N. W. 834.

§ 48. Each house shall have the power to determine the rules of proceeding, and punish its members or other persons for contempt or disorderly behavior in its presence; to protect its members against violence or offers of bribes or private solicitation, and with the concurrence of two-thirds to expel a member; and shall have all other powers necessary and usual in the legislative assembly of a free state. But no imprisonment by either house shall continue beyond thirty days. Punishment for contempt or disorderly behavior shall not bar a criminal prosecution for the same offense.

Implied restrictions on the power of. 17 L.R.A. 838.

Exception in constitutional prohibition as limitation upon legislative power. 36 L.R.A. (N.S.) 73.

Power of state legislatures with respect to naturalization. 30 L.R.A. 761.

Power of legislature, or branch thereof, to appoint a committee to sit after close of session. 10 L.R.A. (N.S.) 172.

§ 49. Each house shall keep a journal of its proceedings, and the yeas and nays on any question shall be taken and entered on the journal at the request of one-sixth of those present.

§ 50. The sessions of each house and of the committee of the whole shall be open unless the business is such as ought to be kept secret.

§ 51. Neither house shall, without the consent of the other, adjourn for more than three days nor to any other place than that in which the two houses shall be sitting, except in case of epidemic, pestilence or other great danger.

§ 52. The senate and house of representatives jointly shall be designated as the Legislative Assembly of the State of North Dakota.

§ 53. The legislative assembly shall meet at the seat of government at twelve o'clock noon on the first Tuesday after the first Monday in January, in the year next following the election of the members thereof.

Applies only to legislatures subsequent to the first, elected in the regular manner and at the regular time. *State ex rel. Larabee v. Barnes*, 3 N. D. 319, 55 N. W. 883.

§ 54. In all elections to be made by the legislative assembly, or either house thereof, the members shall vote viva voce, and their votes shall be entered in the journal.

§ 55. The sessions of the legislative assembly shall be biennial, except as otherwise provided in this constitution.

§ 56. No regular session of the legislative assembly shall exceed sixty days, except in case of impeachment, but the first session of the legislative assembly may continue for a period of one hundred and twenty days.

§ 57. Any bill may originate in either house of the legislative assembly, and a bill passed by one house may be amended by the other.

§ 58. No law shall be passed, except by a bill adopted by both houses, and no bill shall be so altered and amended on its passage through either house as to change its original purpose.

§ 59. The enacting clause of every law shall be as follows: "Be it Enacted by the Legislative Assembly of the State of North Dakota."

§ 60. No bill for the appropriation of money, except for the expenses of the government, shall be introduced after the fortieth day of the session, except by unanimous consent of the house in which it is sought to be introduced.

§ 61. No bill shall embrace more than one subject, which shall be expressed in its title, but a bill which violates this provision shall be invalidated thereby only as to so much thereof as shall not be so expressed.

Complied with where number of act or section to be amended given in title of amendatory act and subject-matter of amendment germane to subject of original act and within title. *School Dist. v. King*, 20 N. D. 614, 127 N. W. 515.

Complied with where subject-matter of amendment is germane to subject of act of which amended section is a part and is within title of original act. *State v. Fargo Bottling Works Co.*, 19 N. D. 396, 26 L.R.A. (N.S.) 872, 124 N. W. 387.

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An act, the body of which is broader than its title, must be annulled so far as it transcends its title. *Divet v. Richland County*, 8 N. D. 65, 76 N. W. 993.

An act, which in its body embraces but a single subject, is not invalidated by fact that title expresses plurality of subjects. *Eaton v. Guarantee Co.*, 11 N. D. 79, 88 N. W. 1029.

Section 1807 of Rev. Codes is part of the Political Code, which was adopted as a whole, and is valid. *Tribune Printing & Binding Co. v. Barnes*, 7 N. D. 591, 75 N. W. 904.

A statute entitled "An act to amend section 10 of chapter 38, Laws of 1887, being section 545 of the Compiled Laws," is valid where the amendment is germane to the subject of the original section. *Steele County v. Erskine*, 98 Fed. 215, 39 C. C. A. 173.

Section 155 of Laws of 1905, relating to limitations as to future assessments, is not violative of this section. *McKone v. Fargo*, 24 N. D. 53, 138 N. W. 967.

Provision in law that letting of premises knowing they will be used as common nuisance or otherwise permitting such use not broader than title concerning letting of building knowingly for such purposes. *State v. McGillic*, 25 N. D. 27, 141 N. W. 82.

Act permitting recovery of money paid at invalid tax sales germane to matter of collection of taxes on land by means of sale. *Sherwood v. Barnes County*, 22 N. D. 310, 134 N. W. 38; *Paine v. Dickey County*, 8 N. D. 581, 80 N. W. 770.

Title of act creating office and prescribing duties of state board of auditors does not express subject of security of state funds. *State ex rel. Standish v. Nomland*, 3 N. D. 427, 44 Am. St. Rep. 572, 57 N. W. 85.

Provision of act for election of first judge germane to title defining boundaries of judicial districts and providing terms of court. *State ex rel. Erickson v. Burr*, 16 N. D. 581, 113 N. E. 705.

Provision that list of names of voters at primary take place of first registration and that notice be given only of date of second day of registration not germane to title relating only to nomination. *Fitzmaurice v. Willis*, 20 N. D. 372, 127 N. W. 95.

Provision for length of term of officers of state militia germane to purpose of title providing that appointments to national guard be made from officers of field and line. *State ex rel. Poole v. Peake*, 18 N. D. 101, 120 N. W. 47.

An act permitting sale of intoxicating liquor for certain purposes, and prohibiting it for others, under regulation, only one subject—regulation of liquor traffic. *State v. Haas*, 2 N. D. 202, 50 N. W. 254.

Provisions of act giving lien to materialmen and laborers germane to title "regulating filing and foreclosure of mechanics' liens." *Powers Elevator Co. v. Pottner*, 16 N. D. 359, 113 N. W. 703.

Provision in body of act for return of weighmaster's certificate to local elevator agents for posting germane to title providing for a return to local agents. *State v. Minneapolis & N. Elevator Co.*, 17 N. D. 23, 138 Am. St. Rep. 691, 114 N. W. 482.

Bastardy law germane to title of criminal code, as proceedings are quasi-criminal. *State v. Brandner*, 21 N. D. 310, 130 N. W. 941.

Act containing provisions simply in furtherance of object of providing homes for orphans contains only one subject. *State ex rel. Kol v. North Dakota Children's Home Soc.*, 10 N. D. 493, 88 N. W. 273.

Effect of provisions requiring statute to embrace but one subject which shall be expressed in the title. 61 Am. Dec. 337; 64 Am. St. Rep. 70; 79 Am. St. Rep. 456.

Sufficiency of title of statute embodying a code or compilation of laws. 55 L.R.A. 836.

Validity of statute or ordinance authorizing a levying of taxes, incurring of indebtedness, or the appropriation of money, for two or more purposes. 14 L.R.A.(N.S.) 519.

Sufficiency of title of civil service laws. 34 L.R.A.(N.S.) 483.

Sufficiency of title of primary election laws. 22 L.R.A.(N.S.) 1137; 41 L.R.A.(N.S.) 133.

§ 62. The general appropriation bill shall embrace nothing but appropriations for the expenses of the executive, legislative and judicial departments of the state, interest on the public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject.

Last sentence requires a specific appropriation for each subject other than those embraced in general appropriation bill. *State ex rel. McDonald v. Holmes*, 19 N. D. 286, 123 N. W. 884.

§ 63. Every bill shall be read three several times, but the first and second readings, and those only, may be upon the same day; and the second reading may be by title of the bill unless a reading at length be demanded. The first and third readings shall be at length. No legislative day shall be shorter than the natural day.

§ 64. No bill shall be revised or amended, nor the provisions thereof extended or incorporated in any other bill by reference to its title only, but so much thereof as is revised, amended or extended or so incorporated shall be re-enacted and published at length.

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Does not refer to act complete in itself containing no reference to other statutes, although in operation it will by implication affect and modify other statutes. *State v. Fargo Bottling Works Co.*, 19 N. D. 396, 26 L.R.A. (N.S.) 872, 124 N. W. 387.

Amendment unconstitutional as containing more than one subject, and also containing matter not germane to act. *Fitzmaurice v. Willis*, 20 N. D. 378, 127 N. W. 95.

§ 65. No bill shall become a law except by a vote of a majority of all the members-elect in each house, nor unless, on its final passage, the vote be taken by yeas and nays, and the names of those voting be entered on the journal.

§ 66. The presiding officer of each house shall, in the presence of the house over which he presides, sign all bills and joint resolutions passed by the legislative assembly; immediately before such signing their title shall be publicly read and the fact of signing shall be at once entered on the journal.

As to whether house journal should control over enrolled bill as authenticated by signatures of proper officers. *Woolfolk v. Albrecht*, 22 N. D. 36, 133 N. W. 310.

§ 67. No act of the legislative assembly shall take effect until July first, after the close of the session, unless in case of emergency (which shall be expressed in the preamble or body of the act) the legislative assembly shall, by a vote of two-thirds of all the members present in each house, otherwise direct.

Act with emergency clause not unconstitutional. *State v. Bacon*, 14 S. D. 394, 85 N. W. 605.

Acts without emergency clause not take effect until time provided by law. *Re Hendricks*, 5 N. D. 114, 64 N. W. 110.

§ 68. The legislative assembly shall pass all laws necessary to carry into effect the provisions of this constitution.

§ 69. The legislative assembly shall not pass local or special laws in any of the following enumerated cases, that is to say:

- 1. For granting divorces.
2. Laying out, opening, altering, or working roads or highways, vacating roads, town plats, streets, alleys or public grounds.
3. Locating or changing county seats.
4. Regulating county or township affairs.
5. Regulating the practice of courts of justice.
6. Regulating the jurisdiction and duties of justices of the peace, police magistrates or constables.
7. Changing the rules of evidence in any trial or inquiry.
8. Providing for changes of venue in civil or criminal cases.
- 9. Declaring any person of age.
10. For limitation of civil actions, or giving effect to informal or invalid deeds.
11. Summoning or impaneling grand or petit juries.
12. Providing for the management of common schools.
13. Regulating the rate of interest on money.
14. The opening or conducting of any election or designating the place of voting.
15. The sale or mortgage of real estate belonging to minors or others under disability.
16. Chartering or licensing ferries, toll bridges or toll roads.
17. Remitting fines, penalties or forfeitures.
18. Creating, increasing or decreasing fees, percentages or allowances of public officers.
- 19. Changing the law of descent.
20. Granting to any corporation, association or individual the right to lay down railroad tracks, or any special or exclusive privilege, immunity or franchise whatever.
21. For the punishment of crimes.
22. Changing the names of persons or places.
23. For the assessment or collection of taxes.

Angell v. Cass Co., 11 N. D. 265, 91 N. W. 72.

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— 24. Affecting estates of deceased persons, minors or others under legal disabilities.

25. Extending the time for the collection of taxes.

26. Refunding money into the state treasury.

27. Relinquishing or extinguishing in whole or in part the indebtedness, liability or obligation of any corporation or person to this state, or to any municipal corporation therein.

28. Legalizing, except as against the state, the unauthorized or invalid act of any officer.

— 29. Exempting property from taxation.

30. Restoring to citizenship persons convicted of infamous crimes.

31. Authorizing the creation, extension or impairing of liens.

32. Creating offices, or prescribing the powers or duties of officers in counties, cities, townships, election or school districts, or authorizing the adoption or legitimation of children.

33. Incorporation of cities, towns or villages, or changing or amending the charter of any town, city or village.

34. Providing for the election of members of the board of supervisors in townships, incorporated towns or cities.

35. The protection of game or fish.

County seat removal statute, §§ 3233-3237, general, prescribing procedure only, and is valid. *Miller v. Norton*, 22 N. D. 196, 132 N. W. 1080.

Laws of 1890, chap. 56, regulating relocation of county seats, invalid as special legislation, arbitrarily classifying counties. *Edmonds v. Herbrandson*, 2 N. D. 270, 14 L.R.A. 725, 50 N. W. 970.

Act requiring county treasurer to transfer to city treasurer bridge funds collected from city property where bridge constructed in city, valid. *State ex rel. Hagen v. Anderson*, 22 N. D. 65, 132 N. W. 433.

A general law assessing and taxing grain in elevators, to the possessor, and providing for a lien as security for reimbursement, if not the owner, is valid. *Minneapolis & N. Elevator Co. v. Traill County*, 9 N. D. 213, 50 L.R.A. 266, 82 N. W. 727.

Act making arbitrary classification of counties for collection of taxes on certain property invalid. *Angell v. Cass County*, 11 N. D. 265, 91 N. W. 72.

Act conferring upon boards of county commissioners of every county authority to enforce payment of taxes on unredeemed tax sale property valid. *Picton v. Cass County*, 13 N. D. 242, 100 N. W. 711, 3 Ann. Cas. 345.

Act requiring counties to pay expense of maintaining indigent inmates at institution for feeble minded valid. *State ex rel. McCue v. Lewis*, 18 N. D. 125, 119 N. W. 1037.

Act giving to materialmen and laborers a lien upon buildings erected upon government lands held under the laws of the United States valid. *Powers Elevator Co. v. Pottner*, 16 N. D. 359, 113 N. W. 703.

What is special legislation forbidden by constitution. 21 Am. St. Rep. 789.

What are local or private statutes. 23 Am. Dec. 543; 1 Am. St. Rep. 903.

Validity of classification in Sunday law. 14 L.R.A.(N.S.) 1259; 32 L.R.A.(N.S.) 1190.

Primary election law as special or local law. 41 L.R.A.(N.S.) 135.

Statute providing for commission form of government as special and local legislation. 41 L.R.A.(N.S.) 112.

Curative act as special legislation. 5 L.R.A.(N.S.) 327; 22 L.R.A.(N.S.) 534; 42 L.R.A.(N.S.) 465.

Consideration of extrinsic evidence to show unconstitutionality of statute attacked as local. 14 L.R.A. 459.

Attack on enrolled bill for failure to give notice of application for passage of. 40 L.R.A.(N.S.) 28.

§ 70. In all other cases where a general law can be made applicable, no special law shall be enacted; nor shall the legislative assembly indirectly enact such special or local law by the partial repeal of a general law; but laws repealing local or special acts may be passed.

Applies only to cases other than those enumerated in section 69, which embraces all laws locating or changing county seats. *Edmonds v. Herbrandson*, 2 N. D. 270, 14 L.R.A. 725, 50 N. W. 790.

Special or local legislation where general laws can be made applicable. 93 Am. St. Rep. 106.

General laws must be enacted where applicable; legislative discretion. 14 L.R.A. 566.

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ARTICLE 3.—EXECUTIVE DEPARTMENT.

§ 71. The executive power shall be vested in a governor, who shall reside at the seat of government and shall hold his office for the term of two years and until his successor is elected and duly qualified.

§ 72. A lieutenant governor shall be elected at the same time and for the same term as the governor. In case of the death, impeachment, resignation, failure to qualify, absence from the state, removal from office, or the disability of the governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted or the disability be removed, shall devolve upon the lieutenant governor.

§ 73. No person shall be eligible to the office of governor or lieutenant governor unless he be a citizen of the United States, and a qualified elector of the state, who shall have attained the age of thirty years, and who shall have resided five years next preceding the election within the state or territory, nor shall he be eligible to any other office during the term for which he shall have been elected.

Qualified electors are male persons only, possessing other qualifications enumerated in section 121 of constitution. *Wagar v. Prinderville*, 21 N. D. 245, 130 N. W. 224.

§ 74. The governor and lieutenant governor shall be elected by the qualified electors of the state at the time and places of choosing members of the legislative assembly. The persons having the highest number of votes for governor and lieutenant governor respectively shall be declared elected, but if two or more shall have an equal and highest number of votes for governor or lieutenant governor, the two houses of the legislative assembly at its next regular session shall forthwith, by joint ballot, choose one of such persons for said office. The returns of the election for governor and lieutenant governor shall be made in such manner as shall be prescribed by law.

§ 75. The governor shall be commander-in-chief of the military and naval forces of the state, except when they shall be called into the service of the United States, and may call out the same to execute the laws, suppress insurrection and repel invasion. He shall have power to convene the legislative assembly on extraordinary occasions. He shall at the commencement of each session communicate to the legislative assembly, by message, information of the condition of the state, and recommend such measures as he shall deem expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the legislative assembly and shall take care that the laws be faithfully executed.

Power to proclaim and maintain martial law. 65 L.R.A. 195.

Power to disband militia. 23 L.R.A. 510.

Power of, in exercise of power to suppress insurrection, to authorize arrest and detention of persons without turning them over to the civil authorities. 12 L.R.A. (N.S.) 979.

§ 76. [The governor shall have power to remit fines and forfeitures, to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment; but the legislative assembly may by law regulate the manner in which the remission of fines, pardons, commutations and reprieves may be applied for. Upon conviction for treason he shall have power to suspend the execution of sentence until the case shall be reported to the legislative assembly at its next regular session, when the legislative assembly shall either pardon or commute the sentence, direct the execution of the sentence or grant further reprieve. He shall communicate to the legislative assembly at each regular session each case of remission of fine, reprieve, commutation or pardon granted by him, stating the name of the convict, the crime for which he is convicted, the sentence and its date, and the date of the remission, commutation, pardon or reprieve, with his reasons for granting the same.]

See amendments, article 3.

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§ 77. The lieutenant governor shall be president of the senate, but shall have no vote unless they be equally divided. If, during a vacancy in the office of governor, the lieutenant governor shall be impeached, displaced, resign or die, or from mental or physical disease, or otherwise become incapable of performing the duties of his office, the secretary of state shall act as governor until the vacancy shall be filled or the disability removed.

§ 78. When any office shall from any cause become vacant, and no mode is provided by the constitution or law for filling such vacancy, the governor shall have power to fill such vacancy by appointment.

Governor may fill vacancies only where neither constitution nor law has made provision therefor. *State ex rel. Standish v. Boucher*, 3 N. D. 389, 21 L.R.A. 539, 56 N. W. 142.

Power of governor to make ad interim appointment to an office whose fixed term expires before the senate's adjournment, where the incumbent is authorized to hold over until his successor is appointed. 46 L.R.A. (N.S.) 1202.

§ 79. Every bill which shall have passed the legislative assembly shall, before it becomes a law, be presented to the governor. If he approve, he shall sign, but if not, he shall return it with his objections to the house in which it originated, which shall enter the objections at large upon the journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of the members-elect shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if it be approved by two-thirds of the members-elect, it shall become a law; but in all such cases the vote of both houses shall be determined by the yeas and nays, and the names of the members voting for and against the bill shall be entered upon the journal of each house respectively. If any bill shall not be returned by the governor within three days (Sundays excepted) after it shall have been presented to him, the same shall be a law unless the legislative assembly, by its adjournment, prevent its return, in which case it shall be a law unless he shall file the same with his objections, in the office of the secretary of state, within fifteen days after such adjournment.

In computing fifteen days' period Sundays are not excepted. *State ex rel. Watkins v. Norton*, 21 N. D. 473, 131 N. W. 257.

As to whether house journal should control over enrolled bill as authenticated by signatures of proper officers. *Woolfolk v. Albrecht*, 22 N. D. 36, 133 N. W. 310.

Power of governor to veto part only of statute. 55 L.R.A. 882.

Attack on enrolled bill for nonapproval by governor. 40 L.R.A. (N.S.) 23.

Resort to legislative journals to show passage of bill over governor's veto. 40 L.R.A. (N.S.) 34.

Right of the executive to sign a bill after the adjournment of the legislative bodies. 37 L.R.A. 391.

§ 80. The governor shall have power to disapprove of any item or items, or part or parts of any bill making appropriations of money or property embracing distinct items, and the part or parts of the bill approved shall be the law, and the item or items, and part or parts disapproved shall be void, unless enacted in the following manner: If the legislative assembly be in session he shall transmit to the house in which the bill originated a copy of the item or items, or part or parts thereof disapproved, together with his objections thereto, and the items or parts objected to shall be separately reconsidered, and each item or part shall then take the same course as is prescribed for the passage of bills over the executive veto.

§ 81. Any governor of this state who asks, receives or agrees to receive any bribe upon any understanding that his official opinion, judgment or action shall be influenced thereby, or who gives or offers, or promises his official influence in consideration that any member of the legislative assembly shall give his official vote or influence on any particular side of any question or matter upon which he may be required to act in his official capacity, or who menaces any member by the threatened use of his veto power, or who offers or promises any member that he, the said governor, will appoint any particular person or persons to any office created or thereafter to be created, in considera-

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tion that any member shall give his official vote or influence on any matter pending or thereafter to be introduced into either house of said legislative assembly, or who threatens any member that he, the said governor, will remove any person or persons from office or position with intent in any manner to influence the action of said member, shall be punished in the manner now, or that may hereafter, be provided by law, and upon conviction thereof shall forfeit all right to hold or exercise any office of trust or honor in this state.

§ 82. There shall be chosen by the qualified electors of the state at the times and places of choosing members of the legislative assembly, a secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of insurance, three commissioners of railroads, an attorney general and one commissioner of agriculture and labor, who shall have attained the age of twenty-five years, shall be citizens of the United States, and shall have the qualifications of state electors. They shall severally hold their offices at the seat of government, for the term of two years and until their successors are elected and duly qualified, but no person shall be eligible to the office of treasurer for more than two consecutive terms.

Qualified electors are male persons only, possessing other qualifications enumerated in section 121 of constitution. *Wagar v. Prindeville*, 21 N. D. 245, 130 N. W. 224.

§ 83. The powers and duties of the secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of insurance, commissioners of railroads, attorney general, and commissioner of agriculture and labor, shall be as prescribed by law.

Attorney general has right to appear before grand jury in matters relating to enforcement of prohibition law. *State ex rel. Miller v. District Ct.*, 19 N. D. 822, 124 N. W. 417, Ann. Cas. 1912 D, 935.

§ 84. Until otherwise provided by law, the governor shall receive an annual salary of three thousand dollars; the lieutenant governor shall receive an annual salary of one thousand dollars; the secretary of state, auditor, treasurer, superintendent of public instruction, commissioner of insurance, commissioners of railroads and attorney general shall each receive an annual salary of two thousand dollars; the salary of the commissioner of agriculture and labor shall be as prescribed by law, but the salaries of any of the said officers shall not be increased or diminished during the period for which they shall have been elected, and all fees and profits arising from any of the said offices shall be covered into the state treasury.

Repealed territorial law providing for salary of secretary of railroad commissioners; salary governed by later statute. *State ex rel. Edgerly v. Currie*, 3 N. D. 310, 55 N. W. 858.

The balance of fees in the hands of a state superintendent of public instruction, remaining after disbursements, must be accounted for to the state. *State v. Stockwell*, 23 N. D. 70, 134 N. W. 767.

ARTICLE 4.—JUDICIAL DEPARTMENT.

§ 85. The judicial power of the state of North Dakota shall be vested in a supreme court, district courts, county courts, justices of the peace, and in such other courts as may be created by law for cities, incorporated towns and villages.

Statute is not unconstitutional merely because it imposes administrative powers upon district judges. *Kermott v. Bagley*, 19 N. D. 346, 124 N. W. 397.

Certiorari appropriate writ to review the proceedings of a court-martial in order to determine whether or not it exceeds its jurisdiction. *State ex rel. Poole v. Peake*, 23 N. D. 457, 40 L.R.A.(N.S.) 354, 135 N. W. 197.

Provision of act for hearing upon notice before secretary of state upon complaint filed of unfair discrimination by corporation and imposition of penalty, invalid. *State ex rel. Standard Oil Co. v. Blaisdell*, 22 N. D. 86, 132 N. W. 769, Ann. Cas. 1913 E, 1089.

Invalidity of statute giving state's attorneys power to subpoena and examine witnesses concerning violation of liquor law can be raised only by individual witness. *State v. Stevens*, 19 N. D. 249, 123 N. W. 888.

Board of railroad commissioners has right to inquire into past transactions of surety on bond of grain elevator operator and into their fairness. *State ex rel. Dakota Trust Co. v. Stutsman*, 24 N. D. 68, 139 N. W. 83.

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§ 86. The supreme court, except as otherwise provided in this constitution, shall have appellate jurisdiction only, which shall be co-extensive with the state and shall have a general superintending control over all inferior courts under such regulations and limitations as may be prescribed by law.

Supreme court has appellate jurisdiction only, and is the supreme appellate tribunal of the state. *Re Peterson*, 22 N. D. 480, 134 N. W. 751.

Supreme court is given superintending control over inferior courts, and has power to issue any of writs named in above sections and such others as may be necessary to exercise of such control. *State ex rel. Red River Brick Corp. v. District Ct.*, 24 N. D. 28, 138 N. W. 988.

Mandamus issuable to compel lower court to proceed with hearing where dismissed erroneously before final hearing. *State ex rel. Heffron v. District Ct.*, — N. D. —, 143 N. W. 143.

Mandamus issuable to compel county auditor to give notice that question of division of county would be submitted to voters at general election. *State ex rel. Steel v. Fabrick*, 17 N. D. 532, 117 N. W. 860.

Court will issue writ of prohibition directed to county judge, only in exceptional cases, involving questions of great public importance. *Selzer v. Bagley*, 19 N. D. 698, 124 N. W. 426.

Writ of prohibition issuable only by virtue of superintending power over inferior courts, or where necessary in pending cause. Court-martial not an inferior court. *State ex rel. Poole v. Nuchols*, 18 N. D. 233, 20 L.R.A.(N.S.) 413, 119 N. W. 632.

Certiorari appropriate writ to review the proceedings of a court-martial in order to determine whether or not it exceeds its jurisdiction. *State ex rel. Poole v. Peake*, 22 N. D. 457, 40 L.R.A.(N.S.) 354, 135 N. W. 197.

§ 87. It shall have power to issue writs of habeas corpus, mandamus, quo warranto, certiorari, injunction and such other original and remedial writs as may be necessary to the proper exercise of its jurisdiction, and shall have authority to hear and determine the same; provided, however, that no jury trial shall be allowed in said supreme court, but in proper cases questions of fact may be sent by said court to a district court for trial.

Supreme court has appellate jurisdiction only, and is the supreme appellate tribunal of the state. *Re Peterson*, 22 N. D. 480, 134 N. W. 751.

Mandamus issuable to compel county auditor to give notice that question of division of county would be submitted to voters at general election. *State ex rel. Steel v. Fabrick*, 17 N. D. 532, 117 N. W. 860.

Mandamus issuable against city auditor to prevent use of ballots allowing cumulative voting for candidates for city commissioners, state being directly interested. *State ex rel. Shaw v. Thompson*, 21 N. D. 426, 131 N. W. 231.

Mandamus not issuable to compel district court to punish guilty parties in contempt proceedings where only special exigency is that financial affairs of districts sought to be annexed to a city will be temporarily involved. *State ex rel. Red River Brick Corp. v. District Ct.*, 24 N. D. 28, 138 N. W. 988.

Writ of prohibition issuable only by virtue of superintending power over inferior courts, or where necessary in pending cause. *State ex rel. Poole v. Nuchols*, 18 N. D. 233, 20 L.R.A.(N.S.) 413, 119 N. W. 632.

Writ of quo warranto issuable to test legality of appointment of district judge by governor where law provides for general election. *State ex rel. Erickson v. Burr*, 16 N. D. 581, 113 N. W. 705.

Jurisdiction of supreme court primarily appellate, quo warranto proceedings not to be initiated against advice of attorney general in absence of special need. *State ex rel. Walker v. McLean County*, 11 N. D. 356, 92 N. W. 385.

Where taxpayer seeking to annul tax and avoid payment, remedy in district court. Writ of certiorari to board of equalization will not issue. *Duluth Elevator Co. v. White*, 11 N. D. 534, 90 N. W. 12.

§ 88. Until otherwise provided by law three terms of the supreme court shall be held each year, one at the seat of government, one at Fargo, in the county of Cass, and one at Grand Forks, in the county of Grand Forks.

§ 89. [The supreme court shall consist of three judges, a majority of whom shall be necessary to form a quorum or pronounce a decision, but one or more of said judges may adjourn the court from day to day or to a day certain.]

See amendments, article 10.

§ 90. The judges of the supreme court shall be elected by the qualified electors of the state at large, and except as may be otherwise provided herein for the first election for judges under this constitution, said judges shall be elected at general elections.

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Qualified electors are male persons only, possessing other qualifications enumerated in section 121 of constitution. *Wagar v. Prindeville*, 21 N. D. 245, 130 N. W. 224.

§ 91. The term of office of the judges of the supreme court, except as in this article otherwise provided, shall be six years, and they shall hold their offices until their successors are duly qualified.

§ 92. The judges of the supreme court shall, immediately after the first election under this constitution, be classified by lot so that one shall hold his office for the term of three years, one for the term of five years, and one for the term of seven years from the first Monday in December, A. D. 1889. The lots shall be drawn by the judges, who shall for that purpose assemble at the seat of government, and they shall cause the result thereof to be certified to the secretary of the territory and filed in his office, unless the secretary of state of North Dakota shall have entered upon the duties of his office, in which event said certification shall be filed therein. The judge having the shortest term to serve, not holding his office by election or appointment to fill a vacancy, shall be chief justice and shall preside at all terms of the supreme court and in case of his absence the judge having in like manner the next shortest term to serve shall preside in his stead.

§ 93. There shall be a clerk and also a reporter of the supreme court, who shall be appointed by the judges thereof, and who shall hold their offices during the pleasure of said judges, and whose duties and emoluments shall be prescribed by law and by rules of the supreme court not inconsistent with law. The legislative assembly shall make provision for the publication and distribution of the decisions of the supreme court and for the sale of the published volumes thereof.

§ 94. No person shall be eligible to the office of judge of the supreme court unless he be learned in the law, be at least thirty years of age and a citizen of the United States, nor unless he shall have resided in this state or the territory of Dakota three years next preceding his election.

§ 95. Whenever the population of the state of North Dakota shall equal 600,000 the legislative assembly shall have the power to increase the number of the judges of the supreme court to five, in which event a majority of said court, as thus increased, shall constitute a quorum.

§ 96. No duties shall be imposed by law upon the supreme court or any of the judges thereof, except such as are judicial, nor shall any of the judges thereof exercise any power of appointment except as herein provided.

Statute is not unconstitutional merely because it imposes administrative duties upon district judges. *Kermott v. Bagley*, 19 N. D. 349, 124 N. W. 397.

An act requiring children's home societies to secure a certificate of trustworthiness from the supreme court is not an imposition of nonjudicial duties. *State ex rel. Kol v. North Dakota Children's Home Soc.*, 10 N. D. 493, 88 N. W. 273.

§ 97. The style of all process shall be "The State of North Dakota." All prosecutions shall be carried on in the name and by the authority of the State of North Dakota, and conclude "against the peace and dignity of the State of North Dakota."

Omission to show prosecution is carried on in name of state or by its authority, fatal. *State v. Hazledahl*, 2 N. D. 521, 16 L.R.A. 150, 52 N. W. 315.

Information entitled in name of "State of North Dakota" valid where parties otherwise properly referred to and recites appearance of state's attorney by authority of state. *State v. Bednor*, 18 N. D. 484, 121 N. W. 614, 20 Ann. Cas. 458.

A summary contempt proceeding for a criminal contempt committed in open court is not a prosecution. *State v. Crum*, 7 N. D. 299, 74 N. W. 992.

Order in proceedings upon execution to show cause why a writ should not be issued restraining further proceedings not process. *Northern P. R. Co. v. Jurgenson*, 25 N. D. 14, 141 N. W. 70.

§ 98. Any vacancy happening by death, resignation or otherwise in the office of judge of the supreme court shall be filled by appointment, by the governor, which appointment shall continue until the first general election thereafter, when said vacancy shall be filled by election.

§ 99. The judges of the supreme and district courts shall receive such compensation for their services as may be prescribed by law, which compensation

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shall not be increased or diminished during the term for which a judge shall have been elected.

§ 100. In case a judge of the supreme court shall be in any way interested in a cause brought before said court, the remaining judges of said court shall call one of the district judges to sit with them on the hearing of said cause.

Participation in a judicial capacity in other proceedings against accused as disqualifying judge to preside at trial. 45 L.R.A.(N.S.) 525.

Participation by judge in movement to enforce criminal law on particular subject as disqualifying him to preside at trial. 45 L.R.A.(N.S.) 519.

Belief in guilt or innocence of accused as disqualification of judge in criminal case. 45 L.R.A.(N.S.) 511.

Political affiliations as ground for disqualification of judge. 19 L.R.A.(N.S.) 602.

Membership in bar association as disqualification of judge to preside at disbarment proceedings instituted by association. 39 L.R.A.(N.S.) 116.

Relationship to attorney in case of disqualifying judge. 42 L.R.A.(N.S.) 1172.

Right of judge who may be affected by the result to hear election cases. 42 L.R.A.(N.S.) 788.

Qualification of judge to sit on trial of one for contempt consisting of reflection upon himself. 11 L.R.A.(N.S.) 619.

Disqualifications without regard to statute, from having been of counsel in the cause. 25 L.R.A. 117.

§ 101. When a judgment or decree is reversed or confirmed by the supreme court, every point fairly arising upon the record of the case shall be considered and decided, and the reasons therefor shall be concisely stated in writing, signed by the judges concurring, filed in the office of the clerk of the supreme court and preserved with a record of the case. Any judge dissenting therefrom may give the reasons of his dissent in writing over his signature.

Requires decision only upon the necessary and controlling points, which the record presents clearly and fully. *Heald v. Strong*, 24 N. D. 120, 138 N. W. 1114.

§ 102. It shall be the duty of the court to prepare a syllabus of the points adjudicated in each case, which shall be concurred in by a majority of the judges thereof, and it shall be prefixed to the published reports of the case.

§ 103. The district courts shall have original jurisdiction, except as otherwise provided in this constitution, of all causes both at law and equity, and such appellate jurisdiction as may be conferred by law. They and the judges thereof shall also have jurisdiction and power to issue writs of habeas corpus, quo warranto, certiorari, injunction and other original and remedial writs, with authority to hear and determine the same.

Statute is not unconstitutional merely because it imposes administrative duties upon district judges. *Kermott v. Bagley*, 19 N. D. 346, 124 N. W. 397.

Trial de novo in testamentary and probate matters may be had in district court upon appeal from county court. *Re Peterson*, 22 N. D. 480, 134 N. W. 751.

Action for separate maintenance maintainable by husband against wife where unable to support himself and wife has ample property, and he did not desert her. *Hogert v. Hogert*, 22 N. D. 290, 38 L.R.A.(N.S.) 966, 133 N. W. 1035.

County courts of increased jurisdiction are not vested with concurrent jurisdiction with district courts in equity cases, by section 111 of constitution. *Mead v. First Nat. Bank*, 24 N. D. 12, 138 N. W. 365.

§ 104. The state shall be divided into six judicial districts, in each of which there shall be elected at general elections, by the electors thereof, one judge of the district court therein, whose term of office shall be four years from the first Monday in January succeeding his election and until his successor is duly qualified. This section shall not be construed as governing the first election of district judges under this constitution.

§ 105. Until otherwise provided by law said districts shall be constituted as follows:

District No. One shall consist of the counties of Pembina, Cavalier, Walsh, Nelson and Grand Forks.

District No. Two shall consist of the counties of Ramsey, Towner, Benson, Pierce, Rolette, Bottineau, McHenry, Church, Renville, Ward, Stevens, Mountrail, Garfield, Flannery and Buford.

District No. Three shall consist of the counties of Cass, Steele and Traill.

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District No. Four shall consist of the counties of Richland, Ransom, Sargent, Dickey and McIntosh.

District No. Five shall consist of the counties of Logan, LaMoure, Stutsman, Barnes, Wells, Foster, Eddy and Griggs.

District No. Six shall consist of the counties of Burleigh, Emmons, Kidder, Sheridan, McLean, Morton, Oliver, Mercer, Williams, Stark, Hettinger, Bowman, Billings, McKenzie, Dunn, Wallace and Allred, and that portion of the Sioux Indian reservation lying north of the seventh standard parallel.

§ 106. The legislative assembly may whenever two-thirds of the members of each house shall concur therein, but not oftener than once in four years increase the number of said judicial districts and the judges thereof; such districts shall be formed from compact territory and bounded by county lines, but such increase or change in the boundaries of the districts shall not work the removal of any judge from his office during the term for which he may have been elected or appointed.

§ 107. No person shall be eligible to the office of district judge, unless he be learned in the law, be at least twenty-five years of age, and a citizen of the United States, nor unless he shall have resided within the State or Territory of Dakota at least two years next preceding his election, nor unless he shall at the time of his election be an elector within the judicial district for which he is elected.

§ 108. There shall be a clerk of the district court in each organized county in which a court is holden who shall be elected by the qualified electors of the county, and shall hold his office for the same term as other county officers. He shall receive such compensation for his services as may be prescribed by law.

§ 109. Writs of error and appeals may be allowed from the decisions of the district courts to the supreme court under such regulations as may be prescribed by law.

Act imposing duties relative to druggists' permits upon district judges not invalid where duties are purely administrative. Kermott v. Bagley, 19 N. D. 345, 124 N. W. 397.

COUNTY COURTS.

§ 110. There shall be established in each county a county court, which shall be a court of record open at all times and holden by one judge, elected by the electors of the county, and whose term of office shall be two years.

§ 111. The county court shall have exclusive original jurisdiction in probate and testamentary matters, the appointment of administrators and guardians, the settlement of the accounts of executors, administrators and guardians, the sale of lands by executors, administrators and guardians, and such other probate jurisdiction as may be conferred by law; provided, that whenever the voters of any county having a population of two thousand or over shall decide by a majority vote that they desire the jurisdiction of said court increased above that limited by this constitution, then said county court shall have concurrent jurisdiction with the district courts in all civil actions where the amount in controversy does not exceed one thousand dollars, and in all criminal actions below the grade of felony, and in case it is decided by the voters of any county to so increase the jurisdiction of said county court, the jurisdiction in cases of misdemeanors arising under state laws which may have been conferred upon police magistrates, shall cease. The qualifications of the judge of the county court in counties where the jurisdiction of said court shall have been increased shall be the same as those of the district judge, except that he shall be a resident of the county at the time of his election, and said county judge shall receive such salary for his services as may be provided by law. In case the voters of any county decide to increase the jurisdiction of said county courts, then such jurisdiction as thus increased shall remain until otherwise provided by law.

Beyond power of legislature to confer upon county courts power to inventory and distribute funds which are not part of decedent's estate. Finn v. Walsh, 19 N. D. 61, 121 N. W. 766.

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Act requiring county judges to direct disposition of orphan children to orphanages or to adopting families, valid. *State ex rel. Kol v. North Dakota Children's Home Soc.*, 10 N. D. 493, 88 N. W. 273.

Does not prohibit a trial de novo in district court upon appeal from county court in probate and testamentary matters. *Re Peterson*, 22 N. D. 480, 134 N. W. 751.

County courts of increased jurisdiction, no equity powers; jurisdiction limited to law actions where not more than \$1,000 involved. *Mead v. First Nat. Bank*, 24 N. D. 12, 138 N. W. 365.

"Majority vote" means majority of votes cast on question of increased jurisdiction, and not majority of all votes cast at the election. *State ex rel. Davis v. Fabrick*, 18 N. D. 402, 121 N. W. 65.

JUSTICES OF THE PEACE.

§ 112. The legislative assembly shall provide by law for the election of justices of the peace in each organized county within the state. But the number of said justices to be elected in each organized county shall be limited by law to such a number as shall be necessary for the proper administration of justice. The justices of the peace herein provided for shall have concurrent jurisdiction with the district court in all civil actions when the amount in controversy, exclusive of costs, does not exceed two hundred dollars, and (in counties where no county court with criminal jurisdiction exists) they shall have such jurisdiction to hear and determine cases of misdemeanor as may be provided by law, but in no case shall said justices of the peace have jurisdiction when the boundaries of or title to real estate shall come in question. The legislative assembly shall have power to abolish the office of justice of the peace and confer that jurisdiction upon judges of county courts or elsewhere.

POLICE MAGISTRATES.

§ 113. The legislative assembly shall provide by law for the election of police magistrates in cities, incorporated towns, and villages, who in addition to their jurisdiction of all cases arising under the ordinances of said cities, towns and villages, shall be ex-officio justices of the peace of the county in which said cities, towns and villages may be located. And the legislative assembly may confer upon said police magistrates the jurisdiction to hear, try and determine all cases of misdemeanors, and the prosecutions therein shall be by information.

A police magistrate court cannot be abolished or superseded by a statute creating a municipal court. *McDermont v. Dinnie*, 6 N. D. 278, 69 N. W. 294.

§ 114. Appeals shall lie from the county court, final decisions of justices of the peace and police magistrates in such cases and pursuant to such regulations as may be prescribed by law.

MISCELLANEOUS PROVISIONS.

§ 115. The time of holding courts in the several counties of a district shall be as prescribed by law, but at least two terms of the district court shall be held annually in each organized county, and the legislative assembly shall make provision for attaching unorganized counties or territories to organized counties for judicial purposes.

§ 116. Judges of the district courts may hold court in other districts than their own under such regulations as shall be prescribed by law.

§ 117. No judge of the supreme or district court shall act as attorney or counselor at law.

§ 118. Until the legislative assembly shall provide by law for fixing the terms of courts, the judges of the supreme and district courts shall fix the terms thereof.

A special term of district court may be convened for trial of criminal case. *State ex rel. Baker v. Boucher*, 8 N. D. 277, 78 N. W. 988.

§ 119. No judge of the supreme or district courts shall be elected or appointed to any other than judicial offices or be eligible thereto during the term for which he was elected or appointed such judge. All votes or appoint-

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ments for either of them for any elective or appointive office except that of judge of the supreme court or district court, given by the legislative assembly of the people, shall be void.

§ 120. Tribunals of conciliation may be established with such powers and duties as shall be prescribed by law, or the powers and duties of such may be conferred upon other courts of justice; but such tribunals or other courts when sitting as such, shall have no power to render judgment to be obligatory on the parties, unless they voluntarily submit their matters of difference and agree to abide the judgment of such tribunals or courts.

ARTICLE 5.— ELECTIVE FRANCHISE.

§ 121. [Every male person of the age of twenty-one years or upwards belonging to either of the following classes, who shall have resided in the state one year, in the county six months and in the precinct ninety days next preceding any election, shall be deemed a qualified elector at such election:

1. Citizens of the United States.
2. Persons of foreign birth who shall have declared their intention to become citizens, one year and not more than six years prior to such election, conformably to the naturalization laws of the United States.
3. Civilized persons of Indian descent who shall have severed their tribal relations two years next preceding such election.]

See amendments, article 2, qualified electors are male persons only possessing the other qualifications therein enumerated. *Wagar v. Prinderville*, 21 N. D. 245, 130 N. W. 224.

The word "electors" as used in section 168 means all persons possessing the qualifications prescribed by section 121 in order to entitle them to vote. *State ex rel. McCue v. Blaisdell*, 18 N. D. 31, 119 N. W. 360.

Does not prescribe rule of voting; election held by city officials at one place instead of in four separate wards as required by statute, valid. *Kerlin v. Devils Lake*, 25 N. D. 207, 141 N. W. 756.

Prescribes the qualifications for voters at any election including a primary election. *Johnson v. Grand Forks County*, 16 N. D. 363, 125 Am. St. Rep. 662, 113 N. W. 1071.

A primary election is a special or partisan election, the purposes thereof determinable by legislature. *State ex rel. Miller v. Flaherty*, 23 N. D. 313, 41 L.R.A. (N.S.) 132, 136 N. W. 76.

A law restricting right of Indians to vote of no effect where not adopted by majority of voters at general election. *State ex rel. Tompton v. Denoyer*, 6 N. D. 586, 72 N. W. 1014.

How far right to vote is absolute. 25 L.R.A. 480.

Does "residence," as a qualification of voters mean "domicil." 19 L.R.A. (N.S.) 759.

Acquiring residence as a voter while attending school or public institution. 23 L.R.A. 215; 40 L.R.A. (N.S.) 168.

§ 122. The legislative assembly shall be empowered to make further extensions of suffrage hereafter, at its discretion, to all citizens of mature age and sound mind, not convicted of crime without regard to sex; but no law extending or restricting the right of suffrage shall be in force until adopted by a majority of the electors of the state voting at a general election.

Primary election special or partisan election, purposes thereof determinable by legislature. *State ex rel. Miller v. Flaherty*, 23 N. D. 313, 41 L.R.A. (N.S.) 132, 136 N. W. 76.

A law restricting right of Indians to vote of no effect where not adopted by majority of voters at general election. *State ex rel. Tompton v. Denoyer*, 6 N. D. 586, 72 N. W. 1014.

§ 123. Electors shall in all cases except treason, felony, breach of the peace or illegal voting, be privileged from arrest on the days of election during their attendance at, going to and returning from such election, and no elector shall be obliged to perform military duty on the day of election, except in time of war or public danger.

§ 124. The general elections of the state shall be biennial, and shall be held on the first Tuesday after the first Monday in November; provided, that the first general election under this constitution shall be held on the first Tuesday after the first Monday in November, A. D. 1890.

Fixes time of holding of general election, legislature simply to prescribe regulations and officers to be elected. *State ex rel. Miller v. Flaherty*, 23 N. D. 313, 41 L.R.A. (N.S.) 132, 136 N. W. 76.

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§ 125. No elector shall be deemed to have lost his residence in this state by reason of his absence on business of the United States or of this state, or in the military or naval service of the United States.

§ 126. No soldier, seaman or marine in the army or navy of the United States shall be deemed a resident of this state in consequence of his being stationed therein.

§ 127. [No person who is under guardianship, non compos mentis or insane, shall be qualified to vote at any election, nor shall any person convicted of treason or felony, unless restored to civil rights.]

See amendments, article 2.

§ 128. Any woman having the qualifications enumerated in section 121 of this article as to age, residence and citizenship, and including those now qualified by the laws of the territory, may vote for all school officers, and upon all questions pertaining solely to school matters, and be eligible to any school office.

Does not make women electors, but places them in a separate class of citizens, and gives them a limited elective franchise. *Wagar v. Prindeville*, 21 N. D. 245, 130 N. W. 224.

§ 129. All elections by the people shall be by secret ballot, subject to such regulations as shall be provided by law.

Constitution permits legislature to prescribe regulations for fair and free elections. *Fitzmaurice v. Willis*, 20 N. D. 381, 127 N. W. 95.

Not impaired by requiring voter at continuation of June primary at general election to call for party ballot in voting for senator. *State ex rel. McCue v. Blaisdell*, 18 N. D. 55, 24 L.R.A.(N.S.) 465, 138 Am. St. Rep. 741, 118 N. W. 141.

A primary election a special or partisan election, purposes thereof determinable by the legislature. *State ex rel. Miller v. Flaherty*, 23 N. D. 313, 41 L.R.A.(N.S.) 132, 136 N. W. 76.

ARTICLE 6.—MUNICIPAL CORPORATIONS.

§ 130. The legislative assembly shall provide by general law for the organization of municipal corporations, restricting their powers as to levying taxes and assessments, borrowing money and contracting debts, and money raised by taxation, loan or assessment for any purpose shall not be diverted to any other purpose except by authority of law.

Legislature has power to organize people within state into cities and villages. *State ex rel. Johnson v. Clark*, 21 N. D. 517, 131 N. W. 715.

ARTICLE 7.—CORPORATIONS OTHER THAN MUNICIPAL.

§ 131. No charter of incorporation shall be granted, changed or amended by special law, except in the case of such municipal, charitable, educational, penal or reformatory corporations as may be under the control of the state; but the legislative assembly shall provide by general laws for the organization of all corporations hereafter to be created, and any such law, so passed, shall be subject to future repeal or alteration.

§ 132. All existing charters or grants of special or exclusive privileges, under which a bona fide organization shall not have taken place and business been commenced in good faith at the time this constitution takes effect, shall thereafter have no validity.

§ 133. The legislative assembly shall not remit the forfeiture of the charter to any corporation now existing, nor alter or amend the same, nor pass any other general or special law for the benefit of such corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this constitution.

§ 134. The exercise of the right of eminent domain shall never be abridged, or so construed as to prevent the legislative assembly from taking the property and franchises of incorporated companies and subjecting them to public use, the same as the property of individuals; and the exercise of the police power of this state shall never be abridged, or so construed as to permit corporations

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to conduct their business in such a manner as to infringe the equal rights of individuals or the general well-being of the state.

§ 135. In all elections for directors or managers of a corporation, each member or shareholder may cast the whole number of his votes for one candidate, or distribute them upon two or more candidates, as he may prefer.

Cumulative voting in election of city commissioners was not authorized by chapter 45 of Laws of 1907. State ex rel. Shaw v. Thompson, 21 N. D. 426, 131 N. W. 231.

§ 136. No foreign corporation shall do business in this state without having one or more places of business and an authorized agent or agents in the same, upon whom process may be served.

Compelling designation of person upon whom process may be served as a condition of right to do business. 1 L.R.A.(N.S.) 558.

Right of foreign corporation to set up noncompliance with conditions of doing business in order to defeat recovery against it. 25 L.R.A. 569.

What constitutes "doing business" as prohibited by statute. 24 L.R.A. 295.

Single or isolated transaction by foreign corporation as "doing business" within the state. 2 L.R.A.(N.S.) 127; 10 L.R.A.(N.S.) 693.

Soliciting trade as doing business within the state. 9 L.R.A.(N.S.) 1214; 23 L.R.A.(N.S.) 834.

Sale by foreign corporation of goods stored in state as intrastate business. 18 L.R.A.(N.S.) 134.

Establishing agency to handle a corporation's product within the state as doing business therein. 18 L.R.A.(N.S.) 142.

Transactions pursuant to agreement with local dealer to sell product of foreign corporation within state as doing business therein. 44 L.R.A.(N.S.) 1094.

§ 137. No corporation shall engage in any business other than that expressly authorized in its charter.

§ 138. No corporation shall issue stock or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held after sixty days' notice given in pursuance of law.

A note is property, and is not within this provision. German Mercantile Co. v. Warner, 25 N. D. 479, — L.R.A.(N.S.) —, 142 N. W. 463.

Commercial paper as payment of subscription to stock. 35 L.R.A.(N.S.) 80.

§ 139. No law shall be passed by the legislative assembly granting the right to construct and operate a street railroad, telegraph, telephone or electric light plant within any city, town or incorporated village, without requiring the consent of the local authorities having the control of the street or highway proposed to be occupied for such purposes.

See State v. Miller, 3 N. D. 433, 57 N. W. 193.

§ 140. Every railroad corporation organized and doing business in this state, under the laws or authority thereof, shall have and maintain a public office or place in the state for the transaction of its business, where transfers of its stock shall be made and in which shall be kept for public inspection, books in which shall be recorded the amount of capital stock subscribed, and by whom, the names of the owners of its stock and the amount owned by them respectively; the amount of stock paid in and by whom, and the transfers of said stock; the amount of its assets and liabilities and the names and place of residence of its officers. The directors of every railroad corporation shall annually make a report, under oath, to the auditor of public accounts, or some officer or officers to be designated by law, of all their acts and doings, which report shall include such matters relating to railroads as may be prescribed by law, and the legislative assembly shall pass laws enforcing by suitable penalties the provisions of this section; provided, the provisions of this section shall not be so construed as to apply to foreign corporations.

§ 141. No railroad corporation shall consolidate its stock, property or franchises with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given at least sixty days to all stockholders, in such manner as may be

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provided by law. Any attempt to evade the provisions of this section by any railroad corporation, by lease or otherwise, shall work a forfeiture of its charter.

§ 142. Railways heretofore constructed, or that may hereafter be constructed, in this state are hereby declared public highways, and all railroad, sleeping car, telegraph, telephone, and transportation companies of passengers, intelligence and freight, are declared to be common carriers and subject to legislative control; and the legislative assembly shall have power to enact laws regulating and controlling the rates of charges for the transportation of passengers, intelligence and freight, as such common carriers, from one point to another in this state; provided, that appeal may be had to the courts of this state from the rates so fixed; but the rates fixed by the legislative assembly or board of railroad commissioners shall remain in force pending the decision of the courts.

Legislature has power to fix and regulate rates upon intrastate traffic, provided such rates are reasonably remunerative, and not confiscatory. *State ex rel. McCue v. Northern P. R. Co.*, 19 N. D. 45, 25 L.R.A.(N.S.) 1001, 120 N. W. 869; affirmed in 216 U. S. 579, 54 L.ed. 624, 30 Sup. Ct. Rep. 423.

Delegation by legislature of power to fix rates. 32 L.R.A.(N.S.) 649.

Power of legislature to delegate to commissions the right to fix rates. 18 L.R.A.(N.S.) 713.

Power of judiciary to fix rates to be charged by public service corporations. 8 L.R.A.(N.S.) 529.

Valuation of property of railroads and other public service corporations for purpose of fixing rates. 48 L.R.A.(N.S.) 1037; 48 L.R.A.(N.S.) 1092; 48 L.R.A.(N. S.) 1146; 48 L.R.A.(N.S.) 1196.

Allowance for depreciation in plant in fixing rates. 38 L.R.A.(N.S.) 1209.

Elements entering into determination of reasonableness of railroad rates prescribed by the state for local traffic. 15 L.R.A.(N.S.) 108; 25 L.R.A.(N.S.) 1001.

Power to require carriers to give reduced rates to classes of persons. 11 L.R.A.(N.S.) 973; 33 L.R.A.(N.S.) 956; 41 L.R.A.(N.S.) 524.

Validity of statute requiring issuance of mileage books at reduced rates. 7 L.R.A.(N.S.) 1086.

Injunction against enforcement of railroad rate legislation under unconstitutional statute as affected by other remedies. 8 L.R.A.(N.S.) 124.

§ 143. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points within this state, and to connect at the state line with the railroads of other states. Every railroad company shall have the right with its road to intersect, connect with or cross any other; and shall receive and transport each other's passengers, tonnage and cars, loaded or empty, without delay or discrimination.

§ 144. The term "corporation," as used in this article, shall not be understood as embracing municipalities or political subdivisions of the state unless otherwise expressly stated, but it shall be held and construed to include all associations and joint stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships.

§ 145. If a general banking law be enacted, it shall provide for the registry and countersigning by an officer of the state, of all notes or bills designed for circulation, and that ample security to the full amount thereof shall be deposited with the state treasurer for the redemption of such notes or bills.

§ 146. Any combination between individuals, corporations, associations or either, having for its object or effect the controlling of the price of any product of the soil or any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited and hereby declared unlawful and against public policy; and any and all franchises heretofore granted or extended, or that may hereafter be granted or extended in this state, whenever the owner or owners thereof violate this article shall be deemed annulled and become void.

Illegal trusts under modern anti-trust laws. 64 L.R.A. 689.

Validity of contract provision for control of price on resale. 27 L.R.A.(N.S.) 396.

Rights of manufacturer, not protected by patent or copyright, with respect to interference by third parties with selling system by which he seeks to control retail price. 12 L.R.A.(N.S.) 135.

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ARTICLE 8.—EDUCATION.

§ 147. A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota.

Religious exercises or instruction in public schools. 16 L.R.A. (N.S.) 860; 105 Am. St. Rep. 151.

Right to require or prohibit the wearing of uniforms or religious garb in public school or college. 42 L.R.A. (N.S.) 337.

§ 148. The legislative assembly shall provide, at its first session after the adoption of this constitution, for a uniform system for free public schools throughout the state, beginning with the primary and extending through all grades up to and including the normal and collegiate course.

§ 149. In all schools instruction shall be given as far as practicable in those branches of knowledge that tend to impress upon the mind the vital importance of truthfulness, temperance, purity, public spirit, and respect for honest labor of every kind.

Power of legislature to prescribe subjects to be taught in public schools. 47 L.R.A. (N.S.) 200.

§ 150. A superintendent of schools for each county shall be elected every two years, whose qualifications, duties, powers and compensation shall be fixed by law.

Provides for the biennial election of a county superintendent of schools, leaving it to the legislature to determine time of election and term of office. *Jenness v. Clark*, 21 N. D. 150, 129 N. W. 357, Ann. Cas. 1913 B, 675.

§ 151. The legislative assembly shall take such other steps as may be necessary to prevent illiteracy, secure a reasonable degree of uniformity in course of study, and to promote industrial, scientific and agricultural improvements.

Power of legislature to prescribe subjects to be taught in public schools. 47 L.R.A. (N.S.) 200.

§ 152. All colleges, universities and other educational institutions, for the support of which lands have been granted to this state, or which are supported by a public tax, shall remain under the absolute and exclusive control of the state. No money raised for the support of the public schools of the state shall be appropriated to or used for the support of any sectarian school.

ARTICLE 9.—SCHOOL AND PUBLIC LANDS.

§ 153. All proceeds of the public lands that have heretofore been, or may hereafter be granted by the United States for the support of the common schools in this state; all such per centum as may be granted by the United States on the sale of public lands; the proceeds of property that shall fall to the state by escheat; the proceeds of all gifts and donations to the state for common schools, or not otherwise appropriated by the terms of the gift, and all other property otherwise acquired for common schools, shall be and remain a perpetual fund for the maintenance of the common schools of the state. It shall be deemed a trust fund, the principal of which shall forever remain inviolate and may be increased but never diminished. The state shall make good all losses thereof.

§ 154. The interest and income of this fund together with the net proceeds of all fines for violation of state laws, and all other sums which may be added thereto by law, shall be faithfully used and applied each year for the benefit of the common schools of the state, and shall be for this purpose apportioned among and between all the several common school corporations of the state in

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proportion to the number of children in each of school age, as may be fixed by law, and no part of the fund shall ever be diverted even temporarily, from this purpose or used for any other purpose whatever than the maintenance of common schools for the equal benefit of all the people of the state; provided, however, that if any portion of the interest or income aforesaid be not expended during any year, said portion shall be added to and become a part of the school fund.

§ 155. After one year from the assembling of the first legislative assembly the lands granted to the state from the United States for the support of the common schools, may be sold upon the following conditions and no other. No more than one-fourth of all such lands shall be sold within the first five years after the same become saleable by virtue of this section. No more than one-half of the remainder within ten years after the same become saleable as aforesaid. The residue may be sold at any time after the expiration of said ten years. The legislative assembly shall provide for the sale of all school lands subject to the provisions of this article. The coal lands of the state shall never be sold, but the legislative assembly may by general laws provide for leasing the same. The words "coal lands" shall include lands bearing lignite coal.

§ 156. The superintendent of public instruction, governor, attorney general, secretary of state and state auditor shall constitute a board of commissioners, which shall be denominated the "Board of University and School Lands," and subject to the provisions of this article and any law that may be passed by the legislative assembly, said board shall have control of the appraisement, sale, rental and disposal of all school and university lands, and shall direct the investment of the funds arising therefrom in the hands of the state treasurer, under the limitations in section 160 of this article.

Impliedly vests board of university and school lands with discretion in performance of its duties, except where limited by statute. *Fuller v. University & School Lands*, 21 N. D. 212, 129 N. W. 1029.

§ 157. The county superintendent of common schools, the chairman of the county board, and the county auditor shall constitute boards of appraisal and under the authority of the state board of university and school lands shall appraise all school lands within their respective counties which they may from time to time recommend for sale at their actual value under the prescribed terms and shall first select and designate for sale the most valuable lands.

§ 158. [No land shall be sold for less than the appraised value and in no case for less than \$10 per acre. The purchaser shall pay one-fifth of the price in cash and the remaining four-fifths as follows: One-fifth in five years, one-fifth in ten years, one-fifth in fifteen years and one-fifth in twenty years with interest at the rate of not less than six per centum payable annually in advance. All sales shall be held at the county seat of the county in which the land to be sold is situate, and shall be at public auction and to the highest bidder, after sixty days' advertisement of the same in a newspaper of general circulation in the vicinity of the lands to be sold, and one at the seat of government. Such lands as shall not have been specially subdivided shall be offered in tracts of one-quarter section, and those so subdivided in the smallest subdivisions. All lands designated for sale and not sold within two years after appraisal shall be reappraised before they are sold. No grant or patent for any such lands shall issue until payment is made for the same; provided, that the lands contracted to be sold by the state shall be subject to taxation from the date of such contract. In case the taxes assessed against any of said lands for any year remain unpaid until the first Monday in October of the following year, then and thereupon the contract of sale for such lands shall become null and void.]

See amendments, articles 9, 11 and 13.

§ 159. All land, money or other property donated, granted or received from the United States or any other source for a university, school of mines, reform

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school, agricultural college, deaf and dumb asylum, normal school or other educational or charitable institution or purpose, and the proceeds of all such lands and other property so received from any source, shall be and remain perpetual funds, the interest and income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and applied to the specific objects of the original grants or gifts. The principal of every such fund may be increased but shall never be diminished, and the interest and income only shall be used. Every such fund shall be deemed a trust fund held by the state, and the state shall make good all losses thereof.

§ 160. All lands mentioned in the preceding section shall be appraised and sold in the same manner and under the same limitations and subject to all the conditions as to price and sale as provided above for the appraisal and sale of lands for the benefit of common schools; but a distinct and separate account shall be kept by the proper officers of each of said funds; provided, that the limitations as to the time in which school land may be sold shall apply only to lands granted for the support of common schools.

§ 161. The legislative assembly shall have authority to provide by law for the leasing of lands granted to the state for educational and charitable purposes; but no such law shall authorize the leasing of said lands for a longer period than five years. Said lands shall only be leased for pasturage and meadow purposes and at a public auction after notice as heretofore provided in case of sale; provided, that all of said school lands now under cultivation may be leased, at the discretion and under the control of the board of university and school lands, for other than pasturage and meadow purposes until sold. All rents shall be paid in advance.

§ 162. The moneys of the permanent school fund and other educational funds shall be invested only in bonds of school corporations within the state, bonds of the United States, bonds of the state of North Dakota or in first mortgages on farm lands in the state, not exceeding in amount one-third of the actual value of any subdivision on which the same may be loaned, such value to be determined by the board of appraisers of school lands.

See amendments, article 8.

Bonds issued by state normal trustees to secure money for school buildings bonds of state when authorized. State ex rel. University & School Lands v. McMillan, 12 N. D. 280, 96 N. W. 310.

§ 163. No law shall ever be passed by the legislative assembly granting to any person, corporation or association any privileges by reason of the occupation, cultivation or improvement of any public lands by said person, corporation or association subsequent to the survey thereof by the general government. No claim for the occupation, cultivation or improvement of any public lands shall ever be recognized, nor shall such occupation, cultivation or improvement of any public lands ever be used to diminish, either directly or indirectly, the purchase price of said lands.

§ 164. The legislative assembly shall have authority to provide by law for the sale or disposal of all public lands that have been heretofore, or may hereafter be granted by the United States to the state for purposes other than set forth and named in sections 153 and 159 of this article. And the legislative assembly, in providing for the appraisement, sale, rental and disposal of the same, shall not be subject to the provisions and limitations of this article.

§ 165. The legislative assembly shall pass suitable laws for the safe keeping, transfer and disbursement of the state school funds; and shall require all officers charged with the same or the safe keeping thereof to give ample bonds for all moneys and funds received by them, and if any of said officers shall convert to his own use in any manner or form, or shall loan with or without interest or shall deposit in his own name, or otherwise than in the name of the state of North Dakota or shall deposit in any banks or with any person or persons, or exchange for other funds or property any portion of the school funds aforesaid, or purposely allow any portion of the same to remain in his

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own hands uninvested, except in the manner prescribed by law, every such act shall constitute an embezzlement of so much of the aforesaid school funds as shall be thus taken or loaned, or deposited, or exchanged, or withheld, and shall be a felony; and any failure to pay over, produce or account for, the state school funds or any part of the same entrusted to any such officer, as by law required or demanded, shall be held and be taken to be prima facie evidence of such embezzlement.

ARTICLE 10.—COUNTY AND TOWNSHIP ORGANIZATION.

§ 166. The several counties in the territory of Dakota lying north of the seventh standard parallel, as they now exist, are hereby declared to be counties of the state of North Dakota.

§ 167. The legislative assembly shall provide by general law for organizing new counties, locating the county seats thereof temporarily, and changing county lines; but no new county shall be organized, nor shall any organized county be so reduced as to include an area of less than twenty-four congressional townships, and containing a population of less than one thousand bona fide inhabitants. And in the organization of new counties and in changing the lines of organized counties and boundaries of congressional townships the natural boundaries shall be observed as nearly as may be.

§ 168. All changes in the boundaries of organized counties before taking effect shall be submitted to the electors of the county or counties to be affected thereby at a general election and be adopted by a majority of all the legal votes cast in each county at such election; and in case any portion of an organized county is stricken off and added to another, the county to which such portion is added shall assume and be holden for an equitable proportion of the indebtedness of the county so reduced.

Applies to organized counties only; act authorizing submission of proposed change also to voters of unorganized counties whose territory is to be annexed, invalid. *State ex rel. Frich v. Stark County*, 14 N. D. 368, 103 N. W. 913.

An act to settle boundary disputes and to confirm nonjurisdictional acts is invalid in part where it contains no provision for submission to voters. *Schaffner v. Young*, 10 N. D. 245, 86 N. W. 733.

Where majority of affirmative votes for division of existing county did not exceed one-half of all votes cast at such election, new county was not created. *State ex rel. Minehan v. Thompson*, 24 N. D. 273, 139 N. W. 960.

Majority of votes in question of change of county boundaries instead of majority of entire vote cast, sufficient. *State ex rel. McCue v. Blaisdell*, 18 N. D. 31, 119 N. W. 360; *State ex rel. Davis v. Willis*, 19 N. D. 225, 124 N. W. 706; *State ex rel. Miller v. Flaherty*, 23 N. D. 313, 41 L.R.A.(N.S.) 132, 136 N. W. 76.

Upon what basis majority essential to adoption of constitutional or other special proposition submitted at general election is to be computed. 22 L.R.A. (N.S.) 478.

§ 169. The legislative assembly shall provide by general law for changing county seats in organized counties, but it shall have no power to remove the county seat of any organized county.

§ 170. The legislative assembly shall provide by general law for township organization under which any county may organize, whenever a majority of all the legal voters of such county, voting at a general election shall so determine, and whenever any county shall adopt township organization, so much of this constitution as provides for the management of the fiscal concerns of said county by the board of county commissioners may be dispensed with by a majority vote of the people voting at any general election; and the affairs of said county may be transacted by the chairmen of the several township boards of said county and such others as may be provided by law for incorporated cities, towns or villages, within such county.

§ 171. In any county that shall have adopted a system of government by the chairmen of the several township boards, the question of continuing the same may be submitted to the electors of such county at a general election in such a manner as may be provided by law, and if a majority of all the votes cast upon such question shall be against said system of government, then such system shall cease in said county and the affairs of said county shall then be

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transacted by a board of county commissioners as is now provided by the laws of the territory of Dakota.

Power to construct drains not part of system of government, and may be conferred where legislature deems fit. *Martin v. Tyler*, 4 N. D. 278, 25 L.R.A. 838, 60 N. W. 392.

§ 172. Until the system of county government by the chairmen of the several township boards is adopted by any county the fiscal affairs of said county shall be transacted by a board of county commissioners. Said board shall consist of not less than three and not more than five members whose terms of office shall be prescribed by law. Said board shall hold sessions for the transaction of county business, as shall be provided by law.

Act requiring payment of expense of maintenance by auditor of county of feeble-minded persons at state institution not invalid because not audited by board. *State ex rel. McCue v. Lewis*, 18 N. D. 125, 119 N. W. 1037.

§ 173. At the first general election held after the adoption of this constitution, and every two years thereafter, there shall be elected in each organized county in the state, a county judge, clerk of court, register of deeds, county auditor, treasurer, sheriff and state's attorney, who shall be electors of the county in which they are elected, and who shall hold their office until their successors are elected and qualified. The legislative assembly shall provide by law for such other county, township and district officers as may be deemed necessary, and shall prescribe the duties and compensation of all county, township and district officers. The sheriff and treasurer of any county shall not hold their respective offices for more than four years in succession.

Did not repeal pre-existing statute, and board of county commissioners may fix compensation of state attorneys until passage of statute fixing compensation. *Doherty v. Ransom County*, 5 N. D. 1, 63 N. W. 148.

Section 764, Rev. Codes 1905 (section 1121, herein), which prescribes that at each general election there shall be elected in each county superintendent of schools, whose term shall be two years "and until his successor is elected and qualified," is constitutional. *Jenness v. Clark*, 21 N. D. 150, 129 N. W. 357, Ann. Cas. 1913B, 675.

Attorney general has right to appear before grand jury in matters relating to enforcement of prohibition law. *State ex rel. Miller v. District Ct.*, 19 N. D. 819, 124 N. W. 417, Ann. Cas. 1912D, 935.

ARTICLE 11.—REVENUE AND TAXATION.

§ 174. The legislative assembly shall provide for raising revenue sufficient to defray the expenses of the state for each year, not to exceed in any one year four mills on the dollar of the assessed valuation of all taxable property in the state, to be ascertained by the last assessment made for state and county purposes, and also a sufficient sum to pay the interest on the state debt.

Legislature has power to require counties to pay expense of local inmates of institution for feeble-minded, such payments not being a tax. *State ex rel. McCue v. Lewis*, 18 N. D. 125, 119 N. W. 1037.

State auditor is not authorized to draw warrant on treasurer for sum earned as reward for convictions under prohibition law, as terms of statute providing for reward is inadequate as appropriation. *State ex rel. McDonald v. Holmes*, 19 N. D. 286, 123 N. W. 844.

§ 175. No tax shall be levied except in pursuance of law, and every law imposing a tax shall state distinctly the object of the same, to which only it shall be applied.

A peddling occupation tax law which does not state the object or purpose of tax, or how revenue is to be applied, is void. *State v. Kleetzen*, 8 N. D. 286, 78 N. W. 984, 11 Am. Crim. Rep. 324.

§ 176. Laws shall be passed taxing by uniform rule all property according to its true value in money, but the property of the United States and the state, county and municipal corporations, both real and personal, shall be exempt from taxation; and the legislative assembly shall by a general law exempt from taxation property used exclusively for school, religious, cemetery or charitable purposes and personal property to any amount not exceeding in value two hundred dollars for each individual liable to taxation; but the legislative assembly may, by law, provide for the payment of a per centum of

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gross earnings of railroad companies to be paid in lieu of all state, county, township and school taxes on property exclusively used in and about the prosecution of the business of such companies as common carriers, but no real estate of said corporations shall be exempted from taxation in the same manner, and on the same basis as other real estate is taxed, except roadbed, right-of-way, shops and buildings used exclusively in their business as common carriers, and whenever and so long as such law providing for the payment of a per centum on earnings shall be in force, that part of section 179 of this article relating to assessment of railroad property shall cease to be in force.

See addenda to this section in amendments, article 7.

Relates exclusively to general taxation, and not to local assessments. *Rolph v. Fargo*, 7 N. D. 640, 42 L.R.A. 646, 76 N. W. 242.

Act not void which only exempts from taxation property of institutions which dispense public charity, and is narrower than constitutional provision. *Engstad v. Grand Forks County*, 10 N. D. 54, 84 N. W. 577.

A general law assessing and taxing grain in elevators, to the possessor, and providing for a lien as security for reimbursement, if not the owner, is valid. *Minneapolis & N. Elevator Co. v. Traill County*, 9 N. D. 213, 50 L.R.A. 266, 82 N. W. 727.

A law creating a tax upon crops and land for seed grain and making it a lien superior to prior liens invalid. *Yeatman v. King*, 2 N. D. 421, 33 Am. St. Rep. 797, 61 N. W. 721.

Acquisition of property by the public as affecting tax proceedings previously instituted, or previously existent tax lien. 48 L.R.A.(N.S.) 707.

Property leased by public as subject of taxation. 35 L.R.A.(N.S.) 167.

Property granted or sold with reservation of title or lien in favor of public, as subject of taxation. 35 L.R.A.(N.S.) 669.

Property held by municipal corporation in trust as subject of taxation. 34 L.R.A.(N.S.) 143.

Exemption of municipal light plant from taxation. 16 L.R.A.(N.S.) 867.

Taxation of waterworks owned by municipality. 60 L.R.A. 851.

Taxation of water company belonging to municipality. 1 L.R.A.(N.S.) 766.

What exempt from taxation, as charitable institutions. 38 Am. Rep. 300.

Right of charitable, educational, or religious institution to exemption from taxation as affected by the geographical field of operation. 17 L.R.A.(N.S.) 733.

Exemption of parish house from taxation. 27 L.R.A.(N.S.) 910.

Exemption of parsonage from taxation. 39 L.A.R.(N.S.) 437.

Exemption of property used for private school. 21 L.R.A.(N.S.) 164.

Is school which is also used for residential purposes by proprietor and family, or other persons connected with the school "exclusively" used for school purposes, within statutory exemption. 21 L.R.A.(N.S.) 171.

Fraternal benefit society as a benevolent or charitable association within exemption statutes. 7 L.R.A.(N.S.) 380.

Benefit association as insurance company under statutes exempting benevolent societies. 38 L.R.A. 49.

Exemption of library from taxation when not expressly included in the exemption statute. 24 L.R.A.(N.S.) 1205.

Effect of fact that property otherwise exempt from taxation is devoted to purposes of a particular society. 16 L.R.A.(N.S.) 829; 26 L.R.A.(N.S.) 696.

Applicability of general tax exemptions to inheritance or succession tax. 48 L.R.A.(N.S.) 373.

§ 177. All improvements on land shall be assessed in accordance with section 179, but plowing shall not be considered as an improvement or add to the value of land for the purpose of assessment.

§ 178. The power of taxation shall never be surrendered or suspended by any grant or contract to which the state or any county or other municipal corporation shall be a party.

§ 179. [All property, except as hereinafter in this section provided, shall be assessed in the county, city, township, town, village or district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbed, rails and rolling stock of all railroads operated in this state shall be assessed by the state board of equalization at their actual value and such assessed valuation shall be apportioned to the counties, cities, towns, townships and districts in which said roads are located, as a basis for taxation of such property in proportion to the number of miles of railway laid in such counties, cities, towns, townships and districts.]

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See amendments, article 4.

"Roadway" includes necessary land for main line, sidetracks, turnouts, connecting tracks, station houses, freight houses, and other reasonably necessary accommodations. *Chicago, M. & St. P. R. Co. v. Cass County*, 8 N. D. 18, 76 N. W. 239.

"Roadway" does not include telegraph line used partly for commercial profit. *Minneapolis, St. P. & S. Ste. M. R. Co. v. Oppegard*, 18 N. D. 1, 118 N. W. 830.

Franchise, roadway, roadbed, rails, rolling stock of railroads in state taxable as personal property. *Minneapolis, St. P. & S. Ste. M. R. Co. v. Dickey County*, 11 N. D. 107, 90 N. W. 260.

Failure to make record of filing of returns of proceedings had concerning assessment of drainage benefits, does not make assessment void. *Hackney v. Elliott*, 23 N. D. 373, 137 N. W. 433.

§ 180. The legislative assembly may provide for the levy, collection and disposition of an annual poll tax of not more than one dollar and fifty cents on every male inhabitant of this state over twenty-one and under fifty years of age, except paupers, idiots, insane persons and Indians not taxed.

§ 181. The legislative assembly shall pass all laws necessary to carry out the provisions of this article.

ARTICLE 12.—PUBLIC DEBT AND PUBLIC WORKS.

§ 182. The state may, to meet casual deficits or failure in the revenue, or in case of extraordinary emergencies, contract debts, but such debts shall never in the aggregate exceed the sum of two hundred thousand dollars, exclusive of what may be the debt of North Dakota at the time of the adoption of this constitution. Every such debt shall be authorized by law for certain purposes to be definitely mentioned therein, and every such law shall provide for levying an annual tax sufficient to pay the interest semi-annually, and the principal within thirty years from the passage of such law, and shall specially appropriate the proceeds of such tax to the payment of said principal and interest, and such appropriation shall not be repealed nor the tax discontinued until such debt, both principal and interest, shall have been fully paid. No debt in excess of the limit named shall be incurred except for the purpose of repelling invasion, suppressing insurrection, defending the state in time of war, or to provide for public defense in case of threatened hostilities; but the issuing of new bonds to refund existing indebtedness, shall not be construed to be any part or portion of said two hundred thousand dollars.

Act authorizing issuance of normal school building bonds and appropriating permanent school fund to pay same invalid where limit of indebtedness is reached. *State ex rel. University & School Lands v. McMillan*, 12 N. D. 280, 96 N. W. 310.

§ 183. The debt of any county, township, city, town, school district or any other political subdivision, shall never exceed five per centum upon the assessed value of the taxable property therein; provided, that any incorporated city may, by a two-thirds vote, increase such indebtedness three per centum on such assessed value beyond said five per centum limit. In estimating the indebtedness which a city, county, township, school district or any other political subdivision may incur, the entire amount of existing indebtedness, whether contracted prior or subsequent to the adoption of this constitution shall be included; provided, further, that any incorporated city may become indebted in any amount not exceeding four per centum on such assessed value without regard to the existing indebtedness of such city, for the purpose of constructing or purchasing water works for furnishing a supply of water to the inhabitants of such city, or for the purpose of constructing sewers, and for no other purpose whatever. All bonds or obligations in excess of the amount of indebtedness permitted by this constitution, given by any city, county, township, town, school district, or any other political subdivision shall be void.

Allegation in complaint in action to test validity of city bonds sufficiently showing that city was not indebted beyond constitutional limit. *State ex rel. Fargo v. Mitchell*, 24 N. D. 196, 139 N. W. 572.

Indebtedness of a city cannot be increased beyond the limit, even temporarily, by issue of refunding bonds. *Birkholz v. Dinnie*, 6 N. D. 511, 72 N. W. 931.

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Warrant issued for current county expenses in anticipation of proceeds of lawful levy valid, although beyond limit of indebtedness. *Darling v. Taylor*, 7 N. D. 538, 75 N. W. 766.

As to what time is the assessed valuation to be taken for purposes of determining the debt limit of a state or municipality. 28 L.R.A.(N.S.) 149.

Creation of indebtedness within meaning of debt limit provision. 23 L.R.A. 404; 37 L.R.A.(N.S.) 1058.

Municipal liability for tort as an "indebtedness." 37 L.R.A.(N.S.) 1097.

Mortgage debt upon property purchased by municipality without assuming payment, as part of municipal indebtedness. 3 L.R.A.(N.S.) 684.

§ 184. Any city, county, township, town, school district, or any other political subdivision incurring indebtedness shall at or before the time of so doing, provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof when due, and all laws or ordinances providing for the payment of the interest or principal of any debt shall be irrevocable until such debt be paid.

§ 185. Neither the state nor any county, city, township, town, school district or any other political subdivision shall loan or give its credit or make donations to or in aid of any individual, association or corporation, except for necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association or corporation, nor shall the state engage in any work of internal improvement unless authorized by a two-thirds vote of the people.

A statute validating contract for transcribing county records is not invalid as constituting a donation. *Steel County v. Erskine*, 98 Fed. 215, 39 C. C. A. 173.

County drainage bonds not loan of credit where reimbursement to be made out of sinking fund created by special assessment extending through life of bonds.

Drainage warrants payable out of drainage fund are not county obligations, and do not constitute loan of credit of county. *Redmon v. Chacey*, 7 N. D. 231, 73 N. W. 1081.

Issuance of drainage bonds, reimbursement to be made by sinking fund created by special assessment during life of bonds, invalid. *Martin v. Tyler*, 4 N. D. 278, 25 L.R.A. 838, 60 N. W. 392.

§ 186. No money shall be paid out of the state treasury except upon appropriation by law and on warrant drawn by the proper officer, and no bills, claims, accounts or demands against the state, or any county or other political subdivision, shall be audited, allowed or paid until a full itemized statement in writing shall be filed with the officer or officers, whose duty it may be to audit the same.

State auditor is not authorized to draw warrant on treasurer for sum loaned as reward for convictions under prohibition law, as terms of statute providing for reward is inadequate as appropriation. *State ex rel. McDonald v. Holmes*, 19 N. D. 286, 123 N. W. 884.

Act requiring payment of expense of maintenance of inmates of institution for feeble minded not invalid because not audited. *State ex rel. McCue v. Lewis*, 18 N. D. 125, 119 N. W. 1037.

§ 187. No bond or evidence of indebtedness of the state shall be valid unless the same shall have indorsed thereon a certificate, signed by the auditor and secretary of state, showing that the bond or evidence of debt is issued pursuant to law and is within the debt limit. No bond or evidence of debt of any county, or bond of any township or other political subdivision shall be valid unless the same have indorsed thereon a certificate signed by the county auditor, or other officer authorized by law to sign such certificate, stating that said bond, or evidence of debt, is issued pursuant to law and is within the debt limit.

Warrant issued for current county expenses in anticipation of proceeds of lawful levy, valid, although beyond limit of indebtedness. *Darling v. Taylor*, 7 N. D. 538, 75 N. W. 766.

State bonds must be certified to by the auditor and secretary of state to be within the debt limit in order to be valid. *State ex rel. University & School Lands v. McMillan*, 12 N. D. 280, 96 N. W. 310.

ARTICLE 13.—MILITIA.

§ 188. The militia of this state shall consist of all able-bodied male persons residing in the state, between the ages of eighteen and forty-five years, except

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such as may be exempted by the laws of the United States or of this state. Persons whose religious tenets or conscientious scruples forbid them to bear arms shall not be compelled to do so in times of peace, but shall pay an equivalent for a personal service.

§ 189. The militia shall be enrolled, organized, uniformed, armed and disciplined in such a manner as shall be provided by law, not incompatible with the constitution or laws of the United States.

§ 190. The legislative assembly shall provide by law for the establishment of volunteer organizations of the several arms of the service, which shall be classed as active militia; and no other organized body of armed men shall be permitted to perform military duty in this state except the army of the United States, without the proclamation of the governor of the state.

Term "active militia" does not mean "militia when in active service." *State ex rel. Poole v. Peake*, 22 N. D. 457, 40 L.R.A. (N.S.) 354, 135 N. W. 197.

§ 191. All militia officers shall be appointed or elected in such a manner as the legislative assembly shall provide.

§ 192. The commissioned officers of the militia shall be commissioned by the governor, and no commissioned officer shall be removed from office except by sentence of court martial, pursuant to law.

§ 193. The militia forces shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at musters, parades and elections of officers, and in going to and returning from the same.

ARTICLE 14.—IMPEACHMENT AND REMOVAL FROM OFFICE.

§ 194. The house of representatives shall have the sole power of impeachment. The concurrence of a majority of all members elected shall be necessary to an impeachment.

§ 195. All impeachments shall be tried by the senate. When sitting for that purpose the senators shall be upon oath or affirmation to do justice according to the law and evidence. No person shall be convicted without the concurrence of two-thirds of the members elected. When the governor or lieutenant governor is on trial, the presiding judge of the supreme court shall preside.

Privilege as to proceedings for impeachment. 25 L.R.A. (N.S.) 455.

§ 196. The governor and other state and judicial officers, except county judges, justices of the peace and police magistrates, shall be liable to impeachment for habitual drunkenness, crimes, corrupt conduct, or malfeasance or misdemeanor in office, but judgment in such cases shall not extend further than removal from office and disqualification to hold any office of trust or profit under the state. The person accused, whether convicted or acquitted, shall nevertheless be liable to indictment, trial, judgment and punishment according to law.

§ 197. All officers not liable to impeachment shall be subject to removal for misconduct, malfeasance, crime or misdemeanor in office, or for habitual drunkenness or gross incompetency in such manner as may be provided by law.

The superintendent of the hospital for insane may be removed at pleasure of board of trustees. *State ex rel. Moore v. Archibald*, 5 N. D. 359, 66 N. W. 234.

§ 198. No officer shall exercise the duties of his office after he shall have been impeached and before his acquittal.

§ 199. On trial of impeachment against the governor, the lieutenant governor shall not act as a member of the court.

§ 200. No person shall be tried on impeachment before he shall have been served with a copy thereof, at least twenty days previous to the day set for trial.

§ 201. No person shall be liable to impeachment twice for the same offense.

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ARTICLE 15.— FUTURE AMENDMENTS.

§ 202. Any amendment or amendments to this constitution may be proposed in either house of the legislative assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment shall be entered on the journal of the house with the yeas and nays taken thereon, and referred to the legislative assembly to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice, and if in the legislative assembly so next chosen as aforesaid such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislative assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the legislative assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislative assembly voting thereon, such amendment or amendments shall become a part of the constitution of this state. If two or more amendments shall be submitted at the same time they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

Provides only method for amendment; word "revision" in proviso of fifth subdivision of section 216 synonymous with "amendment" in section 202. State ex rel. Miller v. Taylor, 22 N. D. 362, 133 N. W. 1046.

Effect of noncompliance with prescribed method of amending constitution. 10 L.R.A. (N.S.) 149.

Validation of unconstitutional statute by constitutional amendment. 60 L.R.A. 564; 88 L.R.A. (N.S.) 77.

ARTICLE 16.— COMPACT WITH THE UNITED STATES.

§ 203. The following article shall be irrevocable without the consent of the United States and the people of this state:

1. Perfect toleration of religious sentiment shall be secured, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

2. The people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes, and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and that said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States; that the lands belonging to citizens of the United States residing without this state shall never be taxed at a higher rate than the lands belonging to residents of this state; that no taxes shall be imposed by this state on lands or property therein belonging to, or which may hereafter be purchased by the United States, or reserved for its use. But nothing in this article shall preclude this state from taxing as other lands are taxed, any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United States or from any person, a title thereto, by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any acts of congress containing a provision exempting the lands thus granted from taxation, which last mentioned lands shall be exempt from taxation so long, and to such an extent, as is, or may be provided in the act of congress granting the same.

3. In order that payment of the debts and liabilities contracted or incurred by and on behalf of the territory of Dakota may be justly and equitably provided for and made, and in pursuance of the requirements of an act of congress approved February 22, 1889, entitled "An act to provide for the division of Dakota into two states and to enable the people of North Dakota,

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South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states," the states of North Dakota and South Dakota, by proceedings of a joint commission, duly appointed under said act, the sessions whereof were held at Bismarck in said state of North Dakota, from July 16, 1889, to July 31, 1889, inclusive, have agreed to the following adjustment of the amounts of the debts and liabilities of the territory of Dakota which shall be assumed and paid by each of the states of North Dakota and South Dakota, respectively, to wit:

This agreement shall take effect and be in force from and after the admission into the union, as one of the United States of America, of either the state of North Dakota or the state of South Dakota.

The words "state of North Dakota," wherever used in this agreement, shall be taken to mean the territory of North Dakota in case the state of South Dakota shall be admitted into the union prior to the admission into the union of the state of North Dakota; and the words "state of South Dakota," wherever used in this agreement, shall be taken to mean the territory of South Dakota in case the state of North Dakota shall be admitted into the union prior to the admission into the union of the state of South Dakota.

The said state of North Dakota shall assume and pay all bonds issued by the territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of North Dakota, and shall pay all warrants issued under and by virtue of that certain act of the legislative assembly of the territory of Dakota, approved March 8, 1889, entitled "An act to provide for the refunding of outstanding warrants drawn on the capitol building fund."

The state of South Dakota shall assume and pay all bonds issued by the territory of Dakota to provide funds for the purchase, construction, repairs or maintenance of such public institutions, grounds or buildings as are located within the boundaries of South Dakota, that is to say, the state of North Dakota shall assume and pay the following bonds and indebtedness, to wit:

Bonds issued on account of the hospital for insane at Jamestown, North Dakota, the face aggregate of which is \$266,000; also, bonds issued on account of the North Dakota university at Grand Forks, North Dakota, the face aggregate of which is \$96,700; also, bonds issued on account of the penitentiary at Bismarck, North Dakota, the face aggregate of which is \$93,600; also, refunding capitol building warrants dated April 1, 1889, \$83,507.46.

And the state of South Dakota shall assume and pay the following bonds and indebtedness, to wit:

Bonds issued on account of the hospital for the insane at Yankton, South Dakota, the face aggregate of which is \$210,000; also, bonds issued on account of the school for deaf mutes, at Sioux Falls, South Dakota, the face aggregate of which is \$51,000; also, bonds issued on account of the university at Vermillion, South Dakota, the face aggregate of which is \$75,000; also, bonds issued on account of the penitentiary at Sioux Falls, South Dakota, the face aggregate of which is \$94,300; also, bonds issued on account of the agricultural college at Brookings, South Dakota, the face aggregate of which is \$97,500; also, bonds issued on account of the normal school at Madison, South Dakota, the face aggregate of which is \$49,400; also, bonds issued on account of the school of mines at Rapid City, South Dakota, the face aggregate of which is \$33,000; also, bonds issued on account of the reform school at Plankinton, South Dakota, the face aggregate of which is \$30,000; also, bonds issued on account of the normal school at Spearfish, South Dakota, the face aggregate of which is \$25,000; also, bonds issued on account of the soldiers' home at Hot Springs, South Dakota, the face aggregate of which is \$45,000.

The states of North Dakota and South Dakota shall pay one-half each of all

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liabilities now existing or hereafter and prior to the taking effect of this agreement incurred, except those heretofore or hereafter incurred, on account of public institutions, grounds or buildings, except as otherwise herein specifically provided.

The state of South Dakota shall pay to the state of North Dakota \$46,500, on account of the excess of territorial appropriations for the permanent improvement of territorial institutions which under this agreement will go to South Dakota, and in full of the undivided one-half interest of North Dakota in the territorial library, and in full settlement of unbalanced accounts, and of all claims against the territory, of whatever nature, legal or equitable, arising out of the alleged erroneous or unlawful taxation of Northern Pacific railroad lands, and the payment of said amount shall discharge and exempt the state of South Dakota from all liability for or on account of the several matters hereinbefore referred to; nor shall either state be called upon to pay or answer to any portion of liability hereafter arising or accruing on account of transactions heretofore had, which liability would be a liability of the territory of Dakota had such territory remained in existence, and which liability shall grow out of matters connected with any public institutions, grounds or buildings of the territory situated or located within the boundaries of the other state.

A final adjustment of accounts shall be made upon the following basis: North Dakota shall be charged with all sums paid on account of the public institutions, grounds or buildings located within its boundaries on account of the current appropriations since March 9, 1889; and South Dakota shall be charged with all sums paid on account of public institutions, grounds or buildings located within its boundaries on the same account and during the same time. Each state shall be charged with one half of all other expenses of the territorial government during the same time. All moneys paid into the treasury during the period from March 8, 1889, to the time of taking effect of this agreement by any county, municipality or person within the limits of the proposed state of North Dakota, shall be credited to the state of North Dakota; and all sums paid into said treasury within the same time by any county, municipality or person within the limits of the proposed state of South Dakota shall be credited to the state of South Dakota; except that any and all taxes on gross earnings paid into said treasury by railroad corporations, since the 8th day of March, 1889, based upon earnings of years prior to 1888, under and by virtue of the act of the legislative assembly of the territory of Dakota, approved March 7, 1889, and entitled "An act providing for the levy and collection of taxes upon property of railroad companies in this territory," being chapter 107 of the session laws of 1889 (that is, the part of such sums going to the territory), shall be equally divided between the states of North Dakota and South Dakota, and all taxes heretofore or hereafter paid into said treasury under and by virtue of the act last mentioned, based on the gross earnings of the year 1888, shall be distributed as already provided by law, except that so much thereof as goes to the territorial treasury shall be divided as follows: North Dakota shall have so much thereof as shall be or has been paid by railroads within the limits of the proposed state of North Dakota, and South Dakota so much thereof as shall be or has been paid by railroads within the limits of the proposed state of South Dakota; each state shall be credited also with all balances of appropriations made by the seventeenth legislative assembly of the territory of Dakota for the account of the public institutions, grounds or buildings situated within its limits, remaining unexpended on March 8, 1889. If there shall be any indebtedness except the indebtedness represented by the bonds and refunding warrants hereinbefore mentioned, each state shall at the time of such final adjustment of accounts, assume its share of said indebtedness as determined by the amount paid on account of the public institutions, grounds or buildings of such state

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in excess of the receipts from counties, municipalities, railroad corporations or persons within the limits of said state, as provided in this article; and if there should be a surplus at the time of such final adjustment, each state shall be entitled to the amounts received from counties, municipalities, railroad corporations or persons within its limits over and above the amount charged it. And the state of North Dakota hereby obligates itself to pay such part of the debts and liabilities of the territory of Dakota as is declared by the foregoing agreement to be its proportion thereof, the same as if such proportion had been originally created by said state of North Dakota as its own debt or liability.

§ 204. Jurisdiction is ceded to the United States over the military reservations of Fort Abraham Lincoln, Fort Buford, Fort Pembina and Fort Totten, heretofore declared by the president of the United States; provided, legal process, civil and criminal, of this state, shall extend over such reservations in all cases in which exclusive jurisdiction is not vested in the United States, or of crimes not committed within the limits of such reservations.

§ 205. The state of North Dakota hereby accepts the several grants of land granted by the United States to the state of North Dakota by an act of congress, entitled "An act to provide for the division of Dakota into two states, and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments, and to be admitted into the union on equal footing with the original states, and to make donations of public lands to such states," under the conditions and limitations therein mentioned; reserving the right, however, to apply to congress for modification of said conditions and limitations in case of necessity.

The proceeds of the sale of all school and institution lands must be kept as a perpetual fund, the interest and income of which can only be used for the maintenance of schools and educational institutions. *State ex rel. University & School Lands v. McMillan*, 12 N. D. 280, 96 N. W. 310.

ARTICLE 17.— MISCELLANEOUS.

§ 206. The name of this state shall be "North Dakota." The state of North Dakota shall consist of all the territory included within the following boundary, to wit: Commencing at a point in the main channel of the Red River of the North, where the forty-ninth degree of north latitude crosses the same; thence south up the main channel of the same and along the boundary line of the state of Minnesota to a point where the seventh standard parallel intersects the same; thence west along said seventh standard parallel produced due west to a point where it intersects the twenty-seventh meridian of longitude west from Washington; thence north on said meridian to a point where it intersects the forty-ninth degree of north latitude; thence east along said line to place of beginning.

§ 207. The following described seal is hereby declared to be and hereby constituted the Great Seal of the state of North Dakota, to wit: A tree in the open field, the trunk of which is surrounded by three bundles of wheat; on the right a plow, anvil and sledge; on the left a bow crossed with three arrows, and an Indian on horseback pursuing a buffalo toward the setting sun; the foliage of the tree arched by a half circle of forty-two stars, surrounded by the motto "Liberty and Union, Now and Forever, One and Inseparable;" the words "Great Seal" at the top, the words "State of North Dakota" at the bottom; "October 1st" on the left and "1889" on the right. The seal to be two and one-half inches in diameter.

§ 208. The right of the debtor to enjoy the comforts and necessities of life shall be recognized by wholesome laws, exempting from forced sale to all heads of families a homestead, the value of which shall be limited and defined by law, and a reasonable amount of personal property; the kind and value shall be fixed by law. This section shall not be construed to prevent liens

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against the homestead for labor done and materials furnished in the improvement thereof, in such manner as may be prescribed by law.

Does not, in absence of legislation thereunder, repeal pre-existing exemption laws. *Roesler v. Taylor*, 3 N. D. 546, 58 N. W. 342.

Homestead laws are remedial and should be liberally construed with view of carrying out their obvious purpose. *Dieter v. Fraine*, 20 N. D. 488, 128 N. W. 684.

Husband, as head of the family, is entitled to claim as exempt a homestead, the fee to which is in the wife. *Bremseth v. Olson*, 16 N. D. 242, 13 L.R.A.(N.S.) 170, 118 N. W. 1056, 14 Ann. Cas. 1155.

Wife may claim exemptions as head of the family only where husband has been constructively deposed. *Ness v. Jones*, 10 N. D. 587, 88 Am. St. Rep. 755, 88 N. W. 706.

Self-executing effect of constitutional exemption. 16 L.R.A. 284.

Exemption of homestead from liability for torts. 24 L.R.A. 789; 16 L.R.A.(N.S.) 947.

Exemption of proceeds on sale of homestead. 19 L.R.A. 36.

Crops grown on homestead, or proceeds thereof, as exempt. 32 L.R.A.(N.S.) 577.

Right to claim homestead in property used as a hotel or boarding house. 41 L.R.A.(N.S.) 303.

A debtor's right of action against his creditor for collecting debt in another jurisdiction is evasion of exemption laws of their domicile. 47 L.R.A.(N.S.) 689.

§ 209. The labor of children under twelve years of age shall be prohibited in mines, factories and workshops in this state.

What places are included within term "business establishment," "mercantile institution," etc., as used in statutes relating to the employment of minors. 44 L.R.A.(N.S.) 1185.

Employment of child in violation of statute as negligence which will sustain an action by the child for personal injuries. 7 L.R.A.(N.S.) 335; 48 L.R.A.(N.S.) 656.

May one employing child under age rely on contributory negligence or assumption of risk, to defeat liability for personal injuries. 12 L.R.A.(N.S.) 461; 20 L.R.A.(N.S.) 876.

Liability of master for injury to minor who procures employment by misrepresenting his age. 15 L.R.A.(N.S.) 443; 20 L.R.A.(N.S.) 500; 25 L.R.A.(N.S.) 708.

Private action for violation of child labor laws. 9 L.R.A.(N.S.) 381.

§ 210. All flowing streams and natural water courses shall forever remain the property of the state for mining, irrigating and manufacturing purposes.

Course of nonnavigable stream may be diverted when substantial integrity of the stream will not be impaired. *Bigelow v. Draper*, 6 N. D. 152, 69 N. W. 570.

§ 211. Members of the legislative assembly and judicial department, except such inferior officers as may be by law exempted shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm, as the case may be) that I will support the constitution of the United States and the constitution of the state of North Dakota; and that I will faithfully discharge the duties of the office of.....according to the best of my ability, so help me God" (if an oath), (under pains and penalties of perjury), if an affirmation, and no other oath, declaration, or test shall be required as a qualification for any office or public trust.

Act requiring legislative candidate to file sworn petition stating that he is a candidate and requesting printing of name on party ballot and agreeing to vote for successful primary candidate for senator, valid. *State ex rel. McCue v. Blaisdell*, 18 N. D. 55, 24 L.R.A.(N.S.) 465, 138 Am. St. Rep. 741, 118 N. W. 141.

§ 212. The exchange of "black lists" between corporations shall be prohibited.

Blacklisting employees. 63 L.R.A. 289.

Injunction against blacklisting. 20 L.R.A. 342; 4 L.R.A.(N.S.) 1121.

Action on the case for blacklisting. 4 L.R.A.(N.S.) 1120.

§ 213. The real and personal property of any woman in this state, acquired before marriage, and all property to which she may after marriage become in any manner rightfully entitled, shall be her separate property and shall not be liable for the debts of her husband.

An act making the wife liable for family necessities is not invalid. *Banner Mercantile Co. v. Hendricks*, 24 N. D. 16, 138 N. W. 993.

ARTICLE 18.— CONGRESSIONAL AND LEGISLATIVE APPORTIONMENT.

§ 214. Until otherwise provided by law, the member of the house of representatives of the United States apportioned to this state, shall be elected at large.

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Until otherwise provided by law, the senatorial and representative districts shall be formed, and the senators and the representatives shall be apportioned as follows:

The first district shall consist of the townships of Walhalla, St. Joseph, Neche, Pembina, Bathgate, Carlisle, Joliet, Midland, Lincoln and Drayton, in the county of Pembina, and be entitled to one senator and two representatives.

The second district shall consist of the townships of St. Thomas, Hamilton, Cavalier, Akra, Beaulien, Thingvalla, Gardar, Park, Crystal, Elora and Lodema, in the county of Pembina, and be entitled to one senator and two representatives.

The third district shall consist of the townships of Perth, Latona, Adams, Silvesta, Cleveland, Morton, Vesta, Tiber, Medford, Vernon, Golden, Lampton, Eden, Rushford, Kensington, Dundee, Ops, Prairie Center, Fertile, Park River and Glenwood, in the county of Walsh, and be entitled to one senator and two representatives.

The fourth district shall consist of the townships of Forest River, Walsh Center, Grafton, Farmington, Ardock, village of Ardock, Harrison, city of Grafton, Oakwood, Martin, Walshville, Pulaski, Acton, Minto and St. Andrews, in the county of Walsh, and be entitled to one senator and three representatives.

The fifth district shall consist of the townships of Gilby, Johnstown, Strabane, Wheatfield, Hegton, Arvilla, Avon, Northwood, Lind, Grace, Larimore, and the city of Larimore, Elm Grove, Agnes, Inkster, Elkmount, Oakwood, Niagara, Moraine, Logan and Loretta, in the county of Grand Forks, and be entitled to one senator and two representatives.

The sixth district shall consist of the third, fourth, fifth and sixth wards of the city of Grand Forks, as now constituted, and the townships of Falconer, Harvey, Turtle River, Ferry, Rye, Blooming, Meckinock, Lakeville and Levant, in the county of Grand Forks, and be entitled to one senator and two representatives.

The seventh district shall consist of the first and second wards of the city of Grand Forks, as now constituted, and the townships of Grand Forks, Brenna, Oakville, Chester, Pleasant View, Fairfield, Allendale, Walle, Bentrue, Americus, Michigan, Union and Washington, in the county of Grand Forks, and be entitled to one senator and two representatives.

The eighth district shall consist of the county of Traill and be entitled to one senator and four representatives.

The ninth district shall consist of the township of Fargo and the city of Fargo, in the county of Cass, and the fractional township number 139 in range 48, and be entitled to one senator and two representatives.

The tenth district shall consist of the townships of Noble, Wiser, Harwood, Reed, Barnes, Stanley, Pleasant, Kenyon, Gardner, Berlin, Raymond, Mapleton, Warren, Norman, Elm River, Harmony, Durbin, Addison, Davenport, Casselton and the city of Casselton, in the county of Cass, and be entitled to one senator and three representatives.

The eleventh district shall consist of the townships of Webster, Rush River, Hunter, Arthur, Amenia, Everest, Maple River, Leonard, Dows, Erie, Empire, Wheatland, Gill, Walberg, Watson, Page, Rich, Ayr, Buffalo, Howes, Eldrid, Highland, Rochester, Lake, Cornell, Tower, Hill, Clifton and Pontiac, in the county of Cass, and be entitled to one senator and three representatives.

The twelfth district shall consist of the county of Richland and be entitled to one senator and three representatives.

The thirteenth district shall consist of the county of Sargent and be entitled to one senator and two representatives.

The fourteenth district shall consist of the county of Ransom and be entitled to one senator and two representatives.

The fifteenth district shall consist of the county of Barnes and be entitled to one senator and two representatives.

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The sixteenth district shall consist of the counties of Steele and Griggs and be entitled to one senator and two representatives.

The seventeenth district shall consist of the county of Nelson and be entitled to one senator and one representative.

The eighteenth district shall consist of the county of Cavalier and be entitled to one senator and two representatives.

The nineteenth district shall consist of the counties of Towner and Rolette, and be entitled to one senator and one representative.

The twentieth district shall consist of the counties of Benson and Pierce, and be entitled to one senator and two representatives.

The twenty-first district shall consist of the county of Ramsey, and be entitled to one senator and two representatives.

The twenty-second district shall consist of the counties of Eddy, Foster and Wells, and be entitled to one senator and two representatives.

The twenty-third district shall consist of the county of Stutsman, and be entitled to one senator and two representatives.

The twenty-fourth district shall consist of the county of LaMoure, and be entitled to one senator and one representative.

The twenty-fifth district shall consist of the county of Dickey, and be entitled to one senator and two representatives.

The twenty-sixth district shall consist of the counties of Emmons, McIntosh, Logan and Kidder, and be entitled to one senator and two representatives.

The twenty-seventh district shall consist of the county of Burleigh, and be entitled to one senator and two representatives.

The twenty-eighth district shall consist of the counties of Bottineau and McHenry, and be entitled to one senator and one representative.

The twenty-ninth district shall consist of the counties of Ward, McLean, and all the unorganized counties lying north of the Missouri river, and be entitled to one senator and one representative.

The thirtieth district shall consist of the counties of Morton and Oliver, and be entitled to one senator and two representatives.

The thirty-first district shall consist of the counties of Mercer, Stark and Billings, and all the unorganized counties lying south of the Missouri river, and be entitled to one senator and one representative.

Senate must be composed at all times of two classes of senators, as nearly equal in number as practicable. State ex rel. Williams v. Meyer, 20 N. D. 631, 127 N. W. 834.

ARTICLE 19.—PUBLIC INSTITUTIONS.

§ 215. The following public institutions of the state are permanently located at the places hereinafter named, each to have the lands specifically granted to it by the United States, in the act of congress, approved February 22, 1889, to be disposed of and used in such manner as the legislative assembly may prescribe, subject to the limitations provided in the article on school and public lands contained in this constitution:

First. The seat of government at the city of Bismarck, in the county of Burleigh.

Second. The State University and the School of Mines at the city of Grand Forks, in the county of Grand Forks.

Third. The Agricultural College at the city of Fargo, in the county of Cass.

Fourth. A State Normal school at the city of Valley City, in the county of Barnes; and the legislative assembly in apportioning the grant of eighty thousand acres of land for normal schools made in the act of congress referred to shall grant to the said normal school at Valley City as aforementioned, fifty thousand (50,000) acres, and said lands are hereby appropriated to said institution for that purpose.

[Fifth. The Deaf and Dumb Asylum at the city of Devils Lake, in the county of Ramsey.]

See amendment, article 5.

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Sixth. A State Reform School at the city of Mandan, in the county of Morton.

Seventh. A State Normal School at the city of Mayville, in the county of Traill; and the legislative assembly in apportioning the grant of lands made by congress, in the act aforesaid for state normal schools, shall assign thirty thousand (30,000) acres to the institution hereby located at Mayville, and said lands are hereby appropriated for said purpose.

[Eighth. A State Hospital for the Insane and Institution for the Feeble Minded in connection therewith, at the city of Jamestown, in the county of Stutsman. And the legislative assembly shall appropriate twenty thousand acres of the grant of lands made by the act of congress aforesaid for "other educational and charitable institutions" to the benefit and for the endowment of said institution.]

See amendments, article 6.

Establishment of additional normal schools by legislature prohibited. *State ex rel. Miller v. Taylor*, 22 N. D. 362, 133 N. W. 1046.

§ 216. [The following named public institutions are hereby permanently located as hereinafter provided, each to have so much of the remaining grant of one hundred and seventy thousand acres of land made by the United States for "other educational and charitable institutions," as is allotted by law, viz.:

First. A Soldiers' Home, when located, or such other charitable institution as the legislative assembly may determine, at Lisbon, in the county of Ransom, with a grant of forty thousand acres of land.

Second. A Blind Asylum, or such other institution as the legislative assembly may determine, at such place in the county of Pembina as the qualified electors of said county may determine at an election to be held as prescribed by the legislative assembly, with a grant of thirty thousand acres.

Third. An Industrial School and School for Manual Training, or such other educational or charitable institution as the legislative assembly may provide, at the town of Ellendale, in the county of Dickey, with a grant of forty thousand acres.

Fourth. A School of Forestry, or such other institution as the legislative assembly may determine, at such place in one of the counties of McHenry, Ward, Bottineau or Rolette, as the electors of said counties may determine by an election for that purpose, to be held as provided by the legislative assembly.

Fifth. A Scientific School, or such other educational or charitable institution as the legislative assembly may prescribe, at the city of Wahpeton, county of Richland, with a grant of forty thousand acres; provided, that no other institution of a character similar to any one of those located by this article shall be established or maintained without a revision of this constitution.]

See amendments, article 12.

Word "revision" in proviso of fifth subdivision synonymous with "amendment" in section 202; prohibits establishment of additional schools. *State ex rel. Miller v. Taylor*, 22 N. D. 362, 133 N. W. 1046.

ARTICLE 20.—PROHIBITION.

§ 217. No person, association or corporation shall within this state, manufacture for sale or gift, any intoxicating liquors, and no person, association or corporation shall import any of the same for sale or gift, or keep or sell or offer the same for sale, or gift, barter or trade as a beverage. The legislative assembly shall by law prescribe regulations for the enforcement of the provisions of this article and shall thereby provide suitable penalties for the violation thereof.

State v. Swan, 1 N. D. 5, 44 N. W. 492.

See amendments, article 1 (new article).

Legislature no power to create new offices in contravention of whole scheme of government, as indicated by other provisions. *Ex parte Corliss*, 16 N. D. 470, 114 N. W. 962.

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SCHEDULE.

§ 1. That no inconvenience may arise from a change of territorial government to state government, it is declared that all writs, actions, prosecutions, claims and rights of individuals and bodies corporate shall continue as if no change of government had taken place, and all processes which may, before the organization of the judicial department under this constitution, be issued under the authority of the territory of Dakota shall be as valid as if issued in the name of the state.

§ 2. All laws now in force in the territory of Dakota, which are not repugnant to this constitution, shall remain in force until they expire by their own limitations or be altered or repealed.

§ 3. All fines, penalties, forfeitures and escheats accruing to the territory of Dakota shall accrue to the use of the states of North Dakota and South Dakota and may be sued for and recovered by either of said states as necessity may require.

§ 4. All recognizances, bonds, obligations or other undertakings heretofore taken, or which may be taken before the organization of the judicial department under this constitution, shall remain valid, and shall pass over to, and may be prosecuted in the name of the state; all bonds, obligations or other undertakings executed to this territory, or to any officer in his official capacity, shall pass over to the proper state authority, and to their successors in office, for the use therein respectively expressed, and may be sued for and recovered accordingly; all criminal prosecutions and penal actions which have arisen, or may arise before the organization of the judicial department, under this constitution, or which shall then be pending, may be prosecuted to judgment and execution in the name of the state.

§ 5. All property, real and personal, and credits, claims and choses in action belonging to the territory of Dakota at the time of the adoption of this constitution, shall be vested in and become the property of the states of North Dakota and South Dakota.

§ 6. Whenever any two of the judges of the supreme court of the state, elected under the provisions of this constitution shall have qualified in their offices, the causes then pending in the supreme court of the territory on appeal or writ of error from the district courts of any county or subdivision within the limits of this state, and the papers, records and proceedings of said court shall pass into the jurisdiction and possession of the supreme court of the state, except as otherwise provided in the enabling act of congress, and until so superseded the supreme court of the territory and the judges thereof shall continue, with like powers and jurisdiction as if this constitution had not been adopted. Whenever the judge of the district court of any district elected under the provisions of this constitution shall have qualified in his office, the several causes then pending in the district court of the territory within any county in such district, and the records, papers and proceedings of said district court, and the seal and other property pertaining thereto, shall pass into the jurisdiction and possession of the district court of the state for such county, except as provided in the enabling act of congress, and until the district courts of this territory shall be superseded in the manner aforesaid, the said district courts and the judges thereof shall continue with the same jurisdiction and power to be exercised in the same judicial districts respectively as heretofore constituted under the laws of the territory.

§ 7. Until otherwise provided by law, the seals now in use in the supreme and district courts of this territory are hereby declared to be the seals of the supreme and district courts respectively of the state.

§ 8. Whenever this constitution shall go into effect, the books, records and papers, and proceedings of the probate court in each county, and all causes and matters of administration and other matters pending therein, shall pass into the jurisdiction and possession of the county court of the same county, and the

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said county court shall proceed to final decree or judgment, order or other determination in the said several matters and causes as the said probate court might have done if this constitution had not been adopted. And until the election and qualification of the judges of the county courts provided for in this constitution, the probate judges shall act as the judges of the county courts within their respective counties, and the seal of the probate court in each county shall be the seal of the county court therein, until the said court shall have procured a proper seal.

§ 9. The terms "probate court" or "probate judge," whenever occurring in the statutes of the territory, shall, after this constitution goes into effect, be held to apply to the county court or county judge.

§ 10. All territorial, county and precinct officers, who may be in office at the time this constitution takes effect, whether holding their offices under the authority of the United States or of the territory, shall hold and exercise their respective offices, and perform the duties thereof as prescribed in this constitution, until their successors shall be elected and qualified in accordance with the provisions of this constitution, and official bonds of all such officers shall continue in full force and effect as though this constitution had not been adopted; and such officers for their term of service, under this constitution, shall receive the same salaries and compensation as is by this constitution or by the laws of the territory, provided for like officers; provided, that the county and precinct officers shall hold their offices for the term for which they were elected. There shall be elected in each organized county in this state, at the election to be held for the ratification of this constitution, a clerk of the district court, who shall hold his office under said election until his successor is duly elected and qualified. The judges of the district court shall have power to appoint state's attorneys in any organized counties where no such attorneys have been elected, which appointment shall continue until the general election to be held in 1890, and until his successor is elected and qualified.

§ 11. This constitution shall take effect and be in full force immediately upon the admission of the territory as a state.

§ 12. Immediately upon the adjournment of this convention the governor of the territory, or in case of his absence or failure to act, the secretary of the territory, or in case of his absence or failure to act, the president of the constitutional convention shall issue a proclamation, which shall be published and a copy thereof mailed to the chairman of the board of county commissioners of each county, calling an election by the people on the first Tuesday in October, 1889, of all the state and district officers created and made elective by this constitution. This constitution shall be submitted for adoption or rejection at said election to a vote of the electors qualified by the laws of this territory to vote at all elections. At the election provided for herein the qualified voters shall vote directly for or against this constitution and for or against the article separately submitted.

§ 13. The board of commissioners of the several counties shall thereupon order such election for said day, and shall cause notice thereof to be given for the period of twenty days in the manner provided by law. Every qualified elector of the territory, at the date of said election, shall be entitled to vote thereat. Said election shall be conducted in all respects in the same manner as provided by the laws of the territory for general elections, and the returns for all state and district officers, and members of the legislative assembly, shall be made to the canvassing board hereinafter provided for.

§ 14. The governor, secretary and chief justice, or a majority of them, shall constitute a board of canvassers to canvass the vote of such election for all state and district officers and members of the legislative assembly. The said board shall assemble at the seat of government of the territory on the fifteenth day after the day of such election (or on the following day if such day falls

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on Sunday), and proceed to canvass the votes on the adoption of this constitution and for all state and district officers and members of the legislative assembly in the manner provided by the laws of the territory for canvassing the vote for delegate to congress, and they shall issue certificates of election to the persons found to be elected to said offices severally, and shall make and file with the secretary of the territory an abstract certified by them, of the number of votes cast for or against the adoption of the constitution, and for each person for each of said offices, and of the total number of votes cast in each county.

§ 15. All officers elected at such election shall, within sixty days after the date of the executive proclamation admitting the state of North Dakota into the union, take the oath required by this constitution, and give the same bond required by the law of the territory to be given in case of like officers of the territory and districts, and shall thereupon enter upon the duties of their respective offices; but the legislative assembly may require by law all such officers to give other or further bonds as a condition of their continuance in office.

§ 16. The judges of the district court who shall be elected at the election herein provided for shall hold their offices until the first Monday in January, 1893, and until their successors are elected and qualified. All other state officers, except judges of the supreme court, who shall be elected at the election herein provided for, shall hold their offices until the first Monday in January, 1891, and until their successors are elected and qualified. Until otherwise provided by law the judges of the supreme court shall receive for their services the salary of four thousand dollars per annum, payable quarterly; and the district judges shall receive for their services the salary of three thousand dollars per annum, payable quarterly.

§ 17. The governor-elect of the state immediately upon his qualifying and entering upon the duties of his office shall issue his proclamation convening the legislative assembly of the state at the seat of government, on a day to be named in said proclamation, and which shall not be less than fifteen nor more than forty days after the date of such proclamation. And said legislative assembly after organizing shall proceed to elect two senators of the United States for the state of North Dakota; and at said election the two persons who shall receive a majority of all the votes cast by the said senators and representatives shall be elected such United States senators. And the presiding officers of the senate and house of representatives shall each certify the election to the governor and secretary of the state of North Dakota; and the governor and secretary of state shall certify the election of such senators as provided by law.

§ 18. At the election herein provided for there shall be elected a representative to the fifty-first congress of the United States by the electors of the state at large.

§ 19. It is hereby made the duty of the legislative assembly at its first session to provide for the payment of all debts and indebtedness authorized to be incurred by the constitutional convention of North Dakota, which shall remain unpaid after the appropriation made by congress for the same shall have been exhausted.

§ 20. There shall be submitted at the same election at which this constitution is submitted for rejection or adoption, article 20, entitled "Prohibition," and persons who desire to vote for said article shall have written or printed on their ballots "For Prohibition," and all persons desiring to vote against said article shall have written or printed on their ballots "Against Prohibition." If it shall appear according to the returns herein provided for that a majority of all the votes cast at said election for and against prohibition are for prohibition, then said article 20 shall be and form a part of this constitution and be in full force and effect as such from the date of the admis-

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sion of this state into the union. But if a majority of said votes shall appear according to said returns to be against prohibition, then said article 20 shall be null and void and shall not be a part of this constitution.

§ 21. The agreement made by the joint commission of the constitutional conventions of North Dakota and South Dakota concerning the records, books and archives of the territory of Dakota, is hereby ratified and confirmed; which agreement is in the words following, that is to say:

The following books, records and archives of the territory of Dakota shall be the property of North Dakota, to wit: All records, books and archives in the offices of the governor and secretary of the territory (except records of articles of incorporation of domestic corporations, returns of election of delegates to the constitutional convention of 1889 for South Dakota, returns of elections held under the so-called local option law, in counties within the limits of South Dakota, bonds of notaries public appointed for counties within the limits of South Dakota, papers relating to the organization of counties situate within the limits of South Dakota, all which records and archives are a part of the records and archives of said secretary's office; excepting also, census returns from counties situate within the limits of South Dakota and papers relating to requisitions issued upon the application of officers of counties situate within the limits of South Dakota, all of which are a part of the records and archives of said governor's office.) And the following records, books and archives shall also be the property of the state of North Dakota, to wit:

Vouchers in the office or custody of the auditor of this territory relating to expenditures on account of public institutions, grounds or buildings situate within the limits of North Dakota. One warrant register in the office of the treasurer of this territory, being a record of warrants issued under and by virtue of chapter 24 of the laws enacted by the eighteenth legislative assembly of Dakota territory. All letters, receipts and vouchers in the same office now filed by counties and pertaining to counties within the limits of North Dakota. Paid and cancelled coupons in the same office representing interest on bonds which said state of North Dakota is to assume and pay. Reports of gross earnings of the year 1888 in the same office, made by corporations operating lines of railroad situated wholly or mainly within the limits of North Dakota. Records and papers of the office of the public examiner of the second district of the territory. Records and papers of the office of the district board of agriculture. Records and papers in the office of the board of pharmacy of the district of North Dakota.

All records, books and archives of the territory of Dakota which it is not herein agreed shall be the property of North Dakota, shall be the property of South Dakota.

The following books shall be copied and the copies shall be the property of North Dakota and the cost of such copies shall be borne equally by said states of North Dakota and South Dakota, that is to say:

Appropriation Ledger for years ending November 1889-90 — one volume.

The Auditor's Current Warrant Register — one volume.

Insurance Record for 1889 — one volume.

Treasurer's Cash Book — "D."

Assessment Ledger — "B."

Dakota Territory Bond Register — one volume.

Treasurer's Current Ledger — one volume.

The originals of the foregoing volumes which are to be copied shall at any time after such copying shall have been completed be delivered on demand to the proper authorities of the state of South Dakota.

All other records, books and archives which it is hereby agreed shall be the property of South Dakota, shall remain at the capitol of North Dakota until demanded by the legislature of the state of South Dakota, and until the state

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of North Dakota shall have had a reasonable time after such demand is made to provide copies or abstracts of such portions thereof as the said state of North Dakota may desire to have copies or abstracts of.

The state of South Dakota may also provide copies or abstracts of such records, books and archives, which it is agreed shall be the property of North Dakota, as said state of South Dakota shall desire to have copies or abstracts of.

The expenses of all copies or abstracts of records, books and archives which it is herein agreed may be made, shall be borne equally by said two states.

§ 22. Should the counties containing lands which form a part of the grant of lands made by congress to the Northern Pacific Railroad company be compelled by law to refund moneys paid for such lands or any of them by purchasers thereof at tax sales thereof, based upon taxes illegally levied upon said lands, then and in that case the state of North Dakota shall appropriate the sum of twenty-five thousand dollars (\$25,000) or so much thereof as may be necessary to reimburse said counties for the amount so received from said illegal tax sales and paid by said counties into the treasury of Dakota territory.

§ 23. This constitution shall, after its enrollment, be signed by the president of this convention and the chief clerk thereof, and such delegates as desire to sign the same, whereupon it shall be deposited in the office of the secretary of the territory, where it may be signed at any time by any delegate who shall be prevented from signing the same for any reason at the time of the adjournment of this convention.

§ 24. In case the territorial officers of the territory of Dakota, or any of them who are now required by law to report to the governor of the territory, annually or biennially, shall prepare and publish such reports covering the transactions of their offices up to the time of the admission of the state of North Dakota into the union; the legislative assembly shall make sufficient appropriations to pay one half of the cost of such publication.

§ 25. The governor and secretary of the territory are hereby authorized to make arrangements for the meeting of the first legislative assembly, and the inauguration of the state government.

§ 26. The legislative assembly shall provide for the editing, and for the publication, in an independent volume, of this constitution, as soon as it shall take effect, and whenever it shall be altered or amended, and shall cause to be published in the same volume the Declaration of Independence, the Constitution of the United States and the Enabling Act.

Done at Bismarck, Dakota, in open convention, this 17th day of August, A. D. 1889.

F. B. FANCHER, President.

JOHN G. HAMILTON, Chief Clerk.

AMENDMENTS TO THE CONSTITUTION OF NORTH DAKOTA.

ARTICLE 1.

The legislative assembly shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift enterprise tickets.

ARTICLE 2.

§ 121. Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state one year and in the county six months, and in the precinct ninety days next preceding any election, shall be a qualified elector at such election.

First — Citizens of the United States.

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Second — Civilized persons of Indian descent, who shall have severed their tribal relations two years next preceding such election.

§ 127. No person who is under guardianship, non compos mentis or insane, shall be qualified to vote at any election; nor any person convicted of treason or felony unless restored to civil rights; and the legislature shall by law establish an educational test as a qualification, and may prescribe penalties for failing, neglecting or refusing to vote at any general election.

Crime as disqualifying voter. 25 L.R.A. 483.

ARTICLE 3.

§ 76. The governor shall have power in conjunction with the board of pardons, of which the governor shall be ex officio a member and the other members of which shall consist of the attorney-general of the state of North Dakota, the chief justice of the supreme court of the state of North Dakota, and two qualified electors who shall be appointed by the governor, to remit fines and forfeitures, to grant reprieves, commutations and pardons after conviction for all offenses except treason and cases of impeachment; but the legislative assembly may by law regulate the manner in which the remission of fines, pardons, commutations and reprieves may be applied for. Upon conviction of treason the governor shall have the power to suspend the execution of sentence until the case shall be reported to the legislative assembly at its next regular session, when the legislative assembly shall either pardon or commute the sentence, direct the execution of the sentence or grant further reprieve. The governor shall communicate to the legislative assembly at each regular session each case of remission of fine, reprieve, commutation or pardon granted by the board of pardons, stating the name of the convict, the crime for which he is convicted, the sentence and its date and the date of remission, commutation, pardon or reprieve, with their reasons for granting the same.

ARTICLE 4.

§ 179. All property, except as hereinafter in this section provided, shall be assessed in the county, city, township, village or district in which it is situated, in the manner prescribed by law. The franchise, roadway, roadbeds, rails and rolling stock of all railroads, and the franchise and all other property of all express companies, freight line companies, car equipment companies, sleeping car companies, dining car companies, telegraph or telephone companies, or corporations operated in this state and used directly or indirectly in the carrying of persons or messages, shall be assessed by the state board of equalization at their actual value, and such assessed value shall be apportioned to the counties, cities, towns, villages, townships, and districts in which such railroad companies, express companies, sleeping car companies, dining car companies, telegraph and telephone companies are located, or through which they are operated, as a basis for the taxation of such property, in proportion to the number of miles of such property, within such counties, cities, towns, villages, townships and districts, or over which any part of such property is used or operated within such counties, towns, villages, townships and districts. But should any railroad allow any portion of its roadway to be used for any purpose other than the operation of a railroad thereon, such portion of its roadway, while so used, shall be assessed in the manner provided for the assessment of other real property.

Situs of railroad rolling-stock for purpose of taxation. 69 L.R.A. 445.

ARTICLE 5.

Subdivision 5 of section 215.

Fifth. The school for the deaf and dumb of North Dakota, at the city of Devils Lake, in the county of Ramsey. [Approved and ratified '1904.]

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ARTICLE 6.

Subdivision 8 of section 215.

Eighth. A state hospital for the insane at the city of Jamestown, in the county of Stutsman. And the legislative assembly shall appropriate twenty thousand acres of the grant of lands made by the act of congress aforesaid for "other educational and charitable institutions," to the benefit and for the endowment of said institution, and there shall be located at or near the city of Grafton, in the county of Walsh, an institution for the feeble minded, on the grounds purchased by the secretary of the interior for a penitentiary building. [Approved and ratified 1904.]

ARTICLE 7.

Addenda to section 176:

The legislative assembly may further provide that grain grown within the state and held therein in elevators, warehouses and granaries may be taxed at a fixed rate. [Approved and ratified 1904.]

ARTICLE 8.

The moneys of the permanent school fund and other educational funds shall be invested only in bonds of school corporations or of counties, or of townships, or of municipalities within the state, bonds issued for the construction of drains under authority of law within the state, bonds of the United States, bonds of the state of North Dakota, bonds of other states; provided, such states have never repudiated any of their indebtedness, or on first mortgages on farm lands in this state, not exceeding in amount one third of the actual value of any subdivision on which the same may be loaned, such value to be determined by the board of appraisal of school lands. [Approved and ratified 1908.]

ARTICLE 9.

§ 158. **Minimum Price of State Lands.** No lands shall be sold for less than the appraised value and in no case for less than ten dollars per acre. The purchaser shall pay one-fifth of the price in cash, and the remaining four-fifths as follows: 'One-fifth in five years, one-fifth in ten years, one-fifth in fifteen years and one-fifth in twenty years, with interest at the rate of not less than six per centum, payable annually in advance. All sales shall be held at the county seat of the county in which the land to be sold is situate, and shall be at public auction and to the highest bidder, after sixty days' advertisement of the same in a newspaper of general circulation in the vicinity of the lands to be sold, and one at the seat of government. Such lands as shall not have been specially subdivided shall be offered in tracts of one-quarter section, and those so subdivided in the smallest subdivisions. All lands designated for sale and not sold within two years after appraisal, shall be reappraised before they are sold. No grant or patent for any such lands shall issue until payment is made for the same; provided, that the lands contracted to be sold by the state shall be subject to taxation from the date of such contract. In case the taxes assessed against any of said lands for any year remain unpaid until the first Monday in October of the following year, then and thereupon the contracts of sale of such lands shall, at the election of the board of university and school lands, become null and void; and no such contract heretofore made shall be held void for nonpayment of taxes accruing on the lands described therein; provided, such taxes shall have been paid before this amendment takes effect; provided, further, that any school or institution land that may be required for town site purposes may be paid for at any time and patent issued therefor. [Approved and ratified 1908.]

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ARTICLE 10.

§ 89. The supreme court shall consist of five judges, a majority of whom shall be necessary to form a quorum or pronounce a decision; but one or more of said judges may adjourn the court from day to day or to a day certain. [Approved and ratified 1908.]

ARTICLE 11.

§ 158. No land shall be sold for less than the appraised value, and in no case for less than ten dollars per acre. The purchaser shall pay one-fifth of the price in cash and the remaining four-fifths as follows: One-fifth in five years, one-fifth on or before the expiration of ten years, one-fifth on or before the expiration of fifteen years, and one-fifth on or before the expiration of twenty years, with interest payable at the rate of not less than five per centum per annum payable annually in advance; provided, that when payments are made before due they shall be made at an interest paying date, and one year's interest in advance shall be paid on all moneys so paid. All sales shall be held at the county seat of the county in which the land to be sold is situated, and be at public auction and to the highest bidder after sixty days' advertisement of the same in a newspaper in general circulation in the vicinity of the land to be sold, and also published in a newspaper published at the county seat, and also in a newspaper published at the seat of government. Such lands as shall not have been especially subdivided shall be offered in tracts of one-quarter section, and those subdivided in the smallest subdivision. All lands designated for sale and not sold within two years after appraisal shall be re-appraised before they are sold. No grant or patent for such lands shall issue until payment is made for the same; provided, that the lands contracted to be sold by the state shall be subject to taxation from the date of such contract. In case the taxes assessed against any of said lands for any year remain unpaid until the first Monday in October of the following year, then and thereupon the contract of sale for such lands shall, if the board of university and school lands so determine, become null and void. Any lands under the provisions of section 158 of the constitution of the state of North Dakota that have heretofore been sold may be paid for, except as to interest, as provided herein; provided, further, that any school or institution lands that may be required for township purposes, may be paid for at any time and patent issued therefor. [Approved and ratified 1910.]

ARTICLE 12.

§ 216. The following named public institutions are hereby permanently located as hereinafter provided, each to have so much of the remaining grant of one hundred and seventy thousand acres of land made by the United States for "other educational and charitable institutions" as is allotted by law, namely:

First. A soldiers' home, when located, or such other charitable institution as the legislative assembly may determine, at Lisbon, in the county of Ransom, with a grant of forty thousand acres of land.

Second. A blind asylum, or such other institution as the legislative assembly may determine, at such place in the county of Pembina as the qualified electors of the said county may determine at an election to be held as prescribed by the legislative assembly, with a grant of thirty thousand acres.

Third. An industrial school and school for manual training, or such other educational or charitable institutions as the legislative assembly may provide, at the town of Ellendale, in the county of Dickey, with a grant of forty thousand acres.

Fourth. A school of forestry, or such other institution as the legislative assembly may determine, at such place in one of the counties of McHenry,

CONSTITUTION OF NORTH DAKOTA.

Ward, Bottineau or Rolette, as the electors of said counties may determine by an election for that purpose, to be held as provided by the legislative assembly.

Fifth. A scientific school, or such other educational or charitable institution as the legislative assembly may prescribe, at the city of Wahpeton, county of Richland, with a grant of forty thousand acres.

Sixth. A state normal school at the city of Minot, in the county of Ward; provided that no other institution of a character similar to any one of those located by this article, shall be established or maintained without a revision of this constitution. [Approved and ratified 1910.]

ARTICLE 13.

§ 158. No land shall be sold for less than the appraised value, and in no case for less than ten dollars per acre. The purchaser shall pay one-fifth of the price in cash, and the remaining four-fifths as follows:

One-fifth in five years, one-fifth on or before the expiration of ten years, one-fifth on or before the expiration of fifteen years, and one-fifth on or before the expiration of twenty years, with interest at the rate of not less than five per cent per annum, payable annually in advance; provided, that when payments are made before due they shall be made at an interest paying date, and one year's interest in advance shall be paid on all moneys so paid. All sales shall be held at the county seat of the county in which the land to be sold is situated, and shall be at public auction and to the highest bidder, after sixty days' advertisement of the same in a newspaper of general circulation in the vicinity of the land to be sold, and one at the seat of government. Such lands as shall not have been specially subdivided shall be offered in tracts of one-quarter section, and those subdivided in the smallest subdivisions. All lands designated for sale and not sold within two years after appraisal shall be reappraised before they are sold. No grant or patent for such lands shall issue until payment is made for the same; provided that the land contracted to be sold by the state shall be subject to taxation from the date of contract. In case the taxes assessed against any of said lands for any year remain unpaid until the first Monday in October of the following year, then thereupon the contract of sale for such lands shall, if the board of university and school lands so determine, become null and void. Any lands under the provisions of section 158 of the constitution of the state of North Dakota that have heretofore been sold, may be paid for, except as to interest, as provided, further, that any school or institution lands that may be required for townsite purposes, school house sites, church sites, cemetery sites, sites for other educational or charitable institutions, public parks, fair grounds, public highways, railroad right of way, or for other railroad uses and purposes, reservoirs for the storage of water for irrigation, drain ditches or irrigation ditches, and lands that may be required for any of the purposes over which the right of eminent domain may be exercised under the constitution and the laws of the state of North Dakota, may be sold under the provisions of this section, and shall be paid for, principal and interest, in full in advance, at the time of sale, or at any time thereafter, and patent issued therefor, when principal and interest are paid. [Approved and ratified 1912.]

ARTICLE 14.

The legislative assembly is hereby authorized and empowered to provide by law for the erection, purchasing or leasing and operation of one or more terminal grain elevators in the states of Minnesota or Wisconsin, or both, to be maintained and operated in such manner as the legislative assembly shall prescribe, and provide for inspection, weighing and grading of all grain received in such elevator or elevators. [Approved and ratified 1912.]

CONSTITUTION OF NORTH DAKOTA.

PROPOSED CONSTITUTIONAL AMENDMENTS.

Passed by the Twelfth and Thirteenth Legislative Assemblies, to be Voted on at the Next General Election.

INITIATIVE AND REFERENDUM — LEGISLATIVE.

Chap. 93, 1911 Session Laws.

Chap. 101, 1913 Session Laws.

A CONCURRENT RESOLUTION for an Amendment to the Constitution Providing for the Initiative and Referendum.

Be it resolved by the Senate of the State of North Dakota, the House of Representatives Concurring:

That the following amendment to the constitution of the state of North Dakota, providing for the initiative and referendum, shall be referred to the next legislative assembly to be chosen at the next general election in said state, and with the approval of said legislative assembly to be submitted to the qualified electors for adoption or rejection, in accordance with the provisions of section 202 of the constitution of the state of North Dakota.

Amendment. Section 25 of article 2 of the constitution of the state of North Dakota is hereby amended to read as follows:

§ 25. The legislative authority of the state of North Dakota shall be vested in a legislative assembly consisting of a senate and house of representatives, but the people reserve to themselves power to propose laws and to enact or reject the same at the polls, independent of the legislative assembly, and also reserve power, at their own option, to approve or reject at the polls any act, item, section or part of any act or measure passed by the legislative assembly. The first power reserved by the people is the initiative, or the power to propose measures for enactment into laws, and at least ten per cent of the legal voters to be secured in a majority of the counties of the state shall be required to propose any measure by initiative petition, and every such petition shall include the full text of the measure so proposed. Initiative petitions shall be filed with the secretary of state and not less than thirty days before any regular session of the legislative assembly; he shall transmit the same to the legislative assembly as soon as it convenes. Such initiative measure shall take precedence over all other measures in the legislative assembly except appropriation bills, and shall be either enacted or rejected without change or amendment by the legislative assembly within forty days. If any such initiative measure shall be enacted by the legislative assembly it shall be subject to referendum petition, or it may be referred by the legislative assembly to the people for approval or rejection. If it is rejected or no action is taken upon it by the legislative assembly within said forty days, the secretary of state shall submit it to the people for approval or rejection at the next ensuing regular general election. The legislative assembly may reject any measure so proposed by initiative petition and propose a different one to accomplish the same purpose, and in any such event both measures shall be submitted by the secretary of state to the people for approval or rejection at the next ensuing regular election. If conflicting measures submitted to the people at the next ensuing election shall be approved by a majority of the votes severally cast for and against the same, the one receiving the highest number of affirmative votes shall thereby become valid, and the other shall thereby be rejected. The second power is the referendum, or the power to order any act, item, or part of any act to be referred to the people for their approval or rejection at the polls, and it may be ordered (except as to laws necessary for the immediate preservation of the public peace, health or safety), as to any measure or any parts, items or sections of any measures passed by the legislative assembly

CONSTITUTION OF NORTH DAKOTA.

either by a petition signed by ten per cent of the legal voters of the state from a majority of the counties, or by the legislative assembly, if a majority of the members elect vote therefor. When it is necessary for the immediate preservation of the public peace, health or safety that a law shall become effective without delay, such necessity and the facts creating the same shall be stated in one section of the bill, and if upon aye and no vote in each house two-thirds of all the members elected to each house shall vote on a separate roll call in favor of the said law going into instant operation for the immediate preservation of the public peace, health or safety, such law shall become operative upon approval by the governor.

The filing of a referendum petition against one or more items, sections or parts of an act shall not delay the remainder of that act from becoming operative. Referendum petitions against measures passed by the legislative assembly shall be filed with the secretary of state not more than ninety days after the final adjournment of the session of the legislative assembly which passed the measure on which the referendum is demanded. The veto power of the governor shall not extend to measures referred to the people. All elections on measures referred to the people of the state shall be had at biennial regular elections, except as provision may be made by law for a special election or elections. Any measure referred to the people shall take effect when it is approved by a majority of the votes cast thereon and not otherwise, and shall be in force from the date of the official declaration of the vote.

The enacting clause of all the initiative bills shall be, "Be it enacted by the people of the state of North Dakota." This section shall not be construed to deprive any member of the legislative assembly of the right to introduce any measure. The whole number of votes for secretary of state at the regular election last preceding the filing of any petition for the initiative or for the referendum shall be the basis on which the number of legal voters necessary to sign such petition shall be counted.

Petitions and orders for the initiative and for the referendum shall be filed with the secretary of state, and in submitting the same to the people he and all other officers shall be guided by the general laws and the act submitting this amendment until legislation shall be specially provided therefor.

This amendment shall be self executing, but legislation may be enacted to facilitate its operation.

Initiative and referendum. 11 L.R.A.(N.S.) 1092; 33 L.R.A.(N.S.) 969.

INITIATIVE AND REFERENDUM — CONSTITUTION.

Chap. 89, 1911 Session Laws.

Chap. 98, 1913 Session Laws.

A CONCURRENT RESOLUTION Amending the Constitution of the State of North Dakota, Providing for the Future Amendment Thereof.

Be it Resolved by the Senate of the State of North Dakota, the House of Representatives Concurring:

§ 1. That the following proposed amendment to section 202 of article 15 of the constitution of the state of North Dakota, be referred to the legislative assembly to be chosen at the next general election in the state of North Dakota, to be, if approved by said last mentioned legislative assembly, submitted to the qualified electors of the state for approval or rejection in accordance with the provisions of section 202 of the constitution of the state of North Dakota.

Amendment. Article 15, section 202, of the constitution of the state of North Dakota is amended so as to read as follows:

CONSTITUTION OF NORTH DAKOTA.

§ 202. This constitution may be amended so as to read as follows:

First: Any amendment or amendments to this constitution may be proposed in either house of the legislative assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment shall be entered on the journal of the house with the yeas and nays taken thereon, and referred to the legislative assembly to be chosen at the next general election, and shall be published, as provided by law, for three months previous to the time of making such choice, and if in the legislative assembly so next chosen as aforesaid such proposed amendment or amendments shall be agreed to by a majority of all members elected to each house, then it shall be the duty of the legislative assembly to submit such proposed amendment or amendments to the people in such manner and at such times as the legislative assembly shall provide; and if the people shall approve and ratify such amendment or amendments by a majority of the electors qualified to vote for members of the legislative assembly voting thereon, such amendment or amendments shall become a part of the constitution of this state. If two or more amendments shall be submitted at the same time, they shall be submitted in such manner that the electors shall vote for or against each of such amendments separately.

Second. Any amendment or amendments to this constitution may also be proposed by the people by the filing with the secretary of state, at least six months previous to a general election, of an initiative petition containing the signatures of at least twenty-five per cent of the legal voters in each of not less than one-half of the counties of the state. When such petition has been properly filed the proposed amendment or amendments shall be published as the legislature may provide, for three months previous to the general election, and shall be placed upon the ballot to be voted upon by the people at the next general election. Should any such amendment or amendments proposed by initiative petition and submitted to the people receive a majority of all the legal votes cast at such general election, such amendment or amendments shall be referred to the next legislative assembly; and should such proposed amendment or amendments be agreed upon by a majority of all the members elected to each house, such amendment or amendments shall become a part of the constitution of this state. Should any amendment or amendments proposed by initiative petition and receiving a majority of all the votes cast at the general election as herein provided, but failing to receive approval by the following legislative assembly to which it has been referred, such amendment or amendments shall again be submitted to the people at the next general election for their approval or rejection as at the previous general election. Should such amendment or amendments receive a majority of all the legal votes cast at such succeeding general election such amendment or amendments at once become a part of the constitution of this state. Any amendment or amendments proposed by initiative petition and failing of adoption, as herein provided, shall not be again considered until the expiration of six years.

CHANGING NAME OF THE STATE BLIND ASYLUM.

Chap. 97, 1911 Session Laws.

Chap. 95, 1913 Session Laws.

A CONCURRENT RESOLUTION To amend Section 216 of the Constitution of the State of North Dakota, Pertaining to Public Institutions.

Be it Resolved by the Senate of the State of North Dakota, the House of Representatives Concurring Therein:

That the following proposed amendment to the constitution of the state of North Dakota adopted by the twelfth legislative assembly, and by it referred to the thirteenth legislative assembly for approval or rejection, is hereby agreed to, and such amendment shall be submitted to the qualified

CONSTITUTION OF NORTH DAKOTA.

electors of the state at the next general election for approval or rejection in accordance with the provisions of section 202 of the constitution of the state of North Dakota:

Amendment. That section 216 of the constitution of the state of North Dakota is amended to read as follows:

The following named public institutions are hereby permanently located as hereinafter provided, each to have so much of the remaining grant of one hundred and seventy thousand acres of land made by the United States for "other educational and charitable institutions" as is allotted by law, viz.:

First. A soldiers' home, when located, or such other charitable institution as the legislative assembly may determine, at Lisbon, in the county of Ransom, with a grant of forty thousand acres of land.

Second. The school for the blind of North Dakota, at Bathgate, in the county of Pembina, with a grant of thirty thousand acres.

Third. An industrial school and school for manual training or such other educational or charitable institution as the legislative assembly may provide at the town of Ellendale, in the county of Dickey, with a grant of forty thousand acres.

Fourth. A school of forestry, or such other institution as the legislative assembly may determine, at the city of Bottineau, in the county of Bottineau.

Fifth. A scientific school, or such other educational or charitable institution as the legislative assembly may prescribe, at the city of Wahpeton, county of Richland, with a grant of forty thousand acres.

Sixth. A state normal school at the city of Minot, in the county of Ward; provided, that no other institution, of a character similar to any one of those located by this article, shall be established or maintained without a revision of this constitution. [Approved March 10, 1913.]

STATE AID FOR HIGHWAYS.

Chap. 91, 1911 Session Laws.

Chap. 100, 1913 Session Laws.

A CONCURRENT RESOLUTION Amending section 185 of the Constitution of the State of North Dakota, Relating to State Aid in the Construction and Improvement of Public Highways.

Be it Resolved by the Senate of the State of North Dakota, the House of Representatives Concurring:

The following proposed amendment to the constitution of the state of North Dakota adopted by the twelfth legislative assembly of the state of North Dakota, and by it referred to the thirteenth legislative assembly of said state for approval or rejection, is hereby agreed to, and such amendment shall be submitted to the qualified electors of the state at the next general election for approval or rejection in accordance with the provisions of section 202 of the constitution of the state of North Dakota.

Amendment to constitution. That section 185 of article 12 of the constitution of the state of North Dakota is hereby amended to read as follows:

§ 185. Neither the state nor any county, city, township, town, school district or any other political subdivision shall loan or give its credit or make donations to or in aid of any individual, association or corporation, except for necessary support of the poor, nor subscribe to or become the owner of the capital stock of any association or corporation, nor shall the state engage in any work or internal improvement unless authorized by a two-third vote of the people; provided, that the state may appropriate money in the treasury or to be thereafter raised by taxation for the construction or improvement of public highways. [Approved February 27, 1913.]

CONSTITUTION OF NORTH DAKOTA.

TERMINAL ELEVATORS WITHIN THE STATE.

Chap. 90, 1911 Session Laws.

Chap. 104, 1913 Session Laws.

A CONCURRENT RESOLUTION Amending the Constitution of the State of North Dakota, Empowering the Legislative Assembly to Provide by Law for Erection, Leasing, Purchasing and Operating Terminal Elevators in the State of North Dakota.

Be it Resolved by the Senate of the State of North Dakota, the House of Representatives Concurring:

That the following proposed amendment to the constitution of the state of North Dakota adopted by the twelfth legislative assembly of the state of North Dakota, and by it referred to the thirteenth legislative assembly of said state for approval or rejection, is hereby agreed to, and such amendment shall be submitted to the qualified electors of the state at the next general election for approval or rejection in accordance with the provisions of section 202 of the constitution of the state of North Dakota.

Amendment. The legislative assembly is hereby authorized and empowered to provide by law for the erection, purchase or leasing and operation of one or more terminal grain elevators in the state of North Dakota, to be maintained and operated in such manner as the legislative assembly shall prescribe, and provide for inspection, weighing and grading of all grain received in such elevator or elevators. [Approved March 10, 1913.]

PROCLAMATION

Admitting the State of North Dakota

INTO THE UNION

[Issued by President Harrison Nov. 2, 1889.]

WHEREAS, The congress of the United States did, by an act approved on the twenty-second day of February, one thousand eight hundred and eighty-nine provide that the inhabitants of the territory of Dakota might, upon the conditions prescribed by said act, become the states of North Dakota and South Dakota; and

WHEREAS, It was provided by said act that the area comprising the territory of Dakota should, for the purposes of the act be divided on the line of the seventh standard parallel produced due west to the western boundary of said territory and that the delegates elected as therein provided to the constitutional convention in districts north of said parallel should assemble in convention at the time prescribed in the act at the city of Bismarck; and

WHEREAS, It was provided by the said act that the delegates elected, as aforesaid, should, after they had met and organized, declare on behalf of the people of North Dakota that they adopt the constitution of the United States; whereupon the said convention should be authorized to form a constitution and state government for the proposed state of North Dakota; and

WHEREAS, It was provided by said act that the constitution so adopted should be republican in form and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the constitution of the United States and the principles of the declaration of independence; and that the constitution should, by an ordinance irrevocable without the consent of the United States and the people of said states, make certain provisions prescribed in said act; and

WHEREAS, It was provided by said act that the constitutions of North Dakota and South Dakota should respectively incorporate an agreement, to be reached in accordance with the provision of the act for an equitable division of all property belonging to the territory of Dakota, the disposition of all public records, and also for the apportionment of the debts and liabilities of said territory, and that each of said states should obligate itself to pay its proportion of such debts and liabilities the same as if they had been created by such states respectively; and

WHEREAS, It was provided by said act that the constitution thus formed for the people of North Dakota should, by an ordinance of the convention forming the same, be submitted to the people of North Dakota, at an election to be held therein on the first Tuesday in October, one thousand eight hundred and eighty-nine, for ratification or rejection by the qualified voters of said proposed state, and that the returns of said election should be made to the secretary of the territory of Dakota, who with the governor and chief justice thereof, or any two of them, should canvass the same, and if a majority of the legal votes cast should be for the constitution, the governor should certify the result to the president of the United States, together with a statement of the

PROCLAMATION ADMITTING NORTH DAKOTA.

votes cast thereon, and upon separate articles or propositions and a copy of said constitution, articles, propositions and ordinances; and

WHEREAS, It has been certified to me by the governor of the territory of Dakota, that within the time prescribed by said act of congress a constitution for the proposed state of North Dakota has been adopted and the same ratified by a majority of the qualified voters of said proposed state in accordance with the conditions prescribed in said act; and

WHEREAS, It is also certified to me by said governor that at the same time that the body of said constitution was submitted to a vote of the people, a separate article numbered 20 and entitled "prohibition" was also submitted and received a majority of all the votes cast for and against said article as well as a majority of all the votes cast for and against the constitution and was adopted; and

WHEREAS, A duly authenticated copy of said constitution, article, ordinances and propositions, as required by said act has been received by me;

Now, therefore, I, Benjamin Harrison, president of the United States of America, do, in accordance with the provisions of the act of congress aforesaid, declare and proclaim the fact that the conditions imposed by congress on the state of North Dakota to entitle that state to admission to the union, have been ratified and accepted and that the admission of the said state into the union is now complete.

In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed. Done at the city of Washington, this second day of November, in the year of our Lord one thousand eight hundred and eighty-nine and of the Independence of the United States of America the one hundred and fourteenth.

BENJ. HARRISON.

By the President:

JAMES G. BLAINE,
Secretary of State.

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ARRANGEMENT OF CODES.

1. POLITICAL CODE.
 2. CIVIL CODE.
 3. CODE OF CIVIL PROCEDURE.
 4. PROBATE CODE.
 5. JUSTICES' CODE.
 6. PENAL CODE.
 7. CODE OF CRIMINAL PROCEDURE.
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POLITICAL CODE

§ 1. Title. This act shall be known as the political code of the state of North Dakota, and is divided into chapters as follows:

Adoption of Political Code not unconstitutional because embracing more than one subject. *Tribune Co. v. Barnes*, 7 N. D. 591, 75 N. W. 904.

CHAPTER 1.

THE SOVEREIGNTY OF THE STATE AND THE POLITICAL RIGHTS AND DUTIES OF ALL PERSONS SUBJECT TO ITS JURISDICTION.

§ 2. Territorial jurisdiction, limitations on. The sovereignty and jurisdiction of this state extends to all places within its boundaries as established by the constitution, but the extent of such jurisdiction over places that have been or may be ceded to, purchased, or condemned by the United States, is qualified by the terms of such cession or the laws under which such purchase or condemnation has been or may be made. [R. C. 1905, § 2; R. C. 1895, § 2.]

§ 3. Legislative consent to purchase of lands by United States. Jurisdiction over. The legislative assembly consents to the purchase or condemnation by the United States of any tracts within this state for the purpose of erecting forts, magazines, arsenals, dock yards and other needful buildings, upon the express condition that all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state against any person charged with crime may be served and executed thereon in the same manner and by the same officers, as if the purchase or condemnation had not been made. [R. C. 1905, § 3; R. C. 1895, § 3.]

As to similar provision in Cal. Pol. Code, § 34, see *United States v. Cornell*, 2 Mason, 60, Fed. Cas. No. 14,867.

§ 4. Jurisdiction ceded. Jurisdiction is hereby ceded to the United States over any tract of land that may hereafter be acquired by the United States on which to establish a military post; provided, that legal process, civil and criminal, of this state shall extend over such land acquired by the United States to establish a military post, in all cases in which exclusive jurisdiction is not vested in the United States, and in all cases of crimes not committed within the limits of such reservation. [R. C. 1905, § 4; R. C. 1895, ch. 81, § 1; R. C. 1899, § 4.]

§ 5. Property ceded to state by United States. That the state of North Dakota may accept from the United States any military reservation, Indian school reservation, and all property connected therewith, that the United States may cede or transfer to the state of North Dakota, subject to any conditions and requirements which congress may impose. [1913, ch. 210, § 1.]

§ 6. Charge of property ceded. That upon the cession of any military reservation or Indian school reservation to the state of North Dakota by the United States, as provided for in section 5, it shall be the duty of the State Board of Trustees of Public Property to take charge of and care for the property until otherwise provided by law; and the governor is hereby directed to receipt to the United States for any personal property transferred to the state. [1913, ch. 210, § 2.]

§ 7. Rights over persons enumerated. The state has the following rights over persons within its limits, to be exercised in the cases and in the manner provided by law:

1. To punish for crime;
2. To imprison or confine for the protection of the public peace or health, or of individual life or safety;
3. To imprison or confine for the purpose of enforcing civil remedies;
4. To establish custody and restraint for the persons of idiots, lunatics, drunkards and other persons of unsound mind;
5. To establish custody and restraint of paupers for the purposes of their maintenance;
6. To establish custody and restraint of minors unprovided for by natural guardians for the purposes of their education, reformation and maintenance;
7. To require services of persons, with or without compensation, in military duty, in jury duty, as witnesses, as township or village officers, in highway labor, in maintaining the public peace, in enforcing the service of process, in protecting life and property from fire, pestilence, wreck or flood, and in such other cases as are provided by law. [R. C. 1905, § 5; R. C. 1895, § 5.]

1. Enhancing penalty for crimes committed by habitual criminals or prior offenders. 34 L.R.A. 398; 24 L.R.A. (N.S.) 432.

Constitutionality of statutes reducing term of imprisonment for good behavior. 34 L.R.A. 509; 1 L.R.A. (N.S.) 520.

Legislative control of extent of punishment. 35 L.R.A. 562.

Delegation of power to determine place of confinement of prisoners committed for crime. 42 L.R.A. (N.S.) 978.

Equal protection as to punishment. 14 L.R.A. 584.

Constitutionality of statute punishing escape by reimprisonment for term dependent upon length of original term. 22 L.R.A. (N.S.) 1123.

As to similar provision in Cal. Pol. Code, § 37, see *People v. Collins*, 105 Cal. 504, 39 Pac. 16.

3. Constitutionality of imprisonment for debt. 34 L.R.A. 634.

—of statute providing for imprisonment for breach of contract of labor or rental. 21 L.R.A. (N.S.) 242.

—of statute providing for imprisonment for beating board bill. 21 L.R.A. (N.S.) 259.

4. Confinement of one acquitted of crime by reason of insanity. 1 L.R.A. (N.S.) 540; 25 L.R.A. (N.S.) 946.

6. State guardianship of children. 15 L.R.A. 593.

Commitment of infants to reformatories without conviction of crime. 16 L.R.A. 691.

Restraint on freedom of infant as impairment of child's constitutional rights. 18 L.R.A. (N.S.) 886.

7. Right of state to require service of witness without compensation. 39 L.R.A. 115.

Constitutionality of statute permitting court to appoint expert witnesses. 33 L.R.A. (N.S.) 917.

§ 8. Original and ultimate title. The original and ultimate right to all property, real or personal, within the limits of this state is in the state. [R. C. 1905, § 6; R. C. 1895, § 6.]

§ 9. Property escheats when. All property, real and personal, within the limits of this state, which does not belong to any person or to the United States, belongs to the state. Whenever the title to any property fails for want of heirs or next of kin, it reverts to the state. [R. C. 1905, § 7; R. C. 1895, § 7.]

Escheat defined. 12 L.R.A. 529.

—what is and proceedings to perfect. 29 Am. Dec. 232.

Is judicial proceeding necessary to effect escheat. 15 L.R.A. (N.S.) 379.

Right of state to contest will so as to escheat the property. 2 L.R.A. (N.S.) 643.

Termination of right to declare escheat by death of alien or transfer in his lifetime.

9 L.R.A. (N.S.) 186.

§ 10. Acquisition by taxation and assessment. The state may acquire property by taxation in the modes authorized by law. [R. C. 1905, § 8; R. C. 1895, § 8.]

As to similar provision in Cal. Pol. Code, § 50, see *People v. Washington*, 36 Cal. 658; *People ex rel. Kimberly v. De La Guerra*, 40 Cal. 311; *Van Valkenburg v. Brown*, 43 Cal. 43, 13 Am. Rep. 136; *Lyons v. Cunningham*, 66 Cal. 42, 4 Pac. 938.

§ 11. By right of eminent domain. It may acquire or authorize others to acquire title to property, real or personal, for public use in the cases and in the mode provided by law. [R. C. 1905, § 9; R. C. 1895, § 9.]

§ 12. Who are the people. The people, as a political body, consist:

1. Of citizens who are electors.
2. Of citizens not electors. [R. C. 1905, § 10; R. C. 1895, § 10.]

§ 13. Who are citizens. The citizens of the state are:

1. All persons born in this state and residing within it, except the children of transient aliens and of alien public ministers and consuls;
2. All persons born out of this state and who are citizens of the United States and residing within this state. [R. C. 1905, § 11; R. C. 1895, § 11.]

Domicil of consul. 45 L.R.A. 587.

As to similar provision in Cal. Pol. Code, § 51, see *People v. Washington*, 36 Cal. 658; *Lyons v. Cunningham*, 66 Cal. 42, 4 Pac. 938.

§ 14. Residence, rules for determining. Every person has in law a residence. In determining the place of residence the following rules are to be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose;
2. There can be only one residence;
3. A residence cannot be lost until another is gained;
4. The residence of the father during his life, and after his death the residence of the mother, while she remains unmarried, is the residence of the unmarried minor children;
5. The residence of the husband is presumptively the residence of the wife;
6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian;
7. The residence can be changed only by the union of act and intent. [R. C. 1905, § 12; R. C. 1895, § 12.]

Domicil or residence when boundary line runs through dwelling. 10 L.R.A.(N.S.) 874.

1. Domicil, definitions of, and how ascertained. 59 Am. Dec. 111.

As to similar provision in Cal. Pol. Code, § 52, subd. 1, see *Hanson v. Graham*, 82 Cal. 631, 7 L.R.A. 127, 23 Pac. 56; *Re Weed*, 120 Cal. 634, 53 Pac. 30.

3. Gaining new domicil or residence before abandoning occupation of old residence, by purchasing or hiring property in new locality with intention of establishing permanent residence there. 33 L.R.A.(N.S.) 766.

When does nonresidence of person intending to leave permanently begin for purpose of attachment or exemption. 1 L.R.A.(N.S.) 778.

Is a domicil lost by abandonment without intention of returning, before acquiring a new one. 40 L.R.A.(N.S.) 986.

As to similar provision in Cal. Pol. Code, § 52, subd. 3, see *Huston v. Anderson*, 145 Cal. 320, 78 Pac. 626.

4. Domicil of minors. 89 Am. St. Rep. 278.

Agreement by parent as to domicil of child. 27 L.R.A. 61.

As to similar provision in Cal. Pol. Code, § 52, subd. 4, see *Re Vance*, 92 Cal. 195, 28 Pac. 229; *Luck v. Luck*, 92 Cal. 653, 28 Pac. 767.

5. Domicil of married women. 84 Am. St. Rep. 27; 85 Am. St. Rep. 559.

As to similar provision in Cal. Pol. Code, § 52, subd. 5, see *Moffatt v. Moffatt*, 5 Cal. 280; *Dow v. Gould & C. Silver Min. Co.*, 31 Cal. 629; *First Nat. Bank v. Bruce*, 94 Cal. 77, 29 Pac. 488.

7. Loss or change of domicil. 32 Am. Dec. 427, 48 Am. St. Rep. 711.

Change of domicil as affected by removal for benefit of health. 9 L.R.A.(N.S.) 1159.

Going to another state, county, or district to teach school or preach, as affecting a change of domicil or residence. 22 L.R.A.(N.S.) 996.

As to similar provision in Cal. Pol. Code, § 52, subd. 7, see *People v. Peralta*, 4 Cal. 175; *Dow v. Gould & C. Silver Min. Co.*, 31 Cal. 629; *Re Donovan*, 104 Cal. 623, 38 Pac. 456; *Re Weed*, 120 Cal. 634, 53 Pac. 30; *De Tolna v. De Tolna*, 135 Cal. 575, 67 Pac. 1045; *Huston v. Anderson*, 145 Cal. 320, 78 Pac. 626; *Sheehan v. Scott*, 145 Cal. 684, 79 Pac. 350.

§ 15. All persons within the state subject to its jurisdiction. Every person while within this state is subject to its jurisdiction and entitled to its protection. [R. C. 1905, § 13; R. C. 1895, § 13.]

As to similar provision in Cal. Pol. Code, § 54, see *People v. Raymond*, 34 Cal. 492; *Spreckels v. Hawaiian Commercial & Sugar Co.*, 117 Cal. 377, 49 Pac. 353.

§ 16. Allegiance. Allegiance is the obligation of fidelity and obedience which every citizen owes to the state. [R. C. 1905, § 14; R. C. 1895, § 14.]

§ 17. Allegiance may be renounced. Allegiance may be renounced by a change of residence. [R. C. 1905, § 15; R. C. 1895, § 15.]

As to similar provision in Cal. Pol. Code, § 56, see *Re Look Tin Sing*, 10 Sawy. 353, 21 Fed. 905; *Browne v. Dexter*, 66 Cal. 39, 4 Pac. 913.

§ 18. Persons not citizens. Persons in this state not its citizens, are either:

1. Citizens of other states; or,

2. Aliens. [R. C. 1905, § 16; R. C. 1895, § 16.]

As to similar provision in Cal. Pol. Code, § 57, subd. 2, see *Walther v. Rabolt*, 30 Cal. 185; *De Tolna v. De Tolna*, 135 Cal. 575, 67 Pac. 1045.

§ 19. Eligibility to office. Every elector is eligible to the office for which he is an elector, except when otherwise specially provided; and no person is eligible who is not such an elector. [R. C. 1905, § 17; R. C. 1895, § 17.]

Right to hold office as a privilege or immunity of a citizen of the United States. 14 L.R.A. 580.

As to similar provision in Cal. Pol. Code, § 58, see *Walther v. Rabolt*, 30 Cal. 185.

§ 20. Rights and duties of citizens not electors. An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office. [R. C. 1905, § 18; R. C. 1895, § 18.]

As to similar provision in Cal. Pol. Code, § 59, see *People v. Washington*, 36 Cal. 658.

§ 21. Rights and duties of citizens of other states. A citizen of the United States who is not a citizen of this state has the same rights and duties as a citizen of this state not an elector. [R. C. 1905, § 19; R. C. 1895, § 19.]

CHAPTER 2.

CONGRESSIONAL DISTRICTS.

§ 22. State divided into three districts. The state of North Dakota is hereby divided into three congressional districts, each of which is entitled to elect one representative to the congress of the United States. [1911, ch. 100, § 1.]

§ 23. First district defined. The counties of Pembina, Cavalier, Towner, Ramsey, Walsh, Nelson, Grand Forks, Steele, Traill, Cass, Ransom, Sargent and Richland shall constitute the first congressional district. [1911, ch. 100, § 2.]

§ 24. Second district defined. The counties of Bottineau, Rolette, McHenry, Pierce, Benson, Sheridan, Wells, Eddy, Foster, Griggs, Stutsman, Barnes, Kidder, Burleigh, Emmons, Logan, McIntosh, LaMoure and Dickey shall constitute the second congressional district. [1911, ch. 100, § 3.]

§ 25. Third district defined. The counties of Divide, Burke, Renville, Ward, Mountrail, Williams, McKenzie, McLean, Dunn, Mercer, Oliver, Billings, Stark, Morton, Hettinger, Bowman and Adams shall constitute the third congressional district. [1911, ch. 100, § 4.]

CHAPTER 3.

THE LEGISLATIVE ASSEMBLY.

ARTICLE 1. MEETING AND ORGANIZATION OF THE LEGISLATIVE ASSEMBLY, §§ 25-33.

2. LEGISLATIVE OFFICERS AND EMPLOYES, §§ 34-43.

3. SENATORIAL AND REPRESENTATIVE DISTRICTS AND LEGISLATIVE APPORTIONMENT, § 44.

4. PRINTING AND DISTRIBUTION OF LAWS AND DOCUMENTS, §§ 45-108.

5. ENGROSSING AND ENROLLING BILLS, §§ 109, 110.

ARTICLE 1.— MEETING AND ORGANIZATION OF THE LEGISLATIVE ASSEMBLY.

§ 26. Legislative assembly meets, when. The legislative assembly shall meet at the seat of government at twelve o'clock noon on the first Tuesday

after the first Monday in January in the year next following the election of the members thereof. [Const. § 53; R. C. 1905, § 20; R. C. 1899, § 20.]

§ 27. Secretary of senate and chief clerk of house to make roll of members. It shall be the duty of the secretary of the senate and the chief clerk of the house, at the opening of each session of the legislative assembly to make a correct roll of the members of their houses respectively to whom certificates of election have been issued by the proper officers, which certificates shall be filed by such secretary and chief clerk, and the same shall be prima facie evidence of the right to membership of the person certified therein to be elected for all purposes of the organization of either branch of the legislative assembly. [R. C. 1905, § 21; Pol. C. 1877, ch. 2, § 14; R. C. 1899, § 21.]

§ 28. Legislative sessions called to order by secretary and chief clerk. In all cases the secretary of the senate and chief clerk of the house serving at the close of a session shall remain in office until the organization of the next regular session of the legislative assembly, and at twelve o'clock noon on the day appointed by law for the meeting of the legislative assembly the said officers, or in the absence of either, then some member or other person appointed by the members present, shall call the members of their respective houses so enrolled to order, when the members may proceed to the election of the necessary officers. The term of office of all officers of the senate and house of representatives shall expire with the close of the session at which they were elected, except the secretary of the senate and the chief clerk of the house for the purposes herein designated. [R. C. 1905, § 22; Pol. C. 1877, ch. 2, § 15; R. C. 1899, § 22.]

§ 29. Punishment by each house for offenses. Each house may punish by imprisonment, as for contempt, a breach of its privileges or the privileges of its members; but only for one or more of the following offenses:

1. Knowingly arresting a member or officer of the house, or procuring such member or officer to be arrested in violation of his privilege from arrest.

2. Disorderly conduct in the immediate view of the house and directly tending to interrupt its proceedings.

3. Refusing to attend and be examined as a witness either before the house, or a committee thereof, or before any person authorized to take testimony in legislative proceedings.

4. Giving or offering a bribe to a member, or attempting by menace or other corrupt means or device, directly or indirectly, to control or influence a member in giving his vote, or to prevent his giving the same; but the term of imprisonment which such house may impose for any contempt specified in this section shall not continue beyond thirty days, nor extend beyond the same session of the legislative assembly. [R. C. 1905, § 23; Pol. C. 1877, ch. 2, § 4; Const. § 48; R. C. 1895, § 23.]

§ 30. Contempt a misdemeanor. Every person who shall be guilty of any contempt specified in the preceding section shall also be deemed guilty of a misdemeanor and on conviction thereof shall be punished by imprisonment not exceeding six months, or by fine not exceeding five hundred dollars, or by both, at the discretion of the court. [R. C. 1905, § 24; Pol. C. 1877, ch. 2, § 5; R. C. 1899, § 24.]

§ 31. Administering oath to members and officers of the legislative assembly. The speaker of the house and the president of the senate, the governor, or any of the judges of the supreme or district courts are authorized to administer the oath of office to the members and officers of the respective bodies. [R. C. 1905, § 25; Pol. C. 1887, ch. 2, § 6; R. C. 1895, § 25.]

§ 32. Chairman of committee may administer oath, when. Any member of the senate or house of representatives, while acting as chairman of a committee of the house of which he is a member, shall have authority to administer oaths to such persons as shall be examined before the committee of which he is a member. [R. C. 1905, § 26; Pol. C. 1887, ch. 2, § 9; R. C. 1899, § 26.]

§ 33. Contested seats. Each house sole judge of member's qualifications. In case the right of any person to a seat in either house of the legislative assembly shall be contested, the right of such person to a seat as aforesaid shall be determined by the house in which he claims such seat as a member; and each house shall in all cases be the sole judge of the qualifications of its members. [R. C. 1905, § 27; Pol. C. 1877, ch. 2, § 9; R. C. 1899, § 27.]

ARTICLE 2.—LEGISLATIVE OFFICERS AND EMPLOYEES.

§ 34. Officers and employes; compensation. The following shall be the officers and employes of the senate and the house of representatives of the legislative assembly, with the compensation as herein provided for:

For the senate:

A president pro tempore, whose compensation shall be two dollars per day.

One secretary, whose compensation shall be six dollars per day.

Two assistant secretaries, whose compensation shall be five dollars per day.

One enrolling and engrossing clerk, whose compensation shall be five dollars per day.

Three assistant enrolling and engrossing clerks, whose compensation shall be four dollars per day.

One voucher clerk and bookkeeper, whose compensation shall be four dollars per day.

One stenographer, whose compensation shall be five dollars per day.

One sergeant-at-arms, whose compensation shall be five dollars per day.

One door-keeper, whose compensation shall be four dollars per day.

One messenger, whose compensation shall be four dollars per day.

One postmaster, whose compensation shall be four dollars per day.

Six pages, whose compensation shall be two dollars per day.

One proofreader, whose compensation shall be five dollars per day.

One chaplain, whose compensation shall be three dollars per day.

Two janitors, whose compensation shall be four dollars per day.

One watchman, whose compensation shall be four dollars per day.

One cloak room attendant, whose compensation shall be four dollars per day.

One bill clerk, whose compensation shall be four dollars per day.

One door-keeper for gallery, who shall act as assistant to the sergeant-at-arms, whose compensation shall be four dollars per day.

One assistant bill clerk, whose compensation shall be four dollars per day.

One clerk of judiciary committee, whose compensation shall be five dollars per day.

One clerk of appropriations committee, whose compensation shall be five dollars per day.

One clerk of state affairs committee, whose compensation shall be five dollars per day.

One journal clerk, who shall be under the supervision of the secretary of the senate and whose compensation shall be five dollars per day.

One assistant journal clerk, whose compensation shall be five dollars per day.

Eight clerks who shall be expert in stenography and typewriting, to perform clerical duties for senators and committees, each five dollars per day.

The journal of the senate shall be completed and indexed by the secretary of the senate within ten days after adjournment thereof, and for such completion and indexing he shall be allowed the sum of fifty dollars.

For the house of representatives:

A speaker, whose compensation shall be two dollars per day.

One chief clerk, whose compensation shall be six dollars per day.

Two assistant clerks, whose compensation shall be five dollars per day.

One voucher clerk and bookkeeper, whose compensation shall be four dollars per day.

One chief enrolling and engrossing clerk, whose compensation shall be five dollars per day.

Three assistant enrolling and engrossing clerks, whose compensation shall be four dollars per day.

One stenographer, whose compensation shall be five dollars per day.

One sergeant-at-arms, whose compensation shall be five dollars per day.

One bill clerk, whose compensation shall be five dollars per day.

One assistant bill clerk, whose compensation shall be four dollars per day.

Two door-keepers, whose compensation shall be four dollars per day, and who shall be assistants to the sergeant-at-arms.

One gallery door-keeper, whose compensation shall be four dollars per day.

One clerk for judiciary committee, whose compensation shall be five dollars per day.

One clerk for appropriations committee, whose compensation shall be five dollars per day.

One clerk for state affairs committee, whose compensation shall be five dollars per day.

Two messengers, whose compensation shall be four dollars per day.

One postmaster, whose compensation shall be four dollars per day.

One chaplain, whose compensation shall be three dollars per day.

Eight pages, whose compensation shall be two dollars per day.

Four janitors, whose compensation shall be four dollars per day.

One watchman, whose compensation shall be four dollars per day.

One cloak room attendant, whose compensation shall be four dollars per day.

One journal clerk, whose compensation shall be five dollars per day, and who shall be under the supervision of the chief clerk of the house.

One assistant journal clerk, whose compensation shall be four dollars per day.

Twelve clerks, who shall be expert in stenography and typewriting, to perform clerical duties for members of the house and committees, each five dollars per day.

The journal of the house shall be completed and indexed by the chief clerk of the house within ten days after the adjournment thereof, and for such completion and indexing he shall be allowed the sum of fifty dollars. [1907, ch. 164, § 1; R. C. 1905, § 28; 1899, ch. 104, § 1; R. C. 1899, § 28; 1901, ch. 117.]

Applicability to nonconstitutional officer of constitutional provision against increase of salary of officer during his term of office. 26 L.R.A.(N.S.) 289.

Change of salary of deputy or other subordinate, as violation of constitutional provision against change of salary of public officer during term of office. 37 L.R.A.(N.S.) 388.

§ 35. Other employes by resolution. No employes of the legislature other than those provided by section 34 shall be paid, except by a resolution of the senate or house of representatives. [1907, ch. 164, § 2.]

§ 36. Officers, how elected. Oath. The officers of each house shall be elected by a roll call vote of the members thereof, at such times after the meeting of such house as the members thereof shall deem proper, and they shall be required to take and subscribe the oath prescribed in section 211 of the constitution. Neither house shall transact any business other than the election or appointment of officers, until such officers are elected or appointed pro tem. [R. C. 1905, § 29; 1899, ch. 104, 2; R. C. 1899, § 29.]

Senate must be composed at all times of two classes of senators, as nearly equal in number as practicable. State ex rel. Williams v. Meyer, 20 N. D. 628, 127 N. W. 834.

§ 37. Salaries, how audited and paid. The respective amounts due each clerk, officer or employe so employed and appointed shall be audited and paid out of the state treasury upon an account certified as correct by the presiding officer of the respective houses, duly attested by the secretary and chief clerk thereof, and when so audited and attested the state auditor is authorized and directed to draw his warrants therefor upon the state treasurer. [R. C. 1905, § 30; 1890, ch. 86, § 6; 1895, ch. 76, § 4; R. C. 1899, § 31.]

§ 38. Discharge of officers, clerks and employes. Whenever any officer, clerk or employe through neglect or incompetency shall fail properly to discharge the duties of his office or position, it shall be the duty of the respective body to declare the office or position vacant and to fill the vacancy so created. [R. C. 1905, § 31; 1890, ch. 86, § 6; 1895, ch. 76, § 5; R. C. 1899, § 32.]

§ 39. Secretary of senate and chief clerk of house to keep journals, preserve and file documents. It shall be the duty of the secretary of the senate and chief clerk of the house of representatives, to keep correct journals of the proceedings of their respective houses; to have the custody of all records, accounts, and other papers committed to them, and at the close of each session of the legislative assembly to deposit for safe keeping in the office of the secretary of state all books, bills, documents, resolutions and papers in the possession of the legislative assembly, correctly labeled, folded and classified, and generally to perform such duties as shall be assigned them by their respective houses; provided, that the journals need not be deposited as above provided until they are fully completed and indexed. [R. C. 1905, § 32; Pol. C. 1877, ch. 2, § 12; R. C. 1895, § 33.]

§ 40. Secretary of senate and chief clerk of house to prepare and index journals. It shall be the duty of the secretary of the senate and the chief clerk of the house at the close of each session to prepare for the press and superintend the publication of the journals of the proceedings of the respective houses, and to affix an index thereto; and to transcribe into a book kept for that purpose the documents accompanying the messages of the governor, or by him sent to either house, other than those entered in the journal, or the documents reported to either branch of the legislative assembly by any public officer of the state in pursuance of law, for which service they shall be allowed the compensation provided in section 34. The state auditor is hereby instructed to draw his warrants on the state treasurer in favor of each of said officers for such sum on proof being made that the record has been completed and the journals indexed as above required. [R. C. 1905, § 33; Pol. C. 1877, ch. 2, § 13; 1883, ch. 79, § 1; 1885, ch. 110, § 1; R. C. 1899, § 34.]

§ 41. Either house may remove its officers. It shall be competent at any time during a session of the legislative assembly for either house by a majority vote to remove from office any of the officers or employes provided for in this article; but in case of the removal of any officer by either house his place shall be filled by an election viva voce; and in all elections under the provisions of this article for officers of either house of the legislative assembly a majority of all votes cast shall be necessary to a choice. [R. C. 1905, § 34; Pol. C. 1877, ch. 2, § 17; R. C. 1899, § 35.]

§ 42. Legislative expense; appropriation. There is hereby appropriated out of any moneys in the state treasury as a standing and continuing appropriation, such sum or sums as may be necessary to pay the mileage and per diem of the members of the legislative assembly, the per diem of officers and employes of the legislative assembly, the expense of investigating committees when authorized by the legislative assembly, necessary postage, express, telegrams, telephone and such other miscellaneous expense as may be authorized by the legislative assembly, except printing. [1913, ch. 28, § 1; R. C. 1905, § 35; 1891, ch. 8, §§ 1, 2; R. C. 1899, § 36.]

Appropriation for expenses of legislative committee to attend public function. 1 L.R.A.(N.S.) 409.

§ 43. Supplies and postage. That the secretary of state be authorized and directed to furnish such supplies and postage to the legislative assembly upon the requisition of members of the senate and house, the chief clerk of the house and the secretary of the senate. The expense involved in the carrying out of this resolution is hereby authorized from the general fund of the state as a proper charge against legislative expense. [1911, ch. 84.]

This was a joint resolution, the preamble reading as follows: "Whereas, it is necessary that the members of the legislature be provided with stationery, desk supplies, postage and necessary articles involving the expenditure of funds, and Whereas, it is the custom of legislative bodies to provide for these necessary expenses in the transaction of the business of the legislative assembly."

Enforcing payment of alimony as imprisonment for debt. 34 L.R.A. 665; 17 L.R.A. (N.S.) 1140.

ARTICLE 3.—SENATORIAL AND REPRESENTATIVE DISTRICTS AND LEGISLATIVE APPORTIONMENT.

§ 44. State legislative apportionment. Until otherwise provided by law under the terms of the constitution, the legislative assembly of the state of North Dakota shall until the end of 1914 consist of fifty senators and one hundred and twelve representatives, and shall thereafter consist of forty-nine senators and one hundred and thirteen representatives, and the senatorial and representative districts of the state shall be formed, and the senators and representatives be apportioned as follows:

(1) The eastern part of the county of Pembina, now constituting the first legislative district, shall be added to and become a part of the second legislative district, and the said second legislative district is hereby renumbered and shall hereafter be, and become known as the first legislative district, and the term of the senator from the district so enlarged and renumbered shall continue for the period for which he was elected as senator of the second legislative district, and the said first legislative district shall in November, 1914, elect his successor for a term of but two years, and the said district consisting of the county of Pembina shall be entitled to one senator and three representatives.

(2) The second district shall consist of the city of Kenmare and that portion of Ward county situated and being in townships 154, 155 and 156 of ranges 85, 86 and 87; township 157 of ranges 84, 85, 86 and 87; township 158 of range 87; townships 159 and 160 of ranges 87, 88 and 89; and township 161 of range 88, and shall be entitled to one senator and one representative.

(3) The third district shall consist of the townships of Perth, Latona, Adams, Silvesta, Cleveland, Norton, Vesta, Tiber, Medford, Vernon, Golden, Lamp-ton, Eden, Rushford, Kensington, Dundee, Opps, Prairie Center, Fertile, City of Park River, village of Edinburg, village of Conway, village of Hoople, village of Pisek, village of Adams, Fairdale, Glenwood, Kinloss, Shepherd, Sauter and Dewey, in the county of Walsh, and be entitled to one senator and two representatives.

(4) The fourth district shall consist of the townships of Forest River, village of Forest River, Walsh Centre, Grafton, city of Grafton, Farmington, Ardock, village of Ardock, Harriston, Oakwood, Martin, Walshville, Pulaski, Acton, city of Minto, and St. Andrews, in the county of Walsh, and be entitled to one senator and one representative.

(5) The fifth district shall consist of the townships of Gilby, Johnstown, Strabane, Wheatfield, Hegton, Arvilla, Avon, Northwood, city of Northwood, Lind, Grace, Larimore, city of Larimore, Elm, Grove, Agnes, Inkster, city of Inkster, Elkmount, Plymouth, Niagara, Moraine, Lagan Centre, and Loretta, in the county of Grand Forks, and be entitled to one senator and one representative.

(6) The sixth district shall consist of the third, fourth, fifth and sixth wards of the city of Grand Forks, as now constituted, and the townships of

Faulkner, Harvey, Turtle River, Ferry, Rye, Blooming, Mekinock, Lakeville and Levant, in the county of Grand Forks, and be entitled to one senator and one representative.

(7) The seventh district shall consist of the first, second and seventh wards of the city of Grand Forks, as now constituted, and the townships of Grand Forks, Brenna, Oakville, Chester, Pleasant View, Fairfield, Allendale, Walle, Bentrü, Americus, Michigan, Union, Washington, and the first and second wards of the city of Reynolds, in the county of Grand Forks, and be entitled to one senator and one representative.

(8) The eighth district shall consist of the county of Traill, and be entitled to one senator and three representatives.

(9) The ninth district shall consist of the township of Fargo and the city of Fargo, in the county of Cass, and the fractional township number one hundred and thirty-nine, range forty-eight and be entitled to one senator and three representatives.

(10) The tenth district shall consist of the townships of Noble, Wiser, Harwood, Reed, Barnes, Stanley, Pleasant, Kenyon, Gardner, Berlin, Raymond, Mapleton, village of Mapleton, Warren, Normanina, Bell, Harmony, Durbin, Addison, Davenport, village of Davenport, Casselton, and the city of Casselton, in the county of Cass, and be entitled to one senator and two representatives.

(11) The eleventh district shall consist of the townships of Gunkle, Rush River, Hunter, Arthur, Amenina, Everest, Maple River, Leonard, Dows, Erie, Empire, Wheatland, Gill, Walburg, Watson, Page, Rich, Ayr, Buffalo, the village of Buffalo, Howes, Eldred, Highland, Rochester, Lake, Cornell, Tower, Hill, Clifton, and Pontiac, in the county of Cass, and be entitled to one senator and two representatives.

(12) The twelfth district shall consist of the townships of Eagle, Abercrombie, village of Abercrombie, Dwight, Ibsen, Centre, Mooreton, Brandenburg, village of Great Bend, Summit, Fairmount, village of Fairmount, Devillo, Lamars, Waldo, Greendale, and the city of Wahpeton, in the county of Richland, and be entitled to one senator and two representatives.

(13) The thirteenth district shall consist of the county of Sargent, and be entitled to one senator and two representatives.

(14) The fourteenth district shall consist of the county of Ransom, and be entitled to one senator and two representatives.

(15) The fifteenth district shall consist of the townships of Baldwin, Dazey, Laketown, Pierce, Uxbridge, Edna, Rogers, Grand Prairie, Minnie Lake, Anderson, Hobart, Potter, village of Dazey, village of Wimbledon, village of Sanborn, city of Valley City, township one hundred forty-three, range fifty-six; township one hundred forty-three, range fifty-eight; township one hundred forty-two, range fifty-eight; township one hundred forty-one, range fifty-eight; township one hundred forty-one, range fifty-nine; township one hundred forty-one, range sixty-one; and township one hundred forty, range fifty-eight, in the county of Barnes, and shall be entitled to one senator and one representative.

(16) The sixteenth district shall consist of the counties of Steele and Griggs, and be entitled to one senator and three representatives.

(17) The seventeenth district shall consist of the county of Nelson, and be entitled to one senator and two representatives.

(18) The eighteenth district shall until the end of 1914 consist of the townships of Cypress, Byron, Lynden, Dresden, Langdon, city of Langdon, South Dresden, Grey, Glenila, Huron, Moscow, Waterloo, Elgin, Perry, Billings, Nekoma, Storlie, Banner, Trier, Gordon, Henderson, Nekoma village, Sievert, Sarles village, Bruce, and Minto, in the county of Cavalier, and shall be entitled to one senator and one representative, and thereafter the district shall consist of all of the county of Cavalier, including that portion

comprised within and in this act numbered as the fiftieth district, and shall then be entitled to and shall in November, 1914, elect one senator and three representatives.

(19) The nineteenth district shall consist of the county of Rolette, and be entitled to one senator and two representatives.

(20) The twentieth district shall consist of the county of Benson, and be entitled to one senator and two representatives.

(21) The twenty-first district shall consist of the county of Ramsey, and be entitled to one senator and three representatives.

(22) The twenty-second district shall consist of the county of Towner, and be entitled to one senator and two representatives.

(23) The twenty-third district shall consist of the county of Stutsman, and shall be entitled to one senator and four representatives.

(24) The twenty-fourth district shall consist of the county of La Moure, and shall be entitled to one senator and two representatives.

(25) The twenty-fifth district shall consist of the county of Dickey, and be entitled to one senator and two representatives.

(26) The twenty-sixth district shall consist of the counties of Emmons and Kidder, and be entitled to one senator and four representatives.

(27) The twenty-seventh district shall consist of the county of Burleigh, and be entitled to one senator and three representatives.

(28) The twenty-eighth district shall consist of the county of Bottineau, and shall be entitled to one senator and four representatives.

(29) The twenty-ninth district shall consist of the city of Minot and that portion of Ward county situated and being in townships 151, 152 and 153 of ranges 81, 82, 83, 84, 85, 86 and 87; townships 154, 155 and 156 of ranges 81, 82, 83, and 84, and township 157 of ranges 81, 82 and 83, and shall be entitled to one senator and four representatives.

(30) The thirtieth district shall consist of the city of Mandan and all of that portion of the county of Morton situated and being in township 130 of ranges 85 and 86; township 131 of ranges 84, 85 and 86; township 132, ranges 83, 84, 85 and 86; township 133 of ranges 82, 83, 84, 85 and 86; township 134 of ranges 79, 80, 81, 82, 83, 84, 85 and 86; townships 135 and 136 of ranges 79, 80, 81, 82, 83, 84 and 85; township 137 of ranges 79, 80, 81, 82 and 83; township 138 of ranges 80, 81, 82 and 83; townships 139 and 140 of ranges 81, 82, 83, and be entitled to one senator and three representatives.

(31) The thirty-first district shall consist of the county of Stark, and be entitled to one senator and three representatives.

(32) The thirty-second district shall consist of the counties of Eddy and Foster, and be entitled to one senator and two representatives.

(33) The thirty-third district shall consist of the county of Wells, and be entitled to one senator and two representatives.

(34) The thirty-fourth district shall consist of the townships 155, 156, 157 and 158, north of range 75 west, and also townships 155, 156, 157, 158 and 159, north of ranges 76, 77, 78, 79 and 80, in the county of McHenry, and be entitled to one senator and one representative.

(35) The thirty-fifth district shall consist of the county of Sheridan and be entitled to one senator and one representative.

(36) The thirty-sixth district shall consist of the counties of McIntosh and Logan, and shall be entitled to one senator and three representatives.

(37) The thirty-seventh district shall consist of the townships of Walcott, Colfax, Barrie, Helendale, Sheyenne, Viking, Garbourg, Freeman, West End, Homestead, Grafton, Antelope, Danton, Garfield, Dexter, Wyndmere, village of Wyndmere, Balford, Liberty, Brightwood, town of Hankinson, Elma, Durr, city of Lidgerwood, Moran and Grant, in the county of Richland, and be entitled to one senator and two representatives.

(38) The thirty-eighth district shall consist of the townships of Weimer, Noltimeir, Alta, Oriska, Springvale, Cuba, Green, Herman, Mansfield, Meadowlake, Svea, Scandia, Norman, Binghampton, Raritan, Thordenskjold, Oakville, Spring Creek, Rosebud, Greenland, village of Litchville, village of Nome; township one hundred forty, range sixty-one; township one hundred thirty-nine, range fifty-eight; and township one hundred thirty-eight, range fifty-eight, in the county of Barnes, and be entitled to one senator and one representative.

(39) The thirty-ninth district shall consist of the counties of Billings and Bowman (including the counties of Slope and Golden Valley if created from the territory of Billings county) and shall be entitled to one senator and three representatives.

(40) The fortieth district shall consist of the counties of Burke and Divide, and be entitled to one senator and three representatives.

(41) The forty-first district shall consist of the counties of Williams and McKenzie, and shall be entitled to one senator and five representatives.

(42) The forty-second district shall consist of the county of Pierce, and shall be entitled to one senator and two representatives.

(43) The forty-third district shall consist of the county of Renville, and shall be entitled to one senator and one representative.

(44) The forty-fourth district shall consist of the county of Mountrail, and shall be entitled to one senator and two representatives.

(45) The forty-fifth district shall consist of townships 151, 152, 153 and 154, north of ranges 75, 76, 78, 79 and 80 in the county of McHenry, and shall be entitled to one senator and one representative.

(46) The forty-sixth district shall consist of the counties of McLean and Stevenson (if created from the territory of McLean county) and shall be entitled to one senator and three representatives.

(47) The forty-seventh district shall consist of that portion of Morton county situated and being in townships 130, 131, and 132, of ranges 87, 88, 89 and 90; townships 133 and 134 of ranges 87, 88, 89 and 90; townships 135 and 136 of ranges 86, 87, 88, 89 and 90; townships 137, 138, 139 and 140 of ranges 84, 85, 86, 87, 88, 89 and 90, and shall be entitled to one senator and two representatives.

(48) The forty-eighth district shall consist of the counties of Mercer, Oliver and Dunn, and be entitled to one senator and three representatives.

(49) The forty-ninth district shall consist of the counties of Adams and Hettinger, and be entitled to one senator and two representatives.

(50) The fiftieth district, consisting of the townships of Hope, Freemont, Olga, Loam, Hay, Harvey, Manilla, Easby, Alma, East Alma, Montrose, Oxford, Mount Carmel, village of Milton and Osnabrock village, in the county of Cavalier, is hereby re-numbered and shall hereafter be known as the fiftieth district, and shall until the end of 1914 be entitled to one senator and one representative, and the term of the senator elected for the district so re-numbered shall continue until the end of 1914, and with the expiration of 1914 the said fiftieth district shall cease to exist and the territory comprised in this district shall be added to and become a part of the eighteenth legislative district, which will then include all of the county of Cavalier. [1911, ch. 256; 1909, ch. 6; 1907, ch. 165; R. C. 1905, § 36; Const. § 214; 1890, ch. 1, § 1; R. C. 1899, § 37; 1901, ch. 143.]

Senate must be composed at all time of two classes of senators as nearly equal in number as practicable. State ex rel. Williams v. Meyer, 20 N. D. 628, 127 N. W. 834.

ARTICLE 4.—PRINTING AND DISTRIBUTION OF LAWS AND DOCUMENTS.

§ 45. Printing commission. The secretary of state, state treasurer and state auditor shall be ex officio commissioners of public printing during their terms of office respectively. [R. C. 1905, § 37; 1890, ch. 119, § 1; R. C. 1899, § 38.]

Power of board to make contract for public printing extending beyond its own term. 29 L.R.A. (N.S.) 655.

§ 46. Classes of printing. The printing of the state is hereby divided into five classes, the first and second to be let in one contract, and the third, fourth and fifth classes in separate contracts as follows:

1. The printing of bills, resolutions and other documents for the use of and incident to the legislative assembly shall constitute the first class.

2. The printing and binding of the journals of the senate and house of representatives shall constitute the second class.

3. The printing and binding of executive and public documents and reports shall constitute the third class.

4. The printing and binding of the volume of laws, with the joint resolutions, which shall be included in said volume, shall constitute the fourth class.

5. The printing of all blanks, circulars and other miscellaneous job work necessary for the use of the executive departments, other than such as are printed in pamphlet form and not entering into the volumes of executive documents, and all printing not included in the foregoing classes shall constitute the fifth class. [R. C. 1905, § 38; 1890, ch. 119, § 2; R. C. 1899, § 39.]

§ 47. Proposals for printing. The commissioners of public printing shall at least six months immediately preceding each regular session of the legislative assembly advertise for four weeks successively in two daily papers in the state, one of which shall be at the seat of government, inviting sealed proposals for doing all printing and binding required by the legislative assembly and by the several state departments for the two succeeding years commencing with the first day of January next following the date of the contract, and such bids shall specify at what per cent below the maximum rates severally prescribed in the next section the bidder will perform the work and furnish the stock. [R. C. 1905, § 39; 1890, ch. 119, § 3; R. C. 1899, § 40.]

As to reception of bids or changing the same, see section 99.

§ 48. Maximum prices for composition, press-work, binding and paper. The following prices are hereby established as the maximum prices for doing such work:

Composition: Sixty cents for each one thousand ems of plain composition; ninety cents for each one thousand ems of figure work; one dollar and twenty cents for each one thousand ems of rule and figure work.

Press-work: For the first one hundred impressions of form, one dollar; and twenty-five cents for each additional one hundred impressions or fraction thereof — one side of the sheet of flat cap, folio or medium, two pages on bill work, and eight pages of pamphlet or journal work, or fraction thereof, to constitute a form.

Folding and pasting on the first and fifth classes, for one fold, eight cents per hundred sheets; for two folds on one sheet, twelve cents per hundred sheets; for two folds and pasting and tipping, twenty-five cents per one hundred sheets, including trimming. On the second, third and fourth classes, when no charge is made for binding, ten cents per one hundred of eight pages or fraction thereof.

For stitching for all classes, including folding, collating, stabbing, stitching and trimming per one hundred copies, for eight pages or less, thirty-five cents per one hundred copies, and for each additional signature of eight pages, ten cents per one hundred copies.

For binding for all classes, including folding, collating, stabbing, stitching and pamphlet covering for books of eight pages or less, per one hundred copies, forty cents; for each additional signature of eight pages, ten cents per one hundred copies; if sewed instead of stitched, twelve cents per one hundred copies for each additional signature.

For binding: Book-work in tar board covered with paper, leather backs, lettered on back with ink, in addition to the pamphlet binding, thirty-five cents per volume.

For binding book-work in cloth, gilt lettering on back, in addition to pamphlet binding, thirty-five cents per volume.

For binding in full law sheep, and lettering, in addition to the pamphlet binding, seventy-five cents per volume.

The printing under the fifth class, which includes miscellaneous job work for the executive departments and other miscellaneous printing not covered by this article shall be under the control of the commissioners of printing, who shall secure the same at the lowest rates and upon the most advantageous terms.

For printing blank books, either ruled and printed or ruled without printing, the paper used to be sized and calendered, and of standard brands:

Cap paper, eighteen pounds to the ream, plain ruled, half-bound, one dollar and twenty-five cents per quire; ditto, printed heads, one dollar and seventy-five cents per quire; ditto, plain ruled, extra full bound, two dollars per quire; ditto, printed heads, two dollars and fifty cents per quire.

Demy paper, twenty-eight pounds to the ream, ruled, half-bound, one dollar and fifty cents per quire; ditto, printed heads, two dollars per quire; ditto, plain ruled, extra full bound, two dollars and fifty cents per quire; ditto, printed heads, three dollars per quire.

Medium paper, thirty-six pounds to the ream, plain ruled, half-bound, two dollars per quire; ditto, printed heads, two dollars and fifty cents per quire; ditto, plain ruled, extra full bound, three dollars per quire; ditto, printed heads, three dollars and fifty cents per quire.

Medium paper, forty pounds to the ream, plain ruled, extra full bound, four dollars per quire; ditto, printed heads, four dollars and fifty cents per quire.

Super-royal paper, fifty-four pounds to the ream, plain ruled, extra full bound, four dollars and fifty cents per quire; ditto, printed heads, five dollars per quire. [R. C. 1905, § 40; 1890, ch. 119, § 4; R. C. 1899, § 41.]

§ 49. Paper, quality, price. All paper used for printing and binding of whatever nature shall be standard weights and grades and approved by the commissioners of printing. The maximum price of sized and calendered book paper shall be ten cents per pound; of linen ledger paper, twenty-five cents per pound; common flat paper, eighteen cents per pound; best bond paper, twenty-five cents per pound. [R. C. 1905, § 41; 1890, ch. 119, § 4; R. C. 1899, § 42.]

§ 50. Proposals, how made. Bond required. Each proposal shall be in writing sealed and addressed to the secretary of state, and shall be accompanied by a bond, executed in due form by the bidders, with at least two good and sufficient sureties, satisfactory to the commissioners, in the penal sum of four thousand dollars, conditioned for the faithful performance pursuant to this article of such class or classes of the state printing as may be awarded to him, and for the payment, as liquidated damages by such bidder to the state of any excess of cost over the bid of such bidder, which the state may be obliged to pay for such work by reason of the failure of such bidder to complete his contract. No bid unaccompanied by such bond shall be considered, and the right is reserved to the commissioners to reject any bid made by any other than regularly established and thoroughly competent printers, and shall also have the right to reject any or all bids if in their judgment the best interests of the state would be subserved thereby. [R. C. 1905, § 42; 1890, ch. 119, § 5; R. C. 1899, § 43.]

As to requirement of a bond, see also section 96.

Rights under statute or ordinance requiring award to lowest bidder. 26 L.R.A. 707.

Discretion in choosing between bidders for public contract. 38 L.R.A.(N.S.) 653.

Elements to be considered in determining responsibility of bidder for public contract.

38 L.R.A.(N.S.) 672.

Remedy of lowest bidder for refusal of authorities to award contract to him. 30 L.R.A.(N.S.) 126.

§ 51. Opening of bids. Awards. The commissioners, or any two of them, shall within two days after the expiration of the term for receiving proposals as aforesaid, and not later than the first Tuesday after the first Monday in August proceed to open in public all such proposals received by them and to award the contract for each class of printing to the lowest bidder therefor, subject to the reservations of the preceding section; provided, that nothing herein contained shall be construed so as to prevent the same person from becoming contractor for two or more classes of printing, if he shall be the lowest bidder therefor. If two or more persons bid the same, and the lowest price for any class, or classes of printing, the commissioners shall award the contract to such one or more of them as in their opinion will best subserve the interests of the state. [R. C. 1905, § 43; 1890, ch. 119, § 6; R. C. 1899, § 44.]

As to reception of bids or changing the same, see section 99.

§ 52. Bills to be printed; how; calendar. Work of the first class shall be printed in first-class calendered paper, from small pica type, with single space between each line, the printed pages to be thirty-three ems pica wide and fifty-five ems pica long; five hundred copies of each bill or resolution shall be printed unless otherwise ordered by resolution of either branch of the legislative assembly. Copies of every bill or resolution shall be furnished for the files of each member of the legislative assembly, and may be procured by any person by applying either in person or in writing to the bill clerk of the branch of the legislative assembly in which such bill or resolution originated. A calendar of bills and resolutions introduced and referred shall be printed daily for the use of the members of the legislative assembly and for distribution. Such calendar shall be printed on sized and calendered paper, set solid in eight point type, two columns thirteen ems wide, in pages of sufficient length to contain a brief synopsis of each bill or resolution introduced and referred on that day, the number of each bill or resolution, the name of the person introducing the same, the name of the committee to whom referred, the number of each bill that day passing either branch of the legislative assembly and messaged to the other, and the statement of the final disposition of any bill or resolution on that day made. The synopsis of bills and resolutions to be so printed in such calendar, and such other matter to be printed therein as hereinbefore provided, shall be edited by a clerk to be employed for such purpose by the branch of the legislative assembly in which such bill or resolution is introduced or in which the action respecting such measure is had. Such synopsis or statement of any bill or resolution, as published in such calendar, shall not exceed ten printed lines in length. Such daily calendar shall be distributed and mailed in such number and manner as by resolution of either branch of the legislative assembly determined. [1913, ch. 202, § 1; R. C. 1905, § 44; 1890, ch. 119, § 7; R. C. 1899, § 45.]

§ 53. Journals to be printed; how. The journals of the legislative assembly shall be printed on first-class sized and calendered paper of not less than forty pounds to the ream, size 25 x 38, eight point type set solid, in lines of twenty-one ems pica long, and there shall be no rules or slugs set between sub-headings or paragraphs; the printed page to be forty-three ems pica in length. The journals shall be delivered daily for the use of the members of the legislative assembly, and nothing shall be charged for composition or correction, or reimposition of the same matter for the bound journals, nor shall extra charge for composition be made when extra or additional copies are ordered printed. Copies of the journal of any day may be procured by application made personally or in writing to the bill clerk of either branch of the legislative assembly. One thousand copies only of the journal of each branch of the legislative assembly shall be printed, unless otherwise ordered by resolution of either branch of such legislative

assembly. [1913, ch. 202, § 2; R. C. 1905, § 45; 1890, ch. 119, § 8; R. C. 1899, § 46.]

§ 54. Executive documents, how printed. The pamphlets and volumes of executive or public documents and reports shall be printed on first-class sized and calendered paper of not less than forty pounds to the ream, size 25 x 38, from long primer type, set solid; provided, that extracts and tabular work may be set in brevier or smaller type, the printed pages to be twenty-five ems pica in width and forty-three ems pica in length. The reports of the officers of the various departments, required to be made out for the use of the legislative assembly and for the information of the public, shall be printed and bound as elsewhere in this article provided, and the various reports, communications and other documents shall be reimposed and form the volumes of executive and public documents. There shall be no charge for the composition of matter used in the volumes of executive documents or as separate pamphlets, or as parts of reports that are to be used, or have been previously used and paid for in the pamphlet form; provided, that the order for the same is given before the forms of type are distributed; but the maximum rate of one dollar for reimposition of each form of eight pages may be allowed. The volumes of the executive documents shall be paged consecutively, and the reports therein made up in as close and compact order as is consistent with good workmanship, without intervention of unnecessary blanks or separate title or half title pages, and at the conclusion of each volume there shall be an index referring to the particular page at which each separate document commences. The commissioners shall determine what reports and documents shall be printed in pamphlet form, and the number of copies of each report or document when not specified by law. There shall be printed and bound three hundred copies of each volume of the executive documents. [R. C. 1905, § 46; 1890, ch. 119, § 9; R. C. 1899, § 47.]

§ 55. Laws, how printed. The laws specified in the fourth class shall be printed in substantially the same form as to type, paper and form, as is prescribed for the printing of public documents in the preceding section. [R. C. 1905, § 47; 1890, ch. 119, § 10; R. C. 1899, § 48.]

§ 56. Expert, duties and compensation of. The commissioners of public printing may employ an expert, familiar with all classes of printing, the material used therein, measuring the work done and computing the price to be paid therefor, for such period of time each year as may be necessary for the performance of the duties devolving upon him, whose duty it shall be to confer and advise with such commissioners relative to advertising and letting contracts, to examine all work and supplies for the purpose of ascertaining whether the same conforms to the contract, to examine all accounts for public printing for the purpose of determining whether the charges contained in such accounts are correct, and to report the result of his examination to the commissioners and to perform such other duties as may be required of him by the commissioners. He shall receive the sum of six dollars per day for each day in which he is engaged in such employment, to be audited by the auditor upon the certificate of the commissioners and paid out of the state treasury as in other cases. [R. C. 1905, § 48; R. C. 1895, § 49.]

§ 57. Printing, how done. All printing shall be done by established printing houses in this state, which shall have been doing business in the state not less than one year, and all work shall be executed in a style consistent with good workmanship and with due reference to economy. [R. C. 1905, § 49; 1890, ch. 119, § 11; R. C. 1899, § 50.]

Requiring printing to be done within state not unconstitutional. *Tribune Co. v. Barnes*, 7 N. D. 591, 75 N. W. 904.

§ 58. Duty of commissioners in case of failure on contract. If from death or any unforeseen cause there shall be a failure on the part of any successful bidder to execute his contract, the commissioners, or a majority

of them, may enter into a contract with the next lowest bidder. If any contractor after commencing upon his contract fails to execute the work embraced therein with reasonable expedition, and in a suitable manner, the commissioners may notify him for reasons they may specify that his contract is cancelled, and they may then contract with some other person to do the work at the lowest practicable rate; provided, that the commissioners may give written notice to any contractor who is delaying the execution of the work in a manner they may deem unreasonable, that the same must be completed within a specified time, and for failure to complete the same within the time specified, that for every twenty-four hours delay thereafter the contractor shall suffer a penalty of one-quarter per cent to be deducted from the net amount of the printing so delayed. [R. C. 1905, § 50; 1890, ch. 119, § 12; R. C. 1899, § 51.]

§ 59. Number of volumes to be printed and style of binding. Five hundred volumes of the laws required by this article to be printed shall be bound in full law sheep, and fifteen hundred copies shall be half bound. The volumes of executive documents provided for in section 54 of this article shall be bound in half binding. Two hundred copies of the biennial reports of the state auditor, state treasurer, commissioner of insurance and superintendent of public instruction shall be bound in cloth, the remainder authorized by law, to be bound in pamphlet form, unless otherwise ordered by the commissioners of printing. [R. C. 1905, § 51; 1890, ch. 119, § 13; R. C. 1899, § 52.]

§ 60. Unnecessary delay, how extension granted. All contractors under the provisions of this article shall promptly and without unnecessary delay execute all orders issued to them by the legislative assembly, or either branch thereof, or by the commissioners of printing on behalf of the executive officers of the state; and the laws and volumes of public documents shall be delivered to the secretary of state within seventy days, and the journals of the two houses of the legislative assembly within sixty days after the index shall have been made out and delivered to the contractor; provided, that the commissioners may on good cause shown extend the time, not exceeding twenty days, for the execution of his contract. [R. C. 1905, § 52; 1890, ch. 119, § 14; R. C. 1899, § 53.]

§ 61. Commissioners may reject inferior printing and work. The commissioners may reject any and all printing that is not done in a workman-like manner, or with good material and with ordinary promptness; and may require contractors to present specimen pages of the type they propose to use, and may reject the same, in their discretion, and require new material, and their ruling and determination shall be final and conclusive on the contractor. Only good, clean and satisfactory work shall be accepted, and it must be done within a reasonable time. To accomplish this end the commissioners may withdraw the work from any contractor for unreasonable delay, or for neglect or refusal to use new material, if so required, or for neglect or refusal to furnish good, clean, or satisfactory work, and may, by their agent or otherwise, go into the open market and contract for and have the same done; and if by reason thereof the cost of having any such work done is greater than the original contract price, the excess shall be charged to and collected from the original contractor, or shall be made payable by and collected from the bondsmen of such original contractor; and the action of the commissioners in this matter shall be final and conclusive upon such contractor and his sureties. [R. C. 1905, § 53; 1890, ch. 119, § 15; R. C. 1895, § 54.]

§ 62. Legislative journals, who keep and furnish copy. The secretary of the senate and the chief clerk of the house shall keep a journal of the proceedings of their respective houses, and furnish a copy immediately upon each daily adjournment to the contractor for printing the same, who shall print and deliver the same at the commencement of the next day's session for the use

of the members of the legislative assembly — the number of copies of each daily journal to be determined by resolution of each branch of the legislative assembly. After being read in the house to which the journals respectively belong, and examined and compared with the minutes of the record of bill clerk, or the clerk having charge of the record of bills, memorials and joint resolutions, and in the presence and with the sanction of the house, corrected as found and declared to be correct, the proceedings of each day shall be attested by the secretary and chief clerk, and immediately thereafter delivered to the printer of the journals, who shall make the authorized corrections, if any, and print the sheets for the bound volumes of the journal.

After the journals shall have been printed, corrected, revised and properly indexed two bound copies of each, which shall be in half morocco, shall be filed and deposited with the secretary of state, who shall carefully preserve the same, and shall attach thereto his certificate showing the date of such delivery to him and attesting that such journals are the identical and official journals delivered to him by the secretary of the senate and clerk of the house of representatives, and such records shall be and constitute the true and authentic journal. [1913, ch. 201, § 1; R. C. 1905, § 54; 1890, ch. 119, § 16; 1899, § 55.]

Enrolled statutes not impeached by journals. *Power v. Kitching*, 10 N. D. 254, 86 N. W. 737; *Narregand v. Brown County*, 14 S. D. 357, 85 N. W. 602.

§ 63. Copies of laws and journals to be furnished printer, by whom.

The secretary of state shall furnish a true and accurate copy of the laws as they may be demanded by the printer thereof, and the secretary of the senate and the chief clerk of the house shall each furnish for the printer, who is bound by his contract to print the same, copies of the journal, bills, reports and other papers and documents without unnecessary delay and no contractor shall be accountable for any delay occasioned by the want of such copy. [R. C. 1905, § 55; 1890, ch. 119, § 17; R. C. 1899, § 56.]

§ 64. Authentication of laws, memorials and resolutions. All laws printed or published by authority of this state shall be printed or published without any certificates or additions to the same, except the word "approved" and the date of such approval, and in each volume of the session laws hereafter published there shall be a general certificate made by the secretary of state to the effect that all laws, memorials and resolutions contained therein have been compared by him with the originals thereof, in his office, and that they are correct copies. [R. C. 1905, § 56; 1890, ch. 119, § 18; R. C. 1899, § 57.]

§ 65. Governor's messages, how printed and number. All regular messages from the governor and all inaugural messages of the governor-elect shall be printed, in pamphlet form and there shall be printed in such form for the governor's use five hundred copies, and for the use of the legislative assembly two thousand copies without any order by either house for the printing thereof. [R. C. 1905, § 57; 1890, ch. 119, § 19; R. C. 1899, § 58.]

§ 66. Biennial and special reports, how printed. There shall be printed one thousand copies of the biennial reports of the state auditor, commissioner of agriculture and labor, two thousand copies of the report of the superintendent of public instruction, six hundred copies of the annual report of the commissioner of insurance, five hundred copies of the annual report of the state examiner, one thousand copies of the annual report of the state treasurer; and five hundred copies of the biennial and annual reports of other state officers and public boards required to make reports, except where otherwise specified by law; provided, that on request of the commissioner of agriculture and labor, such request to be approved by the governor, there shall be printed separately in pamphlet form such parts of the biennial report of said commissioner of agriculture and labor, or such special papers or articles in connection therewith, and such crop reports or other papers or pamphlets from time to time as such commissioner and the governor may jointly recom-

mend for such separate publication; and the number of copies to be printed of each of said separate publications, crop reports or other papers or pamphlets shall be determined by the commissioner of agriculture and labor and the governor jointly. [R. C. 1905, § 58; 1890, ch. 119, § 20; 1893, ch. 95, § 9; 1897, ch. 75; R. C. 1899, § 59; 1903, chs. 185, 187.]

§ 67. Journals and laws, number printed. There shall be printed one hundred and fifty copies of each journal for the daily use of the legislative assembly and three hundred copies of the bound edition which shall be in half binding; provided, that the legislative assembly may by resolution increase such number; two thousand copies of the session laws and joint resolutions shall be printed in one volume and bound in accordance with the provisions of this article. [R. C. 1905, § 59; 1889, ch. 124; R. C. 1899, § 60.]

§ 68. Authority to increase number of laws, etc. The commissioners of public printing shall have authority to increase the number of session laws authorized by law to be printed to not exceeding three thousand copies, which shall be disposed of by the secretary of state according to law. The commissioners shall also have authority to increase the number of the bound editions of the journals of the legislative assembly to five hundred. The commissioners may also authorize the printing of an extra number of such statistical, historical or immigration documents, maps and pamphlets as may be deemed of value to the state, when the same shall have first been approved by the governor. [R. C. 1905, § 60; 1899, ch. 124; R. C. 1899, § 60; 1903, ch. 33.]

§ 69. Laws, how printed. In addition to the official and authenticated edition of the session laws, to be published, the secretary of state shall cause to be printed a popular edition of the session laws of each session in the following form: Type to be of eight point size, set solid, thirteen ems pica wide, two columns to the page of forty-two ems pica in length, with appropriate headings; paper to be of number one grade print paper of the basis of 24 x 36 inches, thirty-five pounds to the ream; the printed page to be 6 x 9 inches; binding to be wire stitching and the cover to be of paper, of the grade and weight now used and specified for the departmental reports, and there shall be three thousand copies printed. [1913, ch. 198, § 1.]

§ 70. Distribution. The secretary of state is hereby required to furnish copies of the unauthenticated edition of the session laws at the actual cost of the same, plus ten per cent and postage, and it shall be the duty of the county auditor of each county to receive applications for copies of said popular edition and forward same together with the purchase price to the office of the secretary of state. [1913, ch. 198, § 2.]

§ 71. Authentication, not required. It is hereby expressly provided that the secretary of state shall not be required to procure a copyright nor authenticate this edition, but shall cause the same to be published and distributed with due care and ready for distribution on or before the fifteenth day of April next following the session of the legislature. [1913, ch. 198, § 3.]

§ 72. Commissioners have charge of all printing paid for by the state. The commissioners shall have charge of all the printing and binding required to be done for the several departments of the government; receive the proper orders for the same, and have the same properly executed according to law; keep a record of all work ordered from the several contractors under the law, and of all printing and binding ordered by the legislative assembly; examine and supervise the work of printing in progress, and see that it is executed with due economy to the state; make or authorize to be made the necessary indices for the volumes of the executive documents and reports; examine all accounts for printing and binding that may be presented, and adjust the same according to the terms of the contracts and in accordance with law and such rulings as may be determined by the commissioners. No printing required by any state officer as provided under this article shall be paid for

unless the same shall have first been authorized by the legislative assembly or by the commissioners of printing. [R. C. 1905, § 61; 1890, ch. 119, § 22; R. C. 1895, § 61.]

§ 73. Copies of documents to accompany bills for printing. Every contractor for public printing shall file and preserve one copy of each document or other matter printed by him for the state, which he shall deliver to the commissioners of printing at the same time the completed work is delivered together with a memorandum bill of the same. In the account submitted for the payment of the work the contractor shall at the same time submit his order for the work and state specifically the nature of the work performed, the number of copies, the number of ems of composition, the extra charge, if any, for rule or figure and rule and figure work; the number of impressions of press work, the cost of folding and binding and any other charges for which he claims payment; and if there is a charge for any alterations or changes from copy, the proofs of original composition and changes must be presented. [R. C. 1905, § 62; 1890, ch. 119, § 23; R. C. 1899, § 62.]

§ 74. Printing accounts, how certified and paid. When the account of any contractor under this article shall have been adjusted, the commissioners shall certify the same to the state auditor, who on receipt thereof shall draw his warrant upon the state treasurer for the amount thereof; provided, that in the current execution of such contracts the commissioners are empowered, in their discretion, to deliver to such contractor a certificate for an amount not exceeding seventy-five per cent of completed work upon the contractor filing with the commissioners a statement of the amount of work done, for which amount the state auditor shall give his warrant upon the state treasurer to such contractor. [R. C. 1905, § 63; 1890, ch. 119, § 24; R. C. 1899, § 63.]

Claim against state for public printing. 42 L.R.A. 59.

§ 75. Distribution of journals and executive documents. Each member and officer of the legislative assembly, for himself and each clerk of a court of record, and each county auditor, for the use of their offices respectively, is entitled to one copy of each journal, and the volumes of the executive documents. Each university, college, academy or other literary institution within the state is entitled to one copy of the general laws passed at each session of the legislative assembly and also to the volumes of executive documents. [R. C. 1905, § 64; 1890, ch. 119, § 25; R. C. 1899, § 64.]

See note to section 76.

§ 76. Laws, who entitled to. Penalty for refusing to turn over same by officers to successors. Each member and officer of the legislative assembly, for himself, shall have a copy of the laws; each judge and clerk of a court of record; each justice of the peace, each auditor or clerk in any city or incorporated village; each county auditor, treasurer, sheriff, register of deeds and state's attorney is entitled to receive one copy of the general laws passed at each session of the legislative assembly for his use while filling such offices, but every such officer, except members and officers of the legislative assembly, shall deliver the same to his successor in office for his use while filling such office; and if any person refuses on demand, to make such delivery, he shall forfeit and pay not less than five nor more than fifteen dollars to be recovered in a civil action brought by the successor in office of any such person in the name of the state for the use of the county where such action is brought before any justice of the peace in such county. [R. C. 1905, § 65; 1890, ch. 119, § 26; R. C. 1895, § 65.]

This section, and sections 75, 77-80, in so far as they provide for distribution of the "laws," are probably superseded by Laws 1913, ch. 199, entitled "An act to regulate the distribution of the laws and the compilations and codifications thereof," the several sections of which constitute sections 81-89 herein, and repealing in its final section "all acts or parts of acts in conflict herewith." But no mention of "journals" or "documents" is made in that act of 1913.

§ 77. Secretary of state to furnish laws, journals and documents to state officers, libraries, etc. The secretary of state shall deliver to the governor, state auditor, state treasurer, attorney-general, adjutant-general, railroad commissioners, commissioner of insurance, commissioner of agriculture and labor, clerk of the supreme court, supreme court reporter, superintendent of public instruction, the superintendent of every state benevolent society, each public institution, United States circuit judge, United States district judge, clerk of each of the United States courts, United States attorney for North Dakota and the United States marshal, each, one copy of the laws and of the journals and documents. He shall supply each state and each of the departments and territories of the United States and the general government of the United States with a copy. He shall furnish the state library with ten copies of the general and special laws, the journals and the volumes of executive documents. [R. C. 1905, § 66; 1890, ch. 119, § 27; R. C. 1895, § 66.]

See section 83 and note to section 76. And as to copies for "each state" see section 89.

§ 78. Secretary of state to forward laws, journals and documents. The secretary of state shall as soon as the laws, journals and executive documents of each session are printed and ready for distribution box up the number of each to which each county is entitled and forward the same by public conveyance to the county auditor of the county. If any county seat is so situated that the laws, journals and documents cannot be forwarded by public conveyance, they shall be forwarded to a secure place as near such county seat as practicable, and the secretary of state shall notify the county auditor in writing of the delivery of the same at such points, and the county auditor shall contract with some person to convey the same to the county seat. [R. C. 1905, § 67; 1890, ch. 119, § 28; R. C. 1899, § 67.]

See note to section 76, and compare the provisions of section 86.

§ 79. Document fund, appropriation for. For the purpose of defraying the expenses incident to the provisions of the four preceding sections there is hereby annually appropriated the sum of two hundred dollars to be designated "Document Fund," upon which the secretary of state can draw at such times and for such amounts as may be necessary in the discharge of the duties imposed by such sections. [R. C. 1905, § 68; 1890, ch. 119, § 29; R. C. 1899, § 68.]

§ 80. County auditors to deliver documents, etc., when. The county auditor shall deliver the laws, journals and documents to such persons and institutions as are entitled to receive them, when requested so to do, and shall take receipts therefor and file the same in his office subject to inspection. [R. C. 1905, § 69; 1890, ch. 119, § 30; R. C. 1899, § 69.]

See note to section 76, and compare the provisions of section 86.

§ 81. Officers entitled to receive. Each member and officer of the legislative assembly, the governor, state auditor, state treasurer, attorney-general, assistant attorney-general, adjutant-general, railroad commissioners, commissioner of agriculture and labor, commissioner of insurance, judge of the supreme court, judge of the district court, clerk of the supreme court, supreme court reporter, superintendent of public instruction, superintendent of every state benevolent society, superintendent of each penal institution, member of the board of control and tax commissioner shall be entitled to receive from the state a copy of any publication of the laws of the state and of any compilation or codification thereof published under authority of the state. [1913, ch. 199, § 1.]

See section 76 and note thereto.

§ 82. Other distribution. In addition to the persons mentioned in section 1 hereof, all such laws or compilations or codifications shall be distributed as follows: To the supreme court law library, five copies; to the law library of the state university, ten copies. [1913, ch. 199, § 2.]

See note to section 76.

§ 83. How distributed. The secretary of state shall, as soon as conveniently can be done after the publication of any such laws, compilations or codifications, and the procuring therefor as provided by law, cause the copies thereof as hereinbefore provided to be furnished to the officers and libraries as mentioned, and upon the opening of the session of the legislature, shall furnish them to the members and officers thereof, and he shall, in addition, furnish to the officers of the legislature such additional copies as shall be necessary for the use of legislative committees as indicated by a resolution of the respective branches thereof. [1913, ch. 199, § 3.]

See section 77 and note to section 76.

§ 84. To remain property of the state. Every copy of laws, compilations or codifications thereof furnished to any officer or member of the legislature, its officers or committees, shall be and remain the property of the state, and must be surrendered to the secretary of state or the successor in office of any officer at the end of his term, and by members of the legislature ten days before the end of his term. [1913, ch. 199, § 4.]

See section 76 and note thereto.

§ 85. Distinctive color and wording. All books distributed hereunder shall be bound in some distinctive and unusual color, and shall be plainly marked in large letters on the outside covers with the words, "Property of the state of North Dakota." [1913, ch. 199, § 5.]

§ 86. Distribution by municipalities. The county commissioners of each county shall, immediately after the publication of any such laws, codes or compilations, cause a copy thereof to be furnished to the treasurer, auditor, sheriff, clerk of court, register of deeds, coroner and public administrator, county judge, superintendent of schools, and board of commissioners, and one copy for use in the district court of such county. [1913, ch. 199, § 6.]

Compare section 78 and see note to section 76.

§ 87. Distribution by other municipalities. It shall be the duty of the fiscal agents of each other municipality in the state, including cities, towns, villages and townships, immediately after such publication, to provide for the use of the officers of such municipality at least one copy of all such publications and as many more as shall reasonably be needed for the use of such officers, as determined by such agents. [1913, ch. 199, § 7.]

See section 76 and note thereto.

§ 88. Publications to remain property of municipalities. All such publications distributed by the counties and such other municipalities shall forever remain the property thereof, and shall be delivered by the respective officers, at the end of their terms, to their successors. [1913, ch. 199, § 8.]

§ 89. Exchange of laws with other states. The chief justice of the supreme court, the attorney-general and the governor shall constitute a board to control other distribution of the publications aforesaid, and whenever it shall seem to such board desirable so to do, it may authorize and direct the secretary of state to distribute copies thereof, in exchange for like publications of other states. [1913, ch. 199, § 9.]

Compare section 77 and see note to section 76.

§ 90. Documents officially printed, when. Faith and credit given. All laws, journals and documents printed and published by any contractor under the provisions of this article, and duly certified by the secretary of state as provided herein, shall be deemed to be officially printed and published, and full faith and credit shall be given to them as such. [R. C. 1905, § 70; 1890, ch. 119, § 31; R. C. 1899, § 70.]

§ 91. Laws, journals and documents preserved, where. All copies of the journals, executive documents and laws which are not distributed under the provisions of this article shall be preserved in the office of the secretary of state, subject to distribution by law. [R. C. 1905, § 71; 1890, ch. 119, § 32; R. C. 1899, § 71.]

§ 92. Blue books to be printed for distribution to schools. The secretary of state shall cause to be printed a sufficient number of blue books for free distribution among the district schools of the state in the manner herein provided. It shall be the duty of the county superintendent of schools to certify to the secretary of state on the first day of March of each year in which the legislature is in session, or as soon thereafter as possible, the total number of district schools in his county, in the libraries of which one copy of the blue book shall be placed. [1911, ch. 60, §§ 1, 2.]

§ 93. Procedure for distribution of blue books. Upon receiving the certificate from the county superintendent provided in the preceding section the secretary of state shall consign a number of blue books to the county superintendent which shall be equal to the number of district schools certified as provided herein. The county superintendent shall upon receipt of such consignment distribute the same among district schools of his county, and it shall be his duty to see that each and every school within his jurisdiction is provided with a blue book as provided in this section and section 92. [1911, ch. 60, § 3.]

§ 94. Official reports to be made, when. All county, township, city and village officers, and all officers and boards of state institutions and all officers connected with the public works of the state, and all corporations, except such as are required to make their reports at some other specified time, which are required by law to make annual or biennial reports for any purpose to any state officer, shall make out and transmit the same on or before the fifteenth day of August of each year to the proper officer except where otherwise specifically provided by law. For the purpose of making out such reports the year shall begin on the first day of July of each year and end on the last day of June of the succeeding year. [R. C. 1905, § 72; 1890, ch. 119, § 33; R. C. 1895, § 72.]

As to the time of making reports and the contents thereof, see sections 95, 98, 633.

§ 95. Reports to governor and legislative assembly to be made, how, when. All officers, departments, boards, commissions and state institutions which are now or hereafter may be by law required to make and transmit reports annually, or semiannually, to the governor and the legislative assembly of this state, shall deliver typewritten copies in triplicate of such reports to the governor not later than September first of the year in which such reports are required to be made, and such reports shall be made to include the 30th day of June next preceding. The governor, upon receiving such reports, shall deliver the same to the commissioners of public printing. The commissioners of public printing shall, not later than October 15th of the year in which such reports are delivered to them, deliver the same revised and condensed as hereinafter provided to the person or persons having contracts with the state for the printing and publishing of the same. The governor shall lay such printed reports before the legislative assembly at its next session, together with his biennial message, provided that the governor and the commissioners of public printing shall revise and condense all such reports so as to eliminate from any such report when published, any and all matter the elimination of which will not seriously detract from the usefulness of such reports, and they shall also in the interest of strict economy restrict the number of such reports to be printed, any provision of law relating to the number of such reports to be printed to the contrary notwithstanding. The governor shall retain one copy of each report filed with him, shall deliver one copy to the commissioners of printing for their files, and one copy shall be filed by him with the secretary of state. [1913, ch. 246, § 1; R. C. 1905, § 73; 1890, ch. 119, § 34; R. C. 1889, § 73; 1901, ch. 139, § 1.]

The word "semiannually" in the first sentence is probably used by mistake for "biennially."

As to the contents of reports of heads of state institutions and state boards, see section 633.

§ 96. Bond. Before any contract for the printing of the reports of officers, departments, boards, commissions and state institutions contemplated in this act are let and entered into with any person or persons, the governor and the commissioners of public printing shall require such person or persons to furnish a bond to the state of North Dakota, in an amount which in their judgment shall seem reasonable and sufficient to protect the interests of the state, such bond to be conditioned upon the faithful performance of all the terms of such contract, and it shall be stipulated in each and every one of such contracts for the printing of the reports contemplated in this act, that time of delivery of the printed report shall be the essence thereof. All contracts with any person or persons for the printing of the reports herein referred to shall contain a stipulation that such reports shall be printed and delivered to the commissioners of public printing not later than the 20th day of December following the date on which such reports were delivered to such person or persons to be printed as provided by law. [1913, ch. 246, § 2.]

As to the requirement of a bond, see also section 50. The words "this act" include sections 95, 97, and 98.

§ 97. Penalty. Any officer, department, board, commission or state institution which is now, or hereafter may be required to make a report annually or biennially to the governor and the legislative assembly of this state, failing to make such report at the time prescribed in this act shall be fined five dollars for each and every day such report shall be delinquent, and in case such report is required to be made by a board or by a commission, the fine imposed herein shall be paid by the secretary thereof, and in case the report herein required to be made shall be that of the department of the state government or of a state institution, the executive head of such department or state institution shall pay such fine. In case the commissioners of public printing omit or neglect to transmit the reports contemplated in this act to the person or persons having contract with the state for printing the same on or before the 15th day of October of the year in which such reports are made to the governor and the legislative assembly, then each of the said commissioners of public printing shall forfeit to the state the sum of five dollars for each and every day during which they shall hold such reports after the 15th day of October as provided herein. [1913, ch. 246, § 3.]

The words "this act" include sections 95, 96, and 98.

§ 98. Repeal. All provisions of law prescribing the time when the report of officers, departments, boards, commissions and state institutions required to be made to the governor and the legislative assembly shall be made, which are in conflict with the provisions of this act, relative to the time of making such reports, are hereby repealed, and all reports shall be made at the time prescribed herein. [1913, ch. 246, § 4.]

The words "this act" refer to sections 95, 96, and 97.

§ 99. Bids received, when. No bids shall be received after the hour specified in the published notice, and no bid shall be changed after the same is received. [R. C. 1905, § 74; R. C. 1895, § 74.]

As to bids for printing and binding, see sections 47, 50 and 51.

§ 100. Penalty for violation. Any member of such board who violates any of the provisions of this article is guilty of a misdemeanor and upon conviction thereof is punishable by a fine of not less than one thousand nor more than five thousand dollars. [R. C. 1905, § 75; R. C. 1895, § 75.]

"Such board" refers to the boards mentioned in sections 94, 95.

§ 101. Printing accounts kept by secretary of state. Appropriation. All accounts for printing and binding, required for the legislative assembly, or any officer or department of the state government, shall be certified to according to law and before payment, be approved by the commissioners of public printing. It shall be the duty of the secretary of state to keep a record of all proceedings of the commissioners of public printing, and also a record of all public printing, which shall be duly authorized by law, and

issue requisitions for all such printing and binding as may be required for the various state offices and departments. He shall receive all completed work from the contractors for public printing, and deliver the same to the respective departments for which it is ordered. When vouchers for public printing shall have been approved and verified according to law, it shall be the duty of the state auditor to draw his warrant on the state treasurer for such sum or sums as may be found due. A sufficient sum is hereby appropriated out of the state treasury, not otherwise appropriated, to pay for all public printing and binding heretofore ordered by the state, and hereafter to include legislative printing, said amount not to exceed thirty thousand dollars annually. [1907, ch. 186; R. C. 1905, § 76; 1889, ch. 123, § 1; R. C. 1899, § 76; 1901, ch. 139, § 2; 1903, ch. 33.]

R. C. 1905, § 76, was amended and re-enacted to read as above in Laws 1907, ch. 186, which chapter was repealed without qualification in sections 653g, 653i. As to whether any part of section 101 will revive on July 1, 1915, see comments in note immediately preceding section 653a.

§ 102. Secretary to arrange and correct laws. In arranging the laws, memorials and resolutions for publication the secretary of state is authorized to make such corrections in orthography, grammatical construction and punctuation of the same as in his judgment shall be proper; but when any words or clauses are inserted, the same shall be enclosed in brackets. [R. C. 1905, § 77; Pol. C. 1877, ch. 3, § 2; R. C. 1899, § 77.]

§ 103. Copyright. It shall be the duty of the secretary of state to correct proof and supervise the publication of the laws and to secure a copyright of the session laws of each session of the legislative assembly before the same are distributed, for the exclusive use and benefit of the state, the procurement of such copyright to be properly printed in each volume of said session laws. [R. C. 1905, § 78; 1905, ch. 162.]

§ 104. Officers to deliver laws to successors. Whenever any person shall be elected to fill any of the county, township or district offices in this state it shall be such person's duty before taking possession of the office to procure from the county auditor of his county a copy of the receipts filed with such auditor by the outgoing officer for any volumes of the laws of this state; which copy of receipt the person so elected shall exhibit to his predecessor in office at the time he assumes the duties of his office, and shall require from his predecessor all the volumes of laws which he may have received, as shown by such receipt, and it shall be the duty of such officer after having received from his predecessor the volumes of laws to make out duplicate receipts of the same, one of which receipts he shall give to his predecessor in office, and the other he shall forthwith transmit to the county auditor of the county, who is hereby required to file the same in his office. [R. C. 1905, § 79; Pol. C. 1877, ch. 3, § 7; R. C. 1899, § 78.]

§ 105. Secretary of state to sell statutes. The secretary of state shall sell to any person applying therefor the volumes of laws of this state for the cost and ten per cent added, and pay over to the state treasurer all sums so received, taking the official receipt of such treasurer therefor. [R. C. 1905, § 80; Pol. C. 1877, ch. 3, § 10; R. C. 1899, § 79.]

§ 106. Copies of laws for state library. Ten volumes of the laws passed by each legislative assembly shall be placed in the state library by the secretary of state, and shall be kept therein for the use of any person visiting such library, but shall not be loaned or otherwise disposed of. [R. C. 1905, § 81; Pol. C. 1877, ch. 3, § 11; R. C. 1899, § 80.]

§ 107. Conflicts adjusted. If the provisions of any code, chapter or article, conflict with or contravene the provisions of any other code, chapter or article, the provisions of each code, chapter or article must prevail as to all matters in question arising thereunder out of the same subject-matter. [R. C. 1905, § 82; Code '77, p. 900, § 17; R. C. 1899, § 81.]

§ 108. Secretary of state authorized to arrange statutes, etc. In the publication of codes and general statutes the secretary of state has power without altering the general plan to renumber and readjust sections, chapters, articles and subdivisions, and also to place and distribute the general statutes not now embraced in the codes in the same under the appropriate chapter or other heading. [R. C. 1905, § 83; Code '77, p. 900, § 18; R. C. 1899, § 82.]

ARTICLE 5.—ENGROSSING AND ENROLLING BILLS.

§ 109. By contract. The secretary of state shall, not less than sixty nor more than seventy-five days before the meeting of the legislative assembly in regular session, give notice by advertising for three successive weeks, in a newspaper at the seat of government, that sealed bids will be received for the engrossing and enrolling of all bills passed by each house of the legislative assembly. The work to be done at a fixed price per folio, the engrossing to be done on typewriter, enrolling to be done on typewriter, using primer type and black record ribbon on standard linen record paper of not less than thirty pounds to the ream of demy size, or its equivalent, of the size of 10½x16 inches with a 1¼-inch red ruled margin. The services to be performed under the direction and in the time set by and to the satisfaction of the committees of the senate and house of representatives, or their agent. Upon the day set in the advertisement, which shall not be less than thirty days before the meeting of the legislative assembly, the bids shall be opened by a board consisting of the governor, secretary of state and state auditor. [1913, ch. 200; R. C. 1905, § 84; 1901, ch. 83, § 1.]

§ 110. Bids to be accompanied by certified check. No bids shall be considered unless accompanied by a certified check in a sum to be named by the secretary of state, such check to be security that the successful bidder shall enter into a contract, and shall give a bond, with sureties to be approved by said board before mentioned, for the proper performance of the work. No bid shall be considered from a person not a bona fide resident of this state. Upon opening of the bids the board shall award the contract to the lowest responsible bidder and enter into a contract with him for the performance of the work, subject to the conditions herein above set forth; provided, further, that nothing in this article shall prevent the awarding of separate contracts for the engrossing and enrolling provided for herein, if deemed advantageous to the state by such board. [R. C. 1905, § 85; 1901, ch. 83, § 2.]

CHAPTER 4.

EXECUTIVE DEPARTMENT.

ARTICLE 1. THE GOVERNOR, §§ 111-117.

2. THE LIEUTENANT GOVERNOR, §§ 118-120.
3. THE SECRETARY OF STATE, §§ 121-131.
4. THE STATE AUDITOR, §§ 132-142.
5. THE STATE TREASURER, §§ 143-156.
6. THE ATTORNEY-GENERAL, §§ 157-162.
7. THE COMMISSIONER OF AGRICULTURE AND LABOR, §§ 163-171.
8. THE COMMISSIONER OF INSURANCE, §§ 172-175.
9. HAIL INSURANCE DEPARTMENT, §§ 176-189a.
10. STATE BONDING DEPARTMENT, §§ 190-200a.
11. FIRE MARSHAL DEPARTMENT, §§ 201-223.
12. THE STATE EXAMINER, §§ 224-235.

ARTICLE 1.—THE GOVERNOR.

§ 111. Powers and duties of governor. In addition to those prescribed by the constitution, the governor has the power and must perform the duties prescribed in this and the following sections:

1. He is to supervise the official conduct of all executive and ministerial officers.

2. He is to see that all offices are filled, and the duties thereof performed, or in default thereof, apply such remedies as the law allows. If the remedy is imperfect, acquaint the legislative assembly therewith at its next session.

3. He is to make appointments and fill vacancies as required by law.

4. He is the sole official organ of communication between the government of this state and the government of any other state of the United States.

5. Whenever any suit or legal proceeding is pending against this state, or which may affect the title of this state to any property, or which may result in any claim against the state, he may direct the attorney-general to appear on behalf of the state, and may employ such additional counsel as he may deem expedient.

6. He may require the attorney-general or state's attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

7. He may require the attorney-general to aid any state's attorney in the discharge of his duties.

8. He may offer rewards not exceeding one thousand dollars each, payable out of the general fund, for the apprehension of any convict who has escaped from the penitentiary, or of any person who has committed or who is charged with the commission of an offense punishable with death.

9. The duty of the governor respecting fugitives from justice is prescribed by the code of criminal procedure.

10. He must issue patents for land as prescribed by the provisions of this code.

11. He must discharge the duties of a member of the following state boards: Equalization; university and school lands; trustees of public property; state historical society; state auditing board; state banking board; state board of pardons; high school board, and trustees of the normal schools.

12. He has such other powers and must perform such other duties as are or may be devolved upon him by law. [R. C. 1905, § 86; R. C. 1895, § 83; 1901, ch. 33; 1905, ch. 25, § 1; 1905, ch. 165, § 1.]

2. Power of court to review action of governor in removing officer. 39 L.R.A. (N.S.) 788.

3. Governor's power of appointment to fill vacancy in office where office is filled by *de facto* officer. *Chandler v. Starling*, 19 N. D. 144, 121 N. W. 198.

Right to make an *ad interim* appointment to an office whose fixed term expires before the senate's adjournment, where the incumbent is authorized to hold over until his successor is appointed. 46 L.R.A. (N.S.) 1202.

Mandamus to compel restoration to office of one who has been illegally removed. 19 L.R.A. (N.S.) 52.

As to similar provision in Cal. Pol. Code, § 380, subd. 3, see *People ex rel. Casserly v. Fitch*, 1 Cal. 519; *People ex rel. Gorham v. Campbell*, 2 Cal. 135; *People ex rel. Finlay v. Jewett*, 6 Cal. 291; *People ex rel. Ryder v. Mizner*, 7 Cal. 519; *People ex rel. Atty.-Gen. v. Hill*, 7 Cal. 97; *People ex rel. Aylett v. Langdon*, 8 Cal. 1; *People ex rel. Atty.-Gen. v. Addison*, 10 Cal. 1; *People ex rel. Melony v. Whitman*, 10 Cal. 38; *People ex rel. Wetherbee v. Cazneau*, 20 Cal. 504; *People ex rel. Madden v. Stratton*, 28 Cal. 382; *People ex rel. Baird v. Tilton*, 37 Cal. 614; *People ex rel. Shoaff v. Parker*, 37 Cal. 639; *Smith v. Brown*, 59 Cal. 672; *Treadwell v. Yolo County*, 62 Cal. 563; *People ex rel. Waterman v. Freeman*, 80 Cal. 233, 13 Am. St. Rep. 122, 22 Pac. 173; *People ex rel. Travers v. Freese*, 83 Cal. 453, 23 Pac. 378; *People ex rel. Parsons v. Edwards*, 93 Cal. 153, 28 Pac. 831; *Quigg v. Evans*, 121 Cal. 546, 53 Pac. 1093; *Patton v. Board of Health*, 127 Cal. 388, 78 Am. St. Rep. 66, 55 Pac. 702; *Sponogle v. Curnow*, 136 Cal. 580, 69 Pac. 255; *Ex parte Gerino*, 143 Cal. 412, 66 L.R.A. 249, 77 Pac. 166.

4. Certification of copies of records by governor for use in other state. 5 L.R.A. (N.S.) 959.

5. Power to employ counsel for the state. 55 L.R.A. 493.

As to similar provision in Cal. Pol. Code, § 380, subd. 5, see *People v. Talmage*, 6 Cal. 256; *Mullan v. State*, 114 Cal. 578, 34 L.R.A. 262, 46 Pac. 670.

11. As to similar provision in Cal. Pol. Code, § 380, subd. 11, see *Leese v. Clarke*, 3 Cal. 17; *Ferris v. Coover*, 10 Cal. 589; *Manson v. Koppikus*, 11 Cal. 89; *Morton v. Folger*, 15 Cal. 275; *Cornwall v. Culver*, 16 Cal. 423; *Soto v. Kroder*, 19 Cal. 87; *Berreyesa v. Schultz*, 21 Cal. 513.

12. Power to adjourn legislature. 22 L.R.A. 716.

— to proclaim and maintain martial law. 65 L.R.A. 195.

— to disband militia. 23 L.R.A. 510.

Mandamus to governor. 6 L.R.A.(N.S.) 750; 32 L.R.A.(N.S.) 355.

§ 112. Records in office. The governor must cause to be kept the following records:

1. A register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application.

2. An account of all his official expenses and disbursements including the incidental expenses of his department, and of all rewards offered by him for the apprehension of criminals and persons charged with crime.

3. A register of all appointments made by him, with date of commission, names of appointees and predecessors.

These records and the originals of all applications, petitions, recommendations and reports therein mentioned shall be preserved in the office of the governor; but whenever any application for appointment to office is refused by him, he may in his discretion return the papers relating to the application. [R. C. 1905, § 87; R. C. 1895, § 84.]

§ 113. Governor to furnish business reports on state institutions. It shall be and is hereby declared to be the duty of the governor to submit to each legislative assembly a detailed report of all monies appropriated by the preceding legislative assembly for state institutions, together with a summary of expenditures of each of such institutions, said summary to be dated December first of each even numbered year, and of a form which will show the following items, viz.:

1. Cost of the boards of directors, per diem and for mileage.
2. For salaries of presidents, superintendents or managers and their deputies or chief assistant.
3. Salaries of each member of every faculty.
4. Amounts paid for maintaining summer schools.
5. Amounts expended for janitor service.
6. Amounts expended for guards and other employes, together with the number of each.
7. Amounts expended for fuel; kind of fuel used; average price per ton.
8. Amount expended for light service.
9. Amount expended for water service, and how measured.
10. Amount expended for new buildings, stating outside dimensions and what purpose used for.
11. Amount expended for repairing buildings.
12. Amount expended for improvement of grounds.
13. Amount expended for groceries, provisions and household supplies.
14. Amount expended for clothing.
15. Amount expended for school and library books.
16. Amount expended for scientific and school apparatus and office sundries.
17. Memorandum of sums appropriated by the preceding legislative assembly.
18. Balance on hand of the various amounts appropriated or set aside by the last legislative assembly.

Such report shall also state number of scholars regularly enrolled in each educational institution, the number of such scholars who are not residents of this state, the number who pay tuition fees over and above the matriculation or incidental fees, the number of summer school scholars, and the average attendance at such institution for each year of the biennial period of regularly enrolled students; the average number of inmates in each charitable institution for the same period, and the average number of prisoners confined in each penal institution for the like period, together with the average cost

of maintenance each year of the individual scholar, inmate or prisoner, and in determining such cost, items 10, 11, 12, 17 and 18 only shall be eliminated, but every institution producing a portion of its supplies shall be allowed a fair net valuation on same as an offset to direct cost of other supplies in determining such per capita cost of conducting. [1907, ch. 233, § 1.]

§ 114. **Supplying data for reports.** Upon demand therefor, the trustees of every state institution shall forward to the governor any data, statistics or such other information as may be required by him as a basis for making statements or reports called for under section 113. [1907, ch. 233, § 2.]

§ 115. **Provision for payment of costs of reports.** The purpose of this act being the submission to each legislative assembly of an up to date business like statement of state institutional business, the governor is hereby authorized to employ in formulating said statement or report, such clerical help as he shall deem necessary and have said statement printed at such cost and place as he shall deem proper; provided, that no more than two hundred copies of such biennial report shall be printed; and the state auditor shall draw his warrant upon the state treasurer for bills rendered for services under this act after such bills are approved by the governor. [1907, ch. 233, § 3.]

"This act" mentioned in the first sentence consists of sections 113, 114, 115.

§ 116. **Persons acting as governor.** Every provision of the laws of this state in relation to the powers and duties of the governor, and in relation to the acts and duties to be performed by others towards him extends to the persons performing for the time being the duties of governor. [R. C. 1905, § 88; R. C. 1895, § 85.]

§ 117. **Salary of governor.** The governor shall receive an annual salary of five thousand dollars per annum. [1909, ch. 216, § 4; R. C. 1905, § 89; R. C. 1895, § 86.]

R. C. 1905, § 89, enacted in 1895, provided as follows: "The annual salary of the governor, to include all services rendered ex officio as member of any board or commission, as now required or which may be by law devolved upon him, is three thousand dollars."

ARTICLE 2.—THE LIEUTENANT GOVERNOR.

§ 118. **Duties of lieutenant governor.** The duties of the lieutenant governor are as prescribed in the constitution. [R. C. 1905, § 90; R. C. 1895, § 87.]

§ 119. **Salary of lieutenant governor.** The lieutenant governor shall receive an annual salary of one thousand dollars, and when he acts as governor, he is entitled to receive during the time he so acts the compensation which the governor, if acting, would be entitled to receive for such time; but during such time he is not entitled as lieutenant governor to any other compensation. [R. C. 1905, § 91; 1903, ch. 93, § 1; R. C. 1895, § 88.]

§ 120. **President pro tem, to act as, when.** In case of the death, impeachment, resignation, failure to qualify, absence from the state, removal from office or the disability of the lieutenant governor, the powers and duties of the office for the residue of the term, or until he shall be acquitted or the disability removed, shall devolve upon the president pro tempore of the senate; and when presiding over any meeting of the senate, all the powers and duties of the office of lieutenant governor shall devolve upon the president pro tempore of the senate. [R. C. 1905, § 92; 1891, ch. 84, § 1; R. C. 1899, § 89.]

As to similar provision in Cal. Pol. Code, § 407, see *Oakland Paving Co. v. Hilton*, 69 Cal. 479, 11 Pac. 3.

ARTICLE 3.—THE SECRETARY OF STATE.

§ 121. **Custody of records.** The secretary of state is charged with the custody:

1. Of the enrolled copy of the constitution.
2. Of all the acts and resolutions passed by the legislative assembly.

3. Of the journals of the legislative assembly.

4. Of the great seal.

5. Of all books, records, deeds, parchments, maps and papers kept or deposited in his office pursuant to law. [R. C. 1905, § 93; R. C. 1895, § 90.]

§ 122. Duties of secretary of state. In addition to the duties prescribed by the constitution, it is the duty of the secretary of state:

1. To attend every session of the legislative assembly for the purpose of receiving bills and resolutions therefrom, and to perform such other duties as may devolve upon him by resolution of the two houses, or either of them.

2. To keep a register of and attest the official acts of the governor.

3. To affix the great seal with his attestation to commissions, pardons and other public instruments to which the official signature of the governor is required.

4. To record in proper books all conveyances made to the state and all articles of incorporation filed in his office.

5. To receive and record in proper books the official bonds of all state officers, from whom bonds are required by law, including his own, and then deliver the originals to the state treasurer, excepting the bond of the state treasurer, of which he shall remain the custodian.

6. To take and file in his office receipts for all books distributed by him and to direct the county auditor of each county to do the same.

7. To certify to the governor the name of any person who has received at any election the highest number of votes for any office the incumbent of which is commissioned by the governor.

8. To furnish on demand to persons paying the fees therefor a certified copy of all or any part of any law, record or other instrument filed, deposited or recorded in his office.

9. To keep a fee book in which must be entered all the fees, commissions and compensation of whatever nature or kind by him earned, collected or charged, with the date, name of payor, paid or unpaid and the nature of the services in each case, which book must be verified annually by his affidavit entered therein.

10. To file in his office descriptions of the seals in use by the different state officers, and to furnish such officers with new seals when they may be required.

11. To discharge the duties of a member of the following state boards: State board of canvassers; trustees of public property; university and school lands; commissioners of public printing; state banking board; state historical society; state board of auditors; and to perform such other duties as are now or may be hereafter prescribed by law.

12. To report to the governor at the time prescribed by law for other state officers to report all moneys received from any source for services performed and accompany such report with a detailed statement under oath of the manner in which the appropriations for his office have been expended.

13. He must distribute the bound volumes of the decisions of the supreme court as provided in section 467. [R. C. 1905, § 94; 1897, ch. 126, § 47; R. C. 1899, § 91; 1901, ch. 33; 1905, ch. 165.]

§ 123. Secretary of state receives field notes. Whenever all the public surveys within the state of North Dakota shall have been completed, the secretary of state, with the approval of the governor, is hereby authorized to receive and receipt to the United States surveyor general for the district of North Dakota for all the field notes, maps, records and other papers appertaining to land titles within the state of North Dakota, and for such other property and records as the government may direct to be turned over to the state. [1907, ch. 245, § 1.]

§ 124. Records preserved. It shall be the duty of the secretary of state to provide suitable rooms in the capitol building containing vaults for fire-proof protection and the safe keeping of such records, and free access to any

such field notes, maps, records and other papers for the purpose of taking extracts therefrom or making copies thereof without charge of any kind, shall be allowed to all officers or employes of the United States, during office hours. [1907, ch. 245, § 2.]

§ 125. Copies to be furnished. It shall be the duty of the secretary of state to furnish on application, exemplified copies of all maps, field notes and records upon the payment to him of such fees for the copying and certifying such field notes, maps and records, as may be prescribed by the governor, secretary of state and attorney-general. All fees paid to the secretary of state for copies of plats, field notes and records shall be paid into the state treasury and placed to the credit of the general fund of the state. [1907, ch. 245, § 3.]

§ 126. Distribution of laws, resolutions and journals. Immediately after the laws, resolutions and journals of the legislative assembly are bound he shall distribute the same to the persons entitled thereto under the provisions of article 4 of chapter 3 of this code. [R. C. 1905, § 95; R. C. 1895, § 92.]

§ 127. To mark books distributed. The secretary of state must indelibly mark each book distributed to officers of this state, except members of the legislative assembly, with the name of the county to which, and the official designation of the officer to whom the same is sent, and such book shall remain the property of the state and must be by the officers receiving them delivered to their successors. [R. C. 1905, § 96; R. C. 1895, § 93.]

§ 128. To receive, keep and distribute supplies. It is the duty of the secretary of state to receive and keep the supplies and articles purchased by the commissioners of printing for the legislative assembly and state officers, and he shall distribute the same from time to time as required, on the requisition of the proper state or legislative officer, taking a receipt therefor and filing such requisition in his office. He must keep a book to be known as a book of supplies in which he must enter a complete list of all stationery, books, articles or other supplies furnished him by such board, making a separate list of each class of articles, and all purchases made by the board, the amount and cost of each article and the amount and cost of each article furnished each officer or board and each member and officer of the legislative assembly. He must embody in his report to the legislative assembly a statement showing the amount of supplies purchased and disposed of as aforesaid. [R. C. 1905, § 97; R. C. 1895, § 94.]

§ 129. Fees. The secretary of state for services performed in his office must charge and collect the following fees:

1. For a copy of any law, resolution, record or other document or paper on file in his office, twenty-five cents per folio.
2. For affixing his certificate and seal to any document, one dollar.
3. For affixing his signature and seal without a certificate, fifty cents.
4. For filing articles of incorporation for domestic corporations, for profit, five dollars; other domestic corporations two dollars.
5. For filing and recording articles of incorporation of foreign corporations intending to do business in this state, twenty dollars.
6. For filing and recording certificates of appointment of attorney, five dollars.
7. For issuing a certificate of corporate existence of domestic corporations, three dollars.
8. For recording official bonds, two dollars.
9. For each commission or other document signed by the governor and attested by the secretary of state, except pardons and military commissions, three dollars.
10. For searching records and archives of the state, one dollar.
11. For filing and recording notice of removal of place of business, three dollars.

12. For filing certificate of increase or decrease of capital stock, three dollars.

13. For issuing certificate of increase or decrease of capital stock, three dollars.

14. For filing certificate of continuance of existence of a corporation, three dollars.

15. For issuing such certificate, three dollars.

16. For recording miscellaneous records, papers or other documents, twenty-five cents per folio and for filing any paper not otherwise provided for, one dollar. But no member of the legislative assembly, or state or county officer can be charged any search relative to matters appertaining to duties of his office, nor must he be charged any fee for a certified copy of any law or resolution passed by the legislative assembly, relative to his official duties. All fees must be paid in advance, and when collected must be paid into the state treasury at the end of each month and placed to the credit of the salary fund. [1911, ch. 271; R. C. 1905, § 98; R. C. 1899, § 95; 1901, ch. 93.]

§ 130. **Salary of secretary of state.** * * * The secretary of state * * * shall * * * receive an annual salary of three thousand dollars, and shall reside at the capital of the state. [1909, ch. 216, § 4; R. C. 1905, § 99; R. C. 1895, § 96.]

R. C. 1905, § 99, enacted in 1895, provided as follows: "The annual salary of the secretary of state, to include all services rendered ex officio as member of any boards or commission as now required, or which may be by law hereafter devolved upon him, is two thousand dollars."

§ 131. **Official bond.** The secretary of state shall give a bond to the state in the sum of ten thousand dollars. [R. C. 1905, § 100; 1890, ch. 192, § 1; R. C. 1899, § 97.]

ARTICLE 4.—THE STATE AUDITOR.

§ 132. **Duties of.** It is the duty of the state auditor:

1. To superintend the fiscal affairs of the state.

2. To report to the governor on or before the fifteenth day of November next preceding each regular session of the legislative assembly a statement of the funds of the state, its revenues, of the public expenditures during the two preceding fiscal years, together with a detailed estimate of the expenditures to be defrayed from the treasury for the two ensuing fiscal years, specifying therein each object of expenditure, and distinguishing between such as are provided for by permanent or temporary appropriation and such as must be provided for by a new statute and suggesting the means from which such expenditures are to be defrayed.

3. To accompany his biennial report with tabular statements showing the amount of each appropriation for the two preceding fiscal years, the amount expended and the balance, if any; also showing the amount of revenue chargeable to each county for such years, the amount paid and the amount unpaid or due therefrom.

4. When requested, to give information in writing to either house of the legislative assembly, relating to the fiscal affairs of the state or to the administration of his office.

5. To suggest measures for the improvement and management of the public revenue.

6. To keep and state all accounts in which the state is interested.

7. To keep an account of all warrants drawn upon the treasurer, and a separate account under the head of each specific appropriation, showing at all times the unexpended balance of such appropriation.

8. To keep an account between the state and state treasurer, and charge the state treasurer therein with the balance in the treasury when he came into office and with all money received by him and credit him with all warrants drawn on and paid by him.

9. To keep a registry of warrants showing the fund upon which they are drawn, the number, in whose favor, for what issued, the appropriation applicable to the payment thereof, when the liability accrued, and a receipt from the person to whom the warrant is delivered, and to register all orders or certificates drawn upon the state treasurer.

10. To audit all claims against the state, the payment of which is authorized by law.

11. To examine and settle the accounts of all persons indebted to the state, and certify the amount to the treasurer, and upon presentation and filing of the treasurer's receipts therefor to give such person a release, and charge the treasurer with such amount.

12. To require, in his discretion, any person presenting an account for settlement to be sworn before him, and to answer orally or in writing as to any facts relating thereto.

13. To require all persons who have received any moneys belonging to the state, and who have not accounted therefor to settle their accounts.

14. To inspect, in his discretion, the books of any person charged with the receipt, safe keeping or disbursement of public moneys.

15. To require at such times and in such forms as he may designate all persons, who have received money or securities or who have had the disposition or management of any property of the state of which an account is kept in his office, to render statements thereof to him, and all such persons must render such statements when so required by said auditor.

16. To direct and superintend the collection of all moneys due the state and institute suits in the name of the state for all official delinquencies in relation to the assessment, collection and payment of the revenue, and against persons who by any means have become possessed of public moneys or property and who fail or neglect to pay for or deliver the same, and against all persons indebted to the state.

17. To draw warrants on the state treasurer for the payment of money directed by law to be paid out of the treasury; which warrants shall be numbered consecutively in the order in which they are drawn; but no warrants shall be drawn unless authorized by law, nor unless there are funds in the treasury applicable to the payment thereof to meet the same; provided, that in case of emergency, and in anticipation of taxes already levied and in process of collection, the auditor, with the advice and consent of the governor and treasurer, may issue warrants in payment of duly authorized vouchers. Every warrant must be drawn upon the fund out of which it is payable and specify for what it is drawn and when the liability accrued.

18. To furnish the state treasurer monthly with a list of all warrants drawn upon the treasury, specifying the amount and number of each warrant and the name of the person in whose favor it is drawn.

19. To authenticate with his official seal all drafts and warrants drawn by him and all copies of papers issued from his office.

20. To discharge the duties of a member of the following state boards: Equalization; state canvassers; trustees of public property; university and school lands; state auditing board; state historical society; state board of auditors, and commissioners of public printing, and to perform such other duties as are or may be prescribed by law. [R. C. 1905, § 101; R. C. 1895, § 98; 1901, chs. 33, 211; 1905, ch. 25, § 1.]

8. As to similar provision in Cal. Pol. Code, § 433, subd. 8, see *People ex rel. Smith v. Lattimore*, 19 Cal. 365.

13. Superintendent of public instruction was bound to account to state and pay into state treasury unexpended balance of examining fees at expiration of each term of office. *State v. Stockwell*, 23 N. D. 70, 134 N. W. 767.

16. As to similar provision in Cal. Pol. Code, § 433, subd. 16, see *People v. Plumas Eureka Min. Co.*, 51 Cal. 566; *People v. Central P. R. Co.*, 105 Cal. 576, 38 Pac. 905.

17. Auditor may require receipts attached to vouchers before issuing warrants. *Sawyer v. Mahew*, 10 S. D. 18, 71 N. W. 141.

As to similar provision in Cal. Pol. Code, § 433, subd. 17, see *People ex rel. McCauley v. Brooks*, 16 Cal. 11; *Stratton v. Green*, 45 Cal. 149; *Meyer v. Porter*, 65 Cal. 67, 2 Pac. 834; *Freehill v. Chamberlain*, 65 Cal. 603, 4 Pac. 646; *Baggett v. Dunn*, 69 Cal. 75, 10 Pac. 125; *Marshall v. Dunn*, 69 Cal. 223, 10 Pac. 399; *Proll v. Dunn*, 80 Cal. 220, 22 Pac. 143; *Sawyer v. Colgan*, 102 Cal. 283, 36 Pac. 580, 834; *Ingram v. Colgan*, 106 Cal. 113, 28 L.R.A. 187, 46 Am. St. Rep. 221, 38 Pac. 315, 39 Pac. 437.

§ 133. Special duties connected with school fund. The state auditor must keep a separate account of the school fund and of the interest and income thereof, together with such moneys as may be raised by special tax or otherwise for school purposes. He must on or before the third Monday in February, May, August and November of each year certify to the superintendent of public instruction the amount of the state tuition fund; he shall also at the same time make a statement to such officer of the securities belonging to the school fund, of the moneys in the treasury subject to apportionment and the sources from which the same accrued, and he shall also perform such duties and draw such warrants in reference to the school fund of the state as now are or hereafter may be prescribed by law. [R. C. 1905, § 102; R. C. 1895, § 99.]

§ 134. Proceedings against defaulters. Whenever any person has received moneys or has moneys or other personal property which belongs to the state by escheat or otherwise, or has been intrusted with the collection, management or disbursement of any moneys, bonds or interest accruing therefrom, belonging to or held in trust by the state, and fails to render an account thereof to and make settlement with the state auditor within the time prescribed by law, or when no particular time is specified, fails to render such account and make such settlement, or who fails to pay into the state treasury any money belonging to the state upon being required so to do by the state auditor within twenty days after such request, the state auditor must state an account with such person, charging interest at the rate of twelve per cent per annum from the time of the failure; a copy of which account shall be prima facie evidence in any suit of the things therein stated; but in case the state auditor cannot for want of information state an account, that fact may be alleged and in such case the amount of money or other property which is due or belongs to the state may be stated generally. [R. C. 1905, § 103; R. C. 1895, § 100.]

Superintendent of public instruction was bound to account to state and cover into state treasury unexpended balance of examining fees at expiration of each term of office. *State v. Stockwell*, 23 N. D. 70, 134 N. W. 767.

As to similar provision in Cal. Pol. Code, § 103, see *People ex rel. Dunn v. Melone*, 73 Cal. 574, 15 Pac. 294.

§ 135. To have access to all state offices. The state auditor shall have access to all state offices during business hours for the purpose of inspecting such books, papers and accounts therein as may concern his duties. [R. C. 1905, § 104; R. C. 1895, § 101.]

§ 136. Legislative inspection of books. Whenever required he shall submit his books, accounts and vouchers to the inspection of the legislative assembly or any committee thereof appointed for that purpose. [R. C. 1905, § 105; R. C. 1899, § 102.]

§ 137. Must transmit lists of taxable lands. He shall transmit to the county auditor of each county, on or before the fifteenth day of March of each year, a list of lands within such county that shall have become subject to taxation during the preceding year, agreeable to the information by him procured from the land offices in the state. [R. C. 1905, § 106; 1897, ch. 127; R. C. 1899, § 103.]

§ 138. Transmit forms and instructions to auditors. He shall from time to time prepare and transmit to the county auditor of each county such general forms and instructions in conformity with the laws in force, as, in his opinion, may be necessary to secure uniformity in levying, charging, collecting and accounting for the public revenue; and assessors and treasurers

shall observe such forms and instructions. [R. C. 1905, § 107; R. C. 1899, § 104.]

§ 139. May remit tax penalties. The auditor is authorized to remit any penalty for the nonpayment of taxes when satisfied that the same is improperly charged, or that such penalty occurred in consequence of the negligence or error of any officer required to do any duty relative to the levy and collection of such taxes; and may from time to time correct all errors which he shall discover in the taxes assessed in any county. [R. C. 1905, § 108; R. C. 1899, § 105.]

§ 140. Salary of state auditor. [The * * * state auditor * * * shall * * * receive an annual salary of three thousand dollars, and shall reside at the capital of the state], and all fees received by him shall be paid into the state treasury at the end of each month. [1909, ch. 216, § 4; R. C. 1905, § 109; R. C. 1895, § 106.]

The words in brackets are part of Laws 1909, ch. 216, § 4. The remainder of section 140 is the concluding provision of R. C. 1905, § 109, which also fixed the salary at two thousand dollars, "to include all services rendered as member of any board or commission as now required, or which may be by law hereafter devolved upon him."

§ 141. Salary of deputy state auditor. The salary of the * * * deputy state auditor shall be twenty-four hundred dollars per annum. [1911, ch. 10, § 1.]

Appointment of deputy by state auditor, see section 701.

§ 142. Official bond. The state auditor must execute an official bond in the sum of twenty thousand dollars. [R. C. 1905, § 110; R. C. 1895, § 107.]

ARTICLE 5.—THE STATE TREASURER.

§ 143. Duties of. It is the duty of the state treasurer:

1. To receive and keep all moneys belonging to the state, and not required to be received and kept by some other person.

2. To register the orders or certificates of the state auditor delivered to him when moneys are paid or to be paid into the treasury.

3. To deliver to each person paying money into the treasury and to the state auditor a duplicate receipt showing the amount, the source from which the money accrued and the funds into which it is paid, which receipts must be numbered in order, beginning with number one at the commencement of each fiscal year.

4. To pay warrants drawn by the state auditor out of the funds upon which they are drawn and in the order in which they are presented.

5. Upon the payment of any warrant to take upon the back thereof the receipt of the person to whom it is paid, and file and preserve the same.

6. To keep an account of all moneys received and disbursed.

7. To keep separate accounts of the different funds. He shall receive in payment for public dues the warrants drawn by the state auditor in conformity with law, or redeem the same, if there is money in the treasury appropriated for that purpose, and on redeeming such warrant or receiving same in payment he shall cause the person presenting such warrant to indorse the same, and the treasurer shall write on the face thereof "Redeemed," and shall enter in his book in separate columns the number of such warrant, its date, amount, and the name of the person to whom payable, date of payment and the amount of interest, if any, paid thereon.

8. To report to the state auditor on the last day of each month the amount disbursed for the redemption of bonds, and any payment of warrants during the month, which report must show the date and number of such bonds and warrants, the funds out of which they were paid and the balance in cash on hand in the treasury to the credit of each fund.

9. At the request of either house of the legislative assembly or of any committee thereof, to give information in writing as to the condition of the treasury, or upon any subject relating to the duties of his office.

10. To report to the governor, on or before the twentieth day of November each year, the exact balance in the treasury to the credit of the state; said report shall show in detail the receipts and disbursements, together with a summary thereof, the balances in the various funds at the beginning and ending of the fiscal year, which year shall end on October thirty-first; said report shall also show where the funds of the state are deposited and shall be certified by the state treasurer and approved by the governor.

11. To authenticate with his official seal all writings and papers issued from his office.

12. To discharge the duties of a member of the board of state canvassers, equalization and of the board of commissioners of public printing, and to perform such other duties as are or may be prescribed by law.

13. To keep a book in which he must enter all warrants paid, giving the names of the owners, and the number and amounts of the warrants.

14. To keep all moneys belonging to the state in his own possession until disbursed according to law. But nothing in this subdivision prohibits him from making special deposits for the safe keeping of public moneys.

15. To post at the door upon the outside of his office a list of all warrants that he may have funds in the treasury to redeem or pay, the payment of which has not been demanded during the preceding six months.

16. To keep his books open at all times for inspection of the governor, the state auditor, the public examiner and any committee appointed to examine them by either house of the legislative assembly.

17. To report annually to the governor in writing and under oath the amount of all moneys in his hands to the credit of each fund, and the place where the same is deposited, and the number and amount of every warrant paid or redeemed by him during the preceding twelve months. The governor shall verify said report, and cause the same to be immediately published in at least one daily paper printed at the seat of government. [R. C. 1905, § 111; 1893, ch. 96, §§ 1, 2, 3, 4, 5, 7; R. C. 1895, § 108; 1903, ch. 187.]

14. Care required of officers in selecting bank for deposit of public funds. 7 L.R.A. (N.S.) 1084.

§ 144. To keep permanent records. The state treasurer shall keep as permanent records of the state, a cash book in which shall be entered the amount of all moneys received or paid out, showing from whom received or to whom paid, on what account, fund or appropriation; a ledger in which shall be kept an account with each fund and appropriation; a daily balance book in which shall be shown the amount in state depositaries and in cash on hand; and such other books as the state examiner shall prescribe. All checks and drafts, deposit slips, bank books and other books used in the transactions of the state treasurer in his connection with state business, shall be furnished by the state and be kept as the permanent records in his office. [R. C. 1905, § 112; 1901, ch. 174.]

§ 145. Examination. Suspension of treasurer. If the state examiner upon examination finds that the books of the state treasurer do not correspond with the amount of funds on hand, or do not show the actual condition of the funds, or if it appears to the state examiner that any moneys belonging to the state have been embezzled, diverted or in any manner taken from the treasury without authority of law, or that the state treasurer has been guilty of negligence in keeping his books or taking care of the public moneys, he must certify the fact to the governor; who upon the receipt of such certificate must forthwith take possession of all books, moneys, papers and other property belonging to the state, which have come into the possession of such state treasurer by virtue of his office, or otherwise, and must temporarily suspend him from his office of state treasurer. [R. C. 1905, § 113; 1893, ch. 96, § 8; R. C. 1899, § 109.]

§ 146. Suspension and appointment by governor. The governor must thereupon, with the auditor and public examiner, examine the books, papers

and all matters connected with the office of the state treasurer, so suspended, and if it appears to the said governor, state auditor and state examiner on such examination, that such state treasurer has embezzled or converted to his own use the public moneys, or has been negligent in keeping his books, or in taking care of public moneys, the governor on the certificate of said state auditor and said state examiner to that effect may in his discretion remove and appoint another person to fill the place of said suspended state treasurer, and such person so appointed must execute an official bond and enter upon the office of state treasurer as provided by law. The governor must report all his acts done under this and the next preceding section to the next succeeding legislative assembly, and the state treasurer so appointed holds his office until the suspended state treasurer is reinstated, or his successor is elected and qualified. [R. C. 1905, § 114; 1893, ch. 96, § 9; R. C. 1895, § 110.]

Removals may be made, how. *Wishek v. Becker*, 10 N. D. 63, 84 N. W. 590; *Territory v. Cox*, 6 Dak. 501.

§ 147. Report of treasurer. It shall be the duty of the state treasurer on or before the tenth of January, April, July and October of each year to make a report in writing, under oath to the governor showing the total amount of all moneys in his hands or under his control on the last day of the preceding month, and showing separately the amount of the average daily balance in each of said state depositaries and the amount of interest received from each depositary for the period covered by such report; also the amount of the bond of each such depositary and the amount on hand in the vaults of the state treasurer. Under the latter head he must specify the amount on hand in currency, and separately and by item, the date, amount, by whom issued and upon what institution or parties drawn of each check, draft, certificate or other cash items. Such report must be verified by the state auditor, and the state treasurer must cause the same to be published once in a daily paper published at the seat of government, on or before the fifteenth day of each of said months, and must forthwith mail a copy thereof to each qualified state depositary and also a copy thereof to each county auditor of the state, which shall be posted in some prominent place in the office of said county auditor. Proof of the publishing and mailing of such report must be made by affidavit of some person having personal knowledge thereof, and such report, with such other proof, then filed in the office of the governor. [1911, ch. 309, § 1; 1909, ch. 217, § 1.]

§ 147a. Expense provided for. The expense of such publication shall not exceed the sum of thirty cents per square of twelve lines of solid brevier type or its equivalent, and such expense shall be audited and paid out of the general fund. [1911, ch. 309, § 2; 1909, ch. 217, § 2.]

§ 147b. Penalty for noncompliance. Failure or refusal on the part of the state treasurer to comply with the provisions of sections 147, 147a shall subject him to a fine of five hundred dollars for each offense and be cause for his removal from office. [1911, ch. 309, § 3; 1909, ch. 217, § 3.]

§ 148. Redeemed warrants deposited with auditor. He shall on the last day of March, June, September and November deposit in the office of the state auditor all warrants by him redeemed or received in payment at the treasury, and take the auditor's receipt therefor. [R. C. 1905, § 115; 1890, ch. 183, § 11; R. C. 1899, § 111.]

§ 149. Prohibited from purchasing warrants or accounts. He shall in no case purchase or receive any warrants redeemable at the treasury or any audited account at a less value than is expressed therein; nor shall he receive any fees or reward, aside from his annual salary, for transacting any business connected with the duties of his office. [R. C. 1905, § 116; R. C. 1899, § 112.]

§ 150. Delinquencies, accountable for. If in any instance the treasurer shall neglect to call to account any delinquent, whereby the public revenue may suffer a loss, he shall be held and deemed accountable for the sums due

by such delinquents to all intents and purposes the same as if the funds had actually been paid into his office. [R. C. 1905, § 117; R. C. 1899, § 113.]

§ 151. To register state bonds. The state treasurer upon presentation to him of any bond issued by, or assumed by the state of North Dakota, and upon application to him in writing by the owner of such bond for the registration thereof shall register such bond (first detaching and canceling all unmatured coupons, in case such bond is a coupon bond), in the name of the said owner in a book which he shall keep for that purpose; and after such registration of ownership as aforesaid, duly indorsed by the treasurer upon the bond so registered, no transfer of ownership of such bond shall be deemed valid unless registration of such transfer shall have been made by the state treasurer as aforesaid; and such bond shall continue subject to registration and to transfer at the option of the owner. [R. C. 1905, § 118; R. C. 1895, § 114.]

§ 152. Registration vests ownership. The registration of bonds, as provided for in the last section, shall vest the ownership thereof, both principal and interest, in the person in whose name the last registration is made; and the state treasurer shall remit in current exchange on New York City to the person in whose name the last registration is made the interest on such bonds as it from time to time becomes due, and the principal thereof at maturity. [R. C. 1905, § 119; 1891, ch. 38, § 2; R. C. 1899, § 115.]

§ 153. Fee for registry. For each registration of ownership or transfer of ownership made as herein provided the treasurer shall be entitled to receive a fee of fifty cents for each bond so registered; provided, that all fees so received shall be covered into the general fund of the state. [R. C. 1905, § 120; 1891, ch. 38, § 3; R. C. 1899, § 116.]

§ 154. Salary of state treasurer. The * * * state treasurer * * * shall * * * receive an annual salary of three thousand dollars, and shall reside at the capital of the state. [1909, ch. 216, § 4; R. C. 1905, § 121; R. C. 1895, § 117.]

R. C. 1905, § 121, enacted in 1895, provided as follows: "The annual salary of the state treasurer, to include all services rendered ex officio as member of any board or commission as now required, or which may hereafter be required of him by law, is two thousand dollars."

§ 155. Salary of deputy state treasurer. The salary of the deputy state treasurer * * * shall be twenty-four hundred dollars per annum. [1911, ch. 10, § 1.]

Appointment of deputy by state treasurer, see section 701.

§ 156. Official bond. The state treasurer must execute an official bond in the sum of not less than five hundred thousand dollars. Such bond shall be executed by the treasurer as principal and by sureties who must justify in the aggregate in a sum equal to twice the amount of the bond. The sureties may consist of freeholders of the state of North Dakota or of corporations authorized to transact the business of fidelity insurance within the state of North Dakota, or may consist in part of such freeholders and in part of such corporations and may consist of one bond for said total amount or of more than one bond, each for a lesser amount but aggregating not less than said total amount; and in the case of more than one bond being used, and in case of loss or liability, the liability of each separate bond shall be held to bear the same proportion to the total loss or liability as the amount of each separate bond shall bear to the total aggregate amount of all such bonds. Such bond or bonds shall be approved by the attorney-general as to form and by the governor as to the sufficiency of the sureties. In case any such bond is approved, having as sureties one or more corporations as herein provided, then the premium for such bond or bonds shall be audited and paid out of the general fund of the state. [1907, ch. 178; R. C. 1905, § 122; 1893, ch. 96, § 10; R. C. 1899, § 118; 1905, ch. 56.]

ARTICLE 6.—THE ATTORNEY GENERAL.

§ 157. Duties of. The duties of the attorney-general shall be:

1. To appear for and represent the state before the supreme court in all cases in which the state is interested as a party.

2. To institute and prosecute all actions and proceedings in favor of or for the use of the state, which may be necessary in the execution of the duties of any state officer.

3. To appear and defend all actions and proceedings against any state officer in his official capacity in any of the courts of this state or of the United States.

4. To consult with and advise the several state's attorneys in matters relating to the duties of their office; and when in his judgment the interests of the state require it, he shall attend the trial of any party accused of crime and assist in the prosecution.

5. To consult with and advise the governor and all other state officers, and give, when requested, written opinions upon all legal or constitutional questions relating to the duties of such officers respectively.

6. To prepare, when necessary, proper drafts for contracts and other writings relating to subjects in which the state is interested.

7. To give written opinions, when requested by either branch of the legislative assembly, upon legal questions.

8. To enforce the proper application of funds appropriated to the public institutions of the state, prosecute breaches of trust in the administration of such funds, and when necessary prosecute corporations for failure or refusal to make the reports required by law.

9. To keep in proper books a register of all cases prosecuted or defended by him, or his assistants, in behalf of this state or its officers, and of all proceedings had in relation thereto, including a record of all actions wherein the state is a party, or is interested, prosecuted by the state's attorneys of the several counties, and reported to him, as provided in section 2494 of this code, and to deliver the same to his successor in office.

10. To keep in his office a book in which he shall record all the official opinions given by him during his term of office, which book shall be by him delivered to his successor in office.

11. To pay into the state treasury all moneys received by him for the use of the state.

12. To discharge the duties of a member of the following state boards: State auditing board; state banking board; state board of auditors; equalization; state historical society; board of pardons; university and school lands.

13. To attend to and perform any other duties which may from time to time be required by law. [R. C. 1905, § 123; 1890, ch. 21, § 4; R. C. 1895, § 119; 1901, ch. 24.]

1. Duty to represent state in supreme court in tax cases. *Storey v. Murphy*, 9 N. D. 115, 75 N. W. 23.

Duty to appear for state in supreme court; court cannot appoint other attorney. *State v. Marshall County*, 14 S. D. 149, 84 N. W. 775.

Not the duty to represent the state where the state is a nominal party only. *State v. Carey*, 2 N. D. 36, 49 N. W. 164.

2. Action on county treasurer's bond for taxes collected presumed authorized. *State v. Welbes*, 11 S. D. 86, 75 N. W. 820.

Quo warranto as matter of right by attorney-general. 1 L.R.A.(N.S.) 826.

Scope of discretion with respect to institution of proceedings in nature of quo warranto. 15 L.R.A.(N.S.) 603.

Right to maintain suit or proceeding to remove officers of private corporations. 18 L.R.A.(N.S.) 672.

Right to maintain action to enforce or prevent the violation of statutory regulations affecting rates, etc. 18 L.R.A.(N.S.) 664.

4. Right to appear before grand jury and examine witnesses in regard to matters relating to prohibition law. *State ex rel. Miller v. District Ct.*, 19 N. D. 819, 124 N. W. 417, Ann. Cas. 1912D, 935.

§ 158. Annual report. He shall make an annual report to the governor on or before the fifteenth day of November, stating the number, character, condition and result of the actions prosecuted or defended by him in behalf of the state, the cost of prosecuting or defending each action and the amount of fines and penalties collected. He shall also direct attention to any defect in the practical operations of the laws relating to revenue and criminal offenses, and suggest such amendments as in his judgment are necessary to subserve the public interests. [R. C. 1905, § 124; 1890, ch. 21, § 5; R. C. 1899, § 120.]

Salary 159

Attorney-general 159

§ 159. Salary of attorney-general. * * * [The attorney-general shall receive an annual salary of three thousand six hundred dollars and he shall reside at the capital of the state.] And in addition thereto he shall be paid all his necessary expenses in attending court upon official business, to be audited and paid as provided by law in other cases. [1909, ch. 216, § 4; R. C. 1905, § 125; R. C. 1895, § 121.]

The sentence in brackets is part of Laws 1909, ch. 216, § 4. The remainder of section 159 is the concluding provision of R. C. 1905, § 125, which also fixed the salary at two thousand dollars, "to include all services rendered ex officio as member of any board or commission as now required, or which may hereafter be devolved upon him by law."

§ 160. Assistant attorneys-general, how appointed. The attorney-general may appoint two assistant attorneys-general whose appointment shall be in writing and filed in the office of the secretary of state. Such assistant attorneys-general shall have the same powers and authority as the attorney-general. They shall before entering on the duties of their office take and subscribe upon their appointment the official oath prescribed by law. [1909, ch. 219, § 1; R. C. 1905, § 126; 1889, ch. 17, § 1; 1895, § 122.]

§ 161. Salary of assistant attorneys-general. The annual salary of the assistant attorneys-general shall be two thousand five hundred dollars each, payable monthly on the warrant of the state treasurer. [1909, ch. 219, § 2.]

As to payment of the salary see sections 653b, 653e.

§ 162. Appropriation. There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of five thousand dollars per annum to pay the salaries of such assistant attorneys-general. [1909, ch. 219, § 3.]

ARTICLE 7.—THE COMMISSIONER OF AGRICULTURE AND LABOR.

§ 163. Duties of. It shall be the duty of the commissioner of agriculture and labor to collect, systematize and present in biennial reports to the legislative assembly statistical details relating to all labor departments in the state, such as hours and wages of labor, the estimated number of persons employed by the several industries within the state, the operation of labor saving machinery and its relation to hand labor, a description of the different kinds of labor organizations in existence in this state, and what they have accomplished in favor of the class for which they were organized. Such statistics may be classified as the commissioner of agriculture and labor deems best. [R. C. 1905, § 127; 1899, ch. 44, § 1; R. C. 1899, § 123.]

§ 164. Duty of all officials to furnish certain information. Penalty. It shall be the duty of all state, county, township and municipal officers to furnish upon the written request of the commissioner of agriculture all the information in their power necessary to assist in carrying out the objects of this article. For the purpose of obtaining statistics relating to manufactures and mining the commissioner of agriculture shall procure in a manner that may seem best to him, the names and addresses of all the manufacturers and mine owners and operators in the state, and shall transmit by mail to each owner, operator or manager of each shop, mill, manufacturing establishment or mine, not later than the first day of July of each year, suitably prepared

blanks embodying inquiries into the subjects upon which the commissioner is required or authorized to prepare statistics, which blanks shall be filled out complete and returned to the commissioner not later than the first day of August following. The information so obtained shall be preserved, systematized and tabulated by the commissioner, but no information concerning the business or affairs of any individual, firm, company or corporation shall be divulged or in any manner made public by the commissioner or any one in the employ of his office, and any violation of this provision shall subject the party violating to a fine of not more than five hundred dollars or to imprisonment of not more than one year, or both such fine and imprisonment. The refusal or neglect of any such owner, operator or manager of any shop, mill, manufacturing establishment or mine to supply the information asked by the commissioner within the time designated shall be construed as a violation of section 165 and shall subject the party so offending to the penalties therein prescribed; provided, that no prosecution shall be begun against such persons for such neglect or refusal until at least twenty days after a second notice and blank shall have been mailed them by the commissioner. [R. C. 1905, § 128; 1890, ch. 46, § 2; 1891, ch. 115, § 1; R. C. 1899, § 124.]

§ 165. Penalty for obstructing commissioner. Any person who willfully impedes or obstructs the commissioner in the full and free performance of his duties shall be guilty of a misdemeanor and upon conviction shall be punishable by a fine of not less than ten nor more than fifty dollars, or by imprisonment of not less than seven nor more than thirty days in the county jail, or by both. The refusal or neglect of any person for himself or for any person, firm, company or corporation of which he may be a member, or agent, to furnish the information or statistical statement required to be furnished to assessors, shall be construed to be a violation of the provisions of this section, and it is hereby made the duty of the county auditor to report such violation with the names and post office address and place of residence of the violator as furnished him by the assessor to the state's attorney for the county in which such violations occurred, and the state's attorney shall forthwith proceed to enforce the penalty provided in this section against such persons; and he is hereby authorized to subpoena the assessor and such other witnesses as may be necessary, and to introduce the assessor's returns in evidence. [R. C. 1905, § 129; 1890, ch. 46, § 3; 1891, ch. 115, § 2; R. C. 1899, § 125.]

§ 166. Power to send for persons, books and papers. He shall have power to send for persons, books and papers whenever in his opinion it is necessary, and he may examine witnesses under oath, being hereby authorized to administer the same in the performance of his duty, and the testimony so taken must be filed and preserved in his office. [R. C. 1905, § 130; 1890, ch. 46, § 5; R. C. 1899, § 126.]

§ 167. Duty to promote immigration. He shall look after and devise means to advance the immigration interests of the state, and to encourage and promote the permanent settlement and improvement of all sections of the state. He shall have charge of the preparation in manuscript, the publication and distribution by mail and otherwise of any and all documents and articles of reading matter designed to convey correct and full information on all matters pertaining to the growth and development of the agricultural, manufacturing, commercial and mining interests of the state. He shall attend to all correspondence relating to immigration and shall do all in his power by letter, by the use of published printed matter and through personal effort to secure the most liberal and extensive advertisement of the resources and opportunities of the state. It shall be his aim to induce the investment of capital in agriculture, in mining and in different industrial and mercantile pursuits, and to facilitate the coming to the state of persons and families seeking permanent location for new homes. He shall procure the most favorable rates of fare obtainable from railroads and other transportation

companies for persons coming to the state, and where such persons have formed a colony or party of considerable number, he shall be required to visit them, if necessary, and do all in his power to direct and assist them in making the necessary arrangements for transportation and in reaching the state. [R. C. 1905, § 131; 1890, ch. 46, § 8; R. C. 1899, § 127.]

Appropriation to promote immigration, see section 649.

§ 168. Shall have charge of exhibits. He shall have charge of any exhibits of the products and resources of the state, which may be made at any fair or exposition held at any point in the United States, and shall have authority to co-operate with any railroad company doing business within the state, and with any persons interested with a view of securing such an exhibit at any fair or exposition held as aforesaid. [R. C. 1905, § 132; 1890, ch. 46, § 9; 1899, ch. 44, § 3; R. C. 1899, § 128.]

§ 169. State statistician. The commissioner of agriculture and labor shall be the state statistician. It shall be his duty to obtain from assessors and other officers of the organized counties of the state, and to collate and prepare in tabulated form for reference, statistics showing the assessed valuation of all real and personal property, the acreage and yield of all kinds of grain and tame grasses; the number of horses, cattle, sheep and other live stock, and other information pertaining to and showing the condition of the growth, development and resources of the state by counties. [R. C. 1905, § 133; 1899, ch. 44, § 2; R. C. 1899, § 129.]

§ 170. Reports of commissioner. Portions may be given out, when. The commissioner shall report to the legislative assembly the number of coal mines being operated within the state, the number of tons of coal being mined annually, the number of persons employed in coal mining, the wages paid coal miners and the cost per ton to mine coal at the different mines. The commissioner is hereby authorized to give out to the press of this or other states at any time such parts of any reports in course of preparation as may be sufficiently concluded to admit of publication, or such information regarding the statistics of the state as may in his judgment be of interest or value to the people, the design being to furnish to the people through the press as fresh information regarding the state and its industries and condition as possible without awaiting the official publication through biennial or other reports. [R. C. 1905, § 134; 1890, ch. 46, § 11; 1891, ch. 115, § 4; R. C. 1899, § 130.]

§ 171. Salary of commissioner of agriculture and labor. * * * The * * * commissioner of agriculture and labor * * * shall * * * receive an annual salary of three thousand dollars, and shall reside at the capital of the state. [1909, ch. 216, § 4; R. C. 1905, § 135; 1890, ch. 47, § 1; R. C. 1895, § 131.]

ARTICLE 8.—THE COMMISSIONER OF INSURANCE.

§ 172. Duties of. It is the duty of the commissioner of insurance:

1. To see that all laws of this state respecting insurance companies are faithfully executed.

2. To file in his office the articles of incorporation of all insurance companies organized or doing business in this state, and on application to furnish a certified copy thereof.

3. To report in detail to the attorney-general any violation of law relative to insurance companies, their officers or agents.

4. To furnish the insurance companies required to make reports to him the necessary blank forms for the statements required.

5. To preserve in permanent form a full record of his proceedings and a concise statement of each company or agency visited or examined.

6. To furnish at the request of any person and on payment of his fees certified copies of any record or paper in his office, when he deems it not

prejudicial to the public interests so to do, and to give such other certificates as may be provided by law.

7. To furnish a written report to the governor on or before the fifteenth day of November of each year showing his official acts, the receipts and expenditures of his department during the preceding fiscal year, the condition of the companies doing business in this state and such other information as will exhibit the affairs of his department; which report shall be printed, to the number of five hundred, at the expense of the state, and distributed among the members of the succeeding legislative assembly, and otherwise as provided by law. Such report must contain only an abstract of the reports of insurance companies.

8. To send a copy of his annual report to the insurance commissioner, or other similar officer, of every other state and to each company doing business in this state.

9. To communicate on request to the insurance commissioner of any other state any facts which by law it is his duty to ascertain respecting companies of this state doing business within such state.

10. To have an official seal and to employ competent clerks, such clerks to discharge such duties as he may assign, and in case of his sickness or temporary absence from office, his chief clerk shall have authority to sign his name and perform such other duties as are required by law pertaining to the duties of such commissioner of insurance. [R. C. 1905, § 136; R. C. 1895, § 132.]

See the later and ruling provisions in respect to the time of making report to the governor and the contents thereof, sections 95, 97, 98, 633.

§ 173. **Fees.** The commissioner of insurance shall charge and collect such fees as are prescribed in chapter 18 of the civil code. [R. C. 1905, § 137; R. C. 1899, § 133.]

§ 174. **Salary of commissioner of insurance.** * * * The * * * commissioner of insurance shall * * * receive an annual salary of three thousand dollars, and shall reside at the capital of the state. [1909, ch. 216, § 4; R. C. 1905, § 138; R. C. 1895, § 134.]

In R. C. 1905, § 138, his salary of two thousand dollars is "to include all services performed by him."

§ 175. **Commissioner disqualified, state examiner to act, when.** In case the commissioner of insurance is a director, officer, agent, attorney, a stockholder of or directly interested in any insurance company except as an insured, the examination of such company shall be made by the state examiner, or by some person appointed by him; and no officer or agent of any insurance company doing business in this state shall be deputed to examine the affairs of such company. [R. C. 1905, § 139; R. C. 1895, § 135.]

ARTICLE 9.—HAIL INSURANCE DEPARTMENT.

§ 176. **Hail insurance department, duties.** A hail insurance department of the state of North Dakota is hereby established and the commissioner of insurance shall also be the commissioner of hail insurance, and the management of said hail insurance department shall be under his supervision. He shall have the authority to appoint and engage one deputy by the month for steady service and one clerk from March fifteenth to November fifteenth of each year, and such additional deputies and clerks as he may find necessary to properly conduct the business, and a salary of such deputies and clerks shall be allowed, not to exceed one hundred dollars per month for each deputy and eighty dollars per month for each clerk, to be paid out of the hail insurance fund. He shall also prepare and provide the necessary blanks, books, stationery and postage, and cause the same to be delivered to the proper officers and persons. The hail insurance department shall insure growing grain in any county in the state against loss by hail upon the terms

and in the manner hereinafter set forth, and shall draw up and furnish form of hail insurance policy; provided, that the appointment and employment of all additional deputies and clerks shall have the approval of the state auditing board, and all expenses and salaries audited and allowed by it. [1913, ch. 192, § 1; 1911, ch. 23, § 1.]

Laws 1911, ch. 23, established a hail insurance department, and made the commissioner of agriculture and labor also the commissioner of hail insurance. Thirteen sections of that act were amended and the three remaining sections repealed by Laws 1913, ch. 192, which, omitting superfluous parts, constitutes article 9 of this compilation.

§ 177. Assessor's duties. It shall be and is hereby made the duty of each and every county, township, city and village assessor in the state, each within his respective district, at the time of listing the property for assessment, or thereafter, to inquire of the party assessed how many acres of crop, if any, such party desires to have insured in said state hail insurance department for the year in which said assessment is made, and at the same time inform said party that as a premium for said hail insurance a payment of thirty (30) cents per acre for each and every acre so insured must be made; and if the party assessed is willing and consents to have all or part of his crops insured, it shall be the duty of said assessor to take said application for such hail insurance on blanks furnished him for that purpose by the county auditor, the form of which must have been approved by the commissioner of hail insurance, and carefully describe each piece of land that he so insures, describing particularly the section or quarter section or any subdivision thereof, and the township and county wherein the same is situated; also stating separately the number of acres of wheat, oats, barley, flax, corn, rye or other grain that said party so insures, and collect thirty (30) cents for each acre so insured, or in such proportion as said party's interest may appear, and in addition the assessor may collect as an application fee a sum equivalent to one-half ($\frac{1}{2}$) cent per acre for each and every acre insured. And the assessor shall forward the application promptly, together with the premiums so collected, to the county auditor. [1913, ch. 192, § 2; 1911, ch. 23, § 2.]

§ 178. County auditor's duties. Each county auditor in the state shall file and keep the insurance applications returned to him by the several assessors, and turn all moneys collected for each month for the insurance over to the county treasurer the first of each succeeding month, taking his receipt therefor, and any party who fails to insure his crop with the assessor, as above described, may at any time up to and including the twenty-first day of August, apply to the county auditor of the county where the land is situated to have his crop insured, as provided in this article, by filling out and filing with the county auditor an application, as prescribed in section 177, and upon the payment of the premium prescribed herein to said county auditor for such insurance, which premium shall be turned over to the county treasurer as above provided.

It is further provided that said insurance shall be in force and effect from the time of filing the application in the office of the county auditor, and until the grain is cut but in no case later than September fifteenth of each year. He shall also keep a record of the time of filing such application. The county auditor shall immediately issue and mail to each applicant his policy upon the filing of said application. [1913, ch. 192, § 3; 1911, ch. 23, § 3.]

§ 179. Duplicates and abstracts. On the first day of June, July, and August, each and every county auditor within the state shall make out a list of all hail insurance applications filed in his office and forward the same at once to the department of hail insurance at Bismarck, and on or before the first day of September in each year, each and every auditor within the state shall make out in duplicate a list of all the hail insurance applications filed in his office, keeping one copy for his records, and forwarding the other

copy to the department of hail insurance at Bismarck, North Dakota. [1913, ch. 192, § 4; 1911, ch. 23, § 4.]

§ 180. Duty of the county treasurer. The county treasurer of each and every county in the state shall issue his receipt to the auditor for such premiums turned over to him and shall keep a separate account of all moneys collected from such hail insurance premiums, and he shall pay the same over to the state treasurer, taking his receipt therefor, not less than ten per cent at the end of each month, and the balance not later than September 1st of each year. [1913, ch. 192, § 5; 1911, ch. 23, § 5.]

§ 181. Adjusters. The county commissioners of each county shall at the April meeting of the board appoint one competent person who shall be a resident of the county to act as official adjuster of losses or damages caused by hail to any crop that has been insured under the provisions of this article. If the county commissioners fail or neglect to appoint an official adjuster as herein required, the commissioner of hail insurance shall appoint an official adjuster for such county and such official adjuster shall have all the powers and perform all the duties imposed upon official adjusters appointed by the county commissioners, according to the provisions of this article. The county auditor shall immediately, after such appointment, notify the commissioner of hail insurance of the same, and no such appointment shall be effective unless confirmed and approved by the said commissioner of hail insurance. The commissioner of hail insurance shall have power and authority to remove or discharge any such official adjuster for misconduct, incompetency or neglect of duty, and such commissioner may in his discretion direct such official adjuster to adjust losses or damages caused by hail to any crop insured under the provisions of this article in any county or counties in this state, adjacent to the county in which he was appointed. The official adjuster shall receive as compensation for his services, the sum of five dollars per day and his actual and necessary expenses while engaged in the actual and necessary performance of his duty. The official adjuster shall adjust losses or damages caused by hail to any crop that has been insured under the provisions of this article. And it is hereby made his duty to adjust all losses and damages within his county, or within any other county in the state when so directed by the commissioner of hail insurance. When any party that is insured as herein provided has sustained a loss by hail, he shall promptly thereafter notify the commissioner of insurance of such loss. The commissioner of insurance shall, as soon as possible after receiving the notice of loss direct an official adjuster to visit the place of loss and proceed to estimate and adjust such loss. In so doing, it shall be his duty to carefully inquire into the condition of the crop before the loss occurred, as to whether it was poor, medium or good, and if he deems it necessary, he shall have the power to call witnesses to testify as to the conditions of the crop before the same was damaged or destroyed, and he shall make his estimate and adjustment after ascertaining the condition of the crop before and after the loss occurred. In estimating the loss the official adjuster shall allow as damages the proportion which the crop as damaged bears to the crop if no loss had occurred. If the total value of the crop insured be less than eighty dollars per acre, then in case of total loss the insured shall receive the total value thereof; and if the loss be partial then the insured shall receive that percentage of value which the loss bears to the total value of the crop insured. If the value of the crop be more than eight dollars per acre, the insured shall receive that percentage of the maximum of eight dollars which the loss bears to the total value of the crop. Provided, however, that in no case shall more than eight dollars per acre be allowed as the maximum for wheat, flax, oats, barley, corn, rye and other grains. [1913, ch. 192, § 6; 1911, ch. 23, § 6.]

§ 182. In case no agreement. In case the party that has sustained the loss is dissatisfied with and refuses to accept the adjustment made by the official adjuster then he shall have the right to appoint one disinterested person as adjuster and the official adjuster shall appoint another person as adjuster, and the two shall elect a third disinterested person, and the three shall then proceed to adjust the loss in the same manner as specified in section 181, and the judgment of the majority shall be the judgment of said adjusters and shall be binding upon both parties as the final determination of said loss; provided, however, that if the insured does not recover a greater sum than allowed by the official in the first instance, he shall pay the expenses of the said three adjusters and their witnesses in making said adjustment, but if he receives a larger sum, then the same shall be paid by the commissioner of hail insurance out of the hail insurance fund. [1913, ch. 192, § 7; 1911, ch. 23, § 7.]

§ 183. Report of adjusters. At the final adjustment of each loss the adjuster shall then and there carefully fill out and make a report in triplicate on an adjustment blank prepared for him for that purpose stating the county, township and range, the number of the section and the quarter of the section or subdivision thereof, on which the crop was damaged or destroyed, also the number of acres and different kinds of grains estimated damaged or destroyed, being the amount allowed for each separately, and that such estimate is true and not in excess of the actual loss sustained, which said adjustment papers must be signed and sworn to by the official adjuster or all the adjusters when arbitration is resorted to, acting as adjuster, and the party whose loss has been adjusted, with the residence and post office address of both. The official adjuster shall, within a reasonable time, not to exceed five days, forward by registered mail said adjustment papers, the original to the commissioner of hail insurance at Bismarck, North Dakota, one copy to the county auditor and one copy to the insured. [1913, ch. 192, § 8; 1911, ch. 23, § 8.]

§ 184. Compensation of adjusters, itemized statement. The official adjuster shall receive as compensation for his services the amount specified in section 181 of this article. All persons called on to assist in adjusting a hail loss, whether acting as adjusters or as witnesses shall receive the sum of two dollars per day for all services so rendered. The official adjuster shall itemize said expense account for each loss or adjustment made, which account must be sworn to and forwarded to the commissioner of hail insurance, and the same shall upon being approved by the hail insurance commissioner be paid out of the state hail insurance fund, on warrants drawn by the state auditor. Provided, however, that such adjuster or adjusters shall not be entitled to receive or be paid any compensation or expenses, as herein provided, unless all adjustments by him made shall be reported to the commissioner of hail insurance, as required in this article, within ten days from the time such adjustment or adjustments were made. [1913, ch. 192, § 9; 1911, ch. 23, § 9.]

§ 185. Duties of state treasurer. The state treasurer shall keep all moneys paid by the several county treasurers from the collections of hail insurance in a separate fund to be designated and known as the hail insurance fund, and the treasurer shall pay out of said fund only upon warrants of the state auditor. [1913, ch. 192, § 10; 1911, ch. 23, § 10.]

§ 186. Duties of commissioner of hail insurance. When the several county auditors of this state shall have made complete returns showing the number of acres insured for that year the commissioner of hail insurance shall sum up the total hail insurance fund for that year; when he shall have received a complete return from all of the hail losses in the state as adjusted and allowed, he shall sum up the total of such amounts for that year. He shall sum up the expenses of his office as follows:

First: The total amount allowed for adjusting losses.

Second: The total amount estimated necessary for deputies and clerk hire in the hail insurance department for said year.

Third: The amount estimated necessary for books, blanks, stationery, postage and other expenses incident to the running and operating of the said hail insurance department, for one year, the total sum of such expense account shall first be deducted from the total amount of the hail insurance receipts for that year and paid, and if the balance remaining is sufficient, all hail losses shall be paid in full as allowed by the adjusters, but if the expenses and hail losses shall exceed the amount of hail insurance receipts for that year, the expenses shall be paid first and the losses shall be paid pro rata. However, should there in any one year after all expenses and losses have been paid, still be a surplus, then such surplus remain in the state treasury in the hail insurance fund to be drawn upon in such future years as there might be a deficiency. [1913, ch. 192, § 11; 1911, ch. 23, § 11.]

§ 187. Penalty. Any county auditor in this state who shall fail or neglect to make complete returns, statements and reports as required in this article to the commissioner of hail insurance at the times specified in any section of this article, shall forfeit the sum of ten dollars per day for each day during which he neglects to make such statements, returns or reports to the commissioner of hail insurance, and upon complaint or notice by the said commissioner to the attorney-general of the state, it shall be the duty of the attorney-general to proceed to collect the amount of such penalty from any delinquent auditor. [1913, ch. 192, § 12.]

§ 188. Payment of losses. When the commissioner of hail insurance has figured up the whole year's business, as indicated in section 187, he shall prepare and furnish to the state auditor a certified list of the loss arranged by counties, showing the names and addresses of persons who have suffered loss by hail and are entitled to compensation for such losses under the provisions of this article, the appraised losses and the amount to be paid each such person; upon receipt of this list from the commissioner of hail insurance it shall be the duty of the state auditor immediately to draw warrants for said amounts upon the state treasurer, the amounts of which shall be charged to the state hail insurance fund, in favor of each person entitled thereto and to mail such warrants forthwith to each person entitled thereto, as shown by the certified list of the state hail insurance commissioner aforesaid. It shall also be the duty of the state hail insurance commissioner to mail a copy of each such list of losses and amounts allowed to each and every person named in such list and who has suffered loss by hail during the year for which such list is made. [1913, ch. 192, § 13; 1911, ch. 23, § 12.]

§ 189. Report published in newspapers. The commissioner of hail insurance shall on or about the first day of December in each year issue and publish in four newspapers of general circulation within the state a concise statement of the work and condition of the hail insurance department during the preceding year. He shall also make a biennial report to the legislature. [1913, ch. 192, § 14; 1911, ch. 23, § 13.]

As to the time of making the biennial report and the contents thereof, see sections 95, 97, 98, 633.

§ 189a. Transfer of records. It shall be the duty of the commissioner of agriculture and labor, acting as commissioner of hail insurance under the provisions of the preceding sections of this article immediately upon the passage and approval of this act to deliver to the commissioner of hail insurance, as constituted by the provisions of this act, all papers, reports, documents, records, funds and accounts of every description which are in his possession or under his control as such commissioner of hail insurance by reason of the duties imposed upon him by the preceding sections of this article; and the commissioner of hail insurance, as constituted by the provisions of

this act, shall receive and have custody of all such records, papers, reports, documents, funds and accounts. [1913, ch. 192, § 15.]

This section went into effect March eleventh, nineteen hundred and thirteen, by virtue of an emergency section in Laws 1913, ch. 192, of which it formed a part, the said chapter being "this act" referred to in section 189a.

ARTICLE 10.— STATE BONDING DEPARTMENT.

§ 190. Establishing a state bonding department. A bonding department of the state of North Dakota is hereby established under the management and supervision of the commissioner of insurance. [1913, ch. 194, § 1.]

§ 191. Deputy and clerks, duties. The commissioner of insurance shall have the authority to appoint a deputy and engage such clerks as he may find necessary to properly conduct the business of the state bonding department of his office, at a salary of not to exceed two hundred dollars per month for such deputy and seventy-five dollars per month for each clerk, to be paid out of the bonding department fund hereinafter provided for. The appointment of such deputy and clerks shall have the approval of the state auditing board. The commissioner of insurance shall prepare and provide the necessary blanks, books, stationery and postage, and cause the same to be delivered to the proper officers and persons. All expenses and salaries shall be audited and allowed by the state auditing board. [1913, ch. 194, § 2.]

§ 192. Business of department defined. Said bonding department shall bond counties, cities, towns, townships and school districts in any county in the state against loss by default of any officer, upon the terms and in the manner hereinafter set forth, and the commissioner of insurance shall draw up, with the assistance of the attorney-general, a standard form of surety bond, and only such form shall be used. [1913, ch. 194, § 3.]

§ 193. What officers to furnish state bonds. Each county official (except justice of the peace and constable), every assessor required by law to furnish a bond, every city treasurer, every town treasurer, every school district treasurer and every township treasurer hereafter elected or appointed to an office required to furnish a bond by law, shall be bonded in and with the state bonding department; provided, however, that the state shall not bond any official for a greater amount than fifty thousand dollars, and any official required to be bonded in a greater sum than fifty thousand dollars shall bond in the amount in excess of fifty thousand dollars with a responsible surety company, or in any manner satisfactory to the proper authorities. Provided, further, that it shall be optional with any township or school district treasurer to be bonded in and with the state bonding department. The premiums for such bonds shall be paid out of the county, city, town, school district or township treasury, as the case may be, by the proper authorities. [1913, ch. 194, § 4.]

§ 194. Premiums, to whom paid. The premiums on such bonds shall be twenty-five cents per hundred dollars of bond per year on all bonds issued. Such premiums shall be paid in advance by the proper authorities of each county, city, town, school district and township from its respective treasury, as provided by law, to the state treasurer, who shall issue receipts therefor, as hereinafter provided. The minimum premium on small and short term officers' bonds shall not be less than two dollars and fifty cents. [1913, ch. 194, § 5.]

§ 195. Bonding fund. Whenever there is paid into the state treasury any money for premiums for bonding officials as prescribed in section 194 of this article, it shall be known as the state bonding department fund, and shall be used as provided in this act. [1913, ch. 194, § 6.]

§ 196. State treasurer, duties of. It shall be the duty of the state treasurer whenever there is any money paid into the state treasury for premiums on bonds, to at once issue quadruple receipts therefor; one he shall send to

the county, city, town, school district or township paying the same; one he shall file with the state auditor; one he shall retain in his office, and one he shall file with the commissioner of insurance. Such receipts must state the amount and date of bond, name of the official bonded, his official duty, postoffice address, and the county he resides in. [1913, ch. 194, § 7.]

§ 197. Period of bonds. All bonds executed and furnished by the state bonding department shall be made to run until the expiration of the officer's term of office, and where such term is less than one year, a full year's premium shall be charged. [1913, ch. 194, § 8.]

§ 198. General duties. It shall be the duty of the commissioner of insurance to estimate at the beginning of each year the amount required for salaries and expenses of the bonding department for the current year, which estimated amount shall be reserved from the premiums paid in, and the amount of premium receipts remaining shall be available for payment of losses. Losses shall be paid promptly and as soon as the amount shall be determined by the commissioner of insurance, and a report thereof made as provided for in this act. Any sum which remains unexpended at the end of any year shall remain in the state bonding fund, which fund shall be permitted to accumulate until it equals in amount \$100,000, after which the surplus in excess of \$100,000 shall be distributed to the various counties, municipalities and townships, in proportion to the amount of premiums paid into the state bonding fund by the same; provided, that in case there should not be sufficient funds to meet the losses sustained after the reservation of expenses for the conduct of the department for the year, such losses shall be paid as funds are accumulated in the state bonding fund by the collection of premiums. [1913, ch. 194, § 9.]

§ 199. Report, to make. The commissioner of insurance shall, on or about the first day of January in each year, issue and publish in four newspapers of general circulation within the state, a concise statement of the work and condition of the bonding department during the preceding year, and said commissioner of insurance shall also make a biennial report to the governor and legislative assembly, containing a detailed statement of the work and condition of said bonding department for the biennial period. [1913, ch. 194, § 10.]

See also as to time and contents of the commissioner's report to the governor and legislative assembly, sections 95, 97, 98, 633.

§ 200. Other duties. The commissioner of insurance shall require and obtain from the various officials bonded statements annually, and as often as deemed necessary, of their receipts, bank accounts and disbursements, verified by the city auditor or county auditor, or clerk of the town, township or school district; and to verify such statements he shall communicate with each bank having such deposits, and he may also require such public official to furnish him with any information concerning the office with which such official is intrusted, and he shall file all such information in his office in a proper manner, and such records shall at all times be open for inspection to the proper authorities. The commissioner of insurance shall supply each county and city auditor, township and school district clerk, with a sufficient number of application blanks, and it shall be the duty of such auditors and clerks to furnish the officials required to be bonded with said application blanks. On the reverse of each blank there shall be printed sections 193, 194 and 196 of this article. All applications for bonds under the provisions of this act shall be made on said blanks. If in the opinion of the commissioner of insurance it is advisable for the safety of the state to reject an application for a bond, or cancel the bond of any official bonded, he shall submit such application, also the person's name whose bond he proposes to cancel, to the state auditing board, together with his reasons for rejecting or cancelling the same, and if the auditing board rejects such application or cancels any bond, such official may bond in any manner

satisfactory to the proper authorities of the city, village, school district, township or county, as the case may be. Provided, however, that when an application is rejected by the board, he shall notify such person by registered mail, and before a bond is cancelled he shall also notify such person by registered mail, demanding from him a receipt thereof, and upon the return of such receipt the board shall cancel such bond six days thereafter. When any default is reported, it shall be the duty of the commissioner of insurance to carefully inquire into and investigate the same before the indemnity is paid thereon. Should any official default, then it shall be the duty of the state examiner to examine and check the accounts of such defaulting official and file his report with the commissioner of insurance, stating amount due upon said defaulting officer's bond, and for such services he shall be paid out of the state bonding fund. [1913, ch. 194, § 11.]

§ 200a. Shall be in effect January 1, 1914. This article shall go into effect on January 1st, 1914. [1913, ch. 194, § 13.]

ARTICLE 11.—FIRE MARSHAL DEPARTMENT.

The act constituting this article is termed in its title "An act for the creation of a fire marshal department."

§ 201. Organization of department. That there be added to the duties of the commissioner of insurance the additional duties created by this article. The governor shall appoint a fire marshal and a chief assistant fire marshal, who shall be under the management of the commissioner of insurance, said appointments to be made within sixty days after the passing of this article, and who shall hold office for the term of two years, and shall be removed for cause only, and until their successors are appointed and qualified. The commissioner of insurance shall appoint one clerk who shall act as deputy assistant fire marshal. The fire marshal and chief assistant shall give a bond to the state of North Dakota in the penal sum of five thousand dollars (\$5,000) each, conditioned upon the faithful discharge of his duties. The fire marshal, the chief assistant fire marshal, and the deputy shall take and subscribe and file in the office of the secretary of state the constitutional oath within fifteen days from the time of their appointment respectively. [1913, ch. 169, § 1.]

§ 202. Duties of officers. It shall be the duty of the fire marshal and assistant to enforce all laws of the state in respect to fires as follows:

- (a) Prevention of fires.
- (b) The storage, sale and use of combustibles and explosives.
- (c) The installation and maintenance of automatic or other fire alarms and fire extinguishing equipment.
- (d) The means and adequacy of exits in case of fires from churches, schools, halls, theaters, amphitheatres and all other places in which numbers of persons congregate from time to time for any purpose.
- (e) The suppression of arson and investigation of the cause, origin and circumstances in connection with fires.

(f) The fire marshal and chief assistant fire marshal shall have such other powers and perform such other duties as are set forth in other sections of this article, and as may be conferred and imposed from time to time by law. [1913, ch. 169, § 2.]

§ 203. Duties of chief assistant. The duty of the chief assistant fire marshal shall be to assist the fire marshal and in the event of a vacancy in the office of fire marshal, or during the absence or disability of that officer the chief assistant fire marshal shall assume the duties of the office of fire marshal. [1913, ch. 169, § 3.]

§ 204. Reports of circumstances of fires. (a) The chief of the fire department of every city or village in which a fire department is established, and the mayor of every incorporated city in which no fire department exists,

and the president of the village board of every incorporated village in which no fire department exists, and the above named officers shall report the cause, origin and circumstances of every fire occurring in such city or village by which property has been destroyed or damaged, when the damage exceeds the sum of twenty-five dollars (\$25.00), except that all fires of unknown origin shall be reported, and shall especially make a report as to whether such fire was the result of carelessness, accident or design.

(b) Such report shall be made within five days after the occurrence of such fire, and the fire marshal shall have the right to supervise and direct such investigation whenever he deems it expedient or necessary.

(c) The officer making reports or investigation of fires occurring in cities or villages shall forthwith notify the fire marshal and shall within one week after the occurrence of the fire furnish to the fire marshal a written statement of all the facts relating to the cause and origin of the fire, and such further information as may be called for by the blanks furnished by said fire marshal. The state fire marshal shall keep in his office a record of all fires occurring in the state, together with the facts, statistics and circumstances in connection with said fires, including the origin of the fire, which may be determined by the reports or investigations provided by this article and such statistics shall at all times be open for public inspection. [1913, ch. 169, § 4.]

§ 205. Investigations by fire marshal. Procedure. Contempt. The fire marshal shall, when, in his opinion, further investigation is necessary, take or cause to be taken the testimony, under oath, of all persons supposed to be cognizant of any facts, or to have any means of knowledge in relation to the matter as to which an examination is herein required to be made, and shall cause the same to be reduced to writing, and if he shall be of the opinion that there is evidence sufficient to charge any person with the crime of arson he shall cause said person to be arrested and charged with such an offense, and shall furnish to the proper prosecuting attorney all such evidence together with a copy of all names of witnesses and all the information obtained by him, including a copy of all pertinent and material testimony taken in the case, and shall keep a record of the proceedings and progress made in all such prosecutions for arson, and the result of all cases finally disposed of.

(a) The fire marshal and chief assistant fire marshal shall each have the power in any county in the state of North Dakota to summon and compel the attendance of witnesses before them or either of them to testify in relation to any matter which is, by the provisions of this article, a subject of inquiry and investigation, and may require the production of any books, papers or documents being pertinent thereto or deemed by them or either of them to be so, and such summons shall be served in the same manner and have the same effect as subpoenas in district court. All witnesses shall receive the same compensation as is paid to witnesses in the district court, which shall be paid out of the fire marshal's fund upon the voucher signed by the state fire marshal or chief assistant fire marshal before whom any witnesses shall have attended, and approved by the state auditing board, and such officers shall at the close of such investigation, wherein such witness or witnesses were subpoenaed, certify to the attendance and the mileage of such witnesses, which certificate shall be filed in the office of the fire marshal, and all investigations held by or under the direction of the state fire marshal or his subordinates.

(b) Said fire marshal, chief assistant fire marshal are hereby authorized and empowered to administer oaths and affirmations to any person appearing as a witness before them, and false swearing in any matter or proceeding aforesaid shall be deemed perjury, and shall be punished as such.

(c) Any witness who refuses to be sworn, or who refuses to testify, or who disobeys any lawful order of the fire marshal or chief assistant fire

marshal in relation to such investigation, or who fails or refuses to produce any paper, book or document touching any matter under examination, or who is guilty of any contemptuous conduct after being summoned to appear before them to give testimony in relation to any matter or subject under investigation or examination, as aforesaid, may be summarily punished by the said state fire marshal, chief assistant fire marshal, as for contempt by a fine for a sum not exceeding one hundred dollars, or be committed to the county jail until such time such person may be willing to comply with any reasonable order made by the said state fire marshal, or chief assistant fire marshal, as provided in this article, and subject to punishment as provided by law. [1913, ch. 169, § 5.]

§ 206. Abatement of dangerous conditions. If the fire marshal, chief assistant fire marshal, or any other officer mentioned in the preceding sections upon an examination or inspection finds a building or other structure, which, for want of proper repair by reason of age and dilapidated condition, defective or poorly installed electric wiring, or equipment, defective chimneys, defective gas connections, defective apparatus, or for any other cause or reason, is especially liable to fire, and which building or structure is so situated as to endanger other buildings or property such officer shall order such buildings to be repaired, torn down, demolished, materials removed, and all dangerous conditions remedied and abated. If such officer finds in a building or upon any premises any combustible or explosive material, rubbish, rags, waste, oils, gasoline, or inflammable conditions of any kind, dangerous to the safety of such buildings or property he shall order such material removed and such dangerous conditions remedied and abated. Such order shall be made against and served personally, or by registered letter, upon the owner, lessee, agent, or occupant of such buildings or premises, and thereupon such order shall be complied with by the owner, lessee, agent, or occupant within the time fixed in such order. Any person who shall interfere in any way with the fire marshal, chief assistant fire marshal in the performance of their duties shall be guilty of a misdemeanor. [1913, ch. 169, § 6.]

§ 207. Order for correction of dangerous conditions. If the fire marshal or chief assistant fire marshal shall find on any premises or in any building conditions that are a menace and dangerous to the safety of life and limb of the occupant of said building or adjacent buildings they are empowered to issue the necessary order for removal or correction of the dangerous conditions forthwith, and any owner, agent, or occupant of said premises upon whom said order is issued failing to comply with said order within the time specified shall be guilty of a misdemeanor. [1913, ch. 169, § 7.]

§ 208. Appeal from order of officer. If the owner, lessee, agent, or occupant deems himself aggrieved by an order of an officer under the preceding section and desires a hearing he may complain or appeal, in writing, to the fire marshal within five days from the service of the order, and the fire marshal shall at once investigate said complaint, and he shall fix a time and place not less than five days nor more than ten days thereafter when and where said complaint will be heard by the fire marshal, and the fire marshal at said hearing may affirm, modify, revoke, or vacate said order, and unless said order is revoked, modified or vacated by the fire marshal it shall remain in force and be complied with by such owner, lessee, agent or occupant within the time fixed in said order, or within such time as may be fixed by the fire marshal at said hearing. [1913, ch. 169, § 8.]

§ 209. Appeal from order of fire marshal. If a person is aggrieved by the final order of the fire marshal, as made at the hearing provided for in the preceding section, such person may, within five days thereafter, appeal to the district court in the county in which the property is situated, notifying the fire marshal of such appeal within three days thereafter, which notice shall be in writing, and delivered personally to the fire marshal or left at

his principal office in the city of Bismarck. The party so appealing shall within two days thereafter file with the clerk of the district court in which appeal is made a bond in an amount to be fixed by the judge of the judicial district in which the property is situated, but in no case less than one hundred dollars (\$100) with at least two sufficient sureties, to be approved by said court, conditioned to pay all the costs of the appeal in case the appellant fails to sustain the same, or the appeal be dismissed for any cause. The district court shall hear and determine the appeal within ten days, or as soon thereafter as possible, from the date of the filing of the same at any place in the judicial district to be designated by the judge of said court. The fire marshal shall make a complete transcript of the proceedings had before him and certify the same together with all the original papers filed in his office, and transmit them to the district court at least three days prior to the date of hearing as fixed by the court. In case the decision is against the appellant, or for any cause the appeal be dismissed, judgment for the costs shall be ordered against the appellant. [1913, ch. 169, § 9.]

§ 210. Service of notice to nonresident. If the owner of such premises is not a resident of the state of North Dakota, and if such premises are vacant and are unoccupied, or if the owner of such premises has no known address then such notice shall be served by a three weeks' publication thereof in a legal newspaper published in the county in which said premises are situated, and such notice shall be deemed to have been served upon such owner upon the last day of the publication of such notice. [1913, ch. 169, § 10.]

§ 211. Insurance companies to report losses. Every fire insurance company authorized to transact business in this state is hereby required to report to the state fire marshal, through the secretary or other officer of the company designated by the board of directors for that purpose, all fire losses on property insured in any such companies, giving date of fire, the amount of probable loss, the character of the property lost or destroyed, and the supposed cause of the fire together with the amount of insurance carried by such company. Such report shall be mailed to the fire marshal within three days after the notice of loss received by such company. Each company is hereby also required to report the amount of loss as adjusted on each fire after adjustment is made. Such report shall be in addition to, and not in lieu of, any reports such company may be required to make by any law of this state to the commissioner of insurance. [1913, ch. 169, § 11.]

§ 212. Penalty for officers neglecting to comply with act. Any officer referred to in this article, who neglects to comply with any of the requirements of this article, shall, upon conviction, be punished by a fine of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) for each neglect or violation. [1913, ch. 169, § 12.]

§ 213. Salaries of officers. The fire marshal shall receive an annual salary of twenty-five hundred dollars (\$2,500). The chief assistant fire marshal shall receive an annual salary of eighteen hundred dollars (\$1,800). The fire marshal, chief assistant fire marshal, and all other employees of the state fire marshal's office shall receive their compensation monthly. All officers who shall perform any service at the request of the fire marshal, chief assistant fire marshal, shall receive the same fees as officers in district court, and such fees shall be paid out of the fire marshal's fund as witnesses testifying under this article. [1913, ch. 169, § 13.]

§ 214. Clerical assistance and other expenses. The commissioner of insurance shall employ clerks and assistants and incur such other expenses as may be necessary for the fire marshal and chief assistant fire marshal in the performance of their duties, including necessary traveling expenses, not to exceed, including salaries, such sums as may be paid into the state treasury in the manner hereafter provided. Provided, that no clerk or assistant shall be appointed, except as expressly provided for in this article, until the

necessity for such appointment shall first be passed upon by the governor and approved by him. [1913, ch. 169, § 14.]

Clerk hire to be paid only on sworn vouchers, etc., see section 653f.

§ 215. Rules for prevention of fires to be issued. The commissioner of insurance and the fire marshal shall make rules for the prevention of fires, and such rules shall be fully explained to all state, county and city boards and officers by the fire marshal or his assistants. All such rules shall be posted in such conspicuous places as will tend to be of the greatest benefit to the residents of the state, and when called upon the fire marshal, or one of his assistants, shall appear before such boards and explain the benefits derived by the compliance with such rules and regulations in the reduction of the hazardous conditions and the reduction in loss by fire. [1913, ch. 169, § 15.]

§ 216. Tax on insurance companies. For the purpose of maintaining the department of the fire marshal and paying the expenses incident thereto every mutual and domestic fire insurance company doing business in the state of North Dakota (excepting therefrom county mutual insurance companies) shall hereafter pay to the commissioner of insurance on or before April 1, 1913, and annually thereafter a tax upon its fire premiums or assessments, or both, as follows: A sum equal to one-half of one per cent ($\frac{1}{2}$ per cent) of the gross premiums and assessments less return premiums on all direct business received by it in this state, or by its agents for it, in cash or otherwise, and during the preceding calendar year.

Provided, however, that if the amount so raised be not sufficient to maintain the office of fire marshal, as herein provided, that the balance so required to support said office, as herein stated, shall be paid out of the two and one-half per cent tax now paid by foreign companies in this state.

Provided, further, that this article shall in no way affect the tax due March 31, 1913, and the payment thereof. The money so received into the state treasury shall be set aside as a special fund, and is hereby appropriated for the maintenance of such office of state fire marshal, and the expenses incident thereto. The state shall not be liable in any manner for the salary of said fire marshal, chief assistant fire marshal, or his subordinates, for the maintenance of the office of fire marshal, or any expense incident thereto, and the same shall be payable only from the special fund provided for in this section, and from the two and one-half per cent tax provided in this section, and the allowance for expenses as provided in this article shall be paid out only on an itemized statement, verified by oath, with receipted bills attached. [1913, ch. 169, § 16.]

§ 217. Account of expenses to be kept. The fire marshal shall keep on file in his office an itemized statement of all expenses incurred by his department, and shall approve all vouchers issued therefor before the same are submitted to the state auditor for payment, which said vouchers shall be allowed and paid in the same manner as other claims against the state. [1913, ch. 169, § 17.]

§ 218. Records to be public. All records on file in the fire marshal's department shall be public, except testimony, correspondence or other matter taken in any investigation under the provisions of this article, which the fire marshal, in his discretion, may withhold from the public. [1913, ch. 169, § 18.]

§ 219. State's attorney to assist on request. The state's attorney of any county, upon the request of the fire marshal, his deputies, or assistants, shall assist such officers upon an investigation of any fire which, in their opinion, is of suspicious origin. [1913, ch. 169, § 19.]

§ 220. Disposition of penalties, fees, or forfeitures. All penalties, fees or forfeitures collected under the provisions of this article shall be paid into the treasury of the state for the benefit of the fire marshal's fund. [1913, ch. 169, § 20.]

§ 221. Fire marshal to report to governor annually. The fire marshal shall submit annually as early as consistent with full and accurate prepara-

tion, and not later than the 15th day of October of each year a detailed report of his official actions to the governor. [1913, ch. 169, § 21.]

§ 222. Compensation of mayors, etc., for reports. There shall be paid to the chiefs of fire departments and mayors of cities, who do not receive to exceed fifty dollars (\$50) annually as compensation for their services as such chiefs and mayors, and to the presidents of village boards, who are by this article required to report fires to the fire marshal, the sum of one dollar and fifty cents (\$1.50) for each fire reported to the satisfaction of the fire marshal. Said allowance shall be paid by the fire marshal at the close of each fiscal year out of any funds appropriated as heretofore provided for the use of the office of said fire marshal. [1913, ch. 169, § 22.]

§ 223. When compensation not given for reports. All chiefs of departments, who receive a stated salary and devote their entire time to the duties of chiefs of departments, and the mayors of cities, who receive a stated salary exceeding fifty dollars (\$50.00) as such officers, shall be precluded from receiving any extra allowance for the report herein mentioned. [1913, ch. 169, § 23.]

ARTICLE 12.—THE STATE EXAMINER.

§ 224. Appointment. Qualifications. There shall be a state examiner who shall be appointed by the governor and confirmed by the senate, who shall hold his office for the term of two years, and until his successor has been appointed and qualified, unless sooner removed as herein provided. The state examiner shall be a skilled accountant, an expert in the theory and practice of bookkeeping, and shall not be an incumbent of any public office in the state, or of any county, municipality or public institution therein, and shall not own, hold or control any stocks, capital or bonds, or the office of trustee, assignee, officer, agent or employe of any banking, annuity, safe deposit, trust company, moneyed or savings institution or corporation, or of any corporation engaged in the business of guaranteeing or insuring the fidelity or faithful performance of the duties of, or the solvency of public officers or of public depositories, created under the laws of North Dakota, or created under the laws of any other state, or under the laws of the United States. In case of vacancy by death, removal, resignation or otherwise, the governor shall fill the same by appointment. The governor is authorized to remove from office any state examiner who violates, or fails faithfully to discharge the duties of his office, or becomes disqualified under the provisions of this section, and to appoint his successor, who shall hold office until the end of the next legislative assembly, unless sooner removed as above provided. [1907, ch. 230; R. C. 1905, § 140; 1893, ch. 95, § 1; R. C. 1899, § 136; 1901, ch. 170.]

§ 225. Duties. The duties of the state examiner are to examine at least once a year the books and accounts of the secretary of state, state auditor, state treasurer, clerk of the supreme court, commissioner of insurance, commissioner of agriculture and labor, department of university and school lands, supply department of the national guard, city auditors, city treasurers, county treasurers, county clerks, county judges, register of deeds, county superintendents of schools, sheriffs and county auditors, fees for such examinations to be charged by the state examiner only for an examination of books and accounts of city auditor, city treasurer, county treasurer, county clerk, county judges, register of deeds, county superintendent of schools, sheriffs and county auditors, at the rate of ten dollars per day for the time actually employed by himself or his deputies in such examinations, such fees to be paid into the state treasury as provided by law for other fees collected by his office. [1913, ch. 10, § 3; R. C. 1905, § 141; 1893, ch. 95, § 2; R. C. 1899, § 137; 1903, ch. 183; 1905, ch. 171.]

Further provision for the checking and auditing of public officials, see section 711 et seq.

This section 225 was enacted in its present form by Laws 1913, ch. 10, § 3, which, by an emergency section, took effect March 20, 1913. Laws 1913, ch. 274, without an emergency section, was approved March 1, 1913, and provided as follows: "The state examiner is authorized and empowered, and it is made his duty, to at least two times each year examine each state office, and to make and file in his office a full report thereof, which report shall be open to inspection."

§ 226. Duty to supervise accounts of public institutions. It shall be the duty of the state examiner to assume and exercise constant supervision over the books and financial accounts of the several public, educational, charitable, penal and reformatory institutions belonging to the state; to prescribe and enforce correct methods of keeping financial accounts of the state institutions by himself or duly appointed deputy, and instruct the proper officer thereof in the due performance of his duty concerning the same; to examine the books and accounts of all public institutions under the control of the state, and of all private institutions with which the state has any dealing, so far only as the same relates to such dealing, once in each six months. [R. C. 1905, § 142; 1893, ch. 95, § 3; R. C. 1899, § 138.]

§ 227. Additional duties. It shall be his duty to order and enforce a correct and, as far as practicable, uniform system of bookkeeping by state and county treasurers and auditors so as to afford a suitable check upon their mutual actions and insure a thorough supervision and the safety of the state and county funds. He shall have full authority to expose false and erroneous systems of accounting, and when necessary instruct or cause to be instructed the state and county officers in the proper mode of keeping the accounts. It shall be the duty of the state examiner to ascertain the character and financial standing of all present and proposed bondsmen of state and county officers. He shall require county treasurers as often as he shall deem necessary to make verified statements of their accounts, and he shall personally, or by deputy, visit said offices without previous notice to such treasurers, at irregular periods, of at least once a year, or when requested by any board of county commissioners, and make a thorough examination of the books, accounts and vouchers of such officers, ascertaining in detail the various items of receipts and expenditures; and it shall be his duty to inspect and verify the character and amounts of any and all assets and securities held by said officers on public account, and to ascertain the character and amount of any commissions, percentages or charges for services exacted by such officer without warrant of law. He shall report to the attorney-general the refusal or neglect of any state or county officer to obey his instructions, and it shall be the duty of said attorney-general promptly to take action to enforce compliance herewith. He shall report to the governor the result of his examination, which shall be filed in the executive office, as well as any failure of duty by any financial officers as often as he thinks required by the public interest, and the governor may cause the result of such examination to be published, or at his discretion to take such action for the public securities as the exigencies demand, and if in his opinion the public interest requires it, he may suspend any such officer from further performance of duty, until examination is had, or such security obtained as may be demanded for the protection of the public funds. [R. C. 1905, § 143; 1893, ch. 95, § 4; R. C. 1899, § 139.]

Governor not authorized to remove officer reported delinquent. (*Territory v. Cox*, 6 D. 501, appendix not followed.) *State v. Shannon*, 7 S. D. 319, 61 N. W. 175.

§ 228. Fiscal affairs of counties. It shall be his duty at the request of the county commissioners of any county in this state to examine and audit, compare and correct any books, records, papers, securities or other documents necessary to be had in any pending settlement of the fiscal affairs, or any necessary correction of the records of any county in this state. He shall have free access to all books, papers, records or other documents of any county in the state, found or deemed to be necessary, and is hereby empowered to take the records of any one county in this state to any other county in

this state, when in his judgment it is deemed necessary, to compare and correct the same. And all county officers in this state are hereby required and enjoined to assist said state examiner in the discharge of his duties in all things which he may require of them as such county officer. [R. C. 1905, § 144; 1893, ch. 95, § 5; R. C. 1899, § 140.]

§ 229. Examination of banks. It shall be his duty to visit, at least once in each year, without previous notice, each of the banks, banking corporations and savings banks incorporated under the laws of this state, insurance, annuity, safe deposit, loan or trust companies and other moneyed corporations and thoroughly examine into their affairs and ascertain their financial condition. It shall be the duty of such examiner to inspect carefully and verify the validity and amount of the securities held by such institutions, examine into the validity of the mortgages held by savings institutions, and see that the same are duly recorded, and ascertain the amount of any discount or other banking transaction which he may deem foreign to the legitimate and lawful purposes of savings institutions. He shall inquire into, and report any neglect or infringement of the laws governing such banking, annuity, safe deposit, trust companies, moneyed and savings institutions, and for such purposes shall have power to examine the officers, agents and employes thereof, and all persons doing business therewith. He shall forthwith report the condition of such corporation so ascertained to the governor, together with his recommendations or suggestions respecting the same, and the governor may cause the same to be published, or in his discretion take such action as the exigencies may seem to demand. [R. C. 1905, § 145; 1893, ch. 95, § 6; R. C. 1899, § 141; 1901, ch. 170.]

§ 230. Public officers to aid examiner. All officers of the state and counties, of the state and all officers and employes of banking and other institutions mentioned in this article must afford all reasonable facilities for the investigations provided for in this article, and all such officers, managers and employes must make return and exhibit to the examiner under oath in such form and in such manner as he may prescribe, and each and every person so required who shall refuse and neglect to make such return or exhibit, or to make or to give such information as may be required by said examiner, shall be deemed guilty of felony; and if any person in making such exhibit or giving such information or affording any statement required under this article, on his oath, shall knowingly swear falsely concerning the same, he shall be deemed guilty of perjury and punished accordingly. [R. C. 1905, § 146; 1893, ch. 95, § 7; R. C. 1899, § 142.]

§ 231. Obstruction of examiner. Penalty. Every person who shall willfully obstruct or mislead the state examiner in the execution of his duties as hereby prescribed shall be subject to conviction and punishment therefor in the same manner as is now provided for the conviction and punishment of persons obstructing or hindering any officers, ministerial, judicial, or executive, under the laws and authority of this state. And said examiner shall have full power and authority for the various purposes named to examine any books, papers, accounts, bills, vouchers and other documents, or property of any or all of the aforesaid state institutions, moneyed, banking, insurance, annuity, safe deposit, trust company and moneyed or insurance corporations and county or state officers and custodians of any county or state fund; also to examine under oath any or all trustees, managers, officers, or employes or agents of said institution and moneyed and savings corporations and other persons in the control of or doing business with said moneyed or savings institutions, and the county and state officers and custodians of county and state funds aforesaid. Said examiner is empowered to issue subpoenas and administer oaths in the performance of his duties, and any person refusing access by said examiner to any such books or papers, or any trustee, manager, officer, agent, clerk, employe, or other person aforesaid,

who shall obstruct such access or refuse to furnish any required information, or who shall in any manner hinder a thorough examination required by this article of the officers, state, moneyed, banking, insurance, annuity, safe deposit, trust companies and savings institutions, or pertaining to the county and state officers aforesaid, shall be deemed guilty of felony and shall be liable on conviction to a fine of one thousand dollars or imprisonment in the penitentiary for the term of one year. And when necessary, the state examiner shall employ stenographers or clerical help, the expense incurred therefor to be collected by the examiner from the county or corporation in interest. [R. C. 1905, § 147; 1893, ch. 95, § 8; R. C. 1899, § 143.]

Refusal to testify before state examiner not contempt, when. *In re Camp*, 7 N. D. 69, 72 N. W. 912.

§ 232. Reports, contents of. The state examiner shall report to the governor the result of his examinations on the first Monday in November of each year; he must also make a report upon any particular matter at any time when required by the governor, and shall embody in such report an abstract of the condition and statistics of the several state institutions and the county and state finances ascertained by him, which report shall be printed to the number of five hundred copies and shall be included with other official reports in the volume of executive documents. The state examiner shall perform such other duties as shall be prescribed by law. [R. C. 1905, § 148; 1893, ch. 95, § 9; R. C. 1899, § 144.]

§ 233. Special state examiner. The governor may, at such times as he may consider it for the best interests of the state, appoint a special state examiner to examine any of the state institutions or public offices. Such special state examiner shall have all the powers and authority that the state examiner now has in making such examinations, and shall also examine into and report upon such other matters connected with the state institutions and public offices as the governor may direct. He shall receive as compensation for such services the sum of ten dollars per day for the time actually employed upon such examinations, and his actual traveling expenses, to be paid upon vouchers approved by the governor, in the same manner as state officers' salaries are now paid. [R. C. 1905, § 149; 1899, ch. 151; R. C. 1899, § 144a; 1901, ch. 171.]

§ 234. Salary, deputies, and penalty for malfeasance. The only salary of the state examiner for all services rendered in any capacity whatever, shall be three thousand dollars per year, and his actual and necessary expense incurred in the discharge of his official duties, to be audited and paid in the same manner as the salary and expense of the state officers are paid. He is authorized, with the approval of the governor, to appoint deputies, five, who shall receive an annual salary of eighteen hundred dollars and one who shall receive an annual salary of fifteen hundred dollars and their actual and necessary traveling expenses, to be audited and paid as hereinbefore stated. The deputy state examiners shall be skilled accountants. If said examiner or his deputies, or either of them, shall directly or indirectly receive any compensation or pay for his services, or extra services, or neglect of services, other than is provided in this article, he shall be deemed guilty of felony. [1909, ch. 215; R. C. 1905, § 150; 1893, ch. 95, § 10; R. C. 1899, § 145; 1901, ch. 170; 1905, ch. 170.]

§ 235. Official bond. The state examiner shall execute an official bond to the state in the sum of ten thousand dollars and each of his deputies execute a like bond in the sum of five thousand dollars, all to be approved by the governor and filed in the office of the secretary of state. [R. C. 1905, § 151; 1893, ch. 95, § 11; R. C. 1899, § 146; 1905, ch. 169.]

CHAPTER 5.

PUBLIC BOARDS.

- ARTICLE 1. BOARD OF CONTROL, §§ 236-283a.
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3. LAND COMMISSIONER, § 299.
4. APPRAISEMENT AND SALE OF SCHOOL LANDS, §§ 300-335.
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17. STATE BOARD OF DENTAL EXAMINERS, §§ 507-515.
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20. STATE BOARD OF EMBALMERS, §§ 540-548.
21. BOARD OF ACCOUNTANCY, §§ 549-557.
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26. COMMISSIONERS OF DEEDS, §§ 608-610.
27. TEMPERANCE COMMISSIONER, §§ 611-622.
28. COMMISSIONERS OF NOXIOUS WEEDS, §§ 623-631.
29. PANAMA EXPOSITION COMMISSION, §§ 631a-631e.

ARTICLE 1.—BOARD OF CONTROL.

§ 236. **Nomination. Term of office. Confirmation. Salaries. Removal. Vacancies.** The governor shall, prior to the adjournment of the twelfth legislative assembly, nominate and, with the consent of two thirds of the members of the senate in executive session, appoint three electors of the state, two of whom shall be of the political party having a plurality, and one of the political party having the next highest number of members in the legislative assembly, and no two of whom shall reside at the time of their appointment in the same congressional district, after such district shall be defined, as members of a board to be known as a "board of control of state institutions." Said members shall hold office for a term of two years. Subsequent appointment shall be made as above provided, except to fill vacancies and shall be for a period of two years. The board shall at all times be subject to the above limitations and restrictions. No nomination shall be considered by the senate until the same shall have been referred to a committee of five, not more than three of whom shall belong to the same political party, to be appointed by the president of the senate without the formality of a motion, which committee shall report to the senate in executive session, which report shall be made at any time when called by the senate. The consideration of nominations by the senate shall not be had on the same legislative day the nominations are referred. The chairman of the board for each biennial period

shall be the member whose term first expires and each member thereof shall receive a salary of three thousand dollars (\$3,000.00) per annum. The governor may remove any member of the board for malfeasance or nonfeasance in office or for any cause that renders him ineligible to appointment or incapable or unfit to discharge the duties of his office, and his removal when so made, shall be final. [1911, ch. 62, § 1.]

In approving this act the governor expressed his confident opinion that the first section violates section 211 of the constitution and part of section 20 thereof by prescribing a political test for members of the board. Governor's message, Laws 1911, p. 104, where the governor cited in support of his opinion *Attorney-General v. Board*, 58 Mich. 213; *People v. Hurlbut*, 24 Mich. 90-92; *Evansville v. State*, 118 Ind. 426; and *Rogers v. Common Council*, 123 N. Y. 185. But he was also "of the opinion that after such portions of the act as are unconstitutional are stricken out, there will still remain a good law that can be enforced."

§ 237. Oath, bond, examination. Not excused from testifying. Each member of the board shall take the oath, and qualify, as required by section 661, and shall devote his whole time to the duties of his office. Before entering on the duties of his office, each member shall give an official bond of the sum of twenty-five thousand dollars (\$25,000.00) conditioned as provided by law, signed by sureties, to be approved by the governor as to the sufficiency of surety, and by the attorney-general as to form, and when so approved, said bond shall be filed in the office of the secretary of state. No member of the board of control shall be eligible to any other lucrative office in the state during his term of service or for one year thereafter or to any position in any state institution during the term of which he was appointed, nor within one year after his term shall have expired. The said board of control shall be subject to the examination of the state auditing board. The claim that any testimony or evidence sought to be elicited or procured on such examination may tend to criminate the person giving or producing it, or expose to public ignominy, shall not excuse him from testifying or producing evidence, documentary or otherwise; but no person shall be prosecuted or subjected to penalty or forfeiture for and on account of any matter or thing concerning which he may testify or produce such evidence, provided that he shall not be exempt from prosecution and punishment for perjury committed in so testifying. [1911, ch. 62, § 2.]

§ 238. Offices. Secretary, salary. Supplies. The board shall be provided by the proper authorities with suitably furnished offices at the seat of government, and shall employ a competent secretary, who shall receive a salary not to exceed two thousand dollars (\$2,000.00) per annum, and may also hire a stenographer and such other employes as may be necessary to properly transact the business within the duties of said board with dispatch. The board shall, by the proper authorities, be also furnished with all necessary books, blanks, stationery, printing, postage stamps, and such other office supplies as are furnished other state officers. It shall present to each legislative assembly an itemized account of its expenditures, to the end that the legislature, may, for the future, fix the maximum amount of such expenditures. [1911, ch. 62, § 3.]

As to the time of making reports to the legislative assembly and the contents of reports, see sections 95, 97, 98, 633.

§ 239. Appropriation. There is hereby appropriated from any funds in the state treasury not otherwise appropriated the sum of \$15,000.00 annually, or as much thereof as may be necessary to carry out the provisions of this act. [1911, ch. 62, § 4.]

§ 240. Traveling expenses. Governor's approval. In addition to the salaries paid the members of the board and the secretary, or other employes, they shall be entitled to the necessary traveling expenses, by the most convenient and practicable route, incurred in going from Bismarck to the different institutions, or to other places in the state, when on official business.

No expenditure for traveling expenses to other states shall be made by the board, or by any officer or agent thereof, or by any officer, employe, or agent of any state institution under the control of this board, unless the authority to make such trip is granted at a meeting of the board of control upon a written resolution, adopted by the board, which shall state the purpose of such trip and the reason the same is deemed necessary. Said resolution, if adopted, shall then be submitted to the governor for his written approval, and if he does not approve the same such trip shall not be made at the expense of the state. [1911, ch. 62, § 5.]

§ 241. Itemized statement. Before any expenses of the members of said board, any officer, or agent thereof, or before any expenses incurred by others under the direction of the board, or the expenses of any officer or any employe of any institution under the charge of the board, shall be paid, a minutely itemized statement of every item of expenditure shall be presented to the proper authority duly verified, which verification shall aver that the expense bill is just, accurate and true and is claimed for cash expenditures, or cash disbursements, truly and accurately made, or payment thereof shall not be made. The expense bills of the members of the board, the secretary and its other employes, when so verified, shall be presented to the state auditing board for their written audit, before payment is made. The salaries and such actual expenses of the board, and the secretary and other officers, and the salaries of employes, shall be paid monthly by the state treasurer, upon the warrant of the state auditor. [1911, ch. 62, § 6.]

§ 242. Official seal. The board shall have an official seal, and every commission, order or other paper executed by the board may, under its direction, be attested with its seal affixed, by the secretary, or any member of the board. [1911, ch. 62, § 7.]

§ 243. Institutions under control. The board of control shall have full power to manage, control and govern, subject only to the limitations contained in this article, the State Hospital for the Insane, the State Penitentiary, the North Dakota Blind Asylum, the School for the Deaf and Dumb, the School for the Feeble Minded, the State Reform School, the North Dakota State Tuberculosis Sanitarium, and such other charitable and reformatory and penal institutions as have been or may hereafter be created or established according to law. The board of control so appointed and qualified shall, within ten days after their appointment, establish an office in the state capitol at Bismarck, and shall thereafter have full access to all the state institutions mentioned in this section, and to all books, accounts, vouchers, supplies and equipments of each of said institutions for the purpose of familiarizing themselves with the conditions, needs and requirements thereof; and, subject to the limitations in this article contained, the said board shall assume full control of said institutions on the first day of July, a. d. 1913; provided, however, that this article shall not apply to the Soldiers' Home. [1913, ch. 55; 1911, ch. 62, § 8.]

§ 244. Powers. Duties. Annual statement. The board of trustees and commissioners now charged with the government of the institutions named in section 243 hereof shall after the first day of July, a. d. 1911, have no further legal existence, but all trustees now in the office shall continue in office until said date. The powers possessed by the boards of trustees with reference to the management and control of the state institutions named in section eight of this act, shall on the first day of July, a. d. 1911, cease to exist in such boards of trustees and shall become vested in the board of control; and the said board of control is, on the first day of July, 1911, without further process of law, authorized and directed to assume and exercise all the powers heretofore vested in or exercised by the several boards of trustees with reference to the several institutions of the state herein named. All duties imposed on the boards of trustees or any other governing body, by statute,

to establish a uniform system of books and accounts for said state institutions, and to cause the same to be examined annually by a skilled accountant, and to annually require a settlement with the officers of each state institution, are transferred from such trustees or other governing bodies to the board of control as far as affecting the institutions herein named. Nothing herein contained shall limit the general supervisory or examining powers vested in the governor by the laws or constitution of the state, or that are vested by the governor in any committee appointed by him.

The board shall prepare annually for publication a statement of the cost for the preceding year of maintaining each of said institutions including improvements, itemized so far as practicable, and so arranged as to show the cost of the various kinds of provisions, supplies and other expenditures, separately. [1911, ch. 62, § 9.]

§ 245. Investigation. Witnesses. Contempt of court. It shall be the duty of the said board, or a committee thereof, to visit and inspect at least once in six months, the institutions named, and investigate the financial condition and management of such institutions; and in aid of any investigation the board shall have the power to summon and compel the attendance of witnesses; to examine the same under oath, which any member thereof shall have the power to administer; and shall have access to all books, accounts, papers and property, material to such investigation, and may order the production of any other books or papers material thereto. Witnesses other than those in the employ of the state shall be entitled to the same fees as in civil cases in the district court. The claim that any testimony or evidence sought to be elicited or produced on such examination may tend to criminate the person giving or producing it, or expose him to public ignominy, shall not excuse him from testifying or producing evidence, documentary or otherwise; but no person shall be prosecuted or subjected to any penalty or forfeiture for and on account of any matter or thing concerning which he may testify or produce such evidence; provided, that he shall not be exempted from prosecution and punishment for perjury committed in so testifying, and it shall be the duty of the board to cause the testimony so taken to be transcribed and filed in the office of the secretary of the board at the seat of government within ten days after the same is taken, or as soon thereafter as practicable and when so filed the same shall be open for inspection of any person. Any person failing or refusing to obey the orders of the board issued under the provisions of this section, or to give or produce evidence when required, shall be reported by the board to the district court or any judge thereof, and shall be dealt with by the court or judge as for contempt of court. [1911, ch. 62, § 10.]

§ 246. Monthly visitation. May appoint a woman. Examine accounts. The board, by a committee, or its secretary shall visit the hospital for the insane once each month and in making such visits shall examine the accounts of the steward and certify their approval on the same page with the monthly balance and shall be vested with and exercise the powers and functions now granted any visiting committee or board to such hospitals except that the discharge of employes for cause shall be left with the superintendent as hereinafter provided. If the board deem it prudent, it may appoint a woman, whose duty it shall be to visit such hospital, when directed by the board, and to report to the board, and who shall be paid three dollars (\$3.00) per diem and mileage at the rate of five cents per mile, from the funds of the institution visited, with proper audit of the bill for such services and expenses by the board, in the manner provided for payment of current expenses of institutions. [1911, ch. 62, § 11.]

§ 247. Biennial report. The board shall make its biennial reports to the governor of its observations and conclusions respecting each and all of the institutions named in section eight of this act, covering the biennial period

ending June the thirtieth, preceding the regular session of the legislative assembly. Said biennial report shall be made not later than October fifteenth in the year preceding the meeting of the legislative assembly, and shall also contain the reports which the executive officers of the several institutions are now or may be by the board required to make, also a statement of visitations to the several institutions, when and by whom made. [1911, ch. 62, § 12.]

As to the time of making the biennial reports and as to the contents thereof, see sections 95, 97, 98, 633.

§ 248. Books and accounts. It shall keep at its office a proper and complete system of books and accounts with each institution, which shall show every expenditure authorized and made thereat, and said book shall exhibit an account of each extraordinary or special appropriation made by the legislature, with each item of expenditure thereof. [1911, ch. 62, § 13.]

§ 249. Uniform system of records and accounts. Expert help. It shall prescribe the forms of records and the kind of accounts to be made and kept by the institutions heretofore specified. In providing for the books of accounts the said board shall establish as uniform a system as possible, compelling similar institutions to keep similar books in the financial operations of such institutions; and the board shall institute and require the keeping of a perfected system of accounts, and requisitions showing the purchase, storing and consumption of supplies for subsistence, construction or other purposes. The board shall, within six months after the passage of this article, determine the kinds and qualities of provisions and supplies for the several institutions subject to its charge. [1911, ch. 62, § 14.]

§ 250. Biennial estimates of special appropriation. It shall prepare for the use of the legislature, biennial estimates of appropriations necessary and proper to be made for the support of the said several institutions, and for the extraordinary and special expenditures for buildings, betterments or other improvements. [1911, ch. 62, § 15.]

§ 251. Suggestions for legislation. The board shall incorporate in its biennial report required by section twelve of this article, suggestions to the legislature, respecting legislation for the benefit of the several institutions, or for the dependent, defective or criminal classes of the state. The board and its secretary shall on request, attend the meetings of legislative committees to which such questions may be submitted for consideration, and furnish such committees such information in regard to its doings and the conduct of such institutions as may be demanded. [1911, ch. 62, § 16.]

§ 252. Plans and specifications. Limited to amount of appropriation. Penalty. It shall prepare plans for all betterments, improvements or buildings costing more than one thousand dollars (\$1,000.00) for which it may recommend an appropriation. But when an appropriation for any amount has been made, there shall be no expenditure thereof until the board has secured suitable plans and specifications prepared by a competent architect, and accompanied by a detailed statement of the amount, quality and description of all the material and labor required for the completion of said structure; and no plan or plans shall be adopted, and no betterments, improvements or buildings constructed, that contemplate the expenditure of more money for completion than the amount appropriated by the legislature therefor, unless exempted from the provisions of this section by the act making such appropriation. In no event shall the board direct or permit an expenditure for any purpose in excess of the amount appropriated by law, or contemplated by the statute, and the members of said board, its officers and agents, are not subject to the provisions of sections 9101, 9102, 9103 and 9104, Revised Codes of 1905, but any violation of the provisions of either of the said sections of the code above named by any member of said board, its officers or agents, shall be deemed a misdemeanor and on conviction the offender shall be fined in any sum not less than two hundred dollars (\$200.00) nor

more than five thousand dollars (\$5,000.00) in the discretion of the court, or imprisoned in the county jail not exceeding one year, or by both such fine and imprisonment. [1911, ch. 62, § 17.]

R. C. 1905, §§ 9101, 9102, 9103, 9104, referred to in this section, are, respectively, sections 9827, 9828, 9829, 9830 in this compilation.

§ 253. Report to governor. It shall investigate and report to the governor any abuses or wrongs alleged to exist in the state institutions referred to in this article. [1911, ch. 62, § 18.]

§ 254. What to inspect. The board or any member thereof at the stated visits to any of the institutions under its control shall inspect every part of each institution, and all the places, buildings and grounds belonging thereto, or used in connection therewith. They shall make an examination of the general and special dietary, the stores, and methods of supply; as far as circumstances may permit, they shall see every inmate of the charitable institutions, especially those admitted since the preceding visit, and shall give such as may require it, suitable opportunity to converse with the members of the board apart from the officers and attendants. They shall, if deemed necessary, examine under oath the officers and attendants, guards and other employes, and make such inquiries as will determine their fitness for their respective duties. [1911, ch. 62, § 19.]

§ 255. Recommendations. Quarterly conferences. The board shall, during the first six months after its creation, meet in conference as often as it may determine, the superintendents, wardens and other executive officers of each of the said institutions, or as many thereof as it deems practicable, and consider in detail all questions of management and the methods to be adopted to secure the economical management of the several institutions, as it may deem necessary or advisable, and the board is vested with power to enforce such recommendations and directions. After six months from the creation of the board, a consultation and conference of the superintendents, wardens and chief executive officers shall be held quarterly with the board at its office in Bismarck at a time to be designated by the board, at which meeting all matters concerning the government and management of the institutions shall be considered and discussed, and the chairman of the board of control shall preside at such meetings, and full minutes thereof shall be preserved by the secretary of such board, who shall be secretary of said meeting. [1911, ch. 62, § 20.]

§ 256. Record. Transfer. Managing officer. The board shall keep in its office accessible only to the members, secretary and proper clerks, except by the consent of the board, or on the order of a judge or court of record, a record showing the residence, sex, age, nativity, occupation, religion, civil condition and date of entrance or commitment of every person, patient, inmate, or convict in the several institutions governed by the board, the date of discharge of every such person from the institution, and whether such discharge was final, and the condition of the person at the time he left the institution. The record shall also indicate if a person is transferred from one institution to another, and to what institution; and if dead, the date and cause of death. This information shall be furnished to the board by the several institutions, and such other obtainable facts as the board may from time to time require. It is the duty of a managing officer of each institution, who shall be appointed by the board, within ten days after the commitment or entrance of a person, patient, inmate or convict to the institution, to cause a true copy of his entrance record to be made and forwarded to the office of the board of control. When a patient or inmate leaves, or is discharged, transferred, or dies in any institution, the superintendent or person in charge shall, within ten days thereafter, send such information to the office of the board, all of which information shall be furnished on forms which the board may prescribe. [1911, ch. 62, § 21.]

§ 257. State architect. The board may, if deemed advisable and expedient for the best interest of the state, employ an architect who shall be skilled in the most improved methods of sanitation, and competent to prepare plans, specifications, estimates and details for the buildings, betterments, and every item or equipment which may be necessary in any of the institutions, whose duty shall be to perform the work usually done by architects in preparing plans and specifications. Said architect shall also perform such other labor as may be designated by the board, and shall receive a compensation to be by the board fixed, which, including expenses, shall in no event exceed one thousand five hundred dollars (\$1,500.00) per annum. In cases of sufficient magnitude, the board may secure the advice of a consulting architect, or secure additional skilled assistant before the adoption of the plans of the state architect, but the expense thereof shall not exceed five hundred dollars (\$500.00) in any one year. [1911, ch. 62, § 22.]

§ 258. Institution officers. Term of office. Removal. Qualifications. It shall be the duty of the board to appoint a superintendent, warden, or other chief executive officer of each institution under the control of the board. The tenure of office of said officers shall be two years from the date of their appointment, and the superintendent, warden, or other chief executive officer now in charge of the several institutions placed under the control of this board and who is now holding under an election, appointment or contract for a definite term except the local treasurers, shall continue in office until the expiration of such term or contract, all other offices shall be filled by appointment by said board. The superintendent, warden or other chief executive officer of any of the institutions named, may be removed by the board for misconduct, neglect of duty, incompetency or other proper cause, showing his inability or refusal to properly perform the duties of his office, but such removal shall be had only after an opportunity is given such person to be heard before such board upon preferred written charges, but the removal, when made, shall be final. The officers of the several institutions shall have the qualifications and perform the duties now imposed and required by them by the statute, except as the same are modified or abrogated in this article. In case there is an alleged or seeming conflict between the powers of the superintendents or other executive officers and the board of control, the determination of such question by the board shall be final. [1911, ch. 62, § 23.]

§ 259. Power to investigate question of insanity. The board shall have the power to investigate the question of insanity and condition of any person committed to any state hospital, and shall discharge any person so committed or restrained, if, in its opinion, such person is not insane, or can be cared for after such discharge without danger to others, and with benefit to the patient, but in determining whether such patient shall be discharged, the recommendation of the superintendent of such hospital shall be secured. The granting of this power to the board to serve as a commission for the determination of the insanity of a person is merely permissive, and does not repeal or alter any statute respecting the discharge or commitment of inmates to state hospitals. [1911, ch. 62, § 24.]

§ 260. Collection of information. Bulletins. Forms. The board shall gather and present information embodying the experience of charitable, reformatory and penal institutions, in this and other countries, regarding the best and most successful methods of caring for the insane, delinquent and criminal classes. And it shall encourage and urge the scientific investigation of the treatment of insanity and epilepsy by the medical staff of the insane hospital, and the institution for the feeble minded, and shall publish, from time to time, bulletins, and reports of the scientific and clinical work now done in said institutions or which it may require to be done therein. It shall

also provide for the several institutions the forms for statistical returns to be made by them in their annual and other reports. [1911, ch. 62, § 25.]

§ 261. Insane patients, residence unknown. Whenever the county authorities shall send to a hospital for the insane a patient whose residence is in another state or foreign country, or whose residence is unknown, and whose maintenance is charged to the state, such county authorities shall notify the state board of control, which shall immediately inquire as to the residence of such person and the propriety of his retention in the state hospital. If the residence of said person is found to be in another state or foreign country, the board shall see that he is sent to his residence. No patient to be maintained at state expense shall be retained permanently at the state hospital without the formal order of the board of control. [1913, ch. 186; 1911, ch. 62, § 26.]

§ 262. Questionable commitment. The superintendents for the hospital for the insane and the institution for the feeble minded are required to immediately notify the board if there is any question as to the propriety of the commitment or detention of any person received at such institution, and said board, upon such notification, shall inquire into the matter presented, and take such action as may be deemed proper in the premises. [1911, ch. 62, § 27.]

§ 263. Protection against fire. Means of escape. It shall be the duty of the board to compel the superintendent, warden or other chief executive officer of each of the institutions under the control of the board, to provide at each institution, adequate and ready means of protection against fire, and to construct proper means of escape for the inmates and attendants where the same are not already constructed, and to establish and enforce rigid rules and regulations, by which the danger of fire shall be minimized, and prevent as far as possible, injury to the persons of inmates, and loss or destruction, by any cause, of the property of the state. [1911, ch. 62, § 28.]

§ 264. Official bonds. It shall be the duty of the board of control to require its secretary and each officer and employe of said board and of every institution under its control, who may be charged with the custody or control of any money or property belonging to the state, and who is not now required by the statute to give bond, to give an official bond, properly conditioned, and signed by sufficient sureties, in a sum to be fixed by the board, which bond shall be approved by the board, and filed in the office of the secretary of state. [1911, ch. 62, § 29.]

§ 265. Inventory of stocks and supplies. The board shall require within thirty days after its organization and on July 1st and January 1st, of each year thereafter, the chief executive officer of each institution under its charge to make a complete, minute and accurate inventory of the stock and supplies on hand, the amount and value thereof, which inventory shall be under the following heads: live stock, produce of the farm on hand, carriages and vehicles, agricultural implements, machinery, mechanical fixtures, real estate, beds and bedding in inmates department, other furniture in inmates department, personal property of the state in superintendent's department, ready made clothing, dry goods, provisions and groceries, drugs and medicines, fuel, library and all other property under such other heads as the board may deem proper. A like inventory shall be submitted by the proper officer of each institution to the board when the semi-annual report of said officer is submitted to the board. [1911, ch. 62, § 30.]

§ 266. Gifts or gratuities. Penalties. No member of the board of control, or officer, agent or employe thereof, and no superintendent, officer, manager or employe of any of the institutions under the charge and control of said board shall directly or indirectly, for himself or any other person or for any institution under the charge of said board, receive or accept any gift or gratuity from any person or persons, firm or corporation, who are dealers

in goods, merchandise or supplies which may be used in any of said institutions, or from any employe, servant or agent of such person or persons, firm or corporation. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction be punished as provided in section 9103, Revised Codes, 1905, and such violation shall be cause for his removal from office. [1911, ch. 62, § 31.]

R. C. 1905, § 9103 is section 9829 herein.

§ 267. Contents of biennial report, daily record. The board shall publish in its biennial report to the legislature the name and salary of every employe of said board, the name and salary of each officer and employe in the several institutions subject to its control. It shall be the further duty of the board to require the proper officer of each institution to keep in a book prepared for the purpose, a daily record, to be made each day, of the time and number of hours of service of each employe, and the monthly pay roll shall be made from such time book, and shall be in accord therewith. When an appropriation is based on the number of inmates in or persons at institution, the board shall require a daily record to be kept of the persons actually residing at and domiciled in such institutions. [1911, ch. 62, § 32.]

§ 268. Political influence or contribution prohibited. Any member or officer of the board of control, or any officer or employe of a state institution subject to this board who, by solicitation or otherwise, exerts his influence directly or indirectly, to induce other officers or employes of the state to adopt his political views, or to favor any particular person or candidate for office, or who shall in any manner contribute money or other thing of value to any person for election purposes, shall be removed from his office or position by the proper authorities. [1911, ch. 62, § 33.]

§ 269. Assistants, discharged. The superintendent, warden, or other chief executive officer of the several institutions, shall appoint all assistants, guards and employes required in the management of the institution, the number of whom shall be determined by the board. It is hereby declared a misdemeanor for the members of the board, or any officer thereof, to exert any influence, by solicitation or otherwise, on the managing officer of an institution in the selection of any employe or assistant. The said chief executive officer may at his pleasure discharge any person employed, but shall keep in the record of employes the date of such discharge, and shall place opposite his name the reason therefor. [1911, ch. 62, § 34.]

§ 270. Institutions, salaries. The board shall, prior to July 1st, 1911, and annually thereafter, fix, with the written approval of the governor, the annual or monthly salaries of all the officers and employes in the several institutions, except such as are fixed by the legislative assembly. The board shall classify the officers and employes into grades and the salaries and wages to be paid in each grade shall be uniform in similar institutions in this state. The schedule of wages so fixed shall become operative on July 1st of each year. Provided, however, that the salaries of officers and employes of said state institutions, except the local treasurers thereof, who are now holding for a definite term, and a salary fixed by law or by contract according to law, shall remain the same until the expiration of such term. The salaries and wages shall be included in the monthly estimates as hereinafter provided, and paid in the same manner as other expenses of the several institutions. Officers shall be entitled to the necessary food supplies for their families, and shall receive such allowance from the supplies of the institution, but shall not be entitled to delicacies when not in season. The word "family" shall be construed to mean only the wife and minor children of an officer. [1913, ch. 57; 1911, ch. 62, § 35.]

§ 271. Local treasurer abolished. The treasurers of the institutions placed under the management of the board of control will be relieved of their duties, and all such offices will be abolished on July first, 1911. Such local treasurers

shall account to the proper authorities, for all moneys, books, records, vouchers or other evidence of property belonging to his office, and in his possession. It shall be the duty of the state treasurer to receive all moneys and evidence of indebtedness in the hands of said treasurer, and a failure on the part of any such local treasurer to properly account to the state treasurer on July first, 1911, without further process of law, shall be by the said state treasurer immediately reported to the attorney-general for such action as may be proper in the premises. [1911, ch. 62, § 36.]

§ 272. Moneys remitted to state treasurer. All moneys belonging to the state, derived from any source at any of the institutions under the control of this board, accounted for and remitted to the state treasurer on the first day of each month, and all funds for necessary expenditures of such institutions shall be drawn from the state treasury as provided by this act. [1911, ch. 62, § 37.]

§ 273. Triplicate estimates; revisions; purchase of supplies. The superintendent, warden or other chief executive officers, as may be designated by the board of control, shall, on or before the fifteenth day of February, May, August and November, cause to be prepared triplicate estimates in minute detail, including estimates, cost of each item, of all the expenditures required for the institution for the ensuing quarterly period beginning on the first day of January, April, July and October. Such estimates shall also include a statement of the source and amount of all the revenues received by the said institution and accounted for to the state treasurer on the first day of each month. Two of the said triplicate estimates shall be sent to the officer of the board and the third shall be kept by the superintendent, warden or other chief executive officer. The board may revise the estimates for supplies of other expenditures, either as to quantity, quality or the estimated cost thereof, and shall certify that it has carefully examined the same and that the articles contained in such estimate as approved or revised by it are actually required for the use of said institution. The board shall thereupon advertise for bids for such supplies, requiring samples in every possible case, and such supplies purchased shall in all cases be at least equal in value to the sample submitted by the successful bidder. Where samples are submitted and bids are the same the firm in the state so bidding shall have the preference. This provision, however, shall not apply to the purchase of fibre for the twine plant but the board of control and the warden shall jointly purchase such necessary fibre in the manner thought to be the most economical to and for the best interests of the state. When the estimates have been so certified and revised and bids for the supplies enumerated and described therein have been received and contracts for furnishing the supplies have been let a copy of such revised estimates and the contract for furnishing the supplies enumerated and described in such revised estimates duly certified shall be sent to the institution and another copy retained by the board. The certified copy sent to the institution shall be sufficient authority to the management of the institution to purchase the supplies enumerated in said estimates at prices not to exceed those named in the contract and not otherwise. Said supplies shall be so purchased as to permit at least thirty days' time to pay therefor, and the steward, clerk or other officer of the institution designated by the board shall require itemized bills to be rendered by the person who furnished supplies, in duplicate, for all purchases whether made upon contract or otherwise, which shall be in the following form:

The State of North Dakota, on account of.....
 (Date.)
 To Dr.
 (Here insert an itemized account of goods or property purchased.)
 The State of)
 County of)

I,, on oath say that the foregoing bill of account is correct and just, and wholly unpaid; that the exact consideration therein charged for was received by the said institution; that neither the same nor any part thereof have since been commuted; that neither bonus, commission or discount, nor any other consideration, directly or indirectly, has been given or stipulated within my knowledge or belief, because of the purchase thereof, as herein set forth, or for any other reason.

(To be signed by the person having personal knowledge of the facts herein set forth.)

Sworn to and subscribed before me this day of

I hereby certify that the above account is correct and that the articles therein charged have been received in good order by the institution.

Steward, Clerk or other designated officer.

It shall be endorsed as follows:

No. Institution, \$.

Passed upon by the Board of Control on the day of and ordered paid. [1913, ch. 57; 1911, ch. 62, § 38.]

§ 274. Monthly statement. Affidavit. The steward, clerk or other officer, who may be designated by the board, shall prepare a monthly statement showing purchases and expenditures of every kind for the preceding month, which shall be signed by such officer, approved by the chief executive officer of the institution, and filed with the board on a day certain to be fixed by said board. Attached thereto shall be the affidavit of such steward, clerk or officer, as the case may be, stating that the goods and other articles therein specified were purchased and received by him or under his direction at the institution, and were purchased at a fair, cash market price, on credit not exceeding thirty days, and that neither he nor any person in his behalf had any pecuniary or other interest in the purchases made, or received any pecuniary or other benefit therefrom, directly or indirectly, by commission, percentage, deductions, or in any other manner whatever, and that the articles contained in such bill conformed in all respects to the invoiced goods received and ordered by him, or the samples from which the goods were purchased, both in quality and quantity. If any invoice or statement, or any part thereof, is found objectionable, the board shall endorse its disapproval thereon, with its reasons therefor, and return it to the management of the institution, and when the matter complained of is corrected, said statement and invoice shall be returned to the board. [1911, ch. 62, § 39.]

§ 275. Payroll. Triplicate abstract. State treasurer. When the monthly statement is so made, provided and verified, it shall be forwarded to the board of control, together with the original invoices of the purchases and a complete and itemized statement of every expense of said institution, including the receipted payroll, for the examination and audit of the board, which board shall fix the regular time for the auditing of the accounts of the institution for the preceding month. The monthly payroll of each institution shall show the names of each officer and employe when first employed, the monthly pay, time paid for, the amount of pay, and any deductions for the careless loss or destruction of property. This requirement shall be observed in all cases, and in no event shall a substitute be permitted to receive compensation in the name of the employe for whom he is acting. When the said accounts are audited, the secretary of the board of control shall, under the seal of the board, prepare in triplicate, an abstract showing the name, residence and amount due each claimant, and the institution and the fund thereof on account of which the payment is made. He shall deliver one

copy thereof to the state auditor, another to the state treasurer and the third shall be retained in the office of the board. Upon such certificate the state auditor shall, if the institution named has sufficient funds, issue his warrant upon the state treasurer for the gross amount as shown by such certified abstract. The state auditor, upon being furnished by the board with a certified copy of such abstract as herein provided, shall send checks on the state treasurer to the several persons for the amounts of their respective claims, as certified by the board of control. The state treasurer shall preserve in his books a record of each check and remittance in the proper manner, showing the date of the issuance of each check, the name of the person to whom it was made payable, and such other data as may be evidence for the state, showing the payment of such indebtedness. The payroll of each institution can be paid by a single check, sent to the steward, clerk or other officer designated by the board of control. If the state treasurer shall require more clerical help because of this enactment, the state auditing board may authorize him to employ an assistant. [1911, ch. 62, § 40.]

§ 276. Contingent fund. The board of control may permit a contingent fund, not to exceed in any institution three thousand dollars (\$3,000.00) to remain in the hands of the managing officer of such institution, from which expenditures may be made in case of actual emergency requiring immediate action to prevent loss or danger to the institution or the inmates thereof.

A full, minute and itemized statement of every expenditure made during the month from such fund, shall be submitted by the proper officer of said institution to the board, under such rules and regulations as may be by said board established. If necessary, the board shall make proper requisition upon the state auditor for a warrant on the state treasurer to secure the said contingent fund for each institution. [1911, ch. 62, § 41.]

§ 277. Blanks and forms. The board of control shall formulate and furnish to each institution, proper blanks and forms for all statements and accounts necessary to furnish the information required of such institution. [1911, ch. 62, § 42.]

§ 278. Duties of institution officers. The stewards of the hospitals for the insane, the clerks of the prisons and the proper officer of the other institutions who shall be designated by the board, shall have charge of and be accountable for all the supplies and stores of such institutions and shall be charged therewith at their invoice value, and shall in conjunction with the chief executive officer of each institution make or direct all purchases for such institution as may be ordered by the board, under the estimates as hereinbefore provided. Such officer shall issue all the stores upon requisition approved by the superintendent or other officer designated by the board which shall be his voucher therefor. He shall present monthly to the board of control an abstract of all expenditures, together with the accounts and payrolls for the preceding month, and shall examine and register all goods delivered, according to their amount and quality, and if found to correspond with the samples, and in good order, and correct in charge, he shall certify the bills as herein provided. He shall quarterly take an account of the subsistence, supplies and stock in his possession and under his control, and transmit a copy of such invoice, duly verified to the board, and at the close of the biennial period he shall make a consolidated report of all purchases, and all other transactions of his department, to the state board. If it shall appear that there is any shortage in the stores of the institution, the board shall appoint a committee from its number to investigate the cause thereof, and if it shall appear that the said shortage resulted from unavoidable loss, without the negligence of such steward, clerk or other designated officer, then such officer shall be credited therewith; otherwise he shall be charged with the amount thereof, and shall be required to pay the same into the state treasury within sixty days after the determination of the loss, if default

shall be made in said payment, he shall forfeit his office, and suit shall be instituted upon his official bond to recover same. [1911, ch. 62, § 43.]

§ 279. Rules. Additional duties. The board of control is authorized to make its own rules for the proper execution of its powers, and may require the performance of additional duties by the officers of the several institutions, so as to fully enforce the requirements, intents and purposes of this enactment, and particularly so much thereof as relates to the making of the estimates, and furnishing proper proofs of the expenditures or use of all stocks of subsistence and supplies. [1911, ch. 62, § 44.]

§ 280. Contracts. Contracts may be entered into under the direction of the board of control by the proper officers of one or more of the institutions for staples and other articles of supplies, as may be found feasible by the board for the institutions to purchase in bulk for use of consumption for periods longer than thirty days. Such contracts shall not, however, be made except in conformity with the provisions of this article relating to estimates. If thought advisable, such contracts may be executed by the representatives of one institution, who may be designated by the board to act for other institutions. [1911, ch. 62, § 45.]

§ 281. Purchase of supplies. It shall be the duty of the board to make specific rules and regulations respecting the manner in which supplies shall be purchased and contracts made for the several institutions, so as to insure the competition and publicity necessary to secure the economical management of each institution. Jobbers or others desirous of selling supplies to an institution, shall by filing with the chief executive officer of such institution, or with the secretary of the board, a memorandum showing their address and business, be afforded an opportunity to compete for the furnishing of the supplies under such limitations and rules as the board may prescribe. In purchasing all supplies, local dealers shall have the preference, when such can be given without loss to the state. When samples are furnished the same shall be properly marked and preserved for six months after purchase of such merchandise. [1911, ch. 62, § 46.]

§ 282. Letting of contracts, labor of inmates utilized. Contracts for the erection, repairs or improvements of buildings, grounds or properties of the institutions under charge of this board, and for which appropriations have been or may be made by the legislature, must be let for the whole or for any part of the work to be performed, by the chief executive officer of the institutions, subject, however, to the same rules and regulations as herein provided for the furnishing of estimates by said institution to, and the approval and revision thereof, by the board of control. If the cost of the erection or betterment is not in excess of one thousand dollars (\$1,000.00) the board may permit the management of the institution to construct the same by day's labor, without contracting the work. All plans or specifications for said erection, repairs and improvements, shall be prepared by the architect of the board, under the board's direction. The board shall determine to what extent and to what length of time, and by what means advertisements are to be inserted in newspapers for proposals for said erection, repairs or improvements. All contracts shall be awarded by the management of the institution to the lowest responsible bidder, subject to the provisions of this article, and the approval of the board, prior to the execution of the contract. The management of the institution has the right to reject any and all bids and to readvertise, upon the approval of the board. A preliminary deposit of money or certified check upon a solvent bank in such amount as the board may prescribe, shall be required as an evidence of good faith, upon all proposals for the construction of said buildings, repairs and improvements, which deposit or certified check shall be held by the management of the institution under the direction of the board. The provision of this section which requires all work to be let by contract, shall not be mandatory as to the labor on the construction work

at the penitentiary, but the board shall establish such rules, and enforce the provisions of this act so that the construction work at the penitentiary shall be performed in a manner agreeable thereto, with the strictest accountability exacted in the consumption of all supplies for construction purposes, and in the expenditure of the public moneys on proper representations the board is authorized to so construct the erections, betterments and improvements at other penal and charitable institutions, that the work of inmates may be utilized, if it is found to be advantageous to the state, and a substantial saving made, but the attempt to use such labor shall not permit a substantial departure from the requirements of this section; and in no case shall any expenditure be made except on estimates submitted to and approved by the board, as provided herein. No payment shall be authorized for construction purposes until satisfactory proof has been furnished to the board of control, by the proper officer or supervising architect, that the contract has been complied with by the parties; and all payments shall be made in a manner similar to that in which the current expenses of the several institutions are paid. [1911, ch. 62, § 47.]

Rights under statute requiring public contract to be awarded to lowest bidder. 26 L.R.A. 707.

§ 283. Building commission abolished. The said board shall succeed to and be vested with all the powers of any building commission and all duties thereof will be performed by said board, and all legislation affecting the powers, duties or obligations of any building commission shall, so far as applicable apply with equal force to the said board of control. All outstanding obligations of any such commission shall be executed and performed by the board of control, but this shall not prevent said board from selecting all its agents or employees in the work of construction, which shall be executed in a manner agreeable to and pursuant to the provisions of this article. [1911, ch. 62, § 48.]

§ 283a. Repealed. Existing laws relating to the institutions referred to in this article, which are not inconsistent with the provisions of this article, shall remain in force, and all acts or parts of acts in conflict with, or inconsistent with this article, are hereby repealed. [1911, ch. 62, § 49.]

ARTICLE 2.—BOARD OF UNIVERSITY AND SCHOOL LANDS.

§ 284. Board, how constituted. The governor, secretary of state, state auditor, attorney-general and superintendent of public instruction shall constitute the board of university and school lands. The governor shall be president; the secretary of state, vice-president and the superintendent of public instruction, secretary thereof. In the absence of the superintendent of public instruction at any meeting of the board the deputy superintendent of public instruction shall act as secretary, but shall not be entitled to a vote. Such board, when acting as such, must act personally; no member can be represented on such board by any assistant or clerk. [R. C. 1905, § 152; 1893, ch. 118, § 2; R. C. 1895, § 169.]

Boards do not have charge of lands granted the state as a permanent military camp, such lands being under the control of the governor. In re Opinion of Judges, 13 S. D. 191, 85 N. W. 86.

§ 285. Board, powers of. Subject to the provisions of article 9 of the constitution and the provisions of this article, such board shall have the full control of the selecting, appraisement, rental, sale, disposal and management of all school and public lands of the state, including the real property donated to the territory of Dakota under the provisions of chapter 104 of the laws of 1883, except such as has been sold, and the investment of the permanent funds derived from the sale thereof, or from any other source, and shall have power to appoint a competent person to act as the general agent of the board in the performance of all its duties pertaining to the selection, sale,

leasing or contracting in any manner allowed by law, and the general control and management of all matters relating to the care and disposition of the public lands of the state, all of whose official acts shall be subject to the approval and supervision of the board. The title of such agent shall be "commissioner of university and school lands," and before entering upon his duties as such he shall take the oath prescribed for civil officers and give a bond in the penal sum of ten thousand dollars, with not less than two sureties, to be approved by the board, and recorded in the office of the secretary of state and filed, when recorded, in the office of the state treasurer. [R. C. 1905, § 153; 1893, ch. 118, § 3; R. C. 1899, § 170.]

Certain described school lands of the state in Mercer county were "withdrawn from sale or rent" in Laws 1907, ch. 131. And certain lands in Dunn county in Laws 1911, ch. 143.

Board of university and school lands has general and full powers in sale of school lands, except as otherwise limited by constitutional and statutory enactment. *Fuller v. University & School Lands*, 21 N. D. 212, 129 N. W. 1029.

§ 286. Meetings of board. Such board shall meet at the office of the commissioner on the last Thursday of each month, at ten o'clock in the forenoon. Special meetings of the board may be held at any time at the written call of the president or any two members of the board. Any three members of the board shall constitute a quorum. [R. C. 1905, § 154; 1893, ch. 118, § 4; R. C. 1899, § 171.]

§ 287. Board invests funds. Compensation of board. Conditions of loans. Said board shall have power, and it is made its duty from time to time to invest any money belonging to the permanent funds of the common schools, university, school of mines, reform school, agricultural college and the school for the deaf and dumb, normal schools and other permanent funds derived from the sale of public lands or from any other source, in bonds of school corporations or of counties, or of townships, or of municipalities within the state, bonds issued for the construction of drains under the authority of law within the state, bonds of the United States, bonds of the state of North Dakota, bonds of other states; provided, such states have never repudiated any of their indebtedness, or in first mortgages on farm lands in this state, not exceeding in amount one-third of the actual value of any subdivision on which the same may be loaned, such value to be determined by the board of appraisal of school lands; provided, at least one-third of the whole amount of the several permanent funds aforesaid, as computed by the commissioner of university and school lands at the end of each fiscal year, shall be invested in first mortgages on cultivated farm lands in this state, if there is a sufficient demand for investment in such loans; provided, further that for said services as such board of appraisal, the county auditor and county superintendent of schools shall receive only their necessary traveling expenses, but that the chairman of the board of county commissioners shall be entitled to the same mileage and per diem as when serving on the board of county commissioners. The first mortgages on farm lands in this state shall be made only in the manner following, to wit:

1. The first mortgage on farm lands and each of them, shall run for a period of time not to exceed twelve years, and the funds so invested shall bear interest at the rate of five per cent per annum, payable annually to the county treasurer of the county in which such lands are located. For the first five years payments shall consist only of interest, paid annually and commencing with the sixth year the interest shall be paid annually as above stated, and the borrower shall have his option of paying ten per cent or any multiple thereof of the principal at any interest bearing date, and the interest when paid shall be covered into and become a part of the interest and income fund.

2. First mortgage loans shall only be made upon cultivated lands within the state and to persons who are actual residents thereof, and in no case on

lands of which the appraised value is less than ten dollars per acre, and in sums not more than five thousand dollars, to any person, firm or corporation.

3. Any or all of said mortgages may be satisfied at any time after three years from the date when made on payment of the whole amount due thereon; provided, if the loan is sought to be paid off in full previous to the time specified for payment in the contract, then the party so paying said loan shall pay in addition to the principal and interest then due on said loan the interest on the principal for six months in advance of date of such payment. All proceedings in regard to investments in first mortgages as provided in this chapter shall conform to and be governed by the laws of the state of North Dakota in such case made and provided. Said board of university and school lands shall not purchase or approve the purchase of any bonds or mortgages except at a legal session thereof, nor unless every member of the board is notified by the secretary of said board in time to be present at such meeting, and notified also that the question of purchasing or acting on a proposition for the purchase of certain bonds or mortgages is to be considered at the meeting, nor unless a majority of all the members vote in favor of such purchase, and the vote on the purchase of every bond and mortgage shall be taken by the yeas and nays and shall be duly recorded in the books of the board. [1909, ch. 106, § 1; 1907, ch. 228; 1907, ch. 224; R. C. 1905, § 155; 1897, ch. 128; R. C. 1899, § 172.]

This section and section 288 constitute Laws 1909, ch. 106, which provides in its enacting clause that "section 155 of the political code * * * and all acts or parts of acts amendatory thereof, are hereby amended to read as follows." Prior amendments of the same section were Laws 1907, chapters 224 and 228. Further amendment of the section was vetoed in Laws 1913, ch. 308, because, said the governor, "I do not believe that the applicant for a farm loan from the state should be put to the expense of two appraisals," for which the act provided.

§ 288. Satisfaction of mortgage loans on real estate. The governor and superintendent of public instruction, who are respectively the chairman and secretary of the board of university and school lands, are hereby empowered and required to jointly satisfy real estate mortgages given to the board of university and school lands whenever the loans secured by such mortgages shall have been fully paid, as attested by the records in the office of the state treasurer. [1909, ch. 106, § 2.]

See note to section 287.

§ 289. Records to be kept by secretary. The secretary shall enter in a suitable book kept for that purpose a full and correct record of all the proceedings of said board at each session thereof, which record when approved shall be signed by the president or presiding officer of the meeting and the secretary. [R. C. 1905, § 156; 1893, ch. 118, § 6; R. C. 1899, § 173.]

§ 290. Treasurer custodian of funds. All moneys belonging to the permanent funds of the common school and other public institutions derived from the sale of any public lands or from any other source shall be paid to and held by the state treasurer, and be subject to the order of such board, and shall be paid over to the order of the board for investment as provided in section 287 of this article, whenever the board requires the same for such investment. The state treasurer shall also be the custodian of all bonds, notes, mortgages and evidences of debt arising out of the management of the permanent funds derived from the sale of any of the public lands of the state or from any other source. [R. C. 1905, § 157; 1893, ch. 118, § 7; R. C. 1899, § 174.]

§ 291. Duty of state treasurer. It shall be the duty of the state treasurer, from time to time as the same becomes due, to collect all moneys due and owing on any and all of the securities held by him for investment or for permanent funds, and from time to time, whenever required by the board, to make report of the amount of such collections to the board and a duplicate of the same to the state auditor. If any such moneys shall remain unpaid for

thirty days after the same shall become due and payable, he shall make report in detail of all such unpaid amounts to the board, who shall place the matter in the hands of the attorney-general for collection whenever they shall deem it for the best interests of the state so to do, whose duty it shall be to proceed to collect the same by civil action, to be brought and prosecuted in the name of the state. [R. C. 1905, § 158; 1893, ch. 118, § 8; R. C. 1899, § 175; 1901, ch. 193.]

§ 292. Mortgage loans foreclosure. Assignments. Mortgage loans made under the provisions of this chapter may be foreclosed either by action or advertisement, in the same manner and upon the same notice as required in other real estate foreclosures. When foreclosure is made by action, said action shall be brought and prosecuted in the name of the state; provided, that the board of university and school lands may, and it is hereby authorized and empowered to assign any or all of said mortgages, whenever in the judgment of said board it will be for the best interests of the state so to do; provided, however, that said board shall not accept as a consideration for said assignment any amount less than the principal and interest due upon said mortgage or mortgages. Such assignments when made shall be executed by the governor and attested by the secretary of state with the great seal of the state of North Dakota attached. [R. C. 1905, § 159; 1893, ch. 118, § 8; R. C. 1899, § 175; 1901, ch. 193.]

§ 293. Manner of investing permanent funds. In the investment of the permanent funds under its control such board shall authorize the state auditor to draw his warrant on the state treasurer, payable out of the proper fund, for the purchase of the bonds or mortgages, which warrant, previous to delivery, shall be registered by the state treasurer in a book provided for that purpose. [R. C. 1905, § 160; 1893, ch. 118, § 9; R. C. 1899, § 176.]

§ 294. Incidental expenses of board, how paid. The necessary incidental expenses of the board shall be paid out of the state treasury, and upon satisfactory vouchers therefor the state auditor shall issue his warrant for the same. [R. C. 1905, § 161; 1893, ch. 118, § 10; R. C. 1899, § 177.]

§ 295. Appropriation for interest. There is hereby annually appropriated such sums as shall be found necessary for the expenses of purchase, and payment of accrued interest at the time of the purchase, of investment bonds or mortgages for the permanent funds under the control of said board, payable from the respective fund for which said purchase is made. [R. C. 1905, § 162; 1893, ch. 118, § 11; R. C. 1899, § 178.]

§ 296. Term of office of commissioner. The first term of office of the commissioner provided for in this article shall be for three years from the date of his appointment and until his successor is appointed and qualified, and after the expiration of the first term, all succeeding terms shall be two years, and until his successor is appointed and qualified, subject to removal by the board. In case of vacancy by death, removal, resignation or any other cause, the board shall fill the same by appointment. [R. C. 1905, § 163; 1893, ch. 118, § 12; R. C. 1899, § 179.]

§ 297. Salary of commissioner. The commissioner shall receive an annual salary of three thousand dollars. [1911, ch. 39; R. C. 1905, § 164; 1893, ch. 118, § 13; 1897, ch. 144; R. C. 1899, § 180; 1905, ch. 127.]

§ 298. Deputy commissioner. By and with the consent of the board, the commissioner may appoint a deputy, who before entering upon any of the duties devolving upon him by said appointment shall take and subscribe the oath of office required by law and shall execute to the state a bond with one or more sureties in the penal sum of five thousand dollars, conditioned for the faithful discharge of his duties. [1907, ch. 163; R. C. 1905, § 165; 1893, ch. 118, § 14; R. C. 1899, § 181.]

ARTICLE 3.—LAND COMMISSIONER.

§ 299. Duties. The commissioner, under such directions as may be given by the board of university and school lands, shall have general charge and supervision of all lands belonging to the state, of all lands in which the state has an interest or which are held in trust by the state. He shall have the custody of all maps, books and papers relating to any of the public lands mentioned in this chapter. He shall procure the proper books, maps and plats in which to keep a complete record of all lands owned or held in trust by the state for schools, public buildings, and for all purposes, and shall keep true records of all the sales, leases, permits, patents, deeds and other conveyances of such land made by the state, amount of money paid, date of sale and payment, description of lands sold or leased, number of acres thereof, name of purchaser and designation of the fund that should be credited therewith. He shall direct all appraisements, sales, leases; shall execute all contracts of sale, leases, permits or other evidences of disposal of lands, subject to approval by the board. Upon all contracts, leases or permits issued by the commissioner, he shall certify the book and page where the same is recorded. He shall have an official seal with a proper device thereon; and the seal of the commissioner affixed to any contract of purchase, receipts, or other instruments issued by him, duly countersigned by him as approved by the board, according to the provisions of this chapter, is prima facie evidence of the due execution of such contract or other paper. He shall biennially report to the legislative assembly, through the board, his work during the preceding term, showing the quantity of lands sold or leased, and the amount received therefor, the amount of interest moneys received to the credit of the several funds, expense of administration of his department, and all such other matters relating to his office as shall be necessary. It shall also be the duty of the land commissioner to receive and present to the board of university and school lands all offers for sale of bonds. He shall also prepare all bonds in connection with the investment of the permanent school fund. He shall keep such books as may be necessary to register and describe all bonds and mortgages purchased or taken by the board of university and school lands for the benefit of any of the permanent funds under its control. Such books shall be ruled so as to permit the registry of the name and residence of the person offering to sell any such bonds or mortgages, the district for which such offer is made, a description of the property covered by the mortgage, and a full and detailed description of every bond, whether United States, state or school district, and the date, number, series, amount and rate of interest of each bond, and when the interest and principal, respectively, are payable; and such record shall be made of every such bond and mortgage before the board shall act upon the question of purchasing the same. He shall also keep in suitable books a record showing a detailed quarterly statement of the condition of all the permanent funds under control of said board, the amount of each fund, how invested, when due, interest paid and any other act in any manner connected with the management of such funds, and shall biennially report all such investments to the governor, to be laid before the legislative assembly. All such records and record books shall at all times be open for inspection by the public. [R. C. 1905, § 166; 1893, ch. 118, § 15; R. C. 1899, § 182; 1901, ch. 116.]

As to the biennial report to the legislative assembly, see sections 95, 97, 98, 633.

ARTICLE 4.—APPRAISEMENT AND SALE OF SCHOOL LANDS.

§ 300. County board of appraisal. Duties of. The county superintendent of schools, the chairman of the board of county commissioners and county auditor of each county shall constitute the "County Board of Appraisers"

of the public lands of the state in and for their county. The county board of appraisal in each county shall, upon the request of the board of university and school lands, designate on or before such date as it may specify, the public lands of the state in their county, that in its judgment can be sold for ten dollars an acre or upwards on the terms prescribed in this article, designating the tracts separately and giving an approximate estimate of their selling value. Thereupon the commissioners shall, if so ordered by the board of university and school lands, prepare a list and order an appraisal of such lands as shall be designated in such list, and it is made the duty of such board of appraisers within ten days after the receipt of such list to examine such lands and appraise them at their cash value as nearly as can be determined, describing each tract or subdivision in parcels not greater than one hundred and sixty acres, more or less, according to the government survey, and in smaller subdivisions thereof if so listed by the commissioners, and set opposite each described tract or parcel of land the appraised value per acre thereof; and when such appraisal is completed, which shall not be later than thirty days after the receipt of the order directing it, the county board of appraisers, or the members of the same who made such appraisement, shall certify to its correctness and make duplicate copies thereof, one of which shall be forwarded immediately to the board of university and school lands, and the other filed in the office of the county auditor for reference, and in addition to the appraisal of such lands the county board of appraisal shall furnish such other information regarding the lands as may be required by the commissioner in the manner and form prescribed by him. The report of such appraisal shall be verified by each of such appraisers and shall disclose any interest, real or contingent, that any of such appraisers has in any of the lands or improvements so appraised. Any appraiser who wilfully makes any false statement in such report, relative to such interest in any of the lands so appraised, or improvements thereon, shall be deemed guilty of a misdemeanor. For all services performed under the requirements of this article the appraisers shall be paid at the rate of three dollars per day and actual traveling expenses, upon vouchers approved by the commissioner of university and school lands to be paid by the state treasurer upon warrants issued by the state auditor. Provided, that all lands designated for sale and not sold within two years after appraisal shall be reappraised before they are sold. [1911, ch. 261, § 1; R. C. 1905, § 167; 1893, ch. 118, § 16; R. C. 1899, § 183.]

§ 301. Selecting and certifying lands for sale. The commissioner shall from the list of lands so appraised and reported by the county board of appraisers select all such tracts as have been appraised at ten dollars per acre and upwards, and upon approval of such selections by the board of university and school lands shall make and certify to the county auditors the list of lands in their respective counties that are offered for sale, and when transmitting such list shall designate the day and hour for the sale thereof; provided, that such sales shall take place only between the hours of ten o'clock a. m. and five o'clock p. m. and to be continued from day to day until all the lands advertised for sale shall have been sold or offered for sale, except that adjournments may be made for any intervening Sunday or legal holiday. [R. C. 1905, § 168; 1893, ch. 118, § 17; R. C. 1899, § 184.]

§ 302. Notice of sale to be published. The board of university and school lands shall cause to be published for a period of sixty days prior to the day of sale, in a newspaper in general circulation in the vicinity of the land to be sold, and also in a newspaper published at the county seat of the county in which the lands are situated, and also in a newspaper published at the seat of government, a notice of such sale, with the list of lands, that are to be

offered for sale, properly described, together with the appraised value thereof, and the terms and conditions of sale. [1911, ch. 261, § 2; R. C. 1905, § 169; 1893, ch. 118, § 18; R. C. 1899, § 185; 1905, ch. 161.]

§ 303. Manner of sale. On the day and hour appointed for such sale, the commissioner, or in case he cannot attend, the deputy land commissioner, or other person designated and authorized by the board of university and school lands, shall proceed to sell or offer for sale at public auction, to the highest bidder, at the court house or at the place where the terms of the district court are held at the county seat of the county in which the lands are situated, the lands so advertised, offering them for sale or selling in the order in which they occur in the advertisement for sale. Such lands as shall have not been specially subdivided shall be offered in tracts of one-quarter section, and those subdivided, in the smallest subdivision thereof. No tract of land shall be sold for less than the appraised value and in no case for less than ten dollars an acre. [1911, ch. 261, § 3; R. C. 1905, § 170; 1893, ch. 118, § 19; R. C. 1899, § 186.]

§ 304. Terms of sale. Each tract of land shall be sold upon the following terms: The purchasers shall pay one-fifth of the price in cash at the time of sale, and the remaining four-fifths as follows: One-fifth in five years, one-fifth on or before the expiration of ten years; one-fifth on or before the expiration of fifteen years, and one-fifth on or before the expiration of twenty years, with interest at the rate of not less than six per cent per annum, payable annually in advance. The highest bidder for any offered tract shall be declared the purchaser thereof, and shall immediately pay over to the county treasurer the amount of one-fifth of the purchase price as specified in the terms of sale. In case the purchaser fails to pay the amount so required to be paid at the time of such sale, such commissioner or whoever shall be conducting the sale, shall immediately reoffer the tract, but no bids shall be received from such person failing to pay as aforesaid; and the person refusing or neglecting to make such payment shall forfeit the sum of one hundred dollars for each tract purchased by him. [1911, ch. 261, § 4; R. C. 1905, § 171; 1893, ch. 118, § 20; R. C. 1899, § 187.]

§ 305. Adjournment of sale. No adjournment of the sale can be made after its opening, except as provided in section 301 of this article, but, when the interests of the state will be subserved thereby, the board of university and school lands may, at any time not less than two weeks preceding the dates fixed for opening such sale, make an order postponing the same to such date as may be fixed in such order, which shall not be more than sixty days, giving due notice of the same to the county auditor, who shall publish such notice of adjournment and the day fixed for the same, for two successive weeks in the same papers in which the notice of sale is published; but the adjournment of any sale shall not require continued publication of the list of lands beyond the time specified in this article for such publication. [R. C. 1905, § 172; 1893, ch. 118, § 21; R. C. 1899, § 188.]

§ 306. Withdrawal of lands from sale. The board of university and school lands, may, in its discretion, on or before the day of sale, withdraw any or all lands that may have been advertised for sale or included in any list to be offered in any county, and upon such withdrawal shall notify the auditor of such county, specifying the lands included in such notice of withdrawal, who shall thereupon strike such lands from the lists in his office, and public notice of withdrawal shall be given at the day of sale before any such lands are offered. [R. C. 1905, § 173; 1893, ch. 118, § 22; R. C. 1899, § 189.]

§ 307. County auditor to act as clerk at sale. Approval of sale. The county auditor shall act as clerk of all land sales and leases made in his county, and it shall be his duty within five days after such sale or lease shall have

been concluded to certify to the board of university and school lands a list of lands sold or leased as provided in this article, with the price thereof and the name of the purchaser or lessee of such tract, the amount for which the lands are sold or leased, the amount of money paid by said purchaser, and the amount of principal remaining unpaid, and the board of university and school lands shall approve and confirm the sale or lease of every such tract, as upon examination of such certified lists and such further information and investigation as shall be deemed necessary, shall be found to have been sold or leased in accordance with the law and without fraud or collusion. For the services imposed by this article the county auditor shall be allowed the sum of three dollars per day for each and every day so engaged, to be paid out of any appropriation for the expenses of appraisal and sale of public lands. [R. C. 1905, § 174; 1893, ch. 118, § 23; R. C. 1899, § 190.]

Disapproval by board of sale of school lands, and refusal to cause contract of sale to be executed, cannot be reviewed by courts. *Fuller v. University & S. Lands*, 21 N. D. 213, 129 N. W. 1029.

§ 308. Notice to purchaser. Execution of contract. Immediately upon approval of the sales by the board of university and school lands, the secretary of such board shall prepare and certify a list of said approved sales to the commissioner, who shall without delay execute duplicate contracts in the form prescribed by the board, and forward the same to the county auditor of the county where the land was sold, whereupon it is made the duty of the county auditor to notify each purchaser in writing of the approval of the sale to him, and to appear within ten days after the date of such notice and pay the county treasurer the amount of interest on the deferred payments as specified in the contract and execute the contracts of sale, and a failure so to appear and execute such contract shall act as a forfeiture of the payment made by the purchaser at the sale. When the contracts are properly executed by the purchaser and the amount of money due thereon shall have been paid to the county treasurer the copy marked duplicate shall be delivered to him and the original returned to the land commissioner, and each contract so returned fully executed shall have on its face in the place noted for such purpose the notation of the date of delivery to the purchaser, and all contracts not executed by the purchaser shall be returned to the land commissioner with a written statement thereon of the reason for such return. [R. C. 1905, § 175; 1893, ch. 118, § 24; R. C. 1899, § 191.]

Sale is consummated upon execution of contracts by purchaser and his payment of purchase moneys and fees required, and delivery of duplicate contract to purchaser. *Fuller v. University & S. Lands*, 21 N. D. 213, 129 N. W. 1029.

§ 309. Sales, when void. Any sale made by mistake, or not in accordance with law, or obtained by fraud, shall be void, and the contract of purchase issued thereon shall be of no effect; but the holder of such contract shall be required to surrender the same to the board of university and school lands, who shall, except in case of fraud on the part of the purchaser, cause the money to be refunded to the holder thereof. [R. C. 1905, § 176; 1893, ch. 118, § 25; R. C. 1899, § 192.]

Disapproval by board, of sale of school lands, and refusal to cause contract of sale to be executed, cannot be reviewed by courts. *Fuller v. University & S. Lands*, 21 N. D. 216, 129 N. W. 1029.

§ 310. Surveys to be made when necessary. Whenever it appears to the board of university and school lands necessary in order to ascertain the true boundaries of any tracts or portions of lands, or to enable the commissioner to describe or dispose of the same in suitable and convenient lots, it may order all such necessary surveys to be made and the expenses shall be paid out of the state treasury as other incidental expenses of the board of university and school lands are paid. [R. C. 1905, § 177; 1893, ch. 118, § 26; R. C. 1899, § 193.]

§ 311. Subdividing land into small tracts or lots, when to be made. Whenever in the opinion of the board of university and school lands the interests of the state will be promoted by laying off any portion of the land under its control into small parcels or city, town or village lots, the board may order such commissioner to cause the same to be done, and have the same appraised in the same manner as hereinbefore prescribed. [R. C. 1905, § 178; 1893, ch. 118, § 27; R. C. 1899, § 194.]

§ 312. Sale of lots. New appraisal. All parcels or lots so appraised shall be subject to sale in the same manner and upon the same terms and conditions and the contract of purchase shall have the same effect, as in the case of other lands for which provision is made in this article, and at the prices at which the same are severally appraised, until a new appraisal is made, which the board of university and school lands may in its discretion order at any time, in the manner aforesaid, and with the like effect; but no lots or parcels so appraised shall be sold for less than the minimum price of said land, established in this article. [R. C. 1905, § 179; 1893, ch. 118, § 28; R. C. 1899, § 195.]

§ 313. Map to be entered of record. Whenever the commissioner shall lay off any tract of land into small parcels or lots, as provided in this article, he shall cause a correct map of the same to be entered of record in the county where said lands are situated. [R. C. 1905, § 180; 1893, ch. 118, § 29; R. C. 1899, § 196.]

§ 314. Contracts of purchase. Rights under. Contracts of purchase, issued pursuant to the provisions of law, entitle the purchaser, his heirs or assigns, to the possession of the lands therein described, to maintain actions for injuries done to the same, or any action or proceeding to recover possession thereof, unless such contract has become void by forfeiture; and all contracts of purchase in force may be recorded in the same manner that deeds of conveyance are authorized to be recorded. [R. C. 1905, § 181; 1893, ch. 118, § 30; R. C. 1899, § 197.]

§ 315. Assignee of purchasers and buyers of purchasers' interest. Each assignee of a bona fide purchaser of any of the lands mentioned in this article is subject to and governed by the provisions of law applicable to the purchaser of whom he is assignee, and he shall have the same rights in all respects as an original purchaser of the same class of lands. The interest of a purchaser of any of the lands mentioned in this article that shall have been heretofore or may hereafter be levied upon or attached in any action brought to recover a debt due from said purchaser of said lands and the interest of said purchaser which has heretofore been or may hereafter be sold under execution and a certificate of sale may have been or shall hereafter be issued by the sheriff of the county to the party buying at said sale the interest of said purchaser of said lands and after the expiration of one year from the date of sale, the buyer of the interest of said purchaser of said lands may present to the land commissioner of this state a certificate of the sheriff of the county in which the land is situated showing said sale and the name and address of the person buying thereat and also showing that one year has elapsed between the date of sale of said land and the date of making said certificate, also showing that no redemption has been made by the purchaser of said land, his assignee or successor in interest or anyone in behalf of either and showing that no claim of homestead has been made to said land by anyone. On the filing of said certificate in the office of the land commissioner of the state of North Dakota the said land commissioner shall subrogate the person who bought the interest of the purchaser of said lands at said sale, to the contract of purchaser and

to all rights of said purchaser of said lands in and to said lands and said person so subrogated shall carry out and perform said contract of purchase with said state in all particulars, and at the expiration of said contract and on the full performance thereof, the person so subrogated shall receive from the state of North Dakota a deed to said land. [1907, ch. 227; R. C. 1905, § 182; 1893, ch. 118, § 31; R. C. 1899, § 198.]

§ 316. Contracts may be surrendered and two or more issued, when. Whenever the holder of any contract of purchase of any state or school land shall surrender the same to the commissioner with a written request to have the same divided into two or more contracts, it shall be lawful for the commissioner to issue the same; provided, that no new contracts shall issue while there is due and unpaid any interest, principal or taxes on such contract or the land described therein, nor in any case where the commissioner shall be of the opinion after an examination of the land, if necessary, that the security would be impaired or endangered by the proposed division, nor until such application for division shall have been approved by the board of university and school lands; provided, that when any such application proposes the division of the land into irregular tracts or other than the regular government subdivisions, the applicant shall file with the commissioner a plat of the land to be subdivided, showing the boundaries and area in acres of each subdivision, and for any contract division made under this section the commissioner shall charge and collect a fee of five dollars for each new contract issued, which fee shall be paid into the state treasury and become a part of the expense fund of the board of university and school lands. [1907, ch. 226; R. C. 1905, § 183; 1893, ch. 118, § 32; R. C. 1899, § 199.]

§ 317. Contract may be surrendered. Railroad right-of-way. New contract. Whenever any holder of any contract for purchase of any state or school land shall surrender the same to the board of university and school lands, and shall present satisfactory evidence that a railroad has been located and established across the land covered by such contract subsequent to the issuance thereof, and shall file a plat of such land showing the exact location, width and area in acres of the land required for right-of-way for such railroad across said land, and shall pay to the state treasurer the balance of the purchase price under said contract and all interest and taxes thereon to date for the acreage taken for such railroad right-of-way, and shall make application in writing that such contract be cancelled and that new contract be issued to such applicant for the land less the acreage taken for such railroad right-of-way, it shall be lawful for the board to cause such new contract to be issued and to issue a deed to the railroad company for the land so deducted from the tract embraced in the original contract, and required for such right-of-way; provided, that the commissioner of university and school lands shall charge and collect a fee of five dollars for each new contract and each deed so issued, which fee shall be paid to the state treasurer and become a part of the expense fund of the board of university and school lands. [1907, ch. 225.]

§ 318. Contract voidable on failure to pay principal or interest. In case the annual interest due on the first day of January in any year shall not be paid within thirty days thereafter by the purchaser or by any person claiming under him, the contract shall, from the time of such failure, be voidable. In case any installment on the purchase price shall not be paid within thirty days after the same becomes due by the provisions of contract of sale, the contract, from the time of such failure shall be voidable. And in all cases where any contract becomes voidable by reason of failure to

make the payments required by the contract and the terms of this section, the board of university and school lands may in their discretion declare such contracts of sale void; and in case of such declaration, shall notify the holder thereof, of such declaration, by written notice mailed to his post office address and send a duplicate copy thereof to the auditor of the county in which such land is situated, and order the commissioner to take possession of the land described in such contract. [R. C. 1905, § 184; 1897, ch. 143; R. C. 1899, § 200.]

§ 319. Redemption before re-sale. In all cases where the rights of a purchaser, his heirs or assigns, become forfeited under the provisions of this article, by failing to pay the amounts required, such purchaser, his heirs or assigns, may, before the re-sale at public auction of the lands described in such contract, pay to the state treasury the amount of interest due and payable on such contract, and all costs which have been incurred in addition thereto, together with interest at the rate of twelve per cent per annum on the interest and costs so due from the date of delinquency to the date of payment, and such payment shall operate as a redemption of the rights of such purchaser, his heirs or assigns, and such contract from the time of such payment shall be in full force and effect, as if no forfeiture had occurred; provided, that after the rights of a purchaser, his heirs or assigns shall have become forfeited under the provisions of this article, the board of university and school lands shall have the power, and it is hereby made their duty to provide for the re-sale of said land so forfeited if in their opinion a re-sale of said land shall be most advantageous to the state, otherwise the said board shall provide for the leasing of said land from year to year as herein provided, and after a lease of said land shall be made by said board, the lessee, his heirs and assigns, shall be entitled to the full and absolute possession of all said lands and premises so leased. [R. C. 1905, § 185; 1893, ch. 118, § 34; R. C. 1895, § 201.]

§ 320. Fee in state until contract fulfilled. The fee of each parcel of such lands shall be and remain in the state until the patents hereinafter provided for are issued for the same respectively, and no patents shall issue until full payment of all sums and full compliance with all the conditions of the contract of purchase, and in case of noncompliance by the purchaser, his heirs or assigns, with the terms of the contract as aforesaid, or with the provisions of law applicable thereto, any and all persons being or continuing in possession of any such lands after a failure to comply with the terms of the contract as aforesaid, or with such provisions of law, as aforesaid, without a written permission of the commissioner, shall be deemed and held to detain such land forcibly and without right, and to be trespassers thereon. [R. C. 1905, § 186; 1893, ch. 118, § 35; R. C. 1899, § 202.]

§ 321. Recovery of possession. In case any person holds or continues in possession of any of the land mentioned in this article, contrary to the conditions or covenants of any lease or written agreement, he shall be liable to an action of forcible detainer, or any other proper action for the recovery of possession of such lands and damages for detention of the same. [R. C. 1905, § 187; 1893, ch. 118, § 36; R. C. 1899, § 203.]

§ 322. Reconveyance to the United States. In all cases where lands have been erroneously or improperly certified or conveyed to the state of North Dakota for school or other purposes by the United States, the governor of the state is authorized to reconvey or relinquish by the execution, under his hand and the seal of the state, of such conveyances as will be necessary to convey or relinquish the title which the state may have to such lands. [R. C. 1905, § 188; 1893, ch. 118, § 37; R. C. 1899, § 204.]

§ 323. Patents, when to issue. No grant or patent for any lands sold under the provisions of this article shall issue until payment in full is made for the same and all terms of the contract of purchase are fully complied with. Provided that payments upon the contract of purchase may be made before due after the expiration of five years from the day of sale, and that if made before due they shall be made at an interest paying date and one year's interest in advance shall be paid on all moneys so paid. Provided, further, that any school or institution lands that may be required for townsite purposes may be paid for at any time and patents issued therefor. Provided further, that any lands sold under the provisions of law heretofore existing may be paid for, upon the terms herein prescribed for sales of land hereafter to be made. When the terms of the contract of purchase are fully complied with as herein provided, the board of university and school lands shall so certify to the governor, who shall thereupon issue to the purchaser thereof, his heirs and assigns, a patent conveying the title of the state to said land, and the governor shall likewise issue a patent to the purchaser of the rights, title and interest of the original purchaser, his heirs and assigns, acquired by any execution sale. All such patents shall be signed by the governor and attested by the secretary of state with the great seal of the state, and shall be countersigned by the board of university and school lands with the seal of the secretary of said board. [1911, ch. 261, § 5; R. C. 1905, § 189; 1893, ch. 118, § 38; R. C. 1899, § 205.]

§ 324. Patents to be recorded. The registers of deeds of the several counties of this state are authorized to record all patents issued by the governor pursuant to the provisions of this article; and the records thereof shall have the same effect as the record of other conveyances executed according to the laws of this state. [R. C. 1905, § 190; 1893, ch. 118, § 39; R. C. 1899, § 206.]

§ 325. Taxation of land after sale. Purchaser of tax certificate. The commissioner shall, as soon as possible after a sale of land, transmit to the auditor of each county in which any lands mentioned in this article have been sold, a detailed description of each parcel of the land so sold, and the names of the purchasers, and the auditor shall extend the same upon his tax duplicate for the purpose of taxation. The lands so contracted to be sold by the state shall be subject to taxation from the date of such contract and the taxes assessed thereon shall be collected and enforced in like manner as against other land. Provided that in case the taxes assessed against any of said lands remain unpaid until the first Monday in October of the following year then and thereupon the contract of sale for such lands shall, if the board of university and school lands so determine, become null and void. Provided further, that when a contract is not declared null and void by said board for failure to pay taxes before the time provided by law for the sale of land for delinquent taxes, any lands upon which taxes are delinquent at the time of such tax sale may be sold for delinquent taxes as other lands are sold, and the purchaser at such tax sale of any such lands so sold shall only acquire, by virtue of such purchase, such rights and interests as belong to the holder and owner of the contract of sale issued by such commissioner under the provisions of this article, and the right to be substituted in the place of such holder and owner of such contract of sale, as the assignee thereof; and upon the production to the proper officer of the tax certificate given upon such tax sale, in case such lands have not been redeemed, such tax purchaser shall have the right to make any payment of principal or interest then in default upon such contract of sale as the assignee thereof. But no tax deed shall be issued upon any tax certificate procured, under the

provisions of this section while the legal title of said lands remain in the state of North Dakota. Whenever the contract for the sale of any of said lands has been cancelled, it shall be the duty of the commissioner to notify the auditor of the county in which such lands are located, of said cancellation, and thereafter such lands shall not be listed for taxation, but, in the event of the redemption of any such lands, the redemptioner shall pay as taxes, in addition to all other charges, an amount equal to the tax last levied thereon for each year such land was not listed for taxation, together with such interest and penalty as would have been charged, if the same had been regularly listed and taxed. [1911, ch. 261, § 6; R. C. 1905, § 191; 1893, ch. 118, § 40; R. C. 1899, § 207; 1901, ch. 168.]

§ 326. Collections, how made. Duties of county treasurer. The purchasers of any land mentioned in this article and the lessees of any such lands, or their executors, administrators or assigns, shall pay to the county treasurer of the county in which such land lies, any and all amounts that may become due from time to time upon such contracts or leases for principal, interest, penalties or rent, and for the amounts so paid the county treasurer shall give to such person a duplicate receipt specifying the amount paid, date of payment, the number of the contract or lease and the description of the land for which the payment is made, name of the person making such payment, nature of the payment, whether for interest, principal, penalty or rent and for what year, and a separate receipt shall be given for each contract or lease, and a separate receipt for each year's interest, and principal and interest shall not be included in the same receipt. All moneys received by each county treasurer under the provisions of this article shall at all times be held by him subject to the order and direction of the state treasurer and the board of university and school lands, and on the first day of each month or within fifteen days thereafter, the county treasurer of each county shall make report to the commissioner of university and school lands of all moneys so collected by him during the next preceding calendar month, which report shall be in such form and on such blanks as may be prescribed and furnished by the commissioner, and a separate report shall be made for principal, interest and rent, and such report shall embrace a list of all receipts for the month, briefly described, amount of each receipt, and the total amount collected for the month from each source. Such reports shall be duly certified by the county treasurer as correct and shall be by him transmitted forthwith to the commissioner of university and school lands, together with a triplicate of each receipt shown on each report. The county treasurer shall also and at the same time that he makes his report to the land commissioner, make a similar report to the state auditor, of the total amount collected from each of said sources for the month, which shall correspond with the amount reported to the land commissioner as herein provided, from principal, interest, rent and other sources. As soon as possible after he has received the reports from the several county treasurers, as provided in this section, it shall be the duty of the commissioner of university and school lands to check up and verify said reports from the records of his office and to apportion the several amounts to the funds to which the same are applicable, which apportionment he shall certify to the state auditor, who shall proceed to make drafts on the respective county treasurers in the same manner as drafts are made for state taxes, and to the credit of the proper funds as certified to him by the land commissioner. [1909, ch. 207; R. C. 1905, § 192; 1893, ch. 118, § 41; R. C. 1899, § 208.]

§ 327. Bond of county treasurer, conditions of. The bond of each county treasurer shall be conditioned for the honest and faithful discharge of

all trusts and responsibility imposed by this article, and for the faithful payment of and accounting for all moneys received by him under the provisions of this article to the state treasurer or any other person entitled to receive the same, and the board of university and school lands shall on or before the first day of January, following any election for county officers, certify to the chairman of the board of county commissioners of each county the amount of money liable to come into the hands of the treasurer of the county under the provisions of this article, and the board of county commissioners shall add to the amount of the sum required on his regular official bond to the county double the sum so certified by the board of university and school lands, and the record of the proceedings of such board of county commissioners when fixing the amount of such bond shall specify in two separate items the aggregate amount of the bond so made up, designating one sum as the amount to indemnify the county, and the other to indemnify the state for any losses incurred by reason of failure to comply with the provisions of all laws regulating his duty. [R. C. 1905, § 193; 1893, ch. 118, § 42; R. C. 1899, § 209.]

§ 328. Fees to county treasurer. County treasurers shall be entitled to a fee of one-half of one per cent on each dollar collected or received and remitted by them in payment of principal or interest, fines, penalties and damages on state lands, which fee shall be payable from the general fund of the class of lands on which payment is made to such treasurer, and such fee shall be paid to the county treasurer on vouchers countersigned by the county auditor and approved by the commissioner of university and school lands and such approved vouchers shall be paid out of any appropriation for the expenses of appraisement and sale of such lands. [R. C. 1905, § 194; 1893, ch. 118, § 43; R. C. 1899, § 210.]

§ 329. Duty of county auditor. The county auditor shall, at the time he is required by law to return abstracts of settlement to the state auditor, also forward to the land commissioner all duplicate or triplicate receipts of principal, interest, penalty or rental on state lands, with a certified statement of such collection by the county treasurer, specifying the amount of each item; and he shall also make such return at any other time as may be required by the board of university and school lands. [R. C. 1905, § 195; 1893, ch. 118, § 44; 1897, ch. 145; R. C. 1899, § 211.]

§ 330. List of lands sold to be furnished county treasurer. On or before the first day of December in each year the commissioner shall cause to be made out and transmitted to county treasurers a statement showing the lands sold in their respective counties, the number of the contracts of purchase, the name of the person to whom each contract was issued, and the amount of both principal and interest due on each on the first day of January, together with such directions, instructions and blanks as shall enable the county treasurers to carry out the provisions of this article. [R. C. 1905, § 196; 1893, ch. 118, § 45; R. C. 1899, § 212.]

§ 331. Township assessors to examine state lands. It shall be the duty of all township and district assessors, whenever required by the commissioner to examine and report on any lands designated to them by him, in the manner and form prescribed by him, and for such examination they shall be paid at the rate of three dollars per day for time actually engaged, upon vouchers approved by the commissioner. [R. C. 1905, § 197; 1893, ch. 118, § 46; R. C. 1899, § 213.]

§ 332. Transfer of records to commissioner. All abstracts and conveyances of title to the state of North Dakota whether the said lands are held for penal, educational, charitable, school or other purposes, shall be, by those

in whose charge such conveyances now are or may come, deposited with and remain in the control of the commissioner of university and school lands. [R. C. 1905, § 198; 1893, ch. 118, § 47; R. C. 1899, § 214.]

§ 333. Permanent and general funds. The principal accruing from all sales of school, university or other state lands under the control of the board of university and school lands, as provided for in this article, shall become a part of the several permanent funds to which they respectively belong and shall not be reduced by any means whatever. All moneys received as interest, for rents, penalties, permits or from any source other than from the principal of sales shall become a part of the general or current funds to which they respectively belong and shall be distributed as directed by law. [R. C. 1905, § 199; 1893, ch. 118, § 48; R. C. 1899, § 215.]

§ 334. Quantity of lands to be sold. No more than one-fourth of the common school lands of the state shall be sold within the first five years after they become salable under the provisions of section 155 of the constitution, nor more than one-half of the remainder within ten years after the same become salable as aforesaid. The residue may be sold at any time after the expiration of such ten years; provided, however, that the coal lands of the state shall not be sold, but may be leased under the provisions of any law governing such leases. The words "coal lands" include lands bearing lignite coal. [R. C. 1905, § 200; 1893, ch. 118, § 49; R. C. 1899, § 216.]

§ 335. Expenses of sale, how paid. The expenses of publishing notices of the sale of the university, school and all other public lands of the state shall be paid by the state treasurer upon the warrant of the state auditor out of the general or current funds of the different institutions as designated in section 333, and such expenses shall be apportioned according to the receipts credited each fund from proceeds of each and every sale. All bills for such publishing shall be verified by the publisher and approved by the board of university and school lands. There is hereby annually appropriated out of any funds in the treasury not otherwise appropriated, the sum of four thousand dollars, or so much thereof as may be found necessary, for the purpose of paying the expense of appraising, advertising and selling common school, institution or other lands, under the control of the board of university and school lands. [R. C. 1905, § 201; 1893, ch. 118, § 70; R. C. 1899, § 234; 1901, ch. 13.]

ARTICLE 5.—LEASE OF SCHOOL LANDS.

§ 336. Lands subject to lease. All the common school lands and all other public lands of the state that are not of such value as will admit of appraisal at ten dollars or more per acre, at the time of any regular appraisal, may be leased; provided, that no leases can be granted for a period longer than five years, and only for pasturage and meadow purposes, and at public auction after notice as hereinafter provided; provided, further, that all of such school and public lands now under cultivation may be leased at the discretion and under the control of the board of university and school lands for other than pasturage and meadow purposes until sold; provided, further, that in case of a sale of the lands so leased during the term of the lease, the lessee shall be given ninety days' notice; provided, further, that at the expiration of said lease or within ninety days of the date of receiving the aforesaid notice, the said lessee may remove from said lands so leased, all fences, sheds, water tanks, wind mills, etc., used upon said lands by said lessee. All rents shall be paid annually in advance. [R. C. 1905, § 202; 1893, ch. 118, § 50; R. C. 1899, § 217; 1901, ch. 135.]

§ 337. May lease cultivated lands. The commissioner of university and school lands is hereby authorized and empowered to lease cultivated school

and institution lands in the several counties of the state for the period of two years for the purpose of summer-fallowing the first year and cropping the next, when in his opinion it is necessary so to do in order to clear the same of noxious weeds, said lessee to pay only one year's rent for the same. When any lands are leased as above provided the party so leasing the same, before lease is approved by the board of university and school lands, shall pay to the county treasurer of the county in which the land is situated the total amount of rent therefor. Should the lessee so renting the land as above provided fail or neglect to summer-fallow the same at the proper time, the board of university and school lands in their discretion may declare the lease cancelled and the amount paid thereon will thereby become forfeited. [R. C. 1905, § 203; 1899, ch. 166; R. C. 1899, § 217a.]

§ 338. Appraisal for lease by county board. It shall be the duty of the county board of appraisers, each and every year, if so ordered, to appraise in the same manner as all other lands that are listed for taxation are appraised all the common school and other public lands of the state in their respective districts that may be included in the order, making a return of all such appraisals to the board of university and school lands in the form prescribed on blanks furnished by the board; such returns to be made on or before the first day of July of the same year; and for any services performed as required by this article they shall be paid at the rate of three dollars per day, to be paid by the state treasurer out of the funds appropriated for the current expenses of such board. It shall be the duty of the board of university and school lands to equalize the appraisements so returned as to counties by adding thereto or taking therefrom such a uniform percentage as may in its judgment seem proper and fair in order to arrive at a just and equitable equalization between the several counties, and upon such valuation so fixed the board of university and school lands are authorized to fix a per cent per acre as the minimum price at which the land can be leased; provided, that the lowest price of lands leased for pasturage cannot be below one-half of one per cent of the average value in the county, and for any cultivated lands in the county the lowest price cannot be below two and one-half per cent of the appraised value of each cultivated tract. And when advertising the same for lease they shall set opposite each description the value thereof as equalized by them, which valuation shall form the basis for leasing the same. [R. C. 1905, § 204; 1893, ch. 118, § 51; R. C. 1895, § 218.]

§ 339. Selection of lands for lease. The board of university and school lands shall have the power, and it is hereby made its duty to select from the lands so appraised such tracts as in the judgment of the board can be leased with profit to the school and other permanent land funds of the state, or as the legislature may by law order to be leased, and shall at such time as in its judgment is for the best interests of the state, proceed to advertise for lease and offer for lease, in each succeeding year, such lands as have thus been selected. [R. C. 1905, § 205; 1897, ch. 145; R. C. 1899, § 219.]

§ 340. Advertisement for leasing. All such lands to be leased, or offered for lease, lying within the respective counties, shall by the board of university and school lands, be advertised for lease by publication once a week for not less than sixty days, in some newspaper or newspapers of general circulation in the vicinity of such lands. Such advertisement shall contain the designation or proper description of each tract or parcel of land so to be leased, the appraised value of each tract and the per cent on such valuation fixed by the board as the minimum price at which such land can be leased, and the terms of the lease. A copy of such advertisement shall also be posted in a conspicuous place at the court house of the county, and

a notice of the time and place where the said lands are to be leased shall also be published for not less than sixty days in one newspaper at the seat of government by such board of university and school lands; provided, that if in the opinion of the board there will not be sufficient of such lands situate in any county leased, to warrant the expense of advertisement in a newspaper by description of each tract or parcel, the notice may be given by general advertisement. [R. C. 1905, § 206; 1893, ch. 118, § 53; R. C. 1899, § 220; 1901, ch. 192.]

§ 341. Manner of leasing. By whom made. How conducted. It shall be the duty of the commissioner of university and school lands, or such other person as may be appointed by the board of university and school lands, to conduct the leasing of such lands in accordance with the provisions of this article and such directions as shall be prescribed therefor by the board; provided, that the leasing shall be at public auction to the highest bidder at the court house or place where terms of the district court are held, commencing on the day specified in the advertisement for such lease and between the hours of ten o'clock a. m. and five o'clock p. m. to continue from day to day until all tracts or parcels of land advertised for lease shall have been leased or offered for lease; but the time for leasing the same shall not exceed ten days in any county, except that an adjournment may be made over the Sabbath or any legal holiday. In counties where a large number of tracts of land are to be leased the land situated in certain townships may be designated in the advertisement to be leased on certain specified days and in such case such lands shall be leased or offered for lease on such specified days, or for want of time for the leasing or offering for lease of all such designated lands, the leasing of those unoffered may be adjourned until the following day or days, when they must be the first lands offered for lease. Such lands as shall not have been specially subdivided shall be leased or offered for lease in tracts of one-quarter section each, and those so subdivided in the smallest subdivision thereof. Notice must be given when the land is offered that all bids are subject to approval by the board. At the time of offering the lands for lease the county auditor of the county shall act as clerk, and it shall be his duty to make report thereof, stating the terms of such leasing, as is prescribed in section 307 for making reports of sales. [R. C. 1905, § 207; 1893, ch. 118, § 54; R. C. 1899, § 221.]

§ 342. Bidders to pay first year's rent at time of leasing. Provisions for failure to pay. The highest bidder for any parcel of land shall at once deposit the amount of his bid with the county treasurer, who shall act as treasurer of said leasing, failing to do which the bid of the next highest bidder shall be accepted under like conditions; provided, his bid shall not be less than the minimum price as fixed under and in pursuance of section 338. [R. C. 1905, § 208; 1897, ch. 145; R. C. 1899, § 222.]

§ 343. Adjournment of lease. Whenever the board of university and school lands finds that the interests of the state will be subserved by the adjournment of the time for offering lands for lease, the authority conferred by section 305 for adjournment of sales is made applicable to the leasing of lands. [R. C. 1905, § 209; 1893, ch. 118, § 56; R. C. 1899, § 223.]

§ 344. Approval of lease and execution of contract for lease. Board of university and school lands to have power to lease to applicants in certain cases. Immediately upon receipt of the report of the county auditor as required by this article, the board of university and school lands shall approve and confirm the lease of all such tracts as in its judgment should be made, and shall at once certify a list of the approved leases to the commissioner who shall without delay execute duplicate contracts of lease in the form

prescribed by the board, and forward to the lessee a copy marked "duplicate," the "original" being filed in the office of the commissioner, who shall also forthwith certify to the auditor of the proper county, a list of such leases as have been approved by the board. In case any of the lands in any county may remain unleased after the date advertised for the leasing, the board shall have authority to make contracts of lease for said lands to the first applicant therefor at not less than the minimum price thereof. [R. C. 1905, § 210; 1897, ch. 145; R. C. 1899, § 224.]

§ 345. Lessee not to destroy timber. No lessee of any of the common school or public lands of this state or his heirs or assigns shall cut down or take away from any such tract any timber, trees or wood, or suffer or cause the same to be done, by any person, except that such lessee may cut down or use such amount of dead or prostrate trees or timber as may be sufficient to supply him with fuel for his family, or the families of his employes actually residing upon said tract; and further, that such lessee, his representatives or assigns may, during his term or within a reasonable time thereafter, remove any pump, curbing, fencing, or any other improvement he may have placed thereon or received from any preceding occupant or lessee of the land. Any lessee violating the provisions of this section shall forfeit his lease and all rights and interests thereunder, and shall be liable to the state for damages sustained by the state by reason thereof, and shall be guilty of a misdemeanor. [R. C. 1905, § 211; 1893, ch. 118, § 59; R. C. 1899, § 225; 1901, ch. 137.]

§ 346. Lessee not to break uncultivated land. No lessee, or his heirs or assigns of any lessee, of any of the common school or public lands of this state, leased for meadow or pasturage purposes, or of school or public lands leased for the purpose of cultivation, which may contain any uncultivated or unbroken land, shall break, plow or cultivate any unbroken land on any tract so leased, or cause or suffer it to be done by any other person. And any lessee, or his heirs, or assigns, who shall violate the provisions of this section shall incur the same forfeitures and liabilities as are provided in the preceding section, and shall also be guilty of a misdemeanor. [R. C. 1905, § 212; 1893, ch. 118, § 60; R. C. 1899, § 226.]

§ 347. Hay not to be cut before July first. No lessee or his heirs or assigns, shall mow or cut for hay or feed any grass on any unbroken land, or cause or suffer the same to be done by any other person prior to the first day of July in any year. And any lessee or his heirs or assigns, who shall violate the provisions of this section shall incur the same forfeitures and liabilities as are provided in section 345, and shall also be guilty of a misdemeanor. [R. C. 1905, § 213; 1897, ch. 145; R. C. 1899, § 227.]

§ 348. Board of university and school lands to grant permits to cut hay and to remove dead and down timber. The board shall have authority, when in its judgment it is for the best interests of the state so to do, to sell the right to cut grass on any of the public lands of the state and to sell any down and dead timber on said lands for such price, terms and conditions as they may think proper, but no dead timber, if standing, shall be deemed to be included in the sale unless expressly so specified in the permit. All such permits shall only be for the current season and between the fifteenth day of June and the first day of April of the following year, and no control or rights of occupancy of said land shall be other than what is specified in such permit; said permit shall be sold by the several county treasurers, whose duties and compensation shall be prescribed by the board of university and school lands, but said compensation shall be based upon a percentage of amounts of money collected and remitted to the state treas-

urer from said sale of grass and timber in their respective counties. All permits shall be paid for in advance. [R. C. 1905, § 214; 1897, ch. 145; R. C. 1899, § 228.]

§ 349. Trespass upon public lands. Civil action for. Whoever commits any trespass upon any of the lands owned, or held in trust, or otherwise by the state shall be liable in treble damages in an action to be brought in the name of the state, if such trespass is adjudged to have been willful; but single damages only shall be recovered in such action if such trespass is adjudged to have been casual and involuntary. [R. C. 1905, § 215; 1893, ch. 118, § 63; R. C. 1899, § 229.]

§ 350. Board empowered to lease school lands for coal mining. The board of university and school lands is hereby authorized and empowered to lease, for coal mining purposes, any lands under its control designated as common school lands, and all other public lands of the state owned or held in trust by the state, or granted to any public institution of the state, which contain coal, including therein lignite coal. Any lease so made shall be for such period of time as such board may determine. [R. C. 1905, § 216; 1903, ch. 176, § 1.]

§ 351. How advertised. The manner of advertising and of leasing such lands for coal mining purposes, and approval and execution thereof, shall be the same as provided in sections 340, 341 and 344. [R. C. 1905, § 217; 1903, ch. 176, § 2.]

§ 352. Minimum price. Such lands shall not be leased for coal mining purposes for a less sum than ten cents per ton of two thousand, two hundred forty pounds, for each and every ton of coal mined thereon; provided, that no lease of any such land for such purpose shall be made for less than ten dollars per annum for each and every forty-acre tract or fraction thereof, it being expressly provided that at the time of the making and execution of such lease, and annually thereafter, there shall be paid by the lessee an amount equal to ten dollars for every forty-acre tract of land so leased, or any fraction thereof, to the person, and in the manner prescribed herein, or by the rules and regulation of the board of university and school lands; it being further provided that upon such lessee mining any coal or lignite coal thereon during a period of one year from and after the date of such payment, such lessee shall have credit upon the amount due under the terms of such lease on tonnage, for the amount paid at the execution of such lease or at the time of the annual payments thereafter made as hereinbefore provided; the amount received for the lease of any such land for coal mining purposes to be used in the same manner, and for the same purpose, as is provided for other money received for the lease of common school and other public lands. [R. C. 1905, § 218; 1903, ch. 176, § 3.]

§ 353. Board authorized to make rules. The board of university and school lands is hereby authorized to make such rules and regulations, as shall be by it deemed necessary, for the manner of determining the amount of rent due under any such lease, the manner and time of payment, and for such other conduct of the business of such leasing not in conflict with the provisions of law. [R. C. 1905, § 219; 1903, ch. 176, § 4.]

§ 354. Lease not to interfere with right to lease for pasture or meadow. The leasing of any such land for coal mining purposes shall not interfere with the right and authority of such board to lease the same land for pasture or meadow purposes, and each and every lease so made for coal mining purposes shall contain therein a provision plainly and explicitly reserving to such board the right to so rent such lands for pasture and meadow purposes, without such renting in any manner affecting the conditions or

terms of such lease for coal mining purposes, and reserving to the said board the right to use, occupy and lease the surface of all such lands; provided, that any such lessee for coal mining purposes shall have the right to the use and occupancy of so much of the surface of such lands as may be necessary for entry, dumps, buildings, tramways or other railways, roadways or uses in the mining, storing and shipping of coal mined thereon. [R. C. 1905, § 220; 1903, ch. 176, § 5.]

§ 355. Leasing restricted. No leases shall be made of any such lands having coal or lignite coal thereon for pasture or meadow purposes, except there shall be contained in such lease a provision authorizing the leasing of the same land for coal mining purposes, and reserving to the said board the right to use and occupy, or lease for use and occupancy, and authorizing the use and occupancy of so much of the surface of said land as shall be required by any lessee of the same for coal mining purposes, for the uses and purposes set forth in section 354. [R. C. 1905, § 221; 1903, ch. 176, § 6.]

§ 356. Board to make schedule of lands. The board of university and school lands shall, as soon as possible, and by the best means at its command, and with the assistance of the state geologist, proceed to ascertain and determine the quantity and description of all common school, or other public lands under its control, on which coal or lignite coal exists, and make and compile a statement and schedule of all such lands. [R. C. 1905, § 222; 1903, ch. 176, § 7.]

§ 357. Penalty for violation. Any person, firm or corporation who shall mine, remove or cause to be mined or removed, from any common school land, or other public lands of the state, any coal or lignite coal, except the same shall be so mined or removed under and by virtue of the terms of this article, shall be liable to the state of North Dakota in damages in the sum of one dollar for each and every ton of coal or lignite coal so mined or removed, and shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred and fifty dollars, nor more than one thousand dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment. Each and every day or fraction of a day so occupied in mining or removing such coal or lignite coal from any such land, is hereby declared to be a separate offense against the provisions of this article. [R. C. 1905, § 223; 1903, ch. 176, § 8.]

§ 358. Willful trespass. Penalty. Whoever commits any willful trespass upon any of the lands owned or held in trust or otherwise by this state, either by cutting down or destroying any timber or wood standing or growing thereon, or by carrying away any timber or wood therefrom, or by mowing or cutting or removing any hay or grass standing or growing or being thereon, or who injures or removes any buildings, fences, improvements or other property belonging or appertaining to said land or unlawfully breaks or cultivates any of said lands or aids, directs or countenances such trespass or other injury shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by imprisonment in the county jail not more than one year, or by fine not exceeding five hundred dollars, or both such fine and imprisonment, in the discretion of the court. And whoever is occupying, residing upon or in possession of any school or other public lands owned or held in trust or otherwise by the state at the time of the passage, approval and taking effect of this article without a valid lease therefor shall be deemed and held to be a willful trespasser thereon, and guilty of trespass upon such land, and upon conviction thereof shall be punished as provided for in this section for any other act of trespass. [R. C. 1905, § 224; 1893, ch. 118, § 64; R. C. 1899, § 230.]

§ 359. Property to be seized. In addition to the penalties provided for in this article against those committing trespass upon any of the lands owned or held in trust or otherwise by this state, the commissioner is authorized and empowered without legal process to seize and take, or cause to be seized and taken any and all timber, grass, wood or other property unlawfully severed from such lands, whether the same has been removed from such lands or not, and may dispose of the property so seized and taken, either at public or private sale, in such manner as will be most conducive to the interests of the state; and all moneys arising therefrom after deducting the reasonable and necessary expenses of such seizure and sale shall be made a part of the general fund belonging to the public lands and shall be distributed in accordance with the provisions of this article. [R. C. 1905, § 225; 1893, ch. 118, § 65; R. C. 1899, § 231.]

§ 360. Damages. All damages recovered for any trespass, or other injury upon or to any of the lands mentioned in this article shall be paid over to the state treasurer for the benefit of the general fund to which the same properly belongs. [R. C. 1905, § 226; 1893, ch. 118, § 67; R. C. 1899, § 232.]

§ 361. State's attorney to prosecute and report. The state's attorneys of the several counties shall promptly report to the commissioner all cases of trespass committed upon such lands, which may come to their knowledge, and shall, when directed by the attorney-general, prosecute all actions for any trespass or injury thereto, or for recovery of possession thereof, or otherwise. [R. C. 1905, § 227; 1893, ch. 118, § 68; R. C. 1899, § 233.]

§ 362. Expense of advertising and leasing. There is hereby annually appropriated out of any funds in the treasury not otherwise appropriated the sum of two thousand dollars, or so much thereof as may be found necessary, for the purpose of paying the expense of advertising the common school lands for lease and the attendant expense of leasing the same. [R. C. 1905, § 228; 1897, ch. 19; R. C. 1899, § 234a.]

§ 363. Fees. Duty of county treasurers. It shall be the duty of the commissioner of university and school lands to charge and collect the following fees: For each one year lease of school or other state lands, one dollar and fifty cents; for each lease for a period of more than one year, three dollars; for each contract for lands purchased, five dollars; for each patent, five dollars; for approving and recording each assignment of school land contract, five dollars; for furnishing certified copies of school land contracts, three dollars. All fees must be paid in advance, and when collected must be paid into the state treasury at the end of each month and be placed to the credit of the expense fund of the board of university and school lands. It shall be the duty of the county treasurer of any county where any such lands are leased, or sold, to collect the fees hereinbefore provided for at the time the first payment thereon is made for leases and contracts of sale, and transmit the same to the commissioner on the first day of each month. [R. C. 1905, § 229; 1899, ch. 165; R. C. 1899, § 234b; 1901, ch. 191.]

§ 364. Appropriation for expenses of board. There is hereby annually appropriated out of any funds in the treasury not otherwise appropriated the sum of five thousand dollars, or so much thereof as may be found necessary, for the salaries and expenses of the commissioner of university and school lands, clerk hire, record books, blanks and all such other expenses as shall be necessarily incurred by the board of university and school lands in carrying out the provisions of this article, and such expenses shall be paid out of the treasury, and upon satisfactory vouchers therefor the state auditor shall issue his warrant for the same. [R. C. 1905, § 230; 1893, ch. 118, § 71; 1895, ch. 112, § 1; R. C. 1899, § 235.]

ARTICLE 6.—EXAMINATION OF LANDS FOR LIGNITE COAL VEINS.

§ 365. Purpose of examination. The board of university and school lands shall, as soon as practicable after the passage of this act, proceed to make an examination of all unsold school and state land, to ascertain the depth below the surface, the thickness and extent of any coal vein underlying such land, and to obtain data bearing on the soil characteristics and topographical features of each quarter section of land. [1911, ch. 262, § 1.]

§ 366. State engineer to aid. Data to be filed. It shall be the duty of the state engineer to aid the board of university and school lands in carrying out the provisions of section 365, and whenever in the opinion of the state engineer it is necessary to make test drillings or borings in order to determine the depth below the surface, the thickness of the vein and the area of coal which underlies any state or school land, to make such test drillings or borings, and it is also made the duty of the state engineer when making such examinations to, at the same time, make a surface examination showing the soil characteristics and topographical features of each quarter section of land investigated. All data on the lignite coal veins and the surface characteristics of each and every quarter section examined by the state engineer shall be filed with the board of university and school lands for their use. [1911, ch. 262, § 2.]

§ 367. Expenses, how paid. All expenses incurred for equipment and assistants shall be paid by the state auditor upon presentation of properly prepared vouchers approved by the board of university and school lands. [1911, ch. 262, § 3.]

§ 368. Appropriation. There is hereby appropriated out of the general fund the sum of fifteen hundred dollars, or so much thereof as may be necessary, for the purchase of drilling apparatus and equipment, and the sum of two thousand dollars for the expenses connected with the carrying out of this article. [1911, ch. 262, § 4.]

ARTICLE 7.—THE STATE BOARD OF AUDITORS AND STATE DEPOSITARIES.

§ 369. Membership of board. There is hereby created a board of auditors for the state of North Dakota, which shall consist of the secretary of state, the state auditor and the attorney-general, whose duty it shall be to examine and audit the accounts, books and vouchers of the state treasurer, and to take an account and ascertain the amount of funds in the state treasury or belonging to the state at least twice in each year without previous notice to the treasurer, and make report thereof and of their acts and doings in the premises to the governor, and also to witness and attest the transfer and delivery of accounts, books, vouchers and funds by any out-going treasurer to his successor in office, and report the same to the governor, and the failure or neglect of the aforesaid board of auditors or any member thereof, to do and perform any of the acts at the time, or times, and in the manner in this section provided for, shall constitute and be misdemeanor in office, provided, that the physical disability of any member of the aforesaid board shall be sufficient excuse, during such disability, for the nonperformance of his part of any of the acts herein required. The board is authorized and empowered to employ such expert accountants as it may deem necessary to carry out the provisions of this section. [1911, ch. 52; R. C. 1905, § 231; 1893, ch. 48, § 1; R. C. 1899, § 236.]

§ 370. State depositaries. All funds of the state shall be deposited by the treasurer in one or more designated state or national banks in the state of North Dakota on or before the first day of each month in the name of this state. Such bank or banks shall be designated by the board of auditors in conjunction with the governor after advertising in one or more newspapers published in this state for at least thirty days for proposals, and receiving

proposals, stating what interest will be paid on monthly balances of such funds on condition that such funds with accrued interest shall be subject to draft and payment at all times on demand; provided, that the amount deposited in any bank shall not exceed fifty per cent of its paid-up capital and surplus. Interest on the fund so deposited, shall be not less than two nor more than three per cent per annum, payable on the average daily balance. Each bank, so designated, shall continue to be a depository unless revoked by the board until the board of auditors designate new depositories which shall be done at a meeting to be held on the second Tuesday in January of every even numbered year, and until depositories so designated shall have qualified. [R. C. 1905, § 232; 1893, ch. 48, § 2; 1899, ch. 150; R. C. 1899, § 237; 1905, ch. 173.]

§ 371. Bond to be furnished. Before any bank shall be designated as such depository it shall deposit with the state treasurer a bond payable to the state and executed by not less than seven freeholders of the state as sureties, or in lieu of such personal bond such bank or banks may file a surety company bond for a sum equal to the amount of funds such bank may receive according to section 370. Such bond shall be approved by the governor and state board of auditors and shall be in such an amount as such board shall direct. If a personal bond is accepted, it shall be for a sum not less than double the amount of the funds to be deposited in such bank at any one time. [R. C. 1905, § 233; 1893, ch. 48, § 3; R. C. 1895, § 238; 1901, ch. 169.]

Liability of sureties on bond of bank as depository of public funds as affected by acquiescence or connivance of public officials in misuse of the funds. 26 L.R.A.(N.S.) 865.

§ 372. Treasurer exempt from liability. Whenever any portion of the funds of the state is deposited in any national or state banks in the manner above provided the state treasurer and the sureties on his bond shall be exempt from all liability by reason of the loss of any such deposited funds from failure, bankruptcy or any other act of such bank to the extent and amount of such funds in the hands of such bank at the time of such failure or bankruptcy. [R. C. 1905, § 234; 1893, ch. 48, § 4; R. C. 1899, § 239.]

Liability on official bond for loss of money by theft or bank failure. 22 L.R.A. 449.

Liability of public officer for loss of funds by failure of bank in which they are deposited. 36 L.R.A.(N.S.) 285.

Care required of officers in selecting bank for deposit of public funds. 7 L.R.A.(N.S.) 1084.

Constitutionality of statute releasing public officer or his surety from liability for loss of public fund. 41 L.R.A.(N.S.) 97.

§ 373. State examiner to examine national banks designated as state depositories. Every national banking corporation, heretofore or hereafter designated as a state depository, under the provisions of section 370 or which shall have at any time on deposit any of the public funds or moneys of the state of North Dakota or of the public institutions thereof, is hereby required to permit the examination and inspection by the state examiner of any report or reports made to the comptroller of the currency, relating to the financial condition of such association. The state examiner may also call for special reports from any such depository whenever in his judgment the same is necessary in order to obtain full and complete knowledge of the condition of the public funds therein deposited. [R. C. 1905, § 235; 1905, ch. 172.]

§ 374. Refusal to allow examination. Treasurer withdraw funds. In case of failure or refusal of any such state depository to comply with the provisions of section 373, it shall be the duty of the state examiner to so certify to the state treasurer, and it shall be the duty of the state treasurer to forthwith withdraw from such depository any public funds on deposit in the same. [R. C. 1905, § 236; 1905, ch. 172.]

ARTICLE 8.—STATE AUDITING BOARD.

§ 375. State auditing board. Duties. The governor, state auditor, attorney-general, state treasurer, and secretary of state, shall constitute a board to be known as the state auditing board. This board shall hold regular monthly meetings and such other times as shall be deemed necessary, in the executive office at the seat of government. The state auditor shall act as secretary of the board and shall receive and file all claims presented to him for payment in the order in which presented, and bring them before the board at its next meeting. It shall be the duty of this board to audit all claims which may come before it, and no warrant shall be drawn on the state treasury by the state auditor in payment of any claim except such as have been duly passed upon and approved by the state auditing board. [1911, ch. 51; R. C. 1905, § 237; 1901, ch. 33.]

ARTICLE 9.—BOARD OF TRUSTEES OF PUBLIC PROPERTY.

§ 376. Board, of whom composed. The governor, secretary of state and state auditor are constituted a board of trustees of public property, and such board shall have charge and control of the capitol, the executive mansion and the park and public grounds connected therewith. [R. C. 1905, § 238; 1897, ch. 162, § 1; R. C. 1895, § 154.]

§ 377. Board to report estimates to legislative assembly. Such board shall, at the opening of each session of the legislative assembly, report to it an estimate of the appropriation necessary to defray the expenses of keeping the capitol building, executive mansion and public grounds in repair, and for fuel and other incidental expenses for keeping and maintaining the state offices for the ensuing two years. [R. C. 1905, § 239; 1887, ch. 162, § 2; R. C. 1899, § 155.]

As to reports of public boards in general, see sections 95, 97, 98, 633..

§ 378. Power to acquire land. That the board of trustees of public property are hereby authorized to secure by purchase or by condemnation proceedings for the state, any lots or land which in their judgment might be necessary for the capitol park and site purposes. [1913, ch. 9, § 1.]

§ 379. Appropriation. That there is hereby appropriated out of the capitol building fund the sum of five thousand (\$5,000) dollars, or so much thereof as may be necessary to carry out the provisions of section 378. [1913, ch. 9, § 2.]

ARTICLE 10.—STATE HISTORICAL SOCIETY.

§ 380. State historical society. Powers. Ex-officio members of board. The state historical society of North Dakota shall be the trustee of the state, and as such shall faithfully expend and apply all money received from the state to the uses and purposes directed by law, and shall hold all its present and future collections and property for the state, and shall not sell, mortgage, transfer or dispose of in any manner, or remove from the historical rooms in the capitol at Bismarck any article therein without authority of law; provided, this article shall not prevent the sale or exchange of any duplicates that the society may have or obtain; and provided, that the secretary of the said society shall have power to withdraw for temporary use such of the collections as shall be needed for the compilation and editing of the publications of the society, and that such of the collections as may be needed for exhibition purposes may be withdrawn for that purpose by the authority of the board of directors. The governor, auditor, secretary of state, commissioner of agriculture and labor, and superintendent of public instruction shall be ex-officio members of the board of directors of said society, and shall take care that the interests of the state are protected. [R. C. 1905, § 240; 1895, ch. 70, §§ 1, 2; R. C. 1899, §§ 152, 153; 1905, ch. 25, § 1.]

§ 381. Duties. It shall be the duty of said society:

1. To collect books, maps, charts and other papers and materials illustrative of the history of this state in particular and of the west generally.

2. To obtain from the early pioneers narratives of their exploits, perils and adventures.

3. To procure facts and statements relative to the history, progress and decay of our Indian tribes so as to exhibit faithfully the antiquities and the past and present resources and conditions of this state.

4. To purchase books to supply deficiencies in the various departments of its collection, and especially reports on the legislation of other states, on railroads and geological surveys and of educational and humane institutions for legislative reference, and such other books, maps, charts and materials as will facilitate the investigation of historical, scientific and literary subjects. The secretary of state shall furnish to the state historical society of North Dakota, for reference and exchange purposes, fifty copies each of every state publication.

5. To thoroughly catalogue the entire collections of said society for the more convenient reference of all persons who have occasion to consult the same. The state shall bind the unbound books, documents, manuscripts and pamphlets, and especially newspaper files containing legal notices, in the possession of the state historical society of North Dakota.

6. To prepare biennially for publication a report of its collections and such other matters relating to the transactions of the society as may be useful to the public, there shall be printed by the state one thousand five hundred copies of the biennial volume of collections of the state historical society of North Dakota, five hundred copies of which shall be bound in cloth and the remainder authorized by law shall be bound in pamphlet form. In addition to this the state shall print such separates of various portions of the volume, not to exceed fifty each, as may be desired by the society for special distribution. The state historical society shall have charge of the distribution and sale of the foregoing volumes and separates, and the board of directors shall account for such proceeds in the manner provided in section 382.

This par. 6 in R. C. 1905, § 241, was amended to read as above in Laws 1907, ch. 130.

7. To keep its rooms open at all reasonable hours on business days for the reception of the citizens of this state who may wish to visit the same, without fee.

8. Whenever any grant, devise, bequest, donation or gift or assignment of money, bonds or choses in action, or of any property, real or personal, shall be made to the state historical society of this state, said society is hereby directed to receive and accept such and the right and title to the same shall pass to the state. [R. C. 1905, § 241; 1895, ch. 70, § 2; R. C. 1899, § 153; 1905, ch. 25, § 2.]

§ 382. Appropriation. For the purpose of aiding in the performance of said duties there is hereby annually appropriated to the said society the sum of two thousand dollars. The board of directors of said society shall keep a correct account of the manner of expenditure of the money hereby appropriated, and report annually to the governor a detailed statement of such expenses. [1907, ch. 132; R. C. 1905, § 242; 1905, ch. 25, § 3.]

See as to annual reports to the governor by public boards, sections 95, 97, 98, 633.

§ 383. Further appropriation. There is hereby appropriated annually out of any money in the hands of the state treasurer, not otherwise appropriated, for the state historical society of North Dakota, eight hundred dollars for field officer's work between the dates of March fifteenth and November fifteenth, in each year, and one thousand eight hundred dollars for salary of the curator of museum. [1909, ch. 139; 1907, ch. 133.]

§ 384. Powers of society as to historical sites and relics. The state historical society may from time to time receive contributions of historical sites and

relics, or money for the purchase of such sites or relics, and may purchase such sites or relics. It may purchase not exceeding ten acres of land, embracing the site of old Fort Abercrombie, in Richland county, at a cost not exceeding five hundred dollars, and not exceeding ten acres of land, embracing the site of the first Christian mission grounds, at Walhalla, in Pembina county, at a cost not exceeding five hundred dollars. When land shall be contributed or purchased as herein authorized for historical purposes, title shall vest in the state of North Dakota, and the land may be placed in the custody of the old settlers' associations of the respective counties in which said sites are located, and may be improved and used by them for public park purposes and for the accumulation and care of relics of historical interest. When relics are contributed or purchased they shall be placed in the custody of the state historical society and those of a local historical nature may be loaned to the county old settlers' associations when proper provision has been made for their care and preservation. Money contributed for the purchase of historical relics or sites shall be placed in the hands of the state treasurer and shall be paid out on warrant of the state auditor when approved by the state historical society, or a majority of its members. [R. C. 1905, § 243; 1903, ch. 15, § 1.]

§ 385. Appropriation. There is hereby appropriated for the purpose of the preceding section the sum of one thousand dollars, or so much thereof as may be necessary, out of any money in the state treasury not otherwise appropriated; provided, that before said appropriation shall be available there shall have been placed in the hands of the treasurer of the state of North Dakota, to the credit and for the use and benefit of said state historical society the sum of one thousand dollars as a contribution from interested persons for carrying out the provisions of section 384. [R. C. 1905, § 244; 1903, ch. 15, § 2.]

ARTICLE 11.—WHITE STONE HILLS BATTLEFIELD COMMISSION.

§ 386. Grant of government land accepted. The grant of said land, to wit: the southeast quarter of section seven, the southwest quarter of section eight, the northeast quarter of section eighteen and the northwest quarter of section seventeen, all in township one hundred and thirty-one north, of range sixty-five west, in Dickey county, made by the United States to the state of North Dakota, is with all the emoluments and obligations, connected therewith is hereby in all things accepted. [R. C. 1905, § 245; 1905, ch. 48, § 1.]

§ 387. Governor to appoint commission. Term of office. The governor is hereby authorized, directed and empowered to appoint a commission of three citizens of the state of North Dakota, to be known as the "White Stone Hills Battlefield Commission" and the members of which commission shall hold office for the term of two years from and after the date of their appointment. [R. C. 1905, § 246; 1905, ch. 48, § 2.]

§ 388. Organization. Duties. State property. It shall be the duty of such commission to meet for organization at the city of Oakes in the county of Dickey, in the state of North Dakota, within thirty days after appointment, and organize by the election of one of their number as chairman and another as secretary. Said commission shall then take all necessary steps to properly inclose said battlefield and to improve the same in so far as may be done consistently with the provisions of this article, and to make and enforce regulations relating to the further improvement, erection of monuments, markers, roads, drives, walks and other means of making the same attractive, and preserving the natural attractions thereof, and regulating the entry of persons thereon and traffic over the same; that in so doing, the said commission shall be and the same is hereby authorized and empowered to receive for and in the name of the state contributions or gifts of money, work, material, monuments, markers, and other things which may come into its hands in the

performance of the things herein contemplated by it to be done. All property of every kind coming into the hands of said commission and all monuments, markers and other improvements made upon and about said premises, shall be forever the property of the state of North Dakota. [R. C. 1905, § 247; 1905, ch. 48, § 3.]

§ 389. **No salary or compensation.** The members of said commission shall not be entitled to any salary or compensation for services rendered or time expended by them or either of them. [R. C. 1905, § 248; 1905, ch. 48, § 4.]

§ 390. **Treasurer of commission.** The treasurer of the state of North Dakota is hereby made the treasurer of said commission and all moneys coming into the hands of said commission, or of the members thereof, shall be by them immediately paid over to the state treasurer for account of the same. [R. C. 1905, § 249; 1905, ch. 48, § 5.]

§ 391. **Vouchers for disbursements, how approved. Filed with state auditor.** The disbursements of said commission shall be at all times evidenced by vouchers approved by the chairman and secretary of said commission and filed with the state auditor. [R. C. 1905, § 250; 1905, ch. 48, § 6.]

§ 392. **Commission report to governor.** The said commission shall keep a complete record of all its proceedings and shall, on or before the first day of January of each odd numbered year transmit to and file with the governor a report of the same. [R. C. 1905, § 251; 1905, ch. 48, § 8.]

As to reports to the governor by public boards, see sections 95, 97, 98, 633.

§ 393. **Authority to sell granted.** The trustees of the White Stone battle-field commission are hereby empowered to sell to the highest bidder for cash at a price not less than the appraised valuation, to be fixed by the county board of appraisers of state land, provided, however, that said land shall not be appraised at a less value than seven dollars per acre, such portion of the southeast quarter of section number seven, the southwest quarter of section number eight, the northeast quarter of section number eighteen, and the northwest quarter of section number seventeen, all in township number one hundred and thirty-one, north, of range number sixty-five west, being the land granted by congress as the White Stone battlefield, as said trustees shall deem advisable; provided, however, there shall be retained of said ground at least forty acres thereof. [1909, ch. 232, § 1.]

§ 394. **Proceeds made special fund.** The money arising from such sale shall be deposited in the state treasury as a special fund to be paid out as hereinafter provided. [1909, ch. 232, § 2.]

§ 395. **Proceeds, how expended.** The said trustees are hereby authorized to expend the money arising from such sale by fencing, embellishing, parking and otherwise improving the said tract reserved from sale, and by the erection thereon of a suitable monument to the memory of those who died in the battle of the White Stone hill. [1909, ch. 232, § 3.]

§ 396. **Bills, how audited.** The bills for such expenditures shall be paid out on properly certified vouchers of the commission, when approved by the state board of audit. [1909, ch. 396, § 4.]

ARTICLE 12.—BOARDS OF HEALTH.

A. STATE BOARD OF HEALTH.

§ 397. **Board, how composed. Officers of.** There is hereby established a state board of health, composed of a president, vice-president and superintendent of public health. The attorney-general shall be president of such board. The governor shall appoint some suitable person, a resident of this state, vice-president, and he shall also appoint by and with the advice and consent of the senate a superintendent of public health, who shall be learned in medicine, a graduate of some reputable medical college authorized by law to grant diplomas and hold license to practice medicine and surgery within

the state, and be a resident of this state. The several persons thus appointed shall hold their offices for two years from the first Tuesday in April succeeding their appointment and until their successors are elected and qualified. [R. C. 1905, § 252; 1889, ch. 22, § 1; R. C. 1895, § 240.]

Right of woman to be member of board of health. 38 L.R.A. 211.

§ 398. Duties of officers. The president of the board shall preside at the meetings thereof, and the vice-president shall perform the duties thereof in his absence. The superintendent of public health shall be secretary of said board. He shall keep a record of all the proceedings of the state board of health, and of his own acts as such superintendent, and he shall perform such other duties as are prescribed by this article, or which may be prescribed by the state board of health. The records kept by the superintendent shall be at all times open to the inspection of the public. [R. C. 1905, § 253; 1885, ch. 63, § 2; R. C. 1899, § 241.]

§ 399. Meetings of the board. The several persons composing the state board of health shall meet as often as once in every six months at such place in the state as they may appoint. [R. C. 1905, § 254; 1885, ch. 63, § 3; R. C. 1899, § 242.]

§ 400. Powers and duties of board. The board shall have power and it shall be its duty:

1. To fix the time and place of the meetings of the board, subject to the provisions of the last section.

2. To make rules and regulations for the government of the board, its officers and its meetings.

3. To make and enforce all needful rules and regulations for the prevention and cure, and to prevent the spread of any contagious, infectious or malarial diseases among persons and domestic animals.

4. To establish quarantine, and isolate any person affected with contagious or infectious disease.

5. To isolate, kill or remove any animal affected with contagious or infectious disease.

6. To remove or cause to be removed any dead, decaying or putrid body, or any decayed, putrid or other substance that may endanger the health of persons or domestic animals.

7. To condemn or cause to be destroyed any impure or diseased article of food that may be offered for sale.

8. To superintend the several boards of health in cities, villages and towns and the county boards of health of the several counties.

9. To empower and direct the superintendent of public health to do or cause to be done any or all of the things mentioned in subdivisions four, five, six, seven and eight of this section.

10. To make such rules and regulations as it may deem necessary to govern the preparation of dead bodies for transportation and to govern what classes of dead bodies may be transported and the manner thereof. [R. C. 1905, § 255; 1899, ch. 30; R. C. 1899, § 243.]

3. Powers which may be delegated to boards of health. 80 Am. St. Rep. 212.

Health laws and regulations and their validity. 47 Am. St. Rep. 533.

State regulations to secure public health and safety. 25 Am. St. Rep. 888.

Constitutionality of statutory regulations as to safety and sanitary conditions of tenement, lodging, and boarding houses. 17 L.R.A.(N.S.) 486.

Power of board of health as to nuisances. 36 L.R.A. 603; 23 Am. Rep. 212.

Contagious diseases, authority of municipalities to prevent the spread of. 92 Am. Dec. 79.

4. Quarantine regulations. 26 L.R.A. 484; 47 Am. St. Rep. 533.

Right to injunction against sending to pest house. 23 L.R.A.(N.S.) 1188.

6. Power of state or health authorities to forbid the use of a polluted water supply. 23 L.R.A.(N.S.) 766.

Validity of statute or ordinance for destruction of food products below prescribed standard or unfit for use. 29 L.R.A.(N.S.) 260.

§ 401. Compensation of officers. The president and vice-president of the board shall receive no compensation, but they shall be paid five cents for every mile actually and necessarily traveled by them in the performance of their official duties, and other necessary expenses incurred by them. The superintendent of public health shall be paid an annual salary of twelve hundred dollars, in equal installments at the end of every three months. He shall also be paid five cents per mile actually and necessarily traveled in the performance of his official duties, and such other sum or sums as he may necessarily pay, or become liable to pay (hotel or other incidental expenses), for the official books, clerk hire, records and papers kept by him, and for the printing of his reports and such circulars and blanks as may be required for the proper conduct of the business of his office, not to exceed in the aggregate the sum of fifteen hundred dollars per annum. The accounts of the superintendent for his mileage and said other expenses of his office shall be audited by said board of health, and the same, together with his salary, shall be paid out of the state treasury. [R. C. 1905, § 256; 1897, ch. 35; R. C. 1899, § 244; 1903, ch. 181.]

See appropriation in section 653e and as to how the appropriation shall be paid, see section 653b.

§ 402. Reports. The superintendent of public health shall on the first day of December of each even numbered year make a full report to the governor, which report shall show all that has been done by the state board of health and by such superintendent during the two years preceding the making of such report, the number of cases treated by him and in each county by the county superintendent, the character and extent during such time of all contagious or infectious diseases that have been reported to him, all expenditures by the state board, and in each of the organized counties by the county board and such recommendations as he may deem advisable for the better protection of the public health and the prevention and cure of contagious or infectious diseases of persons and of domestic animals. [R. C. 1905, § 257; 1885, ch. 63, § 13; R. C. 1895, § 251.]

As to the time of making report to the governor and the contents thereof, see sections 95, 97, 98, 633.

§ 403. Vacancies. In case a vacancy shall occur in the office of vice-president or superintendent, such vacancy shall be filled by appointment by the governor, and the person so appointed shall hold the office for the unexpired term. In case a vacancy occurs in the office of vice-president or superintendent of health in any county board of health, the president of such county board of health shall appoint some suitable person to fill such vacancy, and the person so appointed shall hold office until a successor to such officer has been appointed by the board of county commissioners. [R. C. 1905, § 258; 1899, ch. 58; R. C. 1899, § 252.]

B. COUNTY BOARDS OF HEALTH.

§ 404. Board, how composed. There is hereby established county boards of health, composed of a president, vice-president and superintendent; the state's attorney in each county shall be president of the county board; the county superintendent of schools shall be vice-president, and it shall also appoint a superintendent of public health for the county, who shall be learned in medicine and hold a license to practice medicine and surgery within the state, and the several persons appointed shall hold their offices for one year and until their successors are elected and qualified.

Provided, however, that whenever the state board of health has reason to believe that the county superintendent of public health is failing to perform his duties as prescribed by law they may report the case to the board of county commissioners, and the latter shall at their next meeting declare the office vacant, and appoint another physician in his place for the remainder

of the unexpired term. [1913, ch. 59, § 1; R. C. 1905, § 259; 1899, ch. 58; R. C. 1899, § 245.]

§ 405. Duties of officers of county board. The president of each county board of health shall preside at the meetings thereof and in his absence the vice-president shall perform the duties of president. The county superintendent of health shall be secretary of the board of health of his county. The county superintendent of health shall keep a record of all the proceedings of the board and of his official acts, and he shall at the end of every month make a full report in writing to the superintendent of public health of the proceedings of the county board of health and of his official acts, and shall, whenever the health of persons or domestic animals is endangered, or when any contagious or infectious disease occurs in his county, either among persons or domestic animals, immediately report the same to the superintendent of public health. [R. C. 1905, § 260; 1885, ch. 63, § 8; R. C. 1899, § 246.]

§ 406. Meetings of county boards of health. The several county boards of health shall meet at the county seat in their respective counties at such time within thirty days after the appointment of the county superintendent of health as he may designate. Notice of the time and place of such meeting shall be by him given to the other members of the county board at least five days prior to such meeting, and thereafter the board shall meet at the county seat as often as once in every three months. [R. C. 1905, § 261; 1885, ch. 63, § 9; R. C. 1899, § 247.]

§ 407. Powers and duties of county boards of health. The several county boards of health shall have power within their respective counties outside of the corporate limits of cities having a city board of health, subject to the supervisory control of the state board of health and its secretary:

1. To supervise all matters relating to the preservation of life and health of the people, including public water supplies and sewerage system, and have supreme authority in matters of quarantine, which it may declare and enforce when none exists and modify, relax or abolish when it has been established.

2. To isolate, kill or remove any animal affected with contagious or infectious diseases that is a menace to the health of human beings.

3. To remove or abate, or cause to be removed or abated, any public or private nuisance that may endanger the health of others.

4. To make and enforce orders in local matters when emergency exists, or when the local board of health has neglected or refused to act with promptness or efficiency, or when such board has not been established, as provided by law. In such cases the necessary expense incurred shall be paid by the county for which the services are rendered. All expenses actually and necessarily paid or incurred by the county board of health in carrying out the provisions of this article, such as livery, hotel bills, quarantine guards, automobile hire, railroad fare, stamps, etc., shall be audited by the board and certified to the county commissioners, and shall be paid the same as other county expenses are paid. [1913, ch. 59, § 2; R. C. 1905, § 262; 1885, ch. 63, § 10; R. C. 1899, § 248.]

§ 408. Powers and duties of the superintendent. The county superintendent of health shall have charge of and superintend, subject to the supervisory control of the state board of health, all matters and things mentioned in subdivisions 1, 2, 3 and 4 of section 407, throughout the county outside of the corporate limits of cities. He shall exercise supervisory control of the local boards of health within his county, known as village boards of health and township boards of health. He shall furnish at the expense of the county board of health all township and village clerks and all physicians within his jurisdiction with proper blanks for reporting to him all contagious and infectious diseases. He shall properly instruct the township and village clerks and the physicians within his jurisdiction on the proper methods to employ in reporting contagious diseases. He shall be charged with strict and thorough en-

forcement of the laws, rules and regulations to the end that the health of the people be conserved and protected. When it shall come to his notice, or when he believes that there is a probability that a dangerous disease exists within his jurisdiction he shall make such sanitary inspection of such places as he may deem advisable, and shall take such action and enforce such rules and regulations as he may deem necessary for the protection of the public health. Whenever a village board of health or township board of health within his jurisdiction neglects or refuses to perform any of its duties as specified in this act [article], or refuses or neglects to execute any of the orders or regulations of the county board of health, then the superintendent of said county board of health may execute its orders and regulations by agents of its own appointment. He shall have full and complete control, subject to the supervisory control of the state board of health, of all matters pertaining to public health outside the limits of incorporated cities within his county. He shall decide when quarantine and disinfection are necessary for the safety of the public, and shall have power to establish and perform the same. All expenses incurred in quarantining or disinfecting outside of incorporated cities shall be audited by the county board of health and paid for out of the general fund of the county. He may send out circulars permitting the use of the long distance telephone at the expense of the county board of health in all cases of emergency. He may also investigate, subject to the supervisory control of the state board of health, all public water and ice supplies which are suspected of being infected and cause them to be condemned whenever he finds it necessary. He may also investigate public milk supplies and prohibit the sale of unwholesome milk and dairy products, stop shipment of spoiled or unwholesome meat, the slaughtering of diseased animals, and subsequent sale of the meat thereof. He shall enforce cleanliness in schools, inspect over-crowded, poorly ventilated and insanitary school houses, and when necessary report such cases to the board of inspection, as provided in section 80, chapter 266, of the Session Laws of 1911 [§ 1186 herein]. He shall by the tenth day of each month report to the secretary of state board of health, on blanks furnished for that purpose, the name and address of each case of dangerous and contagious, infectious diseases occurring in his jurisdiction for the preceding month, with the name of the party reporting the same, together with a detailed statement of his official acts. [1913, ch. 59, § 3; 1897, ch. 58; R. C. 1899, § 249.]

§ 409. Compensation. The president and vice-president of the board shall receive three dollars per day for every day in which they may be actually and necessarily engaged in the performance of their duties, and five cents per mile for every mile actually and necessarily traveled in the discharge of their duties. The county superintendent of health shall receive from three hundred dollars to six hundred dollars a year for his office work, which sum shall be determined annually by the county commissioners, and according to the efficiency of the health officer and the amount and character of the work performed. He shall also receive five dollars per day for every day or fraction thereof that he may be actually and necessarily engaged in the performance of his official duties, not including work confined to his office, and in addition to his expenses and other remunerations shall receive five cents for each mile actually and necessarily traveled in the performance of his duties. [1913, ch. 59, § 4; 1885, ch. 63, § 12; R. C. 1899, § 250; 1903, ch. 40.]

§ 410. Boards of health heretofore established, not affected. Nothing contained in this article shall in any manner affect any board of health heretofore established or that may be hereafter established in any city, village or incorporated town; provided, however, that all such boards of health shall be under the superintending control of the state board. [R. C. 1905, § 265; 1885, ch. 63, § 16; R. C. 1899, § 253.]

C. CITY BOARDS OF HEALTH.

§ 411. City board, how constituted. There is hereby established in each incorporated city in this state a board of health, which shall be constituted as follows: The mayor of such city shall at the first meeting of the city council in April in each year appoint four aldermen, who, together with the city engineer and the health officer as hereinafter provided, shall constitute a board of health and shall have and exercise the powers conferred upon such board by law and by the ordinances of such city. [R. C. 1905, § 266; 1893, ch. 34, § 1; R. C. 1899, § 254.]

§ 412. Health officer. City board. Duties of officers. At the first meeting of the city council in April of each odd-numbered year there shall be appointed by the mayor and confirmed by the council one health officer, who shall hold his office for two years and until his successor is appointed and qualified. Provided, however, that when the state board of health is satisfied that the city health officer is neglecting or refusing to perform the duties of his office in conformity with the laws, rules and regulations which are in force governing such matters they may report the case to the city council and the mayor shall at the next meeting declare the office vacant and appoint another physician to fill the unexpired term.

Subdivision A. Meetings. The board shall meet on the first Tuesday after the first meeting of the city council in April at such hour and place as may be named by the city health officer. The board shall organize by electing from its members a president and vice-president. The city health officer shall be secretary and executive officer of the board. A majority of the board shall constitute a quorum. The other regular meetings of the board shall be held on the second Tuesday in July, October and January. Special meetings may be held at any time on call of the president and secretary.

Subdivision B. Duties of officers of board. The president of each city board of health shall preside at the meetings thereof and in his absence the vice-president shall perform the duties of the president. The secretary shall keep a record of all the proceedings of the board and of his official acts. He shall see that the health ordinances of the city, the rules and regulations of his board and the rules and regulations of the state board of health and the health laws of the state are fully complied with throughout his jurisdiction and he is hereby charged with strict enforcement of the same. He shall properly instruct the physicians within his jurisdiction in the proper methods to employ in reporting contagious diseases and shall furnish said physician with the necessary blanks for that purpose, such blanks to be of the form prescribed by the state board of health. He shall keep a record of all dangerous, contagious and infectious diseases occurring within his jurisdiction, which record shall show the name and address of the party affected, the name of the disease, by whom reported and such other statistical data as may be required by the state board of health. He shall by the tenth of each month report to the secretary of the state board of health on blanks furnished for the purpose, all cases of dangerous, infectious and contagious diseases that have occurred within his jurisdiction during the preceding month, with such further data as may be required by the state board of health. The diseases that shall be regarded as infectious or contagious shall be those so designated in the rules and regulations of the state board of health. [1913, ch. 59, § 5; R. C. 1905, § 267; 1893, ch. 34, § 2; R. C. 1899, § 255.]

§ 413. Local boards of health. Duties of. Each city board of health shall perform the duties and exercise the powers herein provided within the limits of the city for which it is established. Each county board of health and city board of health shall be known as the local board of health. [R. C. 1905, § 268; 1893, ch. 90, § 1; R. C. 1895, § 256.]

§ 414. Board to make sanitary regulations. Each local board of health, within its jurisdiction, may examine into all nuisances, sources of filth and

causes of sickness, and make such regulations regarding the same as it may judge necessary for the public health and safety of the inhabitants, and every person who shall violate any published order or regulation made by any board of health, shall be guilty of a misdemeanor and punished by a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or both. [R. C. 1905, § 269; 1893, ch. 90, § 2; R. C. 1899, § 257.]

Information for violation of order must allege knowledge of order. *State v. Butts*, 3 S. D. 577, 54 N. W. 603.

Authority of legislature to make punishable failure to comply with rule of health board. 6 L.R.A.(N.S.) 143.

Power of health authorities to require alteration of private property in a particular manner to abate conditions endangering public health. 24 L.R.A.(N.S.) 241.

Power to regulate location or condition of bakeries. 26 L.R.A.(N.S.) 842.

Municipal regulation of nuisances relating to health. 38 L.R.A. 311.

Municipal regulation of dealing in second-hand clothes. 32 L.R.A. 121.

§ 415. Local school boards, duties. Each local board of health shall, at least once every thirty days, in such manner as it shall direct, cause to be adequately disinfected each school house, within its jurisdiction; provided this section shall not apply to school houses during vacation; provided, that except in case of emergency, the disinfection of school houses shall be made after school hours on Friday afternoon or on Saturday. [1911, ch. 63.]

It should be observed that this section was not one of the "provisions of this article" mentioned in section 433 when the latter was enacted by the legislature in R. C. 1895. That is to say, section 415 is placed in "this article" by the compiler, and not expressly by the legislature.

§ 416. Regulations published. Notice shall be given by each local board of health of all general orders and regulations made by them by publishing the same in some newspaper, if there is one published within the jurisdiction of such board; if there is none, then by posting such orders and regulations in five public places therein, and such publication of such orders and regulations shall be deemed a legal notice to all persons. [R. C. 1905, § 270; 1893, ch. 90, § 3; R. C. 1899, § 258.]

§ 417. Nuisance. Owner to remove. Whenever any nuisance, source of filth or cause of sickness is found on private property any member of the local board of health may order the owner or occupant thereof at his own expense to remove the same within twenty-four hours, and such order may be given to such owner or occupant personally or left at his usual place of abode. [R. C. 1905, § 271; 1893, ch. 90, § 4; R. C. 1899, § 259.]

Municipality's power as to nuisances relating to health. 38 L.R.A. 311.

Municipal power as to nuisances relating to trade or business. 38 L.R.A. 641.

§ 418. Board to act in default of owner. Whenever such owner or occupant shall fail to comply with the order of such board, it may cause such nuisance, source of filth or cause of sickness to be removed and all expenses incurred thereby shall be paid by such owner or occupant, or by such other person as has caused or permitted the same. [R. C. 1905, § 272; 1893, ch. 90, § 5; R. C. 1899, § 260.]

§ 419. Complaint to justice, when. Whenever any local board shall deem it necessary for the preservation of the health of the inhabitants within its jurisdiction to enter any building or vessel within such jurisdiction for the purpose of examining into and destroying, removing or preventing any nuisance, source of filth or cause of sickness and shall be refused entrance, any member of the board may make complaint under oath to a justice of the peace within the jurisdiction of the board, stating the facts in the case so far as he has knowledge thereof. [R. C. 1905, § 273; 1893, ch. 90, § 6; R. C. 1899, § 261.]

§ 420. Justice to issue warrant. Such justice shall thereupon issue a warrant directed to the sheriff or other peace officer, commanding him to take sufficient aid and accompanied by at least one member of the board of health between the hours of sunrise and sunset to have such nuisance, source of filth or cause of sickness destroyed, removed or prevented under the direction of

such of the board of health as accompany him. [R. C. 1905, § 274; 1893, ch. 90, § 7; R. C. 1895, § 262.]

§ 421. Any physician to report cases of contagion. Whenever it shall come to the knowledge of any physician or other person that a case of tuberculosis, typhoid fever or any other dangerous infectious disease exists within the jurisdiction of any county or city board of health, he shall immediately report to the superintendent of the county board of health or to the city health office in whichever jurisdiction the case may be, the name and place of residence, if known, of every person afflicted with such disease, and if he is the attending physician of such person he shall report not less than twice each week, the condition of each person so afflicted with the state of such disease. [1913, ch. 59, § 6; R. C. 1905, § 275; 1893, ch. 90, § 8; R. C. 1899, § 263.]

§ 422. Duty of physician in case of death. It shall be the duty of each practicing physician in this state to report in writing to the local board of health the death of each of his patients, who shall have died within the jurisdiction of such board of any contagious, infectious or epidemic disease. Such report shall be made within twenty-four hours after such death and shall state the specific name and character of such disease. [R. C. 1905, § 276; 1893, ch. 90, § 9; R. C. 1899, § 264.]

Constitutionality of statute as to reporting and registering births, deaths, etc. 39 L.R.A. (N.S.) 1015.

§ 423. Keeper of house to report. Each keeper of any private house, boarding house, lodging house, inn or hotel shall report in writing to the local board of health within whose jurisdiction the same may occur each case of contagious, infectious or epidemic disease which may occur in his house, inn or hotel; such report shall be made within twenty-four hours after the existence of such disease shall become known to such person, and shall state the name of each person afflicted with such disease and the nature thereof. [R. C. 1905, § 277; 1893, ch. 90, § 10; R. C. 1899, § 265.]

§ 424. Removal of sick person. No person shall without a permit from the local or state board of health carry or cause to be removed from without this state to this state, or from one building to another within this state, or from or to any car or vessel, any person afflicted with any contagious, infectious or epidemic disease, or the body of any person who died of such disease. [R. C. 1905, § 278; 1893, ch. 90, § 12; R. C. 1895, § 266.]

§ 425. Vaccination required, when. Each parent or guardian having the care, custody or control of any minor or other person shall cause such minor or other person to be vaccinated. [R. C. 1905, § 279; 1893, ch. 90, § 13; R. C. 1895, § 267.]

Right to compel vaccination. 25 L.R.A. 152; 26 L.R.A. 728; 17 L.R.A. (N.S.) 709.

§ 426. Duty of school officials. No principal, superintendent or teacher of any school, and no parent or guardian of any minor child, shall permit any child having scarlet fever, diphtheria, smallpox, whooping cough, measles or any other dangerous, infectious or contagious disease, or any child residing in any house in which any such disease exists or has recently existed to attend any public or private school until the local board of health shall have given permission therefor. [R. C. 1905, § 280; 1893, ch. 90, § 14; R. C. 1895, § 268.]

§ 427. Burial, case of contagion. Regulations. No person shall allow to be unburied the body of any human being for a longer time than four days, or, when death has been caused by an infectious or contagious disease, for a longer time than twenty-four hours after the death of such person without a permit from the local board of health, which permit shall specify the length of time during which such body may be unburied. In all cases where death has been caused by an infectious or contagious disease, the body shall, if directed by said board, be immediately disinfected as may be directed by it. If the body remains unburied for more than twenty-four hours it shall immediately be inclosed in a tightly sealed metallic coffin which shall not

thereafter be opened and the funeral of such person shall be strictly private. In the removal of such body for burial, or otherwise, only such hearses or other vehicles shall be employed as may be authorized by said board, and no undertaker or other person shall bury or prepare for burial the body of any human being without a certificate signed by the attending physician or by the coroner, which certificate shall state the name, age, sex and place of abode and date of death of such deceased person, the name and duration of the disease of which such person died and whether or not such disease is contagious, and such certificate shall after the burial of such body be filed with the local board of health, and whenever any such dead body shall be presented to any common carrier within the state for transportation by such carrier, it shall be accompanied by a duplicate of such certificate signed by such attending physician or coroner; and no common carrier shall receive any such body for transportation unless such certificate shall state that the disease of which such person died is not contagious, which duplicate shall be securely attached to and remain upon the outside of the coffin or other receptacle containing such dead body. [R. C. 1905, § 281; 1893, ch. 90, § 15; R. C. 1895, § 269.]

§ 428. Infected persons, removal of. It shall be the duty of each local board of health, whenever it shall come to its knowledge that a case of small-pox, scarlet fever, diphtheria or other infectious or contagious disease exists within its jurisdiction, immediately to examine into the facts of the case and, if such disease appears to be of the character herein specified, such board shall adopt such quarantine and sanitary measures as in its judgment tend to prevent the spread of such disease, and may immediately cause any person infected with such disease to be removed to a separate house, if in the opinion of the health officer or superintendent of public health, such person can be so removed without danger to his health, and, if such infected person cannot be removed without danger to his health, the local board shall make such quarantine regulations as it deems proper with reference to the house within which such infected person is, and in such cases may cause the persons in the neighborhood to be removed and take such other measures as it deems necessary for the safety of the inhabitants, and shall immediately notify the state board of health of the existence and nature of such disease and of the measures adopted by it with reference thereto. [R. C. 1905, § 282; 1893, ch. 90, § 16; R. C. 1895, § 270.]

Right to injunction against sending to pest house. 23 L.R.A. (N.S.) 1188.

§ 429 Temporary hospital. Each local board of health may provide such temporary hospital or place of retention for persons afflicted with infectious or contagious diseases as it judges best for their accommodation and the safety of the inhabitants, and all such hospitals and all private houses or other places in which exists any infectious or contagious disease shall during the existence of such disease be under the control and subject to the regulations of the local board of health and all the inmates of such house or other place during the existence of such disease therein must conform to the regulations and obey the instructions of such local board with reference thereto. [R. C. 1905, § 283; 1893, ch. 90, § 17; R. C. 1899, § 271.]

§ 430. Infected clothing, etc. Destruction of. Any local board of health may cause to be destroyed any bed or bedding, clothing, carpets or other articles which have been exposed to infection from such infectious or contagious disease, and may allow reasonable compensation for the same, or may provide a proper place with all necessary apparatus and attendants for the disinfection of such articles and cause all such articles to be disinfected thereby, and may provide a carriage for the conveyance of such articles or of persons suffering from such contagious or infectious disease. [R. C. 1905, § 284; 1893, ch. 90, § 18; R. C. 1899, § 272.]

§ 431. Board has full power. Local boards of health may employ such persons as may be necessary to carry into effect the provisions of this article

and the regulations established by them, and such physicians as they deem necessary, and provide such necessities of life as in their judgment shall be needed for the maintenance, welfare and comfort of persons afflicted with contagious and infectious diseases. All expenses incurred by any local board of health in carrying into effect the provisions of this article, and in providing for the care and maintenance of such sick persons, and all expenses incurred under any of the provisions of this article, shall be audited and allowed by the board incurring the same; such expenses in case of township boards of health shall be certified to the township clerk and paid out of the general fund of the township, and in case of city boards of health shall be certified to the city auditor and paid out of the general fund of the city, and in case of county boards of health, shall be certified to the county auditor and paid out of the general fund of the county. [R. C. 1905, § 285; 1893, ch. 90, § 19; R. C. 1899, § 273; 1903, ch. 41.]

Municipal power in epidemics. 26 L.R.A. 727.

§ 432. **Expense, who chargeable.** All expenses incurred by such boards of health for the care, medical attendance or support of any such sick person shall be a charge upon such person and upon the person legally chargeable with the support of such person, and may be collected by suit in the name of the township, city or county, which shall have incurred such expense; provided, however, that in cases where, after due investigation, such township or city board of health is satisfied that such sick person or the person legally charged with the support of such person is too poor to pay the expenses incurred in his behalf, then and in such cases the local board of health shall make an indorsement to such effect on the bill of expenses incurred in such case, and the clerk of such township or the city auditor of such city shall send a certified statement of such bill of expenses with the indorsement of such local board of health to the county auditor. Such statement shall contain the date upon which such claims were allowed, to whom allowed, for what purpose and the amount allowed, and an itemized statement of the expenses incurred. Upon receipt of such statement the county auditor shall refer the same to the county board of health, and if approved by the county board of health, the county auditor shall issue his warrant upon the county treasurer, payable out of the general fund of the county, the amount allowed by such township or city. Such warrant shall be made payable to the treasurer of such township or city, as the case may be. [R. C. 1905, § 286; 1893, ch. 90, § 19; R. C. 1899, § 273; 1903, ch. 41.]

§ 433. **Neglect of duty herein. Penalty.** Any health officer, superintendent of public health or any member of any local board of health, who shall neglect or refuse to perform any of the duties required to be performed by him under the provisions of this article, and any person who fails to comply with, or violates any of the provisions of this article, or neglects or refuses to conform to any rules, regulations or measures adopted by the local board of health within whose jurisdiction he shall at the time be and which shall have been published or shall have come to his knowledge, or refuses or neglects promptly to obey any orders, directions or instructions given to him by such board of health, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than ten nor more than fifty dollars, or by imprisonment in the county jail not exceeding thirty days, or by both. [R. C. 1905, § 287; 1893, ch. 90, § 20; R. C. 1895, § 274.]

See note to section 415.

ARTICLE 13.—VITAL STATISTICS.

R. C. 1905, §§ 288-293, are evidently superseded as follows by Laws 1907, ch. 270, which bears the caption "Vital Statistics."

§ 434. **Bureau of vital statistics. State registrar.** For the complete and proper registration of births and deaths, for legal, sanitary and statistical purposes, there shall be, and hereby is, created and established a state bureau

of vital statistics, to be under the immediate superintendence of the state board of health, and the secretary of said board shall have general supervision over the bureau which is hereby authorized to be established by the board, and for the purposes of this act he shall be ex-officio state registrar of vital statistics. [1907, ch. 270, § 1.]

Constitutionality of statutes in relation to vital statistics. 39 L.R.A. (N.S.) 1015.

§ 435. Deputy registrar. The state registrar may employ such clerical and other assistants as are necessary for the proper performance of the duties of the office, and fix their compensation within the amount appropriated therefor by the legislature. He shall designate, in writing, one of his assistants, who shall possess the powers and perform the duties of the state registrar during his absence, illness or disability, or during a vacancy in the office, and he is hereby empowered to make, promulgate and enforce such rules and regulations as he may consider necessary to carry out the provisions of this act. Suitable apartments shall be provided by the custodian of the capitol, in the state capitol at Bismarck, for the bureau of vital statistics, which shall be properly equipped with fire proof vault and filing cases for the safe and permanent preservation of all official records made and returned under this article. [1907, ch. 270, § 2.]

§ 436. Registration districts. For the purposes of this article the state shall be divided into registration districts as follows: Each incorporated village and city and each township, exclusive of any incorporated village or city, shall constitute a primary registration district. [1907, ch. 270, § 3.]

§ 437. Local registrars, duties of. Sub-registrars. The clerk of each township, village or city shall be the local registrar in and for the township, village or city of which he is clerk, and he shall perform all the duties of local registrar as hereinafter provided, and he shall immediately appoint in writing, a deputy, who shall be authorized to act in his stead in case of absence, illness or disability; provided, that in unorganized townships the state registrar may appoint suitable persons as local registrars, and when it may appear necessary for the convenience of the people in any township, the local registrar is hereby authorized, with the approval of the state registrar, to appoint one or more suitable and proper persons to act as sub-registrars, who shall be authorized to receive certificates and to issue burial or removal permits in and for such portions of the township as may be designated, and each sub-registrar shall note the date each certificate was filed, over his signature, and forward all certificates to the registrar of the township within ten days, and in all cases before the third day of the following month; provided, that all sub-registrars shall be subject to the supervision and control of the state registrar, and may be by him removed for neglect or failure to perform their duties in accordance with the provisions of this article, or the rules and regulations of the state registrar, and they shall be liable to the same penalties for neglect of duties as the local registrar. [1907, ch. 270, § 4.]

§ 438. Registration of births. All births that occur in the state shall be immediately registered in the districts in which they occur, as hereinafter provided.

Constitutionality of statute as to reporting and registering births, deaths, etc. 39 L.R.A. (N.S.) 1015.

§ 439. Regulation of burials. The body of any person whose death occurs in the state shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district, until a permit for burial or removal shall have been properly issued by the registrar of the registration district in which the death occurs, and no such burial or removal permit shall be issued by any registrar until a complete and satisfactory certificate and return of the death has been filed with him, as herein-

after provided; provided, that in case of any death outside of the state, where the body is accompanied by a removal or transit permit, issued in accordance with the [law] and the health regulations in force where the death occurred, such removal or transit permit may be accepted as of the same authority as a permit from the local registrar. [1907, ch. 270, § 6.]

§ 440. Still-born children to be registered. Still-born children, or those dead at birth, shall be registered as births and also as deaths, and a certificate of both the birth and the death shall be filed with the local registrar in the usual form and manner, the certificate of birth to contain, in place of the name of the child, the words "still birth." The medical certificate of the cause of death shall be signed by the attending physician, and shall state the cause of death as "still born," with the cause of the still birth, if known; whether a premature birth, and if born prematurely, the period of utero-gestation in months, if known, and a burial or removal permit in the usual form shall be required. [1907, ch. 270, § 7.]

§ 441. Death certificate, form of. The certificate of the death shall be of the standard form recommended by the bureau of the census of the American health association, and shall contain the following items:

1. Place of death, including state, county, township or town, city or village. If in a city, the ward, street and house number. If in a hospital or other institution, the name of the same to be given instead of the street and house number.

2. Full name of decedent. If an unnamed child, the surname, preceded by "unnamed."

3. Sex.

4. Color or race, as white, black (negro or negro descent), Indian, Chinese, Japanese or other.

5. Conjugal condition, as single, married, widowed or divorced.

6. Date of birth, including the year, month and day.

7. Age, in years, months and days.

8. Place of birth, state or foreign country.

9. Name of father.

10. Birthplace of father, state or foreign country.

11. Maiden name of mother.

12. Birthplace of mother, state or foreign country.

13. Occupation, the occupation to be reported of any person who had any remunerative employment, women as well as men.

14. Signature and address and informant.

15. Date of death, including the year, month and day.

16. Statement of medical attendance on decedent, fact and time of death, including the time last seen alive.

17. Cause of death, including the primary and immediate causes and contributory causes or complications, if any, and the duration of each.

18. Signature and address of physician or official making the medical certificate.

19. Special information concerning deaths in hospitals and institutions, and of persons dying away from home, including the former or usual residence, length of time at place of death, and place where the disease was contracted.

20. Place of burial or removal.

21. Date of burial or removal.

22. Signature and address of undertaker.

23. Official signature of registrar, with date when certificate was filed and registered number.

The personal and statistical particulars (items 1 to 13) shall be authenticated by the signature of the informant, who may be any competent person acquainted with the facts. The statement of facts relating to the disposition of the body shall be signed by the undertaker or person acting as such. The medical certificate shall be made and signed by the physician, if any, last in attendance on the deceased, who shall specify the time in attendance, the time he last saw the deceased alive, and the hour of the day at which death occurred; and he shall further state the cause of death so as to show the course of disease or sequence of causes resulting in death, giving the primary and immediate causes, and also the contributory causes, if any, and the duration of each. Indefinite and unsatisfactory terms indicating only symptoms of disease or conditions resulting from disease will not be held sufficient for issuing a burial or removal permit, and any certificate containing only such terms, as defined by the state registrar, shall be returned to the physician for correction and definition. Causes of death which may be the result of either disease or violence, shall be carefully defined, and if from violence, its nature shall be stated, and whether accidental, suicidal or homicidal. And in case of deaths in hospitals, institutions or away from home, the physician shall furnish the information required under this head (item 19) and shall state where, in his opinion, the disease was contracted, and the cause of death and all other facts required shall in all cases be stated in accordance with the rules and regulations of the state registrar. [1907, ch. 270, § 8.]

§ 442. Death without medical attendance, duty of undertaker. In case of any death occurring without medical attendance it shall be the duty of the undertaker to notify the registrar of such death, and when so notified the registrar shall inform the local health officer and refer the case to him for immediate investigation and certification, prior to issuing the permit; provided, that when the local health officer is not a qualified physician, or when there is no such official, and in such cases only, the registrar is authorized to make the certificate and return from the statement of relatives or other persons having adequate knowledge of the facts; provided, further, that if the circumstances of the case render it probable that the death was caused by unlawful or suspicious means, the registrar shall then refer the case to the coroner for his investigation and certification. [1907, ch. 270, § 9.]

§ 443. Duties of undertakers. The undertaker or person acting as undertaker, shall be responsible for obtaining and filing the certificate of death with the registrar and securing a burial or removal permit prior to any disposition of the body. He shall obtain the personal and statistical particulars required from the person best qualified to supply them, over the signature and address of his informant. He shall then present the certificate to the attending physician, if any, or to the health officer or coroner, as directed by the registrar, for the medical certificate of the cause of death and other particulars necessary to complete the records, as specified in section 441, and he shall then state the facts required relative to the date and place of burial, over his signature and with his address, and present the completed certificate to the registrar within the time limit, if any, designated by the local board of health for the issuance of a burial or removal permit. The undertaker shall deliver the burial permit to the sexton or person in charge of the place of burial before interring the body, or attach the removal permit to the box containing the corpse, when shipped by any transportation company, to accompany same to destination, when it shall be accepted by the sexton as authority for interment of the body. [1907, ch. 270, § 10.]

§ 444. Burial permit, form of. If the interment or other disposition of the body is to be made in the registration district in which the death occurred, the wording of the burial permit may be limited to a statement by the registrar, and over his signature, that a satisfactory certificate of death having been filed with him as required by law, permission is granted to inter, remove or otherwise dispose of the body of the deceased, stating the name, age, sex, cause of death, and other necessary details upon the form prescribed by the state registrar. But in case the interment or other disposition of the body is to be made in some registration district other than that in which the death occurred, a complete copy of the certificate of death shall be attached to and made a part of the permit. [1907, ch. 270, § 11.]

§ 445. Duty of sextons. Record. No sexton or person in charge of any premises in which interments are made shall inter or permit the interment of any body unless it is accompanied by a burial, removal or transit permit as herein provided, and each sexton or person in charge of any burial ground shall indorse upon the permit the date of interment over his signature, and shall return all permits, so indorsed, to the local registrar of his district within ten days from the date of interment, or within the time [limited] by the local board of health. He shall also keep a record of all interments made in the premises under his charge, stating the name of the deceased person, place of death, date of burial, and name and address of the undertaker, which record shall at all times be open to public inspection. [1907, ch. 270, § 12.]

§ 446. Certificate of birth, filed when and by whom. It shall be the duty of the attending physician or midwife to file the certificate of birth properly and completely filled out, giving all the particulars required by this article, with the local registrar of the district in which the birth occurred, within three days after the date of birth, and if there be no attending physician or midwife, then it shall be the duty of the father of the child, householder or owner of the premises, manager or superintendent of public or private institution in which the birth occurred, to file said certificate of birth with the local registrar within three days after the birth. [1907, ch. 270, § 13.]

§ 447. Form of certificate. The certificate of birth shall be of the standard form recommended by the bureau of the census and shall contain the following items:

All certificates, either of birth or death, shall be written legibly in unfading black ink, and no certificate shall be held to be complete and correct that does not supply all of the items of information called for therein or satisfactorily account for their omission.

1. Place of birth, including state, township or town, village or city. If in a city, the ward, street and house number. If in a hospital or other institution the name of the same to be given instead of the street and house number.

2. The full name of child. If the child dies without a name before the certificate is filed, enter the words "died unnamed." If the living child has not been named at the date of filing the certificate of birth, the space for "full name of child" is to be left blank, to be filled out subsequently by a supplemental report as hereinafter provided.

3. Sex of child.

4. Whether a twin, triplet or other plural birth. A separate certificate shall be required for each child of plural birth, giving number of child in order of birth.

5. Whether legitimate or illegitimate.

6. Full name of father.

7. Residence of father.

8. Color or race of father.

9. Birthplace of father.
10. Age of father at last birthday, in years.
11. Occupation of father.
12. Maiden name of mother, in full.
13. Residence of mother.
14. Color or race of mother.
15. Birthplace of mother.
16. Age of mother at last birthday, in years.
17. Occupation of mother.
18. Number of child of this mother, and number of children of this mother now living.

19. Certificate of attending physician or midwife as to attendance at birth, including statement of year, month, day and hour of birth, and whether the child was dead or alive at birth. This certificate shall be signed by the attending physician or midwife, with date of signature and address. If there was no physician or midwife in attendance, then the father of the child, householder or owner of the premises, or manager or superintendent of public or private institution, or other competent person whose duty it shall become to file the certificate of birth as required by section 446, shall draw a line through the words "I hereby certify that I attended the birth of above child," and shall write in lieu thereof the words "no physician or midwife," filling out the remainder of the certificate in regard to the year, month, day and hour of birth, and signing the certificate as father, householder, owner of premises, manager or superintendent of institution, as the case may be, with his address.

20. Exact date of filing in office of local registrar, attested by his official signature and registered number of birth, as hereinafter provided. [1907, ch. 270, § 14.]

§ 448. Supplemental report giving name of child. When any certificate of birth of a living child is presented without statement of the given name, then the local registrar shall make out and deliver to the informant a special blank for the supplemental report of the given name of the child, which shall be filled out as directed, and returned to the registrar as soon as the child shall be named. The original certificate of birth shall not be considered complete until the supplemental report is filed or the blank returned with the statement "died unnamed." [1907, ch. 270, § 15.]

§ 449. Physicians, midwives and undertakers to be registered. Every physician, midwife and undertaker shall, without delay, register his or her name, address and occupation with the local registrar of the district in which he or she resides, or may hereafter establish a residence, and shall thereupon be supplied by the local registrar with a copy of this article, together with such rules and regulations as may be prepared by the state registrar relative to its enforcement. Within thirty days after the close of each calendar year each local registrar shall make a return to the state registrar of all physicians and midwives who have been registered in his district during the whole or any part of the preceding calendar year, and in certifying names for payment for certificates of birth filed, the state registrar shall not include any physicians or midwives who have not complied with the requirements of this section; provided, that no fee or other compensation shall be charged by local registrars to physicians, midwives or undertakers for registering their names under this section, or making returns thereof to the state registrar. [1907, ch. 270, § 16.]

§ 450. Hospitals to keep record. All superintendents or managers or other persons in charge of hospitals, lying-in or other institutions, public or private, to which persons resort for treatment of disease, confinement or are committed by process of law, are hereby required to make a record of all of the personal

and statistical particulars relative to the inmates in their institutions at the date of approval of this act, [article] that are required in the form of certificate herein provided for, as directed by the state registrar, and thereafter such record shall be by them made for all future inmates at the time of admission, and in case of persons admitted or committed for medical treatment of disease the physician in charge shall specify for entry in the record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself, if it is practicable to do so, and when they cannot be so obtained, they shall be secured in as complete a manner as possible from the relatives, friends or other persons acquainted with the facts. [1907, ch. 270, § 17.]

§ 451. Blanks and forms furnished by state registrar. The state registrar shall prepare, print and supply to all registrars all blanks and forms used in registering, recording and preserving the returns, or in otherwise carrying out the purposes of this article, and shall prepare and issue such detailed instructions as may be required to secure the uniform observance of its provisions and the maintenance of a perfect system of registration, and no other blanks shall be used than those supplied by the state registrar. He shall carefully examine the certificates received monthly from the local registrars, and if any such are incomplete or unsatisfactory, he shall require such further information to be furnished as may be necessary to make the record complete and satisfactory, and all physicians, midwives, informants or undertakers connected with any case, and all other persons having knowledge of the facts are hereby required to furnish such information as they may possess regarding any birth or death, upon demand of the state registrar, in person, by mail, or through the local registrar. He shall further arrange, bind and permanently preserve the certificates in a systematic manner, and shall prepare and maintain a comprehensive and continuous card index of all births and deaths registered, the card to show the name of child or deceased, place and date of birth or death, number of certificate, and the volume in which it is contained. He shall inform all registrars what diseases are to be considered as infectious, contagious, or communicable and dangerous to the public health, as decided by the state board of health, in order that when deaths occur from such diseases proper precautions may be taken to prevent the spreading of dangerous diseases. [1907, ch. 270, § 18.]

§ 452. Local registrars to correct returns. It shall be the duty of the local registrar to supply blank forms of certificates to such persons as require them, and he shall carefully examine each certificate of birth or death when presented for record to see that it has been made out in accordance with the provisions of this article and the instructions of the state registrar, and if any certificate of death is incomplete or unsatisfactory it shall be his duty to call attention to the defects in the return and to withhold issuing the burial or removal permit until they are corrected. If the certificate of death is properly executed and complete, he shall then issue a burial or removal permit to the undertaker; provided, that in case the death occurred from some disease that is held by the state board of health to be infectious, contagious or communicable and dangerous to the public health, no permit for the removal or other disposition of the body shall be granted by the registrar except under such conditions as may be prescribed by the state and local boards of health. If a certificate of birth is incomplete he shall immediately notify the informant and require him to supply the missing items if they can be obtained. He shall then number consecutively the certificates of birth and of death in two separate series, beginning with "number one" for the first birth, and the first death in each calendar year, and sign his name as registrar in attest of the date of filing in his office. He shall also make a complete and accurate copy of each birth and death certificate registered by him, upon a form identi-

cal with the original certificate, to be filed and permanently preserved in his office as the local record of such death, in such manner as directed by the state registrar, and he shall on the fifth day of each month, transmit to the state registrar all original certificates registered by him during the preceding months, and if no births and no deaths occur in any month he shall, on the fifth day of the following month, report that fact to the state registrar in such manner as the state registrar shall direct. [1907, ch. 270, § 19.]

§ 453. Fees of registrars. Each local registrar shall be entitled to be paid the sum of twenty-five cents for each birth and each death certificate properly and completely made out and registered with him, and correctly copied and duly returned by him to the state registrar, as required by this article; provided, that in cities in which the city clerk or health officer, acting as registrar, receives a fixed salary in lieu of fees, no further compensation shall be paid for the duties required by this article. In case no births or no deaths were registered during any month, the local registrar shall be entitled to be paid the sum of twenty-five cents for each report to that effect promptly made in accordance with the directions of the state registrar. All amounts payable to registrars under provisions of this section shall be paid by the county in which the registration districts are located upon certification by the state registrar, and the state registrar shall annually certify to the auditors of the several counties the number of births and deaths registered with the names of local registrars and the amounts due each at the rates fixed herein. [1907, ch. 270, § 20.]

§ 454. Certified copies of record of births or deaths, fees for. The state registrar shall, upon request, furnish any applicant a certified copy of the record of any birth or death registered under provisions of this article, for the making and certification of which he shall be entitled to a fee of fifty cents to be paid by the applicant, and any such copy of the record of a birth or death, when properly certified by the state registrar to be a true copy thereof, shall be prima facie evidence in all courts and places of the facts therein stated. For any search of the files and records, when no certified copy is made, the state registrar shall be entitled to a fee of fifty cents for each hour or fractional hour of time of search, to be paid by the applicant, and the state registrar shall keep a true and correct account of all fees by him received under these provisions, and turn the same over to the state treasurer. [1907, ch. 270, § 21.]

§ 455. Penalty for failure to comply with law. If any physician who was in medical attendance upon any deceased person at the time of death shall neglect or refuse to make out and deliver to the undertaker, sexton or other person in charge of the interment, removal or other disposition of the body, upon request, the medical certificate of cause of death hereinbefore provided for, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five dollars nor more than fifty dollars, and if any physician shall willfully or knowingly make a false certification of the cause of death in any case, he shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be fined not less than fifty dollars nor more than two hundred dollars, and any physician or midwife in attendance upon a case of confinement, or any other person charged with responsibility for reporting births, in the order named in section 446 of this article, who shall neglect or refuse to file a proper certificate of birth with the local registrar within the time required by this act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five dollars nor more than fifty dollars. If any undertaker, sexton or other person acting as undertaker shall inter, remove or otherwise dispose of the body of any deceased person without having received a burial or removal permit as herein provided, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than twenty dollars nor more than

one hundred dollars. Any registrar, deputy registrar, or sub-registrar who shall neglect or fail to enforce the provisions of this article in his district or shall neglect or refuse to perform any of the duties imposed upon him by this article, or by the instructions and directions of the state registrar, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars. Any person who shall willfully alter any certificate of birth or death, or the copy of any certificate of birth or death, on file in the office of the local registrar, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than ten dollars nor more than one hundred dollars, or be imprisoned in the county jail not exceeding sixty days, or suffer both fine and imprisonment in the discretion of the court. Any other person or persons who shall violate any of the provisions of this article, or shall willfully neglect or refuse to perform any duties imposed upon them by the provisions of this article, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five dollars nor more than one hundred dollars. Any transportation company or common carrier transporting or carrying, or accepting through its agents or employes for transportation or carriage, the body of any deceased person without an accompanying permit, issued in accordance with the provisions of this article shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars, nor more than two hundred dollars; provided, that in case the death occurred outside the state and the body is accompanied by a certificate of death, burial, or removal, or transit permit, issued in accordance with the law or board of health regulations in force where the death occurred, such death certificate, burial, or removal, or transit permit may be held to authorize the transportation or carriage of the body into or through the state. [1907, ch. 270, § 22.]

§ 456. Enforcement of law, who charged with. Local registrars are hereby charged with strict and thorough enforcement of the provisions of this article in their districts, under the provision and direction of the state registrar. They shall make an immediate report to the state registrar of any violation of this law coming to their notice by observation or upon complaint of any person, or otherwise. The state registrar is hereby charged with the thorough and efficient execution of the provisions of this article in every part of the state, and with supervisory powers over local registrars to the end that all of these requirements shall be uniformly complied with. He shall have authority to investigate cases of irregularity or violation of law, personally or by accredited representative, and all registrars shall aid him, upon request, in such investigation. When he shall deem it necessary, he shall report cases of violation of any of the provisions of this article to the prosecuting attorney or official of the proper county or municipality, with a statement of the facts and circumstances, and when any such case is reported to them by the state registrar, all prosecuting attorneys, or officials acting in such capacity, shall forthwith initiate and promptly follow up the necessary court proceedings against the parties responsible for the alleged violations of law, and upon request of the state registrar the attorney-general shall likewise assist in the enforcement of the provisions of this article. [1907, ch. 270, § 23.]

§ 457. County auditor to furnish names of township clerks. It is hereby made the duty of each county auditor to furnish, after each township election, the name of the clerk of each organized civil township within his county, with his postoffice address, to the state registrar of vital statistics; and any auditor who shall willfully neglect or refuse to furnish such names shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars nor more than fifty dollars. [1907, ch. 270, § 24.]

ARTICLE 14.—REGULATING THE PRACTICE OF MEDICINE AND SURGERY.

§ 458. Board of medical examiners. How appointed. Qualifications. The governor shall on or before the first day of August, 1911, appoint a state board of medical examiners, consisting of nine members, two of whom shall be homeopathic physicians; who shall be practicing physicians of integrity and ability, who shall be residents of and have been duly licensed to practice medicine and surgery in this state, and who shall have been graduated from medical schools of high educational requirements and standing and shall have been engaged in the active practice of their profession within this state for a period of at least five years. Three of such persons shall hold office for the term of one year from the said first day of August, 1911, three for the period of two years, and three for the period of three years from said date. Thereafter, and as the terms of office expire, all members of the board shall be appointed for the term of three years with the exception of those who may be appointed to fill unexpired terms. Until the first day of August, 1911, the members of the present state board of medical examiners shall hold office and shall enforce the provisions of this article. [1911, ch. 189, § 1; R. C. 1905, § 294; 1890, ch. 93, § 1; R. C. 1895, § 275.]

§ 459. Officers. Meetings for examinations. Records and rules. Such board shall elect a president and secretary-treasurer, and shall have a seal. The secretary-treasurer shall be the general administrative and prosecuting officer of said board but need not be a member thereof. The president and the secretary-treasurer shall have the power to administer oaths. The board shall hold meetings for examinations at such places, as it may designate, on the first Tuesday in January and July of each year, and such special meetings as it may from time to time appoint. The board shall keep a record of all its proceedings, and also a register of applicants for license, together with their ages, and the time spent in the study of medicine and in their studies preliminary thereto, and the nature thereof, and the name and location of all institutions, medical and otherwise, granting to such applicants degrees or certificates of attendance on lectures and classes in medicine and surgery and studies preliminary thereto. Such register shall also show whether the applicant was rejected or licensed by the board. Said books and register shall be prima facie evidence of all matters therein recorded. Said board shall from time to time adopt such rules and regulations as it may deem necessary for the performance of its duties and a schedule of minimum educational requirements which shall be without prejudice, partiality, or discrimination as to schools or systems of practice of medicine. [1911, ch. 189, § 2; R. C. 1905, § 295; 1890, ch. 93, § 2; R. C. 1895, § 276.]

§ 460. Power to administer oaths and summon witnesses. Enforcement of powers. Said board shall have authority to administer oaths, to summon witnesses and take testimony in all matters relating to their duty. When the board, in the transaction of any of its business, or in the conduct of any hearing or when any person interested in such business or hearing shall desire to secure the presence or testimony of any person before said board, said board or such person, may procure subpoenas from the clerk of the district court of the county wherein such business is to be transacted or conducted before said board and the clerk of such court is hereby directed to issue such subpoenas, as, in the name of the state of North Dakota, commanding the persons whose names shall be given to such clerk by said board, or by such persons so interested in such business or hearing, to appear before said board at a certain time and place fixed by said board, for the transaction of such business or conduct of such hearing and then and there testify in the matter of such business or in such hearing. If any person so commanded to appear and testify shall fail or refuse to obey such subpoena, he shall be dealt with by said district court in the same manner and to the same effect as though such subpoena had commanded such person to appear and testify in a cause

on trial in said court. Fees or other charges or payments, which may be demanded by any person so commanded to appear and testify shall be only those which may be demanded by witnesses in causes in the district court and under the same circumstances. Such subpoenas shall be served in the same manner as are subpoenas for trials in the district court, and they shall be substantially the same form. It shall be the duty of the secretary-treasurer, under the direction of the board, personally or by deputy duly authorized thereunto by said board, to aid the several district attorneys of the state in the enforcement of this article and in the prosecution of all persons who may have violated any of its provisions. [1911, ch. 189, § 3.]

§ 461. License. No person shall practice medicine in this state unless he shall have made application to said board of medical examiners, through the secretary-treasurer thereof, upon such form and in such manner as shall be adopted and prescribed by said board, for a license so to do, and shall have obtained from said board and shall possess in full force and virtue a valid license so to do; and any person who practices medicine in this state, without having made such application and without having received and without still possessing such a license, shall be deemed to have thereby violated the provisions of this article. All applicants for a license to practice medicine or for a restoration of any such license which has been revoked, shall furnish the board with satisfactory evidence of good moral character. Nothing in this article shall be taken or construed to preclude physicians and surgeons who have already been admitted to practice their professions within the state of North Dakota and under and according to the laws thereof to continue so to practice. [1911, ch. 189, § 4.]

Applicable to ophthalmologist engaged in fitting glasses to eye and using title "Dr." *State v. Yegge*, 19 S. D. 234, 69 L.R.A. 504, 103 N. W. 17, 9 A. & E. Ann. Cas. 202.

Statutes regulating the practice of physicians, to whom applicable. 98 Am. St. Rep. 742.

Constitutionality of regulations as to practice of physicians, license. 14 L.R.A. 581.

Power to regulate the practicing of physicians. 23 Am. St. Rep. 25.

Right of unlicensed physician to act as employee of licensed one. 44 L.R.A.(N.S.) 1089.

§ 462. Definition. The term "practice of medicine," as used in this article, is intended to cover and include the practice of medicine, surgery, and obstetrics. The term "physician" means physician and surgeon. [1911, ch. 189, § 5.]

What constitutes practicing medicine within the state. 4 L.R.A.(N.S.) 1023.

Midwifery as practice of medicine contravening statute. 17 L.R.A.(N.S.) 94.

Administering domestic remedy for pay as practicing medicine. 12 L.R.A.(N.S.) 1094.

Application of statutes regulating practice of medicine to persons giving special kinds of treatment. 3 L.R.A.(N.S.) 762; 24 L.R.A.(N.S.) 103; 25 L.R.A.(N.S.) 1297; 33 L.R.A.(N.S.) 179.

§ 463. Meaning of the term practice of medicine. Exemptions and exceptions. A person shall be regarded as practicing medicine within the meaning of this article who holds himself, or herself out to the public as being engaged within this state in the diagnosis or treatment of diseases or injuries of human beings; or who suggests, recommends or prescribes any form of treatment for the intended palliation, relief or cure of any physical or mental ailment of any person with the intention of receiving therefor, either directly or indirectly, any fee, gift or compensation whatsoever; or who maintains an office for the examination or treatment of persons afflicted with disease or injury of body or mind; or who attaches the title M. D., surgeon, doctor or any word or abbreviation to his name, indicating that he is engaged in the treatment or diagnosis of the diseases or injuries of human beings. Nothing in this article, however, shall be construed to affect lawfully qualified physicians in other states or countries meeting legally licensed physicians in this state for consultation or any physician residing on the border of a neighboring state and duly licensed under the laws thereof to practice medicine therein, and who does not open an office or appoint a place to meet patients or receive calls within this state; or the domestic administration of family

remedies; or dentists practicing their profession or optometrists when licensed and practicing under the provisions of article 16 of chapter 4 of the political code, Revised Codes of 1905 [sections 524-539 herein]; nor to prohibit the practice of christian science or other religious tenets or religious rules or ceremonies as a form of religious worship, devotion, or healing, provided that the persons administering or making use of or assisting or prescribing such do not prescribe or administer drugs or medicines nor perform surgical or physical operations, nor assume the title of or hold themselves out to be physicians or surgeons; nor shall this article be construed to prohibit any person, if qualified under chapter 172 of the Laws of 1909 [section 516-523 herein], from engaging in the practice of osteopathy, when not representing himself as, or assuming the title of physician or surgeon; provided such person does not profess or hold himself out to, nor administer or prescribe drugs or perform surgery, except minor surgery; nor shall it be construed to prohibit commissioned surgeons of the United States army, navy or public health and marine hospital service from performing their lawful duties in this state as such. [1911, ch. 189, § 6.]

§ 464. Examinations. How conducted. Subjects. The manner of determining the qualifications of any person to practice medicine or surgery shall be such as shall be adopted by the state board of medical examiners. Examination of applicants for the licenses to practice medicine shall be made by said board according to the method deemed by it to be most practicable and expeditious to test the applicant's qualifications. Each applicant shall be designated by a number instead of name, so that his identity shall not be disclosed to the members of the board, until the examinations shall be graded. The subject of written, oral or clinical examinations for applicants shall be as follows:

Anatomy, physiology, chemistry, pathology, gynecology, physical diagnosis, toxicology, surgery, obstetrics, histology, bacteriology, medical jurisprudence, and preventive medicine. [1911, ch. 189, § 7; R. C. 1905, § 296; 1890, ch. 93, § 3; R. C. 1895, § 277; 1905, ch. 148, § 1.]

§ 465. Examinations waived. In the case of an applicant coming from, or who has been educated in other states or foreign universities, such applicant's credentials relating to his general reputation, his preliminary education and the course of study he has pursued, the degrees he has received, the number of years he has been engaged in the lawful practice of medicine, his experience in hospitals, medical departments of the army, navy, and public health and marine hospital service, licenses granted to him by other states and countries, and his experience as a teacher of medicine, shall be given due consideration, by the board in determining his qualifications to practice medicine. When convinced by an investigation of an applicant's credentials that he is qualified to practice medicine and surgery, the board may in its discretion, grant him a license without examination, upon the payment of the regular fee of twenty-five dollars, and provided further that said board upon the payment of such fee and in its discretion, may accept and register and, without further examination, issue a license to practice medicine upon any certificate which shall have been issued to an applicant by the medical examining board of the District of Columbia, or of any state or territory of the United States, provided, however, that the applicant has received a degree or diploma from a legally chartered medical school, the requirements of the medical examining board of such state, district or territory, or degree, in no particular less than those prescribed by the association of American medical colleges for that year; and provided further that the legal requirements of the medical examining board of such state, district or territory, shall have been at the time of issuing such certificate, in no degree or particular less than those of this state, at the time when such certificate shall be presented for registration and approval of the board provided for in this

article; and provided further that the provisions and exceptions in this section contained shall be held to apply only to the certificate of licenses of such states, districts or territories as accept and register the certificates and licenses granted by the board provided for herein, without further examinations of the persons holding such certificates. [1911, ch. 189, § 8; R. C. 1905, § 296; 1890, ch. 93, § 3; R. C. 1895, § 277; 1905, ch. 148, § 1.]

§ 466. Preliminary. Qualifications. All applicants for licenses to practice medicine in the state of North Dakota and all applicants for the examination of the board of medical examiners herein provided for, must, as a prerequisite thereto, and except as provided in section 465 of this article, present evidence which shall be satisfactory to said board of having graduated from a reputable medical college and having attended in such college or colleges the lectures of no less than four college years of at least eight months each, and must all give evidence which shall be satisfactory to said board, or a preliminary education which would be necessary to admit said student to the junior or third year of the University of North Dakota or some equally reputable American college or university; provided, however, that in case of applicants who have graduated from a reputable medical college prior to the year of 1905, satisfactory evidence of attendance on the lectures and classes of three college years of at least six months each, shall be deemed sufficient to entitle such applicants to take the examination herein provided for. [1911, ch. 189, § 9; R. C. 1905, § 296; 1890, ch. 93, § 3; R. C. 1895, § 277; 1905, ch. 148, § 1.]

§ 467. License. Fees. If such applicant passes the prescribed examination, or if such applicant is excused from such examination as provided for in section 465 of this article and is found by the board to be properly qualified, the board may grant him a license to practice medicine, surgery, obstetrics, in this state, which license shall be signed by the president and secretary-treasurer of the board, and shall have the seal thereof affixed to or impressed thereon. The fee of such examination shall be twenty-five dollars, to be applied to the board toward paying the compensation and expenses thereof, including the enforcement of the provisions of this article, and the same fee shall be charged where an application for licenses is made without examination. [1911, ch. 189, § 10; R. C. 1905, § 296; 1890, ch. 93, § 3; R. C. 1895, § 277; 1905, ch. 148, § 1.]

§ 468. Revocation and refusal of licenses. The state board of medical examiners, shall keep a record of all its proceedings, together with the evidence offered in the matter of revoking or refusing licenses hereunder, may refuse to grant, or may revoke, a license to practice medicine and surgery in this state, and may cause a licentiate's name to be removed from the record in the office of any recorder of deeds, upon any of the following grounds, to wit: The employment of fraud or deception in applying for or securing a license, or in passing the examination provided for in this article; the practice of medicine under a false or assumed name, or impersonation of another physician of this state or any state, territory or foreign country of a like or different name; the conviction of a felony, or of a crime involving moral turpitude; habitual intemperance in the use of ardent spirits, narcotics or stimulants to such an extent as to incapacitate for performance of professional duties; the procuring or aiding or abetting in procuring or attempting to procure a criminal abortion; negligent or ignorant malpractice resulting in permanent injury or the death of a patient; the obtaining of a fee either directly or indirectly either in money or in the form of any thing of value, or in the form of financial profit, either as personal compensation, or as compensation, charge, profit or gain for an employer, or any other person or persons, on the representation that a manifestly incurable, sick, diseased or injured condition of any person can be permanently cured, causing the publication, circulation, exhibition or display publicly of an advertisement, notice or information of any medicine or means whereby the monthly periods of

women can be regulated or the menses if suppressed can be re-established, or whereby abortion can be accomplished; causing the publication, circulation, exhibition or display publicly of any advertisement relative to the treatment, alleviation, palliation, cure or prevention of any disease, weakness or condition of the sexual organs. An appeal from the final decision of such board shall lie to the district court of the county in which such decision was made, within sixty days after notice to the party aggrieved. The record on appeal shall consist of the entire proceedings of such board, together with the evidence offered. Such appeal shall be governed by the code of civil procedure so far as applicable. [1911, ch. 189, § 11; R. C. 1905, § 296; 1890, ch. 93, § 3; R. C. 1895, § 277; 1905, ch. 148, § 1.]

Power to revoke license of physicians and surgeons. 1 L.R.A.(N.S.) 811.

Grounds for revoking physician's license. 8 L.R.A.(N.S.) 585; 17 L.R.A.(N.S.) 439; 30 L.R.A.(N.S.) 783.

Statute of limitations as a defense to revocation of physician's license. 11 L.R.A.(N.S.) 557.

§ 469. Licenses to be recorded. Every person who shall receive a license from the state board of medical examiners shall have it recorded immediately in the office of the recorder of deeds of the county in which he shall maintain an office for the practice of medicine, and shall likewise have it recorded in any county in which he shall practice medicine regularly. The recorder of deeds of each county in this state shall keep for public inspection, in a book provided for that purpose, a complete list and description of the licenses recorded by him. When any such license shall be presented to him for record he shall stamp or write upon the back thereof his signed memorandum of the date when such license was presented for record. If the name of any person shall not so appear in such book in any particular county in this state in connection with a description of such license provided for in this article, such act shall be prima facie evidence in any civil or criminal action involving the practice of medicine by such person in such county, that such person does not possess in full force of virtue a license to practice medicine in this state. [1911, ch. 189, § 12; R. C. 1905, § 297; 1890, ch. 93, § 4; R. C. 1895, § 278; 1901, ch. 142.]

§ 470. Penalties for violations and for fraudulent impersonation and fraudulent devices. Any person who shall practice medicine in this state without complying with the provisions of this article, and any person who shall violate any of the provisions of this article, shall be deemed guilty of misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than fifty dollars nor more than three hundred dollars, or by imprisonment in the county jail for not less than ten days, nor more than thirty days, or both, in the discretion of the court. Any person who shall present or attempt to file as his own, diploma or certificate of credentials of another, who shall give false evidence or present any altered or forged instrument or writing of any kind to the state board of medical examiners or any member thereof, in connection with an application for license to practice medicine, or in any hearing before said board, or who shall practice medicine under a false or assumed name or who shall falsely personate another practitioner of a like or different name, shall be guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state penitentiary for a term of not less than one year nor more than ten years at hard labor. [1911, ch. 189, § 13; R. C. 1905, § 299; 1890, ch. 93, § 6; R. C. 1899, § 280; 1905, ch. 148, § 1.]

Effect of physician's failure to procure license. 16 L.R.A. 425.

Validity of contract by unlicensed physician. 12 L.R.A.(N.S.) 613.

Practicing medicine, surgery, or dentistry without a license as a continuing offense. 42 L.R.A.(N.S.) 768.

§ 471. Removal of members of examining board. Re-election. The governor of the state of North Dakota may, for good cause shown, and upon the recommendation of three-fourths of the members of the board of medical examiners, remove any member of such board for misconduct, incapacity or neglect of

duty. No member of such board shall serve thereon for more than two full successive terms. [1911, ch. 189, § 14.]

ARTICLE 15.—FOR THE PROMOTION OF MEDICAL SCIENCE.

The title given to this article 15 is the caption of Laws 1890, ch. 92, which consisted of sections 472-474 herein. These three sections appeared in R. C. 1905 at the end of "Article 12.—State Board of Medical Examiners." Since, however, Laws 1911, ch. 189, constituting sections 458-471 herein, and evidently in large part superseding said article 12, contains no provision on the subject of the sections, and repeals only "all acts and parts of acts in conflict with the provisions of" that act of 1911, the three sections are here preserved.

§ 472. **Certain dead bodies may be used for dissecting.** It shall be lawful for any medical association, regular physician and surgeon or the professors of any medical college in this state to receive the body of any person executed pursuant to sentence of law and of all persons dying in the penitentiary or county jails while under sentence of law for crime, to be used within the state for the advancement of anatomical science, preference being given to medical colleges established by law within this state. [R. C. 1905, § 300; 1890, ch. 92, § 1; R. C. 1895, § 281.]

§ 473. **Remains to be interred.** Every physician, surgeon or professor before receiving any such body shall give to the officer surrendering the same a sufficient bond conditioned that such body shall be used only for the promotion of anatomical science within the state and so as not to outrage public feeling; and that after having been so used the remains thereof shall be interred in some public cemetery. [R. C. 1905, § 301; 1890, ch. 92, § 2; R. C. 1895, § 282.]

§ 474. **When body not to be used for dissecting.** If the deceased during his last illness requested to be buried or, if within thirty-six hours after his death any friend or relative asks to have the body buried, the body shall not be so surrendered, but shall be buried. [R. C. 1905, § 302; 1890, ch. 92, § 3; R. C. 1895, § 283.]

ARTICLE 16.—PRACTICE OF PHARMACY.

R. C. 1905, §§ 303-312, are clearly superseded by the provisions of this article.

§ 475. **Compounding restricted.** No person other than a registered pharmacist, assistant registered pharmacist or a regularly licensed physician shall manufacture, compound, sell or dispense for medicinal use any drug, poison, medicine or chemical (except patent or proprietary preparations) or dispense or compound a prescription of a medical practitioner except as provided in this article. [1907, ch. 182, § 1; R. C. 1905, § 9020; 1890, ch. 108, §§ 1, 12; 1893, ch. 80, § 6; R. C. 1895, § 7280; 1905, ch. 147, § 1.]

Right of unlicensed druggists to recover for services rendered by licensed one. 2 L.R.A. (N.S.) 392.

§ 476. **Registered pharmacists' assistants.** Every store, dispensary, pharmacy, laboratory, or office for the sale, dispensing or compounding of drugs, medicines or chemicals, or for the compounding or dispensing of prescriptions of medical practitioners shall be in charge of a registered pharmacist. A registered assistant pharmacist may be left in charge of a store, dispensary, pharmacy, laboratory or office for the sale, dispensing or compounding of drugs, medicines or chemicals or for the dispensing of prescriptions of medical practitioners only during the temporary absence of the registered pharmacist. No registered assistant shall conduct a pharmacy except during the temporary absence of the registered pharmacist in charge thereof. Every store or shop where drugs, medicines, or chemicals are dispensed or sold at retail, or displayed for sale at retail for medicinal purposes, or where prescriptions are compounded, shall be deemed a "pharmacy" within the meaning of this article. In every pharmacy a sign shall be posted in a conspicuous place showing the name of the registered pharmacist in charge thereof. [1907, ch. 182, § 2.]

§ 477. Board of pharmacy, appointment. The state board of pharmacy shall consist of five registered pharmacists. The members of said board shall be appointed by the governor upon the recommendation of the North Dakota pharmaceutical association, and the persons so appointed shall be chosen from the members of said association. Except as provided in the next section the members of said board shall be appointed for a term of five years and until their successors are appointed and qualified. [1907, ch. 182, § 3; R. C. 1905, § 303; 1890, ch. 108, § 4; R. C. 1895, § 284.]

§ 478. Vacancies. The three members of the present state board of pharmacy shall continue in office for the remainder of their respective terms, and the governor shall appoint two additional members, one for a term of four years and one for a term of five years. In case of a vacancy by death, resignation or removal the governor shall fill the vacancy by an appointment for the unexpired term. [1907, ch. 182, § 4; R. C. 1905, § 304; 1890, ch. 108, § 5; 1893, ch. 80, § 2; R. C. 1895, § 285.]

§ 479. Organization. Bond. Meetings. At the first regular meeting of the board after the appointment and qualification of the additional members thereof provided by this article, and annually thereafter at the first regular meeting after the appointment and qualification of a new member for a full term the board shall elect a president, secretary and treasurer. The president and treasurer shall be chosen from the members of the board, but any suitable person whether a member of the board or not, may be chosen as secretary. Said officers shall respectively perform such duties as the board may prescribe. The secretary and treasurer shall each give a satisfactory bond to the state board of pharmacy in the sum of not less than two thousand dollars for the faithful performance of his official duties and the safe and proper care and disposal of all funds and property under his charge by the officer by and for whom the bond is given. The board shall hold at least two and not more than four meetings in each calendar year for the examination of applicants for registration, and it shall give at least thirty days' notice of the time and place of any meeting for the examination of applicants for registration, by publishing notice thereof in three pharmaceutical journals of general circulation in the state. It may hold such other meetings for the performance of its duties as may be necessary, and such meetings may be called by the secretary at the request of the president, or of any two members upon such notice to all the members as the board may prescribe by its rules and regulations or at such time and place as a majority of the members agree upon. In case of the death, removal or resignation of the president of the board or his absence from or refusal or inability to act at any meeting of the board, the senior member of the board present shall act as president. In case of the death, removal or resignation of the secretary or treasurer or the absence or refusal or inability of either to act, the board may choose another for the time being, or for the remainder of the year. The president, secretary and treasurer, or any of them, may be allowed such compensation for their services as such in addition to their pay as members as four-fifths of the members of the board shall determine. [1907, ch. 182, § 5; R. C. 1905, § 304; 1890, ch. 108, § 5; 1893, ch. 80, § 2; R. C. 1895, § 285.]

§ 480. Quorum. Powers. A majority of the board shall constitute a quorum for the transaction of any business. The board shall have power and it shall be its duty:

(a.) To cancel and revoke the certificate and registration of any registered pharmacist, or registered assistant pharmacist for incompetency, or who is addicted to any drug habit.

(b.) To examine and register as pharmacist and assistant pharmacist all applicants which it shall find to be entitled to such registration.

(c.) To prescribe rules and regulations for the guidance of its members, officers and employees, and to ensure the proper and orderly dispatch of its business.

(d.) To employ and pay such persons as it may deem necessary to inspect pharmacies in this state or investigate for the information of the board or to procure evidence in any proceeding pending before such board or in aid of any prosecution or action in any court commenced or about to be commenced by or against such board in relation to any matter in respect to which the board has any duty to perform.

(e.) To employ and pay counsel to advise the board, or to prosecute or defend any action or proceeding commenced by or against the board or pending before it.

(f.) The president of the board shall have the power to administer oaths to applicants for registration, and to any witness in any hearing, investigation or proceeding pending before such board. [1907, ch. 182, § 6; R. C. 1905, § 304; 1890, ch. 108, § 5; 1893, ch. 80, § 2; R. C. 1895, § 285.]

§ 481. Certificate of registration, cancelled when. The certificate and registration of a pharmacist or assistant pharmacist shall not be revoked or cancelled until after a hearing before the board upon notice to the person accused and an opportunity to appear in person and by counsel and produce witnesses in his own behalf; and the notice of hearing must contain a copy of the complaint against him, which complaint must be in writing. The foregoing provisions of this section shall not apply to cases where a pharmacist or assistant pharmacist shall have been convicted in a court of general jurisdiction of an offense against any law, the violation of which is ground for cancellation of the certificate or registration, but in such cases a certified copy of the judgment of conviction filed with the board shall authorize the board to summarily cancel and revoke the certificate of the convicted pharmacist. The board shall prescribe rules and regulations not inconsistent with this article, to govern the procedure in proceedings before it to cancel a certificate or registration. [1907, ch. 182, § 7; R. C. 1905, § 304; 1890, ch. 108, § 5; 1893, ch. 80, § 2; R. C. 1895, § 285.]

§ 482. Former certificates in force. The certificate of every pharmacist and assistant pharmacist whose certificate and registration as such is in force at the time this article takes effect shall remain in force for the period for which this certificate was issued but subject to the conditions and provisions of this article and may be renewed, cancelled or revoked and the holder shall be entitled to the same privileges and be subject to the same conditions and penalties as if such certificate had been issued and such registration procured under this article; provided, however, that any offense committed or penalty or forfeiture incurred on account of any act or transaction before this article takes effect shall be punishable or recoverable according to the provisions of the law in force when such act was done, notwithstanding any express or implied repeal of such law by this article. [1907, ch. 182, § 8.]

§ 483. Restriction as to registration. After this article takes effect no person except those mentioned in the preceding section shall be registered or receive a certificate as a pharmacist or assistant pharmacist until he or she shall have complied with the conditions hereinafter provided. [1907, ch. 182, § 9.]

§ 484. Registration without examination. When. The board may, without examination, register and issue a certificate as a pharmacist or assistant pharmacist to any person of good moral character who shall present to the board satisfactory evidence that he or she had before coming to this state been legally licensed as a pharmacist or assistant pharmacist in another state or foreign country, by the laws of which the requirements for such license with respect to qualifications are equivalent to the requirements of this article; provided, however, that it shall not be obligatory upon such board to recognize or accept the license, certificate or registration of such other state or foreign country as evidence of the applicant's qualifications unless the board is satisfied that such applicant is in fact qualified to be a

pharmacist or assistant pharmacist in this state; and provided, further, that the board may deny recognition or acceptance of the license, certificate or registration of any state or foreign country which does not accord similar recognition to licentiates of this state. [1907, ch. 182, § 10.]

§ 485. Examination for registration. Except as hereinafter provided, every applicant for registration as a pharmacist or assistant pharmacist must, before receiving a certificate from the board, successfully pass such an examination as to his learning and professional qualifications the board shall prescribe. [1907, ch. 182, § 11.]

§ 486. Qualifications for registration. On and after January first, 1913, an applicant for registration as a pharmacist must, as a condition precedent to an examination therefor, present to, and file with the pharmacy board satisfactory evidence that he or she is over twenty-one years of age and of good moral character; that he or she has had three years of practical pharmaceutical work in a place where drugs, medicines and poisons were dispensed and retailed and prescriptions compounded in a reputable pharmacy, under the instruction and supervision of a registered pharmacist; and has completed at least one year of work in an approved school or college of pharmacy. On and after January first, 1915, an applicant for examination as a registered pharmacist, must, with the application for examination, present to, and file with the pharmacy board, satisfactory evidence that he or she has had at least two years' practical experience in a place where drugs, medicines and poisons were dispensed and retailed and prescriptions compounded, in a reputable pharmacy, under the instruction and supervision of a registered pharmacist, and must have graduated from a school or college of pharmacy approved by the pharmacy board, and shall furnish evidence that he or she has received a diploma from such college or school of pharmacy. The said board shall be authorized to determine what shall constitute an approved school or college of pharmacy, but no school or college of pharmacy shall be considered as approved unless it shall furnish by a competent faculty of instructors a course of instruction for a full two-years' course of not less than six hundred (600) hours given to lectures and recitations and two hundred hours given to laboratory work in the following subjects:

Physics, Chemistry (general, Qualitative, Quantitative, Organic), Pharmacy (theoretical, practical, dispensing), Materia Medica (physiology, therapeutics, posology, toxicology), Botany, Microscopy and Pharmacognosy. Said course of instruction to consist of not less than two terms in separate academic years of not less than thirty-two weeks of five days each for each term. Registration as a pharmacist by said board entitles the person so registered to membership in the North Dakota Pharmaceutical Association.

Provided, however, that this section shall not apply to trained nurses or the persons in charge of laboratories or chemical departments of public hospitals when acting or engaged in the discharge of their duties as such. [1911, ch. 202; 1907, ch. 182, § 12; R. C. 1905, § 305; 1890, ch. 108, § 2; R. C. 1895, § 286; 1905, ch. 146.]

§ 487. Examination for assistant. An applicant for examination and registration as an assistant pharmacist must as a condition precedent to the right to be examined present and file with the board satisfactory evidence that he or she is a person of good moral character over the age of eighteen years, and has had at least two years' experience in a reputable pharmacy under the instruction and supervision of a reputable pharmacist, or has been registered as an apprentice in pharmacy in this state for a period of two years. The board may, however, allow and consider as part of the two years' experience required of such applicant, such time, not exceeding six months, as shall have been spent by the applicant in a regular course of study in a college of pharmacy approved by the board. [1907, ch. 182, § 13; R. C. 1905, § 307; 1890, ch. 108, § 9; R. C. 1895, § 288; 1903, ch. 136.]

§ 488. Fees. Each applicant for registration shall pay to the secretary the sum of five dollars before examination; provided, that in case of a failure to pass a satisfactory examination, he may be re-examined at any regular meeting of the board upon payment of a fee of three dollars. [1907, ch. 182, § 14; R. C. 1905, §§ 306, 307; 1890, ch. 108, §§ 8, 9; R. C. 1895, §§ 287, 288; 1903, ch. 136.]

§ 489. Prerequisites to examination. Any person having the educational qualifications sufficient to enable him to pass an entrance examination to the high schools of the state of North Dakota, or its equivalent, desiring to register as an apprentice in pharmacy, shall at the date of entering into his apprenticeship, file with the secretary of the state board of pharmacy a certificate, stating that he has entered into an apprenticeship, and stating his age, name and educational qualifications, and he shall at the same time file with the said secretary a certificate from his employer, who must be a regularly licensed and registered pharmacist of this state, which certificate shall set forth that the applicant has been employed by him as an apprentice in pharmacy, and that said applicant possesses to the knowledge of such registered pharmacist, education and qualifications which would enable him to pass the entrance examinations to the high schools of this state, or its equivalent; said certificates shall be accompanied by a fee of twenty-five cents, and thereupon it shall be the duty of said secretary to file the same and register said applicant as an apprentice and at the expiration of two years after such registration the said applicant shall be permitted to take the examination prescribed by the state board of pharmacy for assistant pharmacists upon the conditions imposed by the state board of pharmacy. [1907, ch. 182, § 15; R. C. 1905, §§ 308, 309; 1903, ch. 135, §§ 1, 2.]

§ 490. Certificate. Issuance of. The board shall cause to be issued to each pharmacist or assistant pharmacist whom it finds entitled thereto a certificate showing the date of issue and the fact that the person to whom issued is a registered pharmacist or assistant pharmacist, as the case may be, his or her residence. The certificate shall be signed by a majority of the members of the board. Such certificate shall entitle the holder to act in the capacity stated therein for a period of one year, but may be renewed or the place of business designated therein be changed as hereinafter provided. [1907, ch. 182, § 16; R. C. 1905, § 307; 1890, ch. 108, § 9; R. C. 1895, § 288; 1903, ch. 136.]

§ 491. Register. The secretary of the board shall keep a record or register in which in addition to such other matters as the board may require it to show he shall register each certificate issued and the facts appearing in such certificate and appropriate spaces shall be reserved in which to record any subsequent cancellation or renewal thereof or change therein. [1907, ch. 182, § 17.]

§ 492. Teaching of pharmacy. No member of the board of pharmacy shall teach pharmacy in any of its branches, unless it be as a teacher in a public capacity, in a college of pharmacy, or to an apprentice duly registered with him. [1907, ch. 182, § 18.]

§ 493. Compensation of board. The members of the board of pharmacy shall each be paid the sum of five dollars per diem for every meeting of the board which they attend, and all legitimate and necessary expenses incurred in attending the meetings of the board or in performing other official duties. Such expense shall be paid only from the monies received by the board under the provisions of this article, and no part of the salaries or other expenses of the board shall be paid from or out of the state treasury. Any monies remaining after the payment of the salaries and expenses herein provided for shall be held by the treasurer as a special fund for meeting the expenses of the board and of the annual meeting and report of the North Dakota pharmaceutical association, and such other necessary expenses that may be incurred by said association. [1907, ch. 182, § 19; R. C. 1905, § 311; 1890, ch. 108, § 11; 1893, ch. 80, § 5; R. C. 1895, § 290.]

§ 494. Annual report. The board shall in its annual report render to the governor of the state, and the North Dakota pharmaceutical association an account of all monies received and disbursed by it. [1907, ch. 182, § 20; R. C. 1905, § 311; 1890, ch. 108, § 11; 1893, ch. 80, § 5; R. C. 1895, § 290.]

As to the time of making reports to the governor and the contents thereof, see sections 95, 97, 98, 633.

§ 495. Renewal fees. Every registered pharmacist, and every registered assistant pharmacist who desires to retain his registration on the books of the board of pharmacy in this state shall annually before the expiration of the first year's registration and on or before the first day of March in each year, pay to the secretary of the state board of pharmacy a renewal fee to be fixed by the board, in no case exceeding three dollars, in return for which fee a renewal certificate shall be issued. In case the certificate holder fails to pay the renewal fee as above provided within the time provided, then the secretary shall mail to the certificate holder a notice addressed to his last known place of residence, notifying the delinquent of his failure to obtain a renewal certificate. The certificate holder may then within thirty days after the date of mailing of said notice procure a renewal certificate upon payment of five dollars, but if he fails to do so his original certificate or renewal certificate, as the case may be, shall become void and the registry thereof be cancelled. The board may, however, on application by the delinquent certificate holder authorize the issuance to him of a new certificate without examination upon payment of five dollars if satisfied that the applicant is a proper person to receive the same. [1907, ch. 182, § 21; R. C. 1905, § 310; 1890, ch. 108, § 10; 1893, ch. 80, § 4; R. C. 1895, § 289.]

§ 496. Change of residence. Record of. Every registered pharmacist, and assistant pharmacist shall within thirty days after changing his place of business as designated on the books of the board of pharmacy, notify the secretary of the board of his new place of business, and shall accompany the said notice with a fee of fifty cents. Upon receipt of said fee and the notice of change of place of business, the secretary shall make the necessary change in the register and issue a receipt for the said fee to the person sending it. [1907, ch. 182, § 22.]

§ 497. Physicians' prescriptions to be filed and preserved. Every registered pharmacist shall file, or cause to be filed, all physicians' prescriptions, or a copy thereof, compounded or dispensed in his pharmacy or store; they shall be preserved for at least two years, and he may furnish a copy of any prescription to the party presenting it on the request of such party only. [1907, ch. 182, § 23.]

§ 498. False registration. Penalty. Any person who shall procure or attempt to procure registration, for himself or any other person under this act by making or causing to be made any false representations, or who shall falsely or fraudulently represent himself to be registered shall be deemed guilty of a misdemeanor and in addition to the penalty imposed by the court on conviction, shall, if he be a registered pharmacist or registered assistant pharmacist, have his registration cancelled. [1907, ch. 182, § 24.]

§ 499. Who exempt. Nothing in this article shall apply to, or interfere with any practitioner of medicine who is duly registered, as such, by the state board of medical examiners of this state, with supplying his own patients, as their physician, with such remedies as he may desire, nor does this article apply to the exclusively wholesale business of any dealer, nor do general dealers come under the provisions of this article so far as it relates to the keeping for sale of proprietary medicines in original packages and the simple household remedies; nor does this article apply to registered or copyrighted proprietary medicines registered in the United States patent office, nor to the manufacture of proprietary remedies or the sale of the same in original packages, by persons other than pharmacists, and this article shall not be construed to prohibit the sale, dispensing or compounding of drugs

or medicines or physicians' prescriptions in any established hospital to the patients therein by or under the direct supervision of a resident interne physician of such hospital. [1907, ch. 182, § 25.]

§ 500. Penalty. Any proprietor of a pharmacy, who not being a registered pharmacist, shall fail or neglect to place in charge of such pharmacy a registered pharmacist, or any such proprietor who shall by himself, or any other person permit the compounding or dispensing of prescriptions, or the vending of drugs, medicines or poisons, in his store or place of business, except by or in the presence and under the direct supervision of a registered pharmacist, or any person not being a registered pharmacist, who shall take charge of or act as manager of such pharmacy, or store, or who, not being a registered pharmacist, retails, compounds, or dispenses drugs, medicines or poisons, shall be guilty of a misdemeanor. [1907, ch. 182, § 26.]

§ 501. Temporary certificate. How obtained. The secretary of the state board of pharmacy, or any member of said board on being requested by the secretary in writing may examine applicants orally or in writing, and issue a temporary certificate to practice pharmacy, which shall authorize such practice and be valid until the next meeting of the board. Only one temporary certificate shall be issued to the same applicant, and no temporary certificate shall be issued to any person whose application has been acted on by the board. The applicant for a temporary certificate shall pay to the person making the examination the same fee as provided by this act for an examination by the board, and such fees when paid shall be for the benefit of the said board and shall be delivered to the secretary by the person making the examination. [1907, ch. 182, § 27.]

§ 502. Record of poisons. Every person who shall sell, furnish or deliver to another at retail any arsenic or its preparations, corrosive sublimate, white precipitate, red precipitate, biniodide of mercury, cyanide of potassium, hydrocyanic acid, strychnia and all other poisons, vegetable alkaloids and their salts, essential oil of bitter almonds, opium or its preparations, except paregoric and other preparations of opium with less than two grains to the ounce, shall before delivering the same, enter, or cause to be entered in a book kept for that purpose, the date of sale, the name and address of the person to whom sold or delivered, the name, quantity and quality of the articles sold and the name of the dispenser, and shall affix to the bottle, box or vessel or receptacle containing the same, a label showing the name of the contents, the word "poison" and his name and place of business. [1907, ch. 182, § 28.]

§ 503. Same. Every person who shall sell, furnish or deliver to another at retail, any aconite, belladonna, colchicum, conium, formaldehyde, nuxvomica, henbane, savin, ergot, cotton root, cantharides, creosote, digitalis and their pharmaceutical preparations, croton oil, chloroform, chloral hydrate, sulphate of zinc, mineral acids, carbolic acid and oxalic acid, shall before delivering the same affix to the bottle, box, vessel or package containing the same, a label showing the name of the contents, the word "poison" and his name and place of business; provided, however, that any storekeeper may sell the drugs known as formaldehyde and paris green in unbroken packages. [1907, ch. 182, § 29.]

§ 504. Cocaine. No sale of cocaine may be made by any person except upon the written prescription of a licensed physician, dentist or veterinary surgeon, and any wilful violation of this section shall be punished on conviction as provided in this article for violations thereof, and in addition, if the person found guilty shall be a registered pharmacist or registered assistant pharmacist, his registration and license may be cancelled. [1907, ch. 182, § 30.]

§ 505. Penalty for violation. Any person who shall willfully violate any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall, unless otherwise provided in this article, be punished by a fine of not less than fifty dollars and not more than two hundred

dollars together with the costs of the prosecution, and in all cases of prosecution under this article, the costs of securing the evidence, including the costs of traveling and other necessary expenses of members of the board of pharmacy or any inspector appointed by the said board, in obtaining the evidence and securing the conviction, shall be deemed to be costs of the prosecution and taxed to the defendant. [1907, ch. 182, § 31.]

§ 506. Costs in prosecution. All costs and expenses collected in prosecutions under this article except court costs, fees of officers and witness fees shall be paid to the secretary of the state board of pharmacy. [1907, ch. 182, § 32.]

ARTICLE 17.—STATE BOARD OF DENTAL EXAMINERS.

R. C. 1905, §§ 313-322, are evidently superseded by the provisions in this article.

§ 507. Board. How constituted. The state board of dental examiners, consisting of five members, heretofore created, shall continue to be the state board of dental examiners. Upon the expiration of each member's term of office, the governor shall appoint his successor, who shall hold office for five years and until his successor is appointed and qualified. All vacancies in such board shall be filled by appointment by the governor. No person shall be eligible to appointment on such board who is not a licensed dentist in this state. The board shall at all times include three members who shall have been appointed on the recommendation of the North Dakota Dental Association, provided such recommendation be made at least ninety days before the term of a member expires. Otherwise the governor may appoint without such recommendation. Every vacancy, caused otherwise than by the expiration of a term shall be filled in the same manner. If the association fails to recommend a candidate for such expired term within thirty days after the vacancy occurs, the governor may appoint without such recommendation. If a member shall be absent from two consecutive regular meetings, the board may declare a vacancy to exist. The association shall recommend not less than two candidates for each appointment. [1911, ch. 280, § 1; R. C. 1905, § 314; 1890, ch. 58, § 2; R. C. 1895, § 293.]

One who was former incumbent of office cannot be *de facto* officer, upon his removal from state. *Chandler v. Starling*, 19 N. D. 144, 121 N. W. 198.

§ 508. Officers. Meetings. Compensation. Report. The board shall elect from its members a president and a secretary and shall have a seal. It shall hold regular meetings at such places as it may designate on the second Tuesday of the months of January and July of each year, and special meetings at its pleasure. Out of the funds received by the board under the provisions of this article, each member of the board shall receive as compensation for his services the sum of ten dollars for each day that he is actually engaged in the duties of his office, and five cents per mile for distance necessarily traveled in going to and returning from the meetings of the board, and other expenses, and out of the same fund the secretary shall be paid an annual salary equal to fifteen per cent of all funds received by the board during the year. No part of the salary of the secretary or the expenses or compensation of the board shall be paid out of the state treasury except printing of annual report. All amounts received in excess of said compensation and traveling expenses of the members of the board and the salary of the secretary as above provided for, shall be held by the secretary of the board as a special fund for defraying other necessary expenses of the board and for carrying out the provisions of this article. The secretary of the board shall from time to time give such bond for the faithful discharge of his duties as custodian of the funds of the board as the board may direct. The board shall make an annual report of its proceedings to the governor on or before the fifteenth day of November in each year, which report shall contain an account of all moneys received and disbursed by the board dur-

ing the preceding year. [1911, ch. 280, § 2; R. C. 1905, §§ 315, 319; 1890, ch. 58, §§ 3, 8; R. C. 1895, §§ 294, 298.]

As to time of making reports to the governor and the contents thereof, see sections 95, 97, 98, 633.

§ 509. Dentistry defined. Inhibition. Exception. Every person shall be deemed to be practicing dentistry within the meaning of this section, who shall use the word or letters "dentist" or "D. D. S." or any other letters or title in connection with his name, which in any manner represents him as engaged in the practice of dentistry, or who shall advertise, or permit it to be done, by sign, card, circular, hand bill, newspaper, or otherwise, that he can or will attempt to perform dental operations of any kind, treat diseases or lesions of the human jaw or replace lost teeth, by artificial ones, or attempt to correct malposition thereof, or who shall for a fee, salary or other reward, paid or to be paid, either to himself or to another person, perform dental operations of any kind, treat diseases or lesions of the human jaw or teeth, or replace lost teeth by artificial ones, or attempt to correct malposition thereof. This section shall not apply to students enrolled in and regularly attending any dental college. Their acts, done under the direct supervision of a preceptor or a licensed dentist, shall not be subject to the provisions of this section, nor prohibit persons from performing merely mechanical work on inert matter in a dental office or laboratory. Nor shall this section apply to those who upon invitation of a dental society shall perform dental operations of any kind for education purposes. Nor prevent any duly licensed physician or surgeon from extracting teeth. [1911, ch. 280, § 3; R. C. 1905, § 318; 1890, ch. 58, § 7; R. C. 1895, § 297.]

§ 510. Examination. License. Revocation. Assumed name. Any person not already a licensed dentist in this state at the time of going into effect of this article, desiring to practice dentistry therein, shall apply to the secretary of the board for examination, and pay fee of twenty-five dollars for the first examination and ten dollars for each subsequent examination, which fees shall in no case be refunded. At the next regular meeting of the board held after such application is made, the applicant shall present himself for examination and produce a diploma issued to him by some dental college of good standing, of which standing the board shall be the judges. No person shall be permitted to take such examination unless he shall prove to the satisfaction of the board that he has had a preliminary general education equivalent to at least four years of study in some high school or academy in the state of North Dakota having a four-year course beyond that of an elementary school; and from and after the first day of January, 1914, every applicant for such examination shall in addition to the foregoing requirements, present to the board satisfactory evidence of having successfully completed a preliminary course of study equivalent to at least one year's work in the college of liberal arts of the University of North Dakota, provided, however, that the privileges of such examination are not denied an applicant therefor who holds a license to practice dentistry in some other state than North Dakota prior to the passage of this act. No holder of a degree or diploma from a foreign country or province which does not accept for examination the holder of a license to practice dentistry issued by the state board of dental examiners of this state shall be eligible for such examination. The board shall give the applicant such an elementary, theoretical, and practical examination as to thoroughly test his fitness for the practice of dentistry, and include therein the subjects of anatomy, physiology, chemistry, materia medica, therapeutics, metallurgy, histology, pathology, and operative, surgical and mechanical dentistry. If the applicant successfully passes the examination, he shall forthwith be registered upon the records of the board as a licensed dentist, and shall receive a certificate of registration signed by all members of the board, whereby he shall be authorized to practice dentistry in said state for a period of one year from the date of such certificate and as long as such

certificate shall be duly renewed as hereinafter provided. Provided, that any dentist who, for five years or more, has been in legal practice in another state of the United States having and maintaining a standard of laws regulating the practice of dentistry equal to that of this state and is a reputable dentist of good moral character, and is desirous of removing to this state and deposits in person with the board a certificate from the examining board of the state in which he is registered, certifying to the fact of his registration and of his good moral character and professional attainments, and from the state dental society a written recommendation that he be admitted by reciprocity, may, at the discretion of the board, upon payment of a fee of fifty dollars be granted a license to practice in this state without theoretical examination. The board upon hearing, after twenty days' notice thereof, may revoke the license of anyone who, with intent to deceive the public shall practice dentistry under an assumed name.

It shall be no defense for a person prosecuted for practicing dentistry under one name, without a license, that he shall have been licensed under a different name, unless it be shown that such practice was without intent to deceive.

Any dentist may have his license revoked or suspended by the board for any of the following causes:

(1) His conviction of a felony or misdemeanor involving moral turpitude, in which case the record of conviction, or certified copy thereof certified by the clerk of court, or by the judge in whose court the conviction is had, shall be conclusive evidence of such conviction.

(2) For unprofessional conduct, or for gross ignorance or inefficiency in his profession. Unprofessional conduct shall mean the obtaining of any fee by fraud or misrepresentation, habitual intemperance, gross immorality.

The proceedings to revoke or suspend any license under the first subdivision hereof, must be taken by the board on a receipt of a certified copy of the record of conviction. The proceedings under the second subdivision hereof may be taken upon the information of another. All accusations must be in writing, verified by some person familiar with the facts therein charged, and three copies thereof must be filed with the secretary of the board. Upon receiving the accusation, the board shall, if it deem the complaint sufficient, make an order setting the same for hearing at a specified time and place, and the secretary shall cause a copy of the order and the accusation to be served upon the accused, by delivery of the same to him personally, at least ten (10) days before the day appointed in the order for such hearing.

The accused must appear at the time appointed in the order and answer the charges and make his defense to the same, unless for sufficient cause the board assign another day for that purpose. If he do not appear after due service upon him of the accusation and order as aforesaid, the board may proceed and determine the accusation in his absence. If the accused pleads guilty or refuses to answer the charges, or upon the hearing thereof the board shall find them or any of them, true, it may revoke his license or suspend it. The board and the accused may have the benefit of the services of counsel duly licensed to practice law in this state. The board shall have the authority to administer oaths, to summon witnesses and to take testimony, by deposition or otherwise upon its hearing, and when the board or the accused shall desire to secure the presence or testimony of any person before the board, said board or such accused may procure subpoenas from the clerk of the district court of the county wherein such hearing is to be had, and the clerk of such court is hereby directed to issue such subpoenas in the name of the state commanding the persons whose names shall be given to such clerk by the board or by such accused person, to appear before the board at a certain time and place fixed by the board for such hearing and then and there to testify upon such hearing. If any person so commanded to appear

and testify shall fail or refuse to obey such subpoena, he shall be dealt with by said district court in the same manner and to the same effect as though such subpoena had commanded such person to appear and testify in a cause on trial in said court. Such person so commanded to appear and testify shall be entitled to the same fees as witnesses in a district court, and such subpoena shall be served in the manner provided by law for the service of subpoenas for trials in said courts and shall be substantially the same in form. [1911, ch. 280, § 4; R. C. 1905, § 317; 1890, ch. 58, § 5; R. C. 1895, § 296.]

Judicial review of action in respect to licenses of dentists. 20 L.R.A. 355.

Validity of restrictive agreement, ancillary to sale of practice of dentist as affected by territorial scope. 24 L.R.A.(N.S.) 927.

Validity of contract restraining practice of dentists' profession after expiration of term of service with another. 26 L.R.A.(N.S.) 961.

Determining character or standing of dental college for purpose of license statutes. 22 L.R.A.(N.S.) 735.

§ 511. Record of certificate. Fees. Every holder of a certificate of registration as a dentist issued under the authority of this article, shall within ninety days after its issuance file the same for record in the office of the clerk of the district court in the county where the holder resides, and if he changes his residence to another county he shall file said certificate or a certified copy of the record thereof, in the office of the clerk of the district court of such county before practicing therein. The clerk's fee for recording a certificate or a certified copy thereof shall be fifty cents, and for issuing a certified copy one dollar. The fee of the board for issuing a duplicate certificate shall be one dollar. Every dentist in this state admitted to practice under former laws shall be subject to the provisions of this section; provided, that every such dentist must file his certificate as above provided within ninety days after this article goes into effect. [1911, ch. 280, § 5.]

§ 512. Renewal of certificate. Annual fee. Certificate as evidence. No certificate or renewal thereof shall be valid for more than one year from and after the date of its issuance or renewal, and every registered dentist shall on or before the first day in July in each year, if he desires to have his certificate renewed pay to the board a fee of two dollars for the renewal of such certificate, and thereupon the board shall issue to him a renewal thereof. The board may, upon hearing and after twenty days' notice revoke the license of any registered dentist, in case of default in the payment of such annual fee, but the payment thereof on or before the time of hearing, with such additional sum not exceeding five dollars as may be fixed by the board, shall excuse such default and entitle the holder to a renewal of his certificate. Such fee may be collected by the board by suit. All certificates and renewals thereof shall be prima facie evidence of the right of the holder to practice dentistry in this state during the period for which they were issued. Any person receiving such certificate or renewal thereof shall expose conspicuously the same in his place of business. [1911, ch. 280, § 6; R. C. 1905, § 316; 1890, ch. 58, § 4; R. C. 1895, § 295.]

§ 513. Power of board to make rules. Records. The board shall have power to make reasonable rules and regulations for carrying into effect the provisions of this article. Three members shall constitute a quorum, but a smaller number may adjourn from time to time. The board shall keep full and complete minutes of its proceedings and its receipts and disbursements and a full and accurate list of all persons licensed and registered by it, and such records, together with a list of licensed and registered dentists, shall be public records and shall at all reasonable times be open to public inspection. Such records or a transcript of the same, or any part thereof, under the seal of the board, duly certified by the secretary thereof, shall be competent evidence of the facts therein stated. A certificate of the secretary under the seal of the board stating that any person is or is not a registered dentist shall be prima facie evidence of such fact. [1911, ch. 280, § 7; R. C. 1905, § 315; 1890, ch. 58, § 3; R. C. 1895, § 294.]

§ 514. Unlawful to practice without license. Penalty for violation of this article. It shall be unlawful for any person to practice dentistry in this state without having a license so to do from the state board of dental examiners, evidenced by a certificate of renewal thereof as hereinbefore provided; or after the license of such a person has been revoked. Any person who shall practice dentistry in this state, either as a proprietor, employe or assistant, shall keep the annual renewal of his certificate in open view in his operating room. No dentist, proprietor, partnership, association or corporation, owning, running, operating or controlling any rooms or room, office or dental parlors, where dental work of any kind is done or provided for or contracted for, shall employ, keep or retain, contrary to the provisions of this article, any unlicensed dentist, or person doing, or attempting to do, any dental work. Any person guilty of a violation of any of the provisions of this article is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than three hundred dollars or by imprisonment in the county jail not less than ten days, nor more than thirty days, or by both, in the discretion of the court. [1911, ch. 280, § 8; R. C. 1905, §§ 313, 320; 1890, ch. 58, §§ 1, 9; R. C. 1895, §§ 292, 299.]

Information which charges that accused did unlawfully and wilfully practice dentistry without license is insufficient. *State v. Carlisle*, 22 S. D. 529, 118 N. W. 1033.

Fact that acts of dentistry were performed by accused, in pursuit of clinical advantages under supervision of licensed dentist is no defense, unless he were at time a student enrolled in and regularly attending dental college. *State v. Carlisle*, 30 S. D. 475, 139 N. W. 127.

Right of unlicensed dentist to recover for services rendered by licensed one. 2 L.R.A. (N.S.) 392.

Practice of dentistry without license as a continuing offense. 42 L.R.A. (N.S.) 768.

Instigating illegal practice by dentist as a defense to prosecution. 30 L.R.A. (N.S.) 954.

Character and extent of relief by mandamus against board of dental examiners. 7 L.R.A. (N.S.) 528.

§ 515. Penalty for false pretense. Any person who shall knowingly or falsely claim or pretend to have or hold a certificate of registration, or renewal thereof from the state board of dental examiners, or a license to practice dentistry in this state, or who shall falsely or with intent to deceive the public, claim or pretend to be a graduate, from any dental college, not being such graduate, or to be the holder of any diploma or degree, not being such holder, is guilty of a misdemeanor and upon conviction, shall be punishable as provided in section 514. [1911, ch. 280, § 9; R. C. 1905, § 321; 1890, ch. 58, § 10; R. C. 1899, § 300.]

ARTICLE 18.—PRACTICE OF OSTEOPATHY.

§ 516. State board of osteopathic examiners, how appointed. Qualifications. Vacancies, how filled. Within thirty days after the passage of this act [sections 516-519 herein] the governor shall appoint a state board of osteopathic examiners, consisting of three practicing doctors of osteopathy, graduates of reputable schools of osteopathy and resident practitioners of the state. The members of said board shall hold their offices for a term of three years and until their successors are appointed and qualified, except the first appointees, who shall serve for one, two and three years, respectively, in the order of their appointment. All vacancies in the board shall be filled by the governor by appointment, the appointees to such vacancies to possess the qualifications above required for members of said board. [1909, ch. 172, § 1.]

§ 517. Officers. Meetings for examinations. Expenses of board. Quorum. Record of licenses. Such board shall elect a president, a secretary and a treasurer and shall have a seal. The president and secretary shall have the power to administer oaths. The board shall hold regular meetings for examinations at such places as it may designate on the first Tuesdays of January

and July of each year, and such special meetings as it may from time to time appoint. The board shall by appropriate rules and regulations make provision for the payment of the expenses of its members, including per diem and mileage, but all such expenses shall be paid out of application fees. Two members of the board shall constitute a quorum and no license to practice osteopathy shall be granted except upon an affirmative vote of at least two such members. The board shall keep a record of all its proceedings and also a register of applicants for license, showing the name of each, his age, time spent in the study of osteopathy, the names and location of the institutions from which such applicant holds the degree of doctor of or diplomate in, osteopathy, together with the date of his diploma. Such register shall also show whether the applicant was licensed or rejected. Such record and register shall be prima facie evidence of the matters therein recorded. [1909, ch. 172, § 2.]

§ 518. Examinations, how conducted. Licenses, how granted and revoked. All persons before commencing the practice of osteopathy in this state shall apply to the state board of osteopathic examiners for a license so to do, and such applicant shall submit to an examination in the following subjects: Anatomy, histology, physiology, physiological chemistry, toxicology, diagnosis, pathology, obstetrics, gynecology, surgery, principles and practice of osteopathy, medical jurisprudence and such other subjects as the board may require, and shall present a diploma from a reputable school of osteopathy, wherein the course of instruction was not less than twenty months prior to the year 1907, and not less than three years of nine months each since said year. And the board shall cause such examination to be practical and scientific and sufficient to test the applicant's fitness to treat the diseases of the human body according to the theory of osteopathy, which shall not include the prescribing of internal medicine. If the applicant passes the prescribed examination by answering correctly not less than seventy-five per cent of the questions propounded to him in each subject, the board shall grant him a license to practice osteopathy in this state, which license shall be signed by the president and secretary of the board and attested by the seal thereof. The fee for such examination shall be twenty dollars, payable in advance, which shall be applied to the payment of the expenses of the board and of such examination. The board may, in its discretion, permit an unsuccessful applicant to take a second examination within one year after rejection, without the payment of an additional fee. The board may also, in its discretion, grant a license for the fee above specified, without examination, to applicants examined and licensed by the legally constituted boards of other states and territories of the United States, or the District of Columbia, maintaining standards of equal grade with those required of this article. The board may refuse or revoke a license for dishonorable, unprofessional or immoral conduct, chronic or persistent inebriety, or mental aberration, excessive use of narcotics, or the practice of criminal abortion or for violating the provisions of this section. The accused shall be furnished with a copy of the complaint and be given a hearing before the board in person, or by attorney. [1909, ch. 172, § 3.]

Application to osteopaths of statutes regulating practice of medicine. 3 L.R.A. (N.S.) 763; 24 L.R.A. (N.S.) 103; 25 L.R.A. (N.S.) 1297.

§ 519. License to be recorded. The person receiving a license shall file the same for record in the office of the register of deeds of the county wherein he resides and the register of deeds shall record the same in like manner as other instruments required to be recorded. [1909, ch. 172, § 4.]

§ 520. Present practitioners. The board shall acknowledge all osteopathic diplomas of doctors of osteopathy who were residents in the state of North Dakota and practicing under chapter 105 of the laws of 1897, the same being section 323 of the revised codes of North Dakota for 1905, at the time of the passage of this act [§§ 516-519, 521-523 herein], and issue a license to

the applicant upon payment of five dollars, without requiring of applicant to pass the state board examination; provided, the board is satisfied as to the good character of the applicant. [1911, ch. 199; 1909, ch. 172, § 5.]

Laws 1909, ch. 172, § 9, repealed R. C. 1905, § 323, which provided as follows: "Any person having a diploma regularly issued by the American School of Osteopathy, of Kirksville, Missouri, or any other legally chartered and regularly conducted school of osteopathy, who shall have been in personal attendance as student in such school for at least four terms of not less than five months each before graduation, shall be authorized to treat diseases of the human body according to such system, after having filed such diploma for record with the clerk of the county court of the county in which such person proposes to practice, and having filed with such clerk an affidavit that the diploma is genuine, and that he or she is the person to whom the same was issued, and that all the provisions of this article were fully complied with before the issuing of such diploma; whereupon the clerk shall record such diploma in a book to be provided by him for that purpose, and shall indorse upon such diploma the date of filing and recording the same, for which he shall receive from such person a fee of one dollar. Any person who shall practice or pretend or attempt to practice the system, method or science of osteopathy in treating diseases of the human body without having complied with the provisions of this section, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum of not less than fifty nor more than one hundred dollars for each offense; provided, that nothing in this section shall be construed as prohibiting any legally authorized practitioner of medicine or surgery in this state from curing or relieving disease with or without drugs, or by any manipulation by which any disease may be cured or alleviated."

§ 521. Permits. An applicant for a license may upon payment to the secretary of the fee of twenty dollars be granted a permit by the board to practice osteopathy until the next regular examination, but only one such permit shall be granted to the same applicant. [1909, ch. 172, § 6.]

§ 522. Who exempt from the provisions of this article. This act shall not apply to doctors of osteopathy in actual consultation from other states or territories, or the District of Columbia. [1909, ch. 172, § 7.]

§ 523. Penalty for practicing without a license. Any person practicing osteopathy without a license or permit, or who, without complying with the provisions of this act shall advertise or attempt to practice as an osteopath or who shall use any of the terms or letters "osteopath," "osteopathist," "osteopathy" or "D. O." or any other title or titles under such circumstances or in such a manner as to indicate the belief that he is engaged in the practice of osteopathy, or otherwise violates the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punishable by a fine of not less than fifty dollars and not more than five hundred dollars for each offense. Nothing in this section shall be construed so as to prohibit gratuitous assistance to a sick or injured person in case of emergency. [1909, ch. 172, § 8.]

ARTICLE 19.—STATE BOARD OF EXAMINERS IN OPTOMETRY.

§ 524. Defined. The practice of optometry is defined as follows, namely: The employment of subjective and objective mechanical means to determine the accommodative and refractive states of the eye and the scope of its functions in general, and the applying of lenses as correctives. [R. C. 1905, § 324; 1903, ch. 130, § 1; 1905, ch. 142, § 1.]

§ 525. Unlawful to practice without certificate. It shall be unlawful for any person to practice optometry in the state of North Dakota unless he shall first have obtained a certificate of registration. [R. C. 1905, § 325; 1903, ch. 130, § 2; 1905, ch. 142, § 2.]

§ 526. Board created. There is hereby created a board, whose duty it shall be to carry out the purposes and enforce the provisions of this article, and shall be styled "North Dakota State Board of Examiners in Optometry." Said board shall be appointed by the governor and shall consist of five resident opticians who are members of the North Dakota optical association, engaged in the actual practice of optometry. Each member of said board shall hold office for a term of three years, and until his successor is appointed.

Appointments to fill vacancies caused by death, resignation or removal shall be made for the residue of such term by the governor. The members of said board, before entering upon their duties, shall respectively take and subscribe to the oath required to be taken by other state officers, and said board shall have a common seal. [R. C. 1905, § 326; 1903, ch. 130, § 3.]

§ 527. Governor to appoint officers. Meetings. The governor shall appoint one of the members of said board president, and one member secretary, who severally shall have the power during their term of office to administer oaths and take affidavits, certifying thereto under their hand and the seal of the board. Said board shall meet at least once in each year at a place designated by the board, and in addition thereto, whenever and wherever the president and secretary thereof shall call a meeting. A majority of said board shall at all times constitute a quorum. The secretary of said board shall keep a full record of the proceedings of said board, which records shall at all reasonable times be open to public inspection. Such records shall also contain a registry list of all persons registered by said board, together with renewals and revocations of licenses, which record shall constitute the official register of all persons licensed to practice optometry in this state. [R. C. 1905, § 327; 1903, ch. 130, § 4; 1905, ch. 142, § 3.]

§ 528. Examinations. Every person before beginning to practice optometry in this state shall pass an examination before said board of examiners. Such person shall make written application to said board of examiners and such application shall be accompanied by the affidavit of two freeholders of this state, to the effect that the person is of good moral character and a resident of this state. Such person shall also furnish to the board satisfactory proof that he is a graduate of some school of optometry, to be approved by the board, or that he has practiced optometry for two full years as a student practitioner under the supervision of a regular optician or has practiced as a regular optician for two full years outside this state. Such examination shall be confined to such knowledge as is essential to the practice of optometry. Any person having signified to said boards his desire to be examined by them shall appear before them at such time and place as they may designate, and before beginning such examination shall pay to the secretary of said board, for the use of said board, the sum of ten dollars, and if he shall successfully pass such examination, shall pay to said secretary, for the use of said board, a further sum of five dollars on the issuance to him of a certificate. All persons successfully passing such examination shall be registered in the board register, which shall be kept by said secretary, as licensed to practice optometry and shall receive a certificate of such registration, to be signed by the president and secretary of said board. [R. C. 1905, § 328; 1903, ch. 130, § 5; 1905, ch. 142, § 4.]

§ 529. Fees. Every person who is residing and engaged in the practice of optometry in the state of North Dakota at the time of the taking effect of this article, shall within six months thereafter, file an affidavit in proof thereof with said board, who shall make and keep record of such person, and shall for the consideration of the sum of three dollars, issue to him a certificate of registration. [R. C. 1905, § 329; 1903, ch. 130, § 6.]

§ 530. Who exempt from provisions of section 528. All persons entitled to a certificate of registration under the full provisions of section 529 shall be exempt from the provisions of section 528. [R. C. 1905, § 330; 1903, ch. 130, § 7.]

§ 531. Fee for filing certificate. Such board shall be entitled to a fee of one dollar for the reissue of any certificate. [R. C. 1905, § 331; 1903, ch. 130, § 8; 1905, ch. 142, § 5.]

§ 532. Penalty. Any person entitled to a certificate, as provided for in section 529, who shall not within six months after the passage thereof make written application to the board of examiners for a certificate of registration,

accompanied by a written statement, signed by him, and duly verified before an officer authorized to administer oaths within this state, fully setting forth the grounds upon which he claims such certificate, shall be deemed to have waived his right to a certificate under the provisions of said section. Any failure, neglect or refusal on the part of any person holding such certificate to file the same for record as hereinbefore provided, for six months after the issuance thereof, shall forfeit the same. [R. C. 1905, § 332; 1903, ch. 130, § 9.]

§ 533. Certificate to be displayed. Every person to whom a certificate of examination or registration is granted shall display the same in a conspicuous part of his office wherein the practice of optometry is conducted. [R. C. 1905, § 333; 1903, ch. 130, § 10.]

§ 534. Compensation of board. Out of the funds coming into the possession of said board, each member thereof may receive as compensation, the sum of five dollars for each day actually engaged in the duties of his office and mileage at three cents per mile for all distance necessarily traveled in going to and coming from the meetings of the board. Said expenses shall be paid from the fees and assessments received by the board under the provisions of this article, and no part of the salary or other expenses of the board shall ever be paid out of the state treasury. All moneys received in excess of said per diem allowance and mileage, as above provided for, shall be held by the secretary as a special fund for meeting expenses of said board and carrying out the provisions of this article, and he shall give such bonds as the board shall from time to time direct; and the said board shall make an annual report of its proceedings to the governor on the first Monday of December of each year, which report shall contain an account of all moneys received and disbursed by them pursuant to this article. All surplus moneys shall go to the state school fund. [R. C. 1905, § 334; 1903, ch. 130, § 11.]

As to the time of making reports to the governor and as to the contents thereof, see sections 95, 97, 98, 633.

§ 535. Annual license fee. Every registered optician shall in every year after 1903, pay to the said board of examiners the sum of two dollars as a license fee for each year. Such payment shall be made prior to the first day of April in each and every year, and in case of default in such payment, by any person, his certificate may be revoked by the board of examiners, upon twenty days' notice of the time and place of considering such revocation. But no license shall be revoked for such nonpayment if the person so notified shall pay before or at such time of consideration his fee and such penalty as may be imposed by said board; provided, that said board may impose a penalty of five dollars and no more on any one person so notified, as a condition of allowing his license to stand; provided, further, that said board of examiners may collect any such dues by suit. [R. C. 1905, § 335; 1903, ch. 130, § 12.]

§ 536. Certificate revoked, when. Said board shall have power and must revoke any certificate of registration granted by it under this article, for conviction of crime, habitual drunkenness, or the excessive use of intoxicating liquors or narcotic drugs for six months immediately before a charge is made, contagious or infectious disease, gross incompetency or for advertising himself as an eye specialist or doctor, or member of this board, or for designating himself in any manner as other than an optician or optometrist, skilled in the art of optometry; provided, that before any certificate shall be so revoked the holder thereof shall have notice in writing from the secretary of the charge or charges against him and at a day specified in said notice, at least five days after the service thereof, be given a public hearing, and have opportunity to produce testimony in his behalf and to confront the witnesses against him. Any person whose certificate has been so revoked may after the expiration of sixty days apply to have the same regranted,

and the same shall be regranted him upon a satisfactory showing that the disqualification has ceased. [R. C. 1905, § 336; 1903, ch. 130, § 13; 1905, ch. 142, § 6.]

Grounds for revoking physician's license. 8 L.R.A.(N.S.) 585; 17 L.R.A.(N.S.) 439; 30 L.R.A.(N.S.) 783.

Statute of limitations as a defense to revocation of physician's license. 11 L.R.A.(N.S.) 557.

§ 537. Penalty. Any person who shall violate any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction may be fined not less than twenty dollars, nor more than one hundred dollars, or be confined not less than one month nor more than three months in the county jail. And all fines thus received shall be paid into the common school fund of the county in which such conviction takes place. [R. C. 1905, § 337; 1903, ch. 130, § 14.]

§ 538. Justices of peace to have jurisdiction. Justices of the peace shall have jurisdiction of violations of this article. It shall be the duty of the respective state's attorneys to prosecute all violations of this article. [R. C. 1905, § 338; 1903, ch. 130, § 15.]

§ 539. Who exempt. Nothing in this article shall be construed so as to require physicians and surgeons authorized to practice under the laws of the state of North Dakota to be registered under the provisions of this article, but such persons shall be deemed to be regularly licensed to practice optometry by virtue of their license to practice medicine and surgery; nor to apply to persons who sell spectacles or eyeglasses or any other article of merchandise without attempting to practice optometry as in this article defined, nor to student practitioners under the supervision of registered opticians. [R. C. 1905, § 339; 1903, ch. 130, § 16; 1905, ch. 142, § 7.]

ARTICLE 20.—STATE BOARD OF EMBALMERS.

§ 540. Governor to appoint. The governor shall appoint the president and secretary of the state board of health, and three persons who shall be practical and practicing embalmers in this state, who shall constitute a state board of embalmers. One of the embalmers so appointed shall hold office for two years, one for three years, and one for four years, unless sooner removed. Appointments to fill vacancies caused by death, resignation or removal before the expiration of terms, shall be made for the residue of such terms by the governor, and all the appointments to fill vacancies caused by expiration of terms shall be made in same manner and shall be for a period of four years. [R. C. 1905, § 340; 1905, ch. 111, § 1.]

§ 541. Oath of office. The members of said board, before entering upon their duties shall respectively take and subscribe the oath required by other state officers, which shall be filed in the office of the secretary of state, who is hereby authorized to administer same. They shall have power to elect out of their own number a president, secretary and treasurer, and adopt such regulations for the transaction of the business of the board and the management of its affairs, as they may deem expedient. The members of such board shall receive no salary as such, except the secretary, who shall receive fifty dollars a year for services; but the actual traveling and necessary expenses of the board and its members shall be paid, but only out of the receipts as hereinafter directed. [R. C. 1905, § 341; 1905, ch. 111, § 2.]

§ 542. Meetings of board. Such board shall meet at least once a year, and may also hold special meetings as frequently as the proper and efficient discharge of its duties shall require, at a time and place to be fixed by the rules and by-laws of the board; and the rules and by-laws of the board shall provide for the giving of timely notice of all meetings to every member of the board, and to all applicants for license. Three of the members shall at any meeting constitute a quorum for the transaction of business. [R. C. 1905, § 342; 1905, ch. 111, § 3.]

§ 543. Board to examine candidates. The members of this board, or such number thereof as shall be designated by said board, shall examine candidates for license on the subjects of embalming, and care, disposition and preservation of deceased persons, also on the subject of sanitation for the prevention and spread of infectious and contagious diseases, in accordance with the rules of the state board of health. And they shall adopt such rules and regulations for the disinfection of dead bodies, their bedding, clothes and surroundings, as they shall think proper, and shall cause such rules to be made known to every person engaged in the profession of embalming and the business of undertaker. And it is the intention that this board shall be an aid to the state board of health. [R. C. 1905, § 343; 1905, ch. 111, § 4.]

§ 544. License issued. When. Every person who wishes to practice the profession of embalming dead human bodies in the state of North Dakota or prepare for shipment any dead human body, shall appear before the state board of embalmers, or such member thereof designated, as hereinbefore provided, for examination on their knowledge of embalming, sanitation, preservation of the dead, disinfection of a deceased person and the apartments, bedding, clothing, excretion or anything likely to be affected in case of death from infectious or contagious disease, in accordance with the rules and regulations of the state board of health. Such examination shall be in writing and all examination papers shall be kept on record by said board of embalmers; and if the applicant be of good moral character and passes a satisfactory examination, then the said board shall issue to said applicant, on payment of the sum of five dollars to the treasurer of said board, a license to practice the profession of embalming for the term of one year:

Provided, however, that whenever the state board of embalmers shall have reason to believe that any person to whom a license has been issued has become unfitted to practice embalming and disinfecting, or whenever a written complaint of a licensed embalmer, substantiated by affidavits thereto, charging the holder of an embalmer's license with the violation of any provision of this act [article] is filed with said board, it shall be the duty of said board to notify the person in question that it has reason to believe that he has violated the provisions of law and that his license ought to be revoked, which notice shall be served upon him either by registered mail or personal service; provided, that when a written complaint against any such person is filed with said board, either by a member thereof or a licensed embalmer, a copy thereof shall be attached to the notice so served upon said person. The said notice shall set forth in what particulars it is claimed there has been a violation of the law, or for what reason the person is believed to be unfitted to longer prosecute the business of an embalmer; the said board shall in such notice definitely fix a time and place when and where it will be in session for the purpose of considering such person's case, which time shall not be less than twelve days after the service of notice upon the person. Such person shall have the right to appear before the said board at such time and place to dispute the charges made in said notice. Any member of said board shall have the right to administer oaths to witnesses. If, after considering all of the facts and circumstances the board shall have sufficient reason to believe that there has been a violation of the provisions of this act, [article] or a violation of any rule or regulation prescribed by the said board for the preparation, embalming, shipping or burial of any dead human body, or that such person is unfitted to remain a licensed embalmer in this state, it shall have the right to revoke and cancel the license theretofore granted to such person. If the applicant desires the renewal of the license, the said board shall grant it, except for cause, and the annual fee for the renewal of the license shall not exceed three dollars. [1913, ch. 158; 1909, ch. 108; R. C. 1905, § 344; 1905, ch. 111, § 6.]

§ 545. Seal. Licenses. Said board is hereby authorized to adopt and use a common seal, and any transcript of any matter of record in the office of said board, with the certificate of the secretary thereof attached, under the seal of said board, shall be competent evidence of such matter of record in any court in this state. All licenses shall be signed by a majority of the state board of embalmers and attested by its seal, and shall specify by name, the person to whom issued. Every such license shall be nonassignable and nontransferable, and shall be displayed by such embalmer in a conspicuous place in his or her office or place of business. [R. C. 1905, § 345; 1905, ch. 111, § 6.]

§ 546. Penalty for violation. Any person who shall practice or hold himself or herself out as practicing the art of embalming the dead in accordance with the provisions of section 544, without having complied with the provisions of said section shall be guilty of a misdemeanor, and upon conviction thereof before any court of competent jurisdiction, shall be sentenced to pay a fine of not less than fifty dollars, or more than five hundred dollars, or undergo an imprisonment of not exceeding one year, or both, at the discretion of the court, for each and every offense, but the penalties of this section named shall not be enforced until after an examination of applicants has been held under the provisions of this article. [R. C. 1905, § 346; 1905, ch. 111, § 7.]

§ 547. Fees paid to treasurer. Bond of. All fees collected and fines paid under the provisions of this article shall be paid to the treasurer of the state board of embalmers, to be used for the purpose of defraying the necessary expenses, and the treasurer of the state board shall give bond in the sum of five hundred dollars to the approval of said board for the honest and faithful discharge of his duties. [R. C. 1905, § 347; 1905, ch. 111, § 8.]

§ 548. Report. It shall be the duty of said state board on or before the first Monday in November of each and every year to make a report in writing to the governor of this state, containing a detailed statement of the nature of the receipts and the manner of the expenditures and balance of money remaining at the end of the year after the payment of the necessary expenses, including the salary of the secretary and the traveling and other necessary expenses of the members of the board, incurred in the discharge of their duties as such may be used by the state board of embalmers for educational purposes in their profession. [R. C. 1905, § 348; 1905, ch. 111, § 8.]

As to reports to the governor, see sections 95, 97, 98.

ARTICLE 21.—BOARD OF ACCOUNTANCY.

§ 549. Board of accountancy. The trustees of the State University shall appoint a board of three members, which board shall be known as a board of accountancy. The term of office of the members of this board shall be five years. Vacancies in this board shall be filled in the same manner as original appointments are made. Members of this board shall receive for their services actual expenses incurred in the discharge of their duties and an amount sufficient to defray clerk hire, and no more. Of the members of this board, one shall be an educator, one an attorney, and one a person skilled in the practice of accounting. [1913, ch. 2, § 1.]

§ 550. Powers and duties of the board. The board of accountancy shall conduct examinations and shall exercise such powers and perform such duties as may be prescribed by the trustees of the State University. [1913, ch. 2, § 2.]

§ 551. Certified public accountant. Any person in order to assume the title of certified public accountant or the abbreviation C. P. A. or any other words or letters or abbreviations tending to indicate that the person, firm, or corporation so using the same is a certified public accountant must receive a certificate as a certified public accountant. Certificates shall be granted

to those persons with the necessary general qualifications who shall pass the required examinations or for whom such examinations shall be waived. [1913, ch. 2, § 3.]

§ 552. Qualifications. Any person of good moral character twenty-one years of age or over, residing in North Dakota or having a place for the regular transaction of business in this state, shall be deemed qualified to become a candidate for the title of certified public accountant. [1913, ch. 2, § 4.]

§ 553. Examination. Examinations shall be held at such place and at such time, but at least one (once) a year, as the trustees of the University may designate. Public notice of an examination shall be given at least thirty days before the date of each examination, in such manner as the trustees of the State University may determine. The examination shall cover the theory of accounts, practical accounting, political economy, commercial law, and such other subjects as the trustees of the State University may designate. An oral examination for general fitness may be also required. [1913, ch. 2, § 5.]

§ 554. Waiver of examination. The trustees of the State University may waive examination of any person possessing the general qualifications, who has practiced in North Dakota for more than one year as a public accountant on his own account before the passage of this article, and who shall apply for a certificate of a certified public accountant within a year thereafter. [1913, ch. 2, § 6.]

§ 555. Certificate. The trustees of the State University shall have the power to issue the certificate of certified public accountant, which certificate shall remain good and valid during the good behavior of the holder. The trustees of the State University may revoke a certificate for sufficient cause and after written notice to the holder thereof and after a full hearing. [1913, ch. 2, § 7.]

§ 556. Fees. The trustees of the University shall fix the amount of the fees to be paid by the applicants for the title of certified public accountant. Such fees shall be used by the trustees of the University to pay the necessary expense incurred in offering the examinations. [1913, ch. 2, § 8.]

§ 557. Penalties. Any certified public accountant who shall falsify a report, statement, investigation or audit, or who shall in any other manner be guilty of a misrepresentation as a certified public accountant, shall be guilty of a misdemeanor and shall be punished accordingly. [1913, ch. 2, § 9.]

ARTICLE 22.—BARBERS' EXAMINING BOARD.

§ 558. Certificate of registration. It shall be unlawful for any person to follow the occupation of barber in this state unless he shall have first obtained a certificate of registration as provided in this article; provided, however, that nothing herein contained shall apply to or affect any person who was actually engaged in such occupation on the taking effect of this article, except as hereinafter provided. [R. C. 1905, § 349; 1901, ch. 30, § 1.]

§ 559. Board of examiners, how appointed. Bonds. A board of examiners to consist of three persons is hereby created to carry out the purposes and enforce the provisions of this article. Said board shall be appointed by the governor, and each person appointed to act on said board must be a practical barber, who has been practicing his profession in the state of North Dakota for a period of five years. Each member of the board shall serve for a term of two years and until his successor is appointed and qualified, except in the case of the first board, whose members shall serve one, two and three years respectively, as specified in their appointment. Each member of said board shall give a bond of five thousand dollars with sureties to be approved by the secretary of state, conditioned for the faithful performance of his duties, and shall take the oath provided by law for public officers. Vacancies on said

board caused by death, resignation or expiration of the term of any member thereof, shall be filled by appointment from the same class of persons to which the deceased or retiring member belonged. [R. C. 1905, § 350; 1901, ch. 30, § 2.]

§ 560. Organization. Said board shall elect a president, secretary and treasurer, and shall have its headquarters at the state capitol; shall have a common seal, and the secretary and president shall have power to administer oaths. [R. C. 1905, § 351; 1901, ch. 30, § 3.]

§ 561. Compensation. Each member of said board shall receive a compensation of three dollars per day for actual service and ten cents per mile for each mile actually traveled in attending the meetings of said board, which compensation shall be paid out of any moneys in the hands of the treasurer of said board; provided, that the said compensation and mileage shall in no event be paid out of the state treasury. [R. C. 1905, § 352; 1901, ch. 30, § 4.]

§ 562. Biennial report. Said board shall make a biennial report to the governor, which report shall contain a full statement of its receipts and disbursements of the board for the preceding two years, also a full statement of its doings and proceedings and such recommendations as to it may seem proper looking to the better carrying out of the intents and purposes of this article, which report shall not be printed except at the expense of the fund herein provided for. Any moneys in the hands of the treasurer of the said board at the time of making such report shall be kept by him for the future maintenance of the board and to be disbursed by him upon warrants signed by the president and secretary of the said board. [R. C. 1905, § 353; 1901, ch. 30, § 5.]

As to time of making reports to the governor and as to the contents of reports, see sections 95, 97, 98, 633.

§ 563. Four examinations each year. Said board shall hold public examinations at least four times in each year in at least four different cities in this state at such times and places as it may determine, notice of such meetings to be given by publication thereof at least ten days before such meetings, in a newspaper published in the county where such meeting is to be held. [R. C. 1905, § 354; 1901, ch. 30, § 6.]

§ 564. Affidavit of residence and name. Fees. Every person now engaged in the occupation of barber in this state shall, within ninety days after the taking effect of this article, file with the secretary of said board an affidavit setting forth his name, residence and length of time during which, and the place where he has practiced such occupation, and shall pay the treasurer of said board two dollars, and a certificate of registration entitling him to practice said occupation shall thereupon be issued to him. [R. C. 1905, § 355; 1901, ch. 30, § 7.]

§ 565. Registration, how obtained. Fee. Any person desiring to obtain a certificate of registration under this article shall make application to said board therefor and shall pay to the treasurer of said board an examination fee of five dollars, and shall present himself at the next regular meeting of the board for the examination of applicants, whereupon said board shall proceed to examine such persons, under such rules and regulations as may be by said board prescribed, which rules and regulations shall require that said applicant shall present to said board a certificate from some reputable physician designated by said board to the effect that said applicant is free from any contagious or infectious disease, and being satisfied that he is above the age of nineteen years, of good moral character, free from contagious or infectious diseases, has either studied the trade for three years as an apprentice under a qualified and practicing barber, or studied the trade for at least three years in a properly appointed and conducted barber school under the instructions of a competent barber, or practiced the trade in another state for at least

three years, and is possessed of the requisite skill in said trade to properly perform all the duties thereof, including his ability in the preparation of tools, shaving, hair cutting, and all the duties and services incident thereto, and is possessed of sufficient knowledge concerning the common diseases of the face and skin to avoid the aggravation and spreading thereof in the practice of said trade. His name shall be entered by the board in the register hereinafter provided for, and a certificate of registration shall be issued to him, authorizing him to practice said trade in this state; provided, that whenever it appears that the applicant has acquired his knowledge of said trade in a barber school, the board shall be judges of whether said barber school is properly appointed and conducted and competent to give sufficient training in such trade. All persons making application for examination under the provisions of this article shall be allowed to practice the occupation of barbering until the next regular meeting of said board. Certificates of registration provided for in this article, shall be valid for one year from the date thereof, but shall be renewed by said board upon application within thirty days after the expiration thereof and the payment of one dollar to the treasurer of said board, which application shall be accompanied by a certificate from a physician approved by said board, stating that said applicant is free from contagious or infectious diseases. [R. C. 1905, § 356; 1901, ch. 30, § 8.]

Constitutionality and effect of restrictions on right to practice trade of barber. 40 L.R.A.(N.S.) 629.

§ 566. Apprentice. Nothing in this article shall prohibit any person from serving as an apprentice in said trade under a barber authorized to practice same under this article nor from serving as a student in any school for the teaching of such trade under the instruction of a qualified barber; provided, that in shops where there are two or more barbers there shall not be more than one apprentice to two barbers authorized under this article to practice said occupation; provided, further, that all persons serving as apprentices shall within ninety days after the taking effect of this article file with the secretary of said board an affidavit setting forth his name, residence and the length of time and place he has practiced as such apprentice, and shall pay the treasurer of said board two dollars, and a certificate of registration entitling him to practice as a barber's apprentice shall thereupon be issued to him, which certificate shall be kept posted in a conspicuous place in front of his working chair. [R. C. 1905, § 357; 1901, ch. 30, § 9; 1903, ch. 38, § 1.]

§ 567. Sunday barbering prohibited. It shall be unlawful for any registered barber or barber's apprentice to practice the occupation of a barber upon Sunday; provided, that nothing in this article shall prevent or prohibit a barber from shaving or otherwise preparing the dead for burial on Sunday. [R. C. 1905, § 358; 1903, ch. 38, § 2.]

Validity of classification in Sunday law with regard to barbers. 14 L.R.A.(N.S.) 1259; 32 L.R.A.(N.S.) 1190.

§ 568. Certificate of registration. Said board shall furnish to each person to whom a certificate of registration is issued a card or insignia bearing the seal of the board and the signature of its president and secretary, certifying that the holder thereof is entitled to practice the occupation of barber in this state, for a period of one year from the date thereof, and it shall be the duty of the holder of such card or insignia to post the same in a conspicuous place in front of his working chair, where it may readily be seen by all persons whom he may serve. [R. C. 1905, § 359; 1901, ch. 30, § 10.]

§ 569. Certificates registered by board. Said board shall keep a register in which shall be entered names of all persons to whom certificates are issued under this article, and said register shall be at all times open to public inspection. [R. C. 1905, § 360; ch. 30, § 11.]

§ 570. Power to revoke certificates. Said board shall have power to revoke any certificate of registration granted by it under this article, for conviction of crime, habitual drunkenness for six months immediately preceding the

time of receiving notice of a charge thereof duly made, as hereinafter provided, gross incompetency or contagious or infectious diseases; provided, that before any certificate shall be revoked the holder thereof shall have notice in writing of the charge or charges against him, and shall at a day specified in said notice, at least five days after the service thereof, be given a public hearing and full opportunity to produce testimony in his behalf and to confront the witnesses against him. Any person whose certificate has been so revoked may, after the expiration of ninety days apply to have the same regranted and the same shall be regranted to him upon a satisfactory showing that the disqualification has ceased. [R. C. 1905, § 361; 1901, ch. 30, § 12.]

§ 571. Occupation of barber, what constitutes. To shave or trim the beard or cut the hair of any person for hire or reward received by the person performing such service, or any other person shall be construed as practicing the occupation of barber within the meaning of this article. [R. C. 1905, § 362; 1901, ch. 30, § 13.]

§ 572. Penalty for violation. Any person practicing the occupation of barber without having obtained a certificate of registration, as provided by this article, or willfully employing a barber who has not such certificate, or falsely pretending to be qualified to practice such occupation under this article, or violation of any of the provisions of this article, is guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than ten dollars or more than one hundred dollars, or by imprisonment in the county jail not less than ten days or more than ninety days. [R. C. 1905, § 363; 1901, ch. 30, § 14.]

ARTICLE 23.—BOARD OF IMMIGRATION.

§ 573. State board of immigration. A board to be known as the North Dakota state board of immigration is hereby created. [1913, ch. 44, § 1.]

§ 574. Membership. The said board shall be composed of the state auditing board, which consists of the governor, secretary of state, auditor, treasurer and attorney-general. [1913, ch. 44, § 2.]

§ 575. Powers of board. General executive agent. Duties. Other employees. The commissioner of agriculture and labor shall be the general executive agent of said board, and he shall act by and with the advice of the said board and shall perform such duties as said board may designate. The governor may appoint an agent, or agents, under the North Dakota state board of immigration, to visit any state in the United States for employment at such times and seasons of encouraging immigrants to the state of North Dakota. He shall also solicit and encourage laborers, artisans and mechanics to come to this state from other states within the United States for employment at such times and seasons of the year as they may be needed to supply labor in this state. Such state immigration agent shall, under the direction of the governor and commissioner of agriculture and labor, be authorized to visit any state or foreign country where it may appear any settlers can be secured to the advantage of the state of North Dakota. Such agent shall make a report monthly, and, if required, oftener, to the governor and commissioner of agriculture and labor, and all bills incurred by them shall be approved by the state board of immigration. Provided, that in the discretion of the governor and commissioner of agriculture and labor, the necessary expenses of such agents may be advanced from time to time. [1913, ch. 44, § 3.]

§ 576. Compensation. Such agents shall receive such compensation for their services as may be fixed by the state board of immigration. Provided, their compensation and expenses shall not exceed the amount appropriated by this article. [1913, ch. 44, § 4.]

§ 577. Bond required. Such immigration agents shall each give to the state a bond in the sum of five thousand dollars for the faithful and impartial

performance of their duties, to be approved by the governor as to sufficiency, and by the attorney-general as to form. [1913, ch. 44, § 5.]

§ 578. Appropriation. There is hereby appropriated out of the funds in the state treasury, not otherwise appropriated, the sum of five thousand dollars annually for the use of said board for the purpose of carrying into effect and force this article. [1913, ch. 44, § 6.]

ARTICLE 24.—BOARD OF RAILROAD COMMISSIONERS.

§ 579. How constituted. The three persons elected commissioners of railroads, pursuant to the provisions of section 82 of the constitution of this state, constitute and shall be known and designated as the "Board of Railroad Commissioners of the State of North Dakota." They shall have power to elect one of their number president of such board and to appoint a secretary. [R. C. 1905, § 364; R. C. 1895, § 3003.]

§ 580. Who disqualified. No person in the employment of, or owning any stocks or bonds, or otherwise pecuniarily interested in, or an officer of any railroad, freight or transportation company, public warehouse or elevator operated in this state shall be eligible to the office of commissioner of railroads. [R. C. 1905, § 365; 1889, ch. 110, § 2; R. C. 1899, § 3004.]

§ 581. Oath and bond. Such commissioners before entering upon the duties of their office shall take and subscribe the following oath, which shall be filed in the office of the secretary of state, viz.:

I do solemnly swear (or affirm) that I will support the constitution of the state of North Dakota and that I will faithfully discharge the duties of commissioner of railroads to the best of my ability; that I am not in the employment of and that I own no stock or bonds of and am not otherwise pecuniarily interested in, nor an officer of any railroad, freight or transportation company, public warehouse or elevator operated in this state.

And each of such commissioners shall give at the same time a bond to the state in the sum of ten thousand dollars with sureties to be approved by the state treasurer, conditioned for the faithful discharge of his duties, which bond shall be filed in the office of the secretary of state. [R. C. 1905, § 366; R. C. 1895, § 3005.]

§ 582. Salary and expenses. Appropriation. The commissioners of railroads shall receive an annual salary of two thousand dollars per annum. The commissioners in office, and those hereafter to be elected, shall keep their office at the seat of government, and shall be provided with suitable rooms, necessary office furniture, stationery, books and maps, not exceeding the sum of five hundred dollars per annum, to be paid out of the state treasury. [The secretary of said board of railroad commissioners shall receive a salary of one thousand dollars per annum.] The accounts for all expenses authorized by this section, except salary of members of the board, shall be audited only when approved by the governor. There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of eight hundred dollars per annum, or so much thereof as may be necessary, for the purpose of paying the traveling expenses of the board of railroad commissioners and its secretary when actually engaged in the discharge of their duties. [1909, ch. 216, § 4; R. C. 1905, § 367; 1897, ch. 119; 1899, ch. 27; R. C. 1899, § 3006.]

As to the secretary of the board of commissioners mentioned in brackets in the foregoing section, Laws 1909, ch. 195, § 1, provides as follows: "The secretary of the board or [of] railroad commissioners shall receive an annual salary of two thousand dollars and shall reside at the capital city. He shall have no other occupation, but devote his entire time to the work of the commission." This chapter 195, Laws 1909, is expressly repealed in sections 653g, 653i. As to whether it will revive on July 1, 1915, see comments in the note immediately preceding section 653a. How appropriations for salaries shall be paid, see section 653b.

§ 583. Free passage. Such commissioners, their secretary and the persons in their official employment shall, when in the performance of their official

duties, have the right to pass free of charge on all railroads, steamers, vessels and boats and on all vehicles employed in or by any railroad or other transportation company engaged in the transportation of freight and passengers within this state. [R. C. 1905, § 368; 1889, ch. 110, § 4; R. C. 1899, § 3007.]

§ 584. Sessions, held where and time. The board of railroad commissioners shall hold at least five sessions annually for the purpose of hearing complaints and taking evidence. The first session shall be held at their office at the state capitol in the city of Bismarck, county of Burleigh, commencing on the first Tuesday after the first Monday in January of each year. The second session shall be held in the city of Minot, county of Ward, commencing on the first Tuesday after the first Monday in April of each year. The third session shall be held in the city of Fargo, county of Cass, commencing on the first Tuesday after the first Monday in July of each year. The fourth session shall be held in the city of Grand Forks, county of Grand Forks, commencing on the first Tuesday after the first Monday in October of each year. The fifth session shall be held in the city of Carrington, in the county of Foster, commencing on the first Tuesday after the first Monday in December of each year; provided, further, that each of said sessions shall be held for a period of not less than three days, and each session shall begin at nine o'clock a. m. When practicable, such sessions shall be held in the court house of the respective counties. [1909, ch. 194, § 1; 1907, ch. 213, § 1.]

§ 585. Special sessions. Whenever from any cause it appears that the public interest demands that a special session of said board be held, the president of the commission or the governor may call a special meeting of said board, to be held at any of the places aforementioned, by giving ten days' previous notice thereof by advertisement published in a newspaper at the place where meeting is to be held. [1909, ch. 194, § 2; 1907, ch. 213, § 2.]

§ 586. Employ stenographer. The board of railroad commissioners is hereby authorized to employ a stenographer whenever said board shall require such services in connection with their official duties, and there is hereby appropriated the sum of twelve hundred dollars, or so much thereof as may be necessary, to defray the expense of such stenographic work for the present biennial period. [1909, ch. 194, § 3; 1907, ch. 213, § 3.]

§ 587. Report to governor. It shall be the duty of the board to report in writing its findings to the governor within ten days after the close of each session. [1909, ch. 194, § 4; 1907, ch. 213, § 4.]

§ 588. Duty of attorney-general. It shall be the duty of the attorney-general or his deputy to appear for and represent the state at all sessions of the board. [1909, ch. 194, § 5; 1907, ch. 213, § 5.]

§ 589. Powers and duties. The commissioners of railroads shall have the general supervision of all railroads, railroad corporations and common carriers in the state operated by steam, and of all bridge corporations and ferry companies, the property of which is used or operated for railroad purposes, and shall inquire into any neglect or violation of the laws of this state by any such railroad, railroad corporation, bridge corporation, common carrier or ferry company doing business therein, or by the officers, agents or employees thereof, and shall also from time to time carefully examine and inspect, as hereinafter provided, the condition of each railroad and railroad corporation in the state, and of its equipment, and the manner of its conduct and management, with reference to the public safety and convenience. [R. C. 1905, § 369; 1897, ch. 115, § 1; R. C. 1899, § 3008.]

Authorized to require construction of necessary depot. *State v. C. St. P. Min. & O. R. Co.*, 12 S. D. 305, 81 N. W. 503.

Delegation to railroad commissioners of power to regulate carriers. 32 L.R.A. (N.S.) 639.

§ 590. Duties of railroad commissioners. It shall be the duty of the board of railroad commissioners to adjust all claims for overcharges and losses in freight, freight charges or fares, when it has jurisdiction over the carrier

where the loss or overcharge took place, whenever it is requested to do so by a resident or shipper of this state. It shall have authority to fix reasonable penalties for neglect or failure on the part of the carrier to adjust such overcharges or losses within a reasonable time. [1911, ch. 240, § 1.]

§ 591. Investigation of interstate rates. It is hereby made the duty of the board of railroad commissioners to exercise constant diligence in informing themselves of the rates, charges, rules and practices of common carriers engaged in the transportation of freight, express and passengers and in the transmission of messages or intelligence, from points in this state to points beyond its limits, and from points in other states to points in this state, also in territory wholly outside of this state, and whenever it shall come to the knowledge of the board of railroad commissioners either from their own investigation or by complaint made to them in any manner whatsoever that the rates charged by any common carrier on interstate business are unjust or unreasonable or that such rates, rules or practices discriminate unjustly against the citizens, industries or interests of this state or place any of the citizens, industries or interests of this state, at an unreasonable disadvantage, as compared with those of other states, or are levied or laid in violation of the act to regulate commerce, or in conflict with the rulings, orders or regulations of the interstate commerce commission, it shall be the duty of the board of railroad commissioners to immediately call the attention of the officials of such common carriers operating in this state to the fact, and to urge upon them the propriety of changing such rate or rates, rules or practices. Whenever such rates, rules or practices are not changed or adjusted so as to remove or remedy such discrimination within a reasonable time, it shall be the duty of the board of railroad commissioners, whenever it can legally be done, to present the facts involved in such discrimination to the interstate commerce commission and appeal to it for relief and thereafter, if deemed necessary, by said board of railroad commissioners, the attorney-general, with such other assistance as is now provided by law, shall prosecute any charge or charges growing out of any such discrimination. [1911, ch. 240, § 2.]

§ 592. Branch line schedules. The commission shall have power and authority to regulate time schedules on branch lines of railroad companies and compel train connections of competing lines at junction points whenever practicable. [1911, ch. 240, § 3.]

§ 593. Assistance provided for. The commission shall have authority to employ stenographers, rate experts and such other employes as may be deemed necessary in the discharge of its several duties. [1911, ch. 240, § 4.]

§ 594. Appropriation. There is hereby appropriated annually the sum of ten thousand dollars (\$10,000.00), or so much thereof as may be necessary to pay the necessary traveling and other expenses of the board of railroad commissioners, and the salaries and expenses of their agents and employes. All moneys which shall come into the state treasury on account of licenses of public grain warehouses shall be credited to the general fund of the state, out of which the expenses of the board of railroad commissioners, and the salaries and expenses of their agents and employes, shall be paid as now provided by law. [1911, ch. 240, § 5.]

§§ 595-600. Attorney-general attorney for board. Duties of state's attorneys. The attorney-general of the state of North Dakota shall be ex officio attorney for the board of railroad commissioners and shall give it such counsel and advice as it may from time to time require; and he shall institute and prosecute any actions which such board may deem it proper and expedient to prosecute; and he shall render such board all counsel, advice and assistance necessary to carry out the provisions of any law of this state according to the true intent and meaning thereof. It shall also be the duty of the state's attorney in every county on request of such board to institute and prosecute and to appear and defend for such board in any and all actions and proceed-

ings which he shall be requested by such board to institute and prosecute and to appear in all actions and proceedings to which the board is a party. Such board shall have power to employ additional counsel to assist such attorney-general or state's attorney, when in its judgment the exigencies of the case so require. The fee of such additional counsel shall be determined by the governor and paid by the state. [R. C. 1905, § 370; 1889, ch. 110, § 17; 1890, ch. 122, § 9; R. C. 1895, § 3009.]

§ 601. **Majority vote decides.** All questions arising in the action of such commissioners shall be decided and determined by a majority vote. [R. C. 1905, § 371; 1889, ch. 110, § 25; R. C. 1895, § 3012.]

ARTICLE 25.—HIGHWAY COMMISSION.

§ 602. **How constituted.** The governor, state engineer and one other member to be appointed by the governor shall constitute the state highway commission. They shall serve without extra compensation. [1913, ch. 179, § 1.]

§ 603. **Organization and meetings. Duties of state engineer.** The governor shall be ex officio chairman of the said highway commission. The commission shall have a common seal. The members thereof shall have power to administer oath, and it shall hold regular meetings at the state capitol not less than once in every two months. The state engineer shall be secretary of the commission. The state engineer shall file and safely keep all maps and paper belonging to the commission, and shall keep a record of every vote and official act of the said commission. It shall be the duty of the state engineer to prepare plans and specifications and superintend the construction of any road under the direction of the highway commission when requested by any board having jurisdiction over said road, also to give such advice, assistance and supervision with regard to road construction throughout the state as time and conditions will permit, and as rules and regulations of the commission may prescribe, and he and his assistants may be required by the commission to attend any public meeting held by the commission or other parties in the interest of road improvement in the state. [1913, ch. 179, § 2.]

§ 604. **Duties of commission.** It shall be the duty of the state highway commission upon request of any board of county commissioners to require the state engineer to prepare plans and specifications for the construction or improvement of any road within such county, and to make surveys, and in general supervise road construction in said county. It shall also be the duty of the state highway commission to require the state engineer to prepare maps of each county showing the roads in the county and the location of all bridges and culverts, and also showing the roads on which it is proposed to utilize state funds whenever such funds may be by law provided for this purpose.

§ 605. **Attorney-general attorney for commission.** The attorney-general shall be ex officio attorney of the commission and he shall give the commission such legal counsel, advice and service as it may from time to time require. [1913, ch. 179, § 4.]

§ 606. **Commission to issue bulletins.** It shall be the duty of the highway commission to issue bulletins containing advice and suggestions and the law concerning highway construction from time to time as they shall deem most practicable. [1913, ch. 179, § 5.]

§ 607. **Information to be furnished by various officials.** County commissioners and city and town officials having the care of and authority over roads throughout the state shall on request furnish said highway commission any information which they may possess and required by said highway commission, concerning roads within their jurisdiction. [1913, ch. 179, § 6.]

ARTICLE 26.— COMMISSIONERS OF DEEDS.

§ 608. Appointment. The governor may appoint in each of the states of the United States and the territories thereof one or more commissioners under the seal of this state, to continue in office for the term of six years, who shall have the power to administer oaths, and to take depositions and affidavits to be used in this state, and also to take acknowledgments of any deed or other instrument to be used or recorded in this state. [1909, ch. 59; R. C. 1905, § 372; 1903, ch. 57, § 1.]

§ 609. Oath, seal and fee. Before any commissioner, appointed as aforesaid, shall proceed to perform any of the duties of his office, he shall take and subscribe an oath before any clerk of a court of record, or other officer having an official seal, authorized to administer oaths in the state or territory for which such commissioner is appointed, that he will faithfully discharge all the duties of his office, which oath shall be filed in the office of the secretary of state, and shall provide and keep an official seal upon which must be engraved his name and the words, "Commissioner of Deeds for the State of North Dakota," and the name of the state or territory for which he is commissioned, with the date on which his commission expires, and shall file an impression of said seal in the office of the secretary of state of North Dakota, and shall furnish a bond to this state by a surety company in the sum of five hundred dollars, conditioned that he will perform the duties of his office, which bond shall be filed in the office of the secretary of state of North Dakota, and shall pay into the state treasury the sum of ten dollars. [R. C. 1905, § 373; 1903, ch. 57, § 2.]

§ 610. Compensation for services. Such commissioner shall be entitled to collect and charge for his services the same fees as are allowed a notary public in the state for which he is appointed. [R. C. 1905, § 374; 1903, ch. 57, § 3.]

ARTICLE 27.— TEMPERANCE COMMISSIONER.

§ 611. Appointment. Clerk. The governor is hereby authorized to appoint a capable citizen of this state to be enforcement commissioner, who shall be paid a salary of two thousand dollars per annum and actual expenses, which salary shall be payable in four quarterly payments on the first days of January, April, July and October. Said enforcement commissioner shall be provided with an office at the state capitol with suitable furniture, stationery and other necessary facilities for transacting the business of his office, and he may employ a clerk at the expense of the state, which clerk may be paid at a salary not exceeding nine hundred dollars per year, payable in equal monthly installments. [1909, ch. 187, § 1.]

§ 612. Qualifications and powers. Said appointee shall be an attorney at law and shall be known as enforcement commissioner and with the advice and under the direction of the governor shall have and is hereby authorized to exercise in any part of this state, all of the common law and statutory powers of state's attorneys in their respective counties in the enforcement of the law against the manufacture and sale of intoxicating liquors. [1909, ch. 187, § 2.]

§ 613. Deputy commissioner. Said commissioner may appoint one deputy commissioner, if he shall consider it necessary, who shall also be an attorney at law. The deputy commissioner shall have the same powers as are given to the enforcement commissioner. Said deputy commissioner shall be appointed in writing signed by said enforcement commissioner, which appointment shall be recorded in the office of said enforcement commissioner, and such deputy commissioner shall hold office during the pleasure of said enforcement commissioner. Upon being discharged he shall immediately surrender his certificate of appointment and all papers and other property relative to his office. [1907, ch. 187, § 3.]

Deputy enforcement commissioner has no right, as assistant state's attorney, to visit grand jury room. *Ex parte Corliss*, 16 N. D. 470, 114 N. W. 962.

§ 614. Special enforcement sheriffs. The enforcement commissioner shall appoint such number of special enforcement sheriffs as in his judgment may be necessary, who shall have throughout the state all the common law and statutory powers of sheriffs in their respective counties in the enforcement of the law against the manufacture and sale of intoxicating liquors; such special sheriffs shall be appointed in writing signed by said enforcement commissioner, which appointment shall be recorded in the office of said enforcement commissioner, and they shall hold office during the pleasure of said enforcement commissioner. Upon being discharged, each shall immediately surrender his certificate of appointment and all papers and other property relative to his office. [1907, ch. 187, § 4.]

§ 615. Official bonds. The said enforcement commissioner, deputy commissioner and special sheriffs shall be sworn and give bonds to the state for the faithful discharge of their duties, the said enforcement commissioner in the sum of five thousand dollars, the said deputy commissioner in the sum of twenty-five hundred dollars, and said special sheriffs in the sum of two thousand dollars, all of which bonds shall be approved by the governor as to sufficiency and by the attorney-general as to form, and such bonds and the oaths of such officers shall be deposited in the office of the secretary of state. [1907, ch. 187, § 5.]

§ 616. Expenses, how paid. It shall be the duty of said deputy commissioner and special sheriffs to exercise all the powers herein conferred when, where, and as directed by said enforcement commissioner, and they shall be paid all the actual expenses occasioned by the performance of such duty and in addition thereto the said deputy commissioner shall be paid the sum of five dollars per day and the said special sheriffs each the sum of three dollars per day, and they shall at such time as may be fixed by the enforcement commissioner present their accounts for approval to him and after approval the same shall be subject to payment by the state from money in the treasury not otherwise appropriated. [1907, ch. 187, § 6.]

§ 617. Taxation of costs. There shall be taxed for said enforcement commissioner and said deputy commissioner, as costs in all actions in which either of them appear, the same fees as are allowed to be taxed for state's attorneys under the provisions of the laws of this state prohibiting the unlawful manufacture and sale of intoxicating liquors, and there shall be taxed for said special sheriffs the same fees as sheriffs and witnesses have heretofore been entitled to receive, all of which fees shall be paid directly to the state treasurer. [1907, ch. 187, § 7.]

§ 618. Powers where local authorities fail to enforce law. The said enforcement commissioner, upon being satisfied that the local authorities fail to enforce the law against the manufacture and sale of intoxicating liquors in any county, city, village or town of this state, shall, subject to the limitations of section two hereof, with the aid, assistance and co-operation of the said deputy commissioner and one or more of such special sheriffs, enforce said laws. [1907, ch. 187, § 8.]

§ 619. Local officers not relieved of duty. Nothing in this act shall in any way relieve the sheriffs or the municipal officers of states, towns and villages or the state's attorney for any county of the duties devolving upon them for the enforcement of the law against the manufacture and sale of intoxicating liquors. [1907, ch. 187, § 9.]

§ 620. Removal from office. Whenever in the judgment of the governor said enforcement commissioner is negligent in the performance of his duty, it shall be the duty of the governor, and he is hereby authorized to remove said enforcement commissioner from office. [1907, ch. 187, § 10.]

§ 621. Office suspended, when. Whenever in the judgment of the governor the enforcement commissioner is no longer necessary, he is authorized to remove him from office, and the office shall thereby be suspended until the

governor of this state deems his services are again required. [1907, ch. 187, § 11.]

§ 622. Appropriation. There is hereby appropriated the sum of eight thousand dollars out of any funds in the treasury not otherwise appropriated, to defray the expense of carrying out the provisions of this act. [1907, ch. 187, § 13.]

ARTICLE 28.— COMMISSIONERS OF NOXIOUS WEEDS.

See further as to noxious weeds, sections 2002, 2003, 2517-2823.

§ 623. Public nuisance. All Canada and sow thistles and quack grass are hereby declared to be and the same are a public nuisance, and the board of township supervisors in organized townships, and the board of county commissioners for unorganized townships are hereby empowered to destroy the same as hereinafter provided. [1909, ch. 231, § 1.]

§ 624. Commissioner appointed. There shall be appointed by the board of township supervisors in all organized townships, and by the board of county commissioners in all unorganized townships, for each township or election precinct, and by the city council of any city, or by the board of trustees of any town or village, as the case may be, some competent person, to be styled "Commissioner of Noxious Weeds," who shall take the oath required of township officers, and shall hold his office for the term of one year, and until his successor is appointed and qualified, and who shall receive for his compensation the sum of three dollars a day for each day necessarily spent in the performance of his duty. The board of appointment may, at any time, for good cause, remove the commissioner from office and appoint his successor to serve the remaining portion of his time, and it shall be the duty of said board to strictly enforce all the provisions of this article, and they shall have the same power as the commissioner of noxious weeds in discharging such duty. [1909, ch. 231, § 2.]

§ 625. Duties of commissioner. The commissioner of noxious weeds shall diligently examine and investigate into the existence and introduction of Canada and sow thistles and quack grass in his township or precinct, and if any are found growing therein he shall take charge of all such as are growing upon the highways and uncultivated lands, and prevent the same from going to seed, or otherwise spreading, and he shall carefully investigate and ascertain the best practicable methods for their destruction and he shall persistently apply at proper times such remedy or treatment as he shall deem best calculated to prevent their spread and to eradicate the same, and he shall serve upon all persons, partnerships, firms, corporations and associations owning or controlling any lands where such noxious weeds are growing, written notice to destroy the same within a time specified in said notice. [1909, ch. 231, § 3.]

§ 626. Treatment of thistles and quack grass on cultivated land. Taking possession. Appeal. In case said thistles and quack grass are found growing upon cultivated lands, the commissioner shall consult and advise with the owner, agent or occupant thereof as to their treatment, and if the said commissioner shall deem it necessary and expedient for him to fully control the same, he shall agree with the owner, agent or occupant as to the boundaries of the tract so infected which it is expedient for him to control for the purpose of destroying such noxious weeds and he shall mark the same by stakes and thereafter such infected tract, or as much as from time to time remains infected, shall be managed and controlled by the said commissioner for the purpose of destroying said thistles and quack grass, and for so long a time as it may be necessary to complete such work. In case the commissioner and the owner, agent or occupant of said land cannot agree as regards the propriety of the commissioner controlling such tract, or the boundaries of the same, then the commissioner shall proceed to stake out or mark such boundaries as he deems proper, and file a description of such tract and a

record of his proceedings with the town clerk in organized townships or county auditor in unorganized townships. The owner, agent or occupant of the land may, if he feels aggrieved, appeal from such decision of the commissioner within five days to the township supervisors or to the county commissioners, as the case may be, by filing written notice of appeal with the township clerk or county auditor, as the case may be, and thereupon such board shall proceed within five days to review the same, and to hear the reason for and against the decision of the commissioner, and a majority of such board of appeal shall decide as to the propriety of taking possession of the tract alleged to be infected, and if they decide to take such possession, shall also determine the boundaries of the same, and shall direct said commissioner to exterminate said thistles and quack grass without unnecessarily depriving the owner of the land of any legitimate use and enjoyment of the same, not interfering in any way with the destruction of such thistles and quack grass, and the owner or occupant of said land shall pay all cost and expense of labor for said extermination, which shall not exceed the sum of one hundred dollars for each one hundred and sixty acres, or fraction thereof, in any one year, without the written consent of the supervisors of said township or county commissioners, as the case may be, and that the sum so expended shall be a lien upon said tract so infected; and if the owner or occupant shall not pay the same to said commissioner on or before the first Monday of December following, the commissioner shall certify under oath to the county auditor the amount so due on each tract; and it shall be the duty of said commissioner to collect the same in a civil action and cover the same into the general fund of the respective districts. [1909, ch. 231, § 4.]

§ 627. Salary of commissioner. It shall be the duty of the board of township supervisors or the board of county commissioners as the case may be, to pay out of the general fund the salary of the commissioner of noxious weeds, and all expenses and disbursements incurred under the provisions of this article, upon verified vouchers duly audited and approved. [1909, ch. 231, § 5.]

§ 628. Prosecutions. It shall be the duty of the commissioner to prosecute on complaint with the proper authorities, any person or corporation who shall violate any law now existing or which shall hereafter be passed on the subject of Canada and sow thistles and quack grass. [1909, ch. 231, § 6.]

§ 629. Report of commissioner. The commissioner shall annually before the first day of December, make a written report to the supervisors of the township or to the county commissioners, as the case may be, which report shall be filed with the town clerk or the county auditor. The report so filed shall be publicly read at the next regular meeting of such board. Said report shall state:

First: Whether there are or are not any Canada or sow thistles or quack grass growing in the town or precinct.

Second: If any are growing, where and to what extent and when and how introduced.

Third: A detailed statement of his treatment of each infected tract with cost and result.

Fourth: He shall report such other matters, as may be required of him by the board of township supervisors, or by the county commissioners, as the case may be.

Fifth: He shall state his views on the further treatment of each infected tract and make such suggestions and recommendations as he may deem proper and useful. [1909, ch. 231, § 7.]

§ 630. Enforcement of article. All officials charged with the enforcement of this article shall have the right and may go upon lands infected, or which they believe to be infected, with Canada or sow thistles or quack grass, for any purpose necessary for such enforcement. All officials charged with the

enforcement of this article who neglect or refuse to carry out the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than ten nor more than fifty dollars. [1909, ch. 231, § 8.]

§ 631. Land owners. Any person, partnership, firm, corporation or association who after due notice, shall neglect or fail to cut down, dig up, destroy or take other certain means of exterminating Canada and sow thistles or quack grass, or prevent the same from going to seed, that may at any time be growing upon any lands owned or controlled by them, shall be liable for each offense in a sum not less than twenty-five dollars, nor more than one hundred dollars, to be recovered in a civil action by the commissioner of noxious weeds and to cover the same into the general fund of the respective districts. [1909, ch. 231, § 9.]

ARTICLE 29.—PANAMA EXPOSITION COMMISSION.

§ 631a. Commission created. There is hereby authorized a commission to be known as the Panama Exposition Commission, to represent the state of North Dakota at the Panama-Pacific International Exposition at San Francisco, California, to be held in nineteen hundred and fifteen and celebrate the completion and commercial use of the Panama Canal. [1913, ch. 39, § 1.]

§ 631b. Constitution and organization. The commission hereby authorized shall consist of seven members, and shall be the governor, the commissioner of agriculture and labor, and five civilians of the state to be appointed by the governor. Said commission shall encourage and promote a full and complete exhibit of the commercial, educational, industrial, artistic and other interests of the state and its citizens, at such exposition and celebration, and shall provide, furnish and maintain during the exposition a building or buildings for a state exhibit and for the official headquarters of the state and for the comfort and convenience of its citizens and exhibitors. This commission shall, within thirty days after its appointment, and upon notification by the secretary of state, convene in the city of Bismarck, and elect a chairman and vice chairman, and perfect its organization for the transaction of the duties devolving upon it by reason of this article. [1913, ch. 39, § 2.]

§ 631c. Expenses. Secretary and other clerical assistance. The members of the commission shall receive no compensation for their services, but shall be entitled to the actual necessary expenses incurred while in discharge of duties imposed upon them by the commission. Such commission may appoint a secretary and fix his compensation for all services to be performed in carrying out the provisions of this article, and the commission may also provide for such other clerical assistance and office facilities in this state or in San Francisco, as it deems necessary, but no salaries or expenses shall be incurred for a longer period than ninety days after the close of the exposition. [1913, ch. 39, § 3.]

§ 631d. Appropriation. Report of disbursements. The sum of thirty-five thousand dollars or so much thereof as may be necessary for the accomplishment of the above specified purposes, is hereby appropriated out of any moneys in the treasury, not otherwise appropriated, for the purpose of this article. Of the moneys hereby appropriated, five thousand thousand dollars shall be available in nineteen hundred and thirteen; twenty thousand dollars shall be available in nineteen hundred and fourteen, and the balance thereof shall be available in nineteen hundred and fifteen. Such money shall be paid by the state treasurer on the warrant of the state auditor issued upon a requisition signed by the chairman and vice chairman of the commission, accompanied by an estimate of the expenses for the payment of which the money so drawn is to be applied. Within ninety days after the close of the exposition, such commission shall make a verified report to the governor of the disbursements made by it. No indebtedness or obligation shall be incurred under this article in excess of the appropriation herein made. [1913, ch. 39, § 4.]

§ 631e. Report of proceedings. The commission shall, as requested by the governor, from time to time, render to him reports of its proceedings. [1913, ch. 39, § 5.]

CHAPTER 6.

STATE OFFICERS AND BOARDS.

ARTICLE 1. MISCELLANEOUS PROVISIONS, §§ 632-645.

2. **VOUCHERS FILED TO BE CONSECUTIVELY NUMBERED AND PAID,** § 646.
3. **CONTINGENCY FUND,** §§ 647-651.
4. **CLERK HIRE FOR STATE OFFICERS,** §§ 652, 653.
5. **APPROPRIATIONS, GENERAL,** §§ 653a-653i.
6. **STANDING APPROPRIATIONS,** §§ 654-658.
7. **STATE ENGINEER,** §§ 658a-658c.

ARTICLE 1.— MISCELLANEOUS PROVISIONS.

§ 632. Beginning and end of fiscal year. The fiscal year for the state shall commence the first day of July and end on the thirtieth day of June in each year, and all reports required annually or biennially by any state officer shall be made to and include the thirtieth day of June preceding, and all accounts of said officers shall be closed and balanced to that date, except where otherwise specifically prescribed by law. [R. C. 1905, § 375; 1893, ch. 67, § 1; R. C. 1899, § 302.]

See also as to reports by state officers, sections 95, 97, 98.

Fiscal year ends June 30. *Carter v. State*, 9 S. D. 423, 69 N. W. 523; *Meade Co. v. Reeves*, 13 S. D. 193, 82 N. W. 951.

§ 633. Duty of the heads of state institutions and state boards to make reports. It shall be the duty of every head of all state institutions and state boards to set forth, in their annual or biennial report required by law, a list of all persons in the employ of the institution or board, which list shall give the name of each person drawing a salary at such institution, or from such board, the amount of salary and other emoluments drawn, the fund or funds from which drawn, and the number of installments per annum in which such salary is drawn. [1913, ch. 245, § 1.]

See also as to reports, sections 95, 97, 98.

§ 634. Exemption from operation of preceding section. Section 73 of the Revised Codes of 1905 shall not operate to affect section 633 herein. [1913, ch. 245, § 2.]

On the same day that the foregoing sections 633 and 634 were enacted, section 73 of the Revised Codes of 1905 was amended, and as amended it constitutes section 95 in this compilation.

§ 635. Appropriations, when available. All appropriations made for the maintenance of the state institutions or other purposes by the legislative assembly shall become available on the first day of July next succeeding their enactment, unless otherwise specifically prescribed by law. [R. C. 1905, § 376; 1893, ch. 67, § 2; R. C. 1899, § 303.]

§ 636. Penalty for failure to make reports. Any public officer who is required to make an official report to any other officer, or board, who willfully neglects to make such report at the time and substantially in the manner required by law, shall forfeit and pay to the state a penalty of not less than twenty dollars nor more than five hundred dollars, to be recovered from such delinquent officer, or from him and the sureties upon his official bond. [R. C. 1905, § 377; 1890, ch. 118, § 1; R. C. 1895, § 304.]

§ 637. Attorney-general to prosecute. Upon the willful neglect of any public officer to make any report required by law it shall be the duty of the officer or board to whom such report should be made promptly to notify the attorney-general of such failure to report, whose duty it shall be to investigate the

neglect of duty complained of; and, if in his opinion the officer has not a sufficient excuse for such failure, the attorney-general shall prosecute such officer for the recovery of the penalty above provided. [R. C. 1905, § 378; 1890, ch. 118, § 2; R. C. 1899, § 305.]

§ 638. Record of fees. Penalty. Every state officer or deputy state officer required by section 84 of the constitution of this state, or by any provision of the laws of this state to cover into the state treasury all fees and profits arising from such office, shall keep a record of all such fees or profits in a book kept for that purpose, which book shall be the property of the state. They shall report to the state treasurer monthly the amount of fees or profits received, verified by oath, and at the same time pay the amount of such fees or profits to the treasurer, taking duplicate receipts therefor, one of which shall be filed with the state auditor forthwith, and the auditor shall charge the treasurer with the amount thereof. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in the sum not less than fifty dollars, nor more than one hundred dollars, in the discretion of the court wherein he is convicted. [R. C. 1905, § 379; 1890, ch. 183, § 7; 1891, ch. 1, § 2; R. C. 1899, § 327; 1901, ch. 95.]

On duty of superintendent of public instruction to pay into treasury unexpended balance of fund derived from examining fees. *State v. Stockwell*, 23 N. D. 70, 134 N. W. 767.

§ 639. Time for covering into state treasury. All fees and profits arising from any of the state offices, which are required by law to be paid into the state treasury, shall be covered into the state treasury at the end of each month. [1913, ch. 168.]

§ 640. Apportionment of moneys belonging to counties, how made. The apportionment of all moneys paid into the state treasury, any part of which is required by law to be paid to the several counties or to municipal corporations, shall be made by the auditor and treasurer, and each shall keep an account with such counties or corporations, crediting them with all such apportionments and charging them with all sums paid to them. The auditor shall draw an order on the state treasurer for the amount so credited, and forward the same to the county treasurer of such county or the clerk of such corporation, and at the same time send a written notice to the county auditor or clerk of such corporation, stating the amount so apportioned. [R. C. 1905, § 380; 1890, ch. 183, § 8; R. C. 1899, § 328.]

§ 641. Moneys, how paid from treasury. Moneys shall be paid from the state treasury only upon the warrant or order of the auditor, and each warrant shall specify upon what fund or from what apportionment it is to be paid; provided, however, that the treasurer may redeem outstanding bonds or pay interest on bonds when due without the auditor's warrant, retaining such bond or interest coupon as his voucher for such payment until the next succeeding settlement. [R. C. 1905, § 381; 1890, ch. 183, § 9; R. C. 1899, § 329.]

Contract between school board and teacher is not void merely because, at date of contract, teacher did not hold teacher's certificate. *Schafer v. Johns*, 23 N. D. 593, 42 L.R.A.(N.S.) 411, 137 N. W. 481.

§ 642. Account current between auditor and treasurer. The auditor shall keep an accurate account current with the treasurer, charging him with all moneys received and crediting him with all sums paid out upon the surrender of the vouchers for such payments. [R. C. 1905, § 382; 1890, ch. 183, § 10; R. C. 1899, § 330.]

§ 643. Monthly statements. The treasurer and auditor shall on the first day of each month have a full settlement of the business of the preceding month, at which settlement the treasurer shall turn over to the auditor all

vouchers for payments made by him, taking the auditor's receipt for the same. [R. C. 1905, § 383; 1890, ch. 183, § 11; R. C. 1899, § 331.]

§ 644. Separate accounts with the several appropriations. The auditor and treasurer shall keep a separate account with the several appropriations made by the legislative assembly, and also with each fund created by the sale of bonds and each permanent or current fund created by law. [R. C. 1905, § 384; 1890, ch. 183, § 12; R. C. 1899, § 332.]

§ 645. Auditor and treasurer to procure books, blanks, etc. The auditor and treasurer are authorized and empowered to procure the necessary books and blanks to enable them to comply with the provisions of this article. [R. C. 1905, § 385; 1890, ch. 183, § 13; R. C. 1899, § 333.]

ARTICLE 2.—VOUCHERS FILED TO BE CONSECUTIVELY NUMBERED AND PAID.

§ 646. Vouchers and warrants, how numbered. All vouchers which shall be presented to the state auditor for any bills, claims or accounts against any funds in the treasury of this state, shall be numbered consecutively against such fund by the state auditor, in the order in which they shall be presented and filed, and a record shall be kept of the same. All warrants, orders or certificates, which shall be issued by the state auditor, for or upon any such vouchers, and against any fund in the treasury of this state, shall be issued consecutively and in the same order that the state auditor shall have received the same, except when the appropriations made to any fund shall have been exhausted; also for state officers' salary and clerk hire. Each voucher shall show the post office address of the person in whose favor said warrant shall be made, and the state auditor shall mail said warrant to the address as given as soon as issued; provided, that none of the provisions of this section shall apply to moneys in the treasury appropriated for the maintenance of the state capitol; provided, further, that the salary and expenses of the legislative assembly shall not be subject to the provisions of this section. [R. C. 1905, § 386; 1899, ch. 170; R. C. 1899, § 338d; 1901, ch. 210.]

ARTICLE 3.—CONTINGENCY FUND.

§ 647. Appropriation. Contingency fund. There is hereby annually, on the first Tuesday in January, appropriated out of any moneys in the state treasury not otherwise appropriated, the sum of five hundred dollars for the establishment and maintenance of a contingency fund to be drawn upon by the state auditor at the direction of the executive, for the transaction of such state business or the payment of such state obligations as are not otherwise provided for, and as, in the opinion of the executive, are wise or necessary; provided, that if on the first Tuesday in January of any year there shall remain a balance of cash on hand in such fund, then only such sum shall be appropriated in that year as shall be necessary to complete the total of five hundred dollars. [R. C. 1905, § 387; 1899, ch. 66; R. C. 1899, § 338a.]

§ 648. Moneys, how accounted for. The governor shall, in all cases when directing the issuance of any warrant upon the contingency fund hereinbefore provided, file with the state auditor a written and itemized statement of the material, services or other consideration in payment of which such warrant is ordered drawn, together with the names of person or persons in whose favor the warrant is so ordered and shall certify that the material, services or other consideration therein named are necessary and proper matters for settlement from this fund, and that the amounts charged therefor are proper and right; and the auditor shall file such statement and certificate as his authority for issuing the warrant therein directed. [R. C. 1905, § 388; 1899, ch. 66; R. C. 1899, § 338b.]

§ 649. Appropriation to promote immigration. There is hereby appropriated, annually, the sum of five hundred dollars, or so much thereof as shall

be needed, out of the general funds of the state treasury, not otherwise appropriated to be used by the commissioner of agriculture and labor in getting out maps and other printed matter for the purpose of promoting and inducing immigration into the state of North Dakota. The commissioner of agriculture and labor shall make a verified and itemized statement of his expenses and disbursements incurred under the provisions of this section and file the same with the state auditor, who shall thereupon issue his warrant on the state treasurer therefor. [R. C. 1905, § 389; 1899, ch. 101; R. C. 1899, § 338c.]

See appropriation for promotion of immigration and preamble to the same, Laws 1909, ch. 142. And see section 167 herein.

§ 650. Appropriation. Contingency fund. There is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, at the date on which this act becomes operative and annually on the first Tuesday in January thereafter, the sum of five hundred dollars for the establishment and maintenance of a contingency fund to be drawn upon by the state auditor at the direction of the commissioner of insurance for the transaction of such business or the payment of such obligations as are not otherwise provided for, and as, in the opinion of the commissioner of insurance, are wise or necessary; provided, that if on the first Tuesday in January of any year there shall remain a balance of cash on hand in such fund, then only such sum shall be appropriated in that year as shall be necessary to complete the total of five hundred dollars. [1913, ch. 27, § 1.]

§ 651. Moneys, how accounted for. The commissioner of insurance shall, in all cases when directing the issuance of any warrant upon the contingency fund hereinbefore provided, file with the state auditor a written and itemized statement of the material, services, or other consideration in payment of which such warrant is ordered drawn, together with the names of person or persons in whose favor the warrant is so ordered, and shall certify that the material, services or other consideration therein named are necessary and proper matters for settlement from this fund, and that the amounts charged therefor are proper and right; and the auditor shall file such statement and certificate as his authority for issuing the warrant therein directed. [1913, ch. 27, § 2.]

ARTICLE 4.—CLERK HIRE FOR STATE OFFICERS.

§ 652. Clerk hire allowed and fixed. Appropriation. The following amounts are hereby fixed and allowed for clerk hire of the several state offices hereinafter mentioned, which sums, commencing January first, 1905, shall be paid in monthly payments on the warrant of the state auditor:

Governor's office—for private secretary, stenographer, messenger, and such other employes as may be necessary, three thousand dollars per annum.

Secretary of state's office, three thousand nine hundred dollars per annum.

State auditor's office, five thousand seven hundred dollars per annum.

Treasurer's office, five thousand dollars per annum.

Superintendent public instruction's office, four thousand dollars per annum.

Commissioner agriculture and labor's office, two thousand seven hundred dollars per annum.

Attorney-general's office, four thousand dollars per annum.

Commissioner of insurance's office, three thousand six hundred dollars per annum.

State bank examiner's office, for stenographer and office clerk, one thousand dollars per annum.

Clerk of supreme court's office, one thousand two hundred dollars per annum.

Secretary of state's office, for care and custody of state libraries, one thousand dollars per annum.

State weather bureau's office, six hundred dollars per annum.

Deputy commissioner of university and school lands, one thousand eight hundred dollars per annum.

Secretary of the board of railroad commissioners, one thousand dollars per annum.

Provided, that the chief deputy in the several offices enumerated shall receive out of the sums herein provided for an annual salary of one thousand eight hundred dollars per annum; and provided, further, that all clerical appointments shall first be referred to the governor for his approval. There is hereby annually appropriated out of any money in the state treasury not otherwise appropriated a sum of money sufficient to carry out the provisions of this article. [R. C. 1905, § 390; 1891, ch. 9, § 2; 1897, ch. 24; R. C. 1895, §§ 334, 335; 1903, ch. 186; 1905, ch. 18.]

In section 653f, the foregoing section 652 is partly repealed. See note under article 5 immediately preceding section 653a.

§ 653. Additional clerical assistance in state offices. That the state auditing board may, in their discretion, from time to time as the necessity therefor may appear to them, authorize the employment in the different state offices at the capitol, of clerical assistance to enable the different state officers to properly fulfill their duties. The said state auditing board shall act on written applications only, which application shall be signed by the state officer desiring the additional clerical assistance, giving the name of the party desired to be employed, the probable time of such employment and the salary that should be paid such person. On receiving such written application the said board shall, by resolution, duly entered in the minutes of their proceedings, approve or disapprove the said request, state the person authorized to be employed, the duration of such employment, the salary to be received and such other and further directions as to said board may seem proper. On receipt of a duly certified copy of such resolution the state auditor is authorized to draw his warrant on the state treasurer from time to time for the sum authorized to be paid and a sufficient appropriation to cover the same out of any funds in the state treasury is hereby made. [1907, ch. 49.]

The foregoing was a joint resolution, concluding with an emergency clause, and approved by the governor. As to the constitutional validity of a joint resolution, consult the following: North Dakota Constitution, sections 58, 59; 2 L.R.A. 612, note; 4 L.R.A. 65, note; *Olds v. State Land Office Comrs.*, 134 Mich. 442, 86 N. W. 956, 96 N. W. 508; *Smith v. Jennings*, 67 S. C. 324, 45 S. E. 821; *Swann v. Buck*, 40 Miss. 268; *Weckes v. Galveston*, 21 Tex. Civ. App. 102, 51 S. W. 544; *Collier & C. Lithographing Co. v. Henderson*, 18 Colo. 259, 32 Pac. 417; *Mullan v. State*, 114 Cal. 578, 34 L.R.A. 262, 46 Pac. 670.

ARTICLE 5.—APPROPRIATIONS, GENERAL.

Laws 1913, ch. 41, appears in the authenticated volume of Sessions Laws of that year under the heading "Appropriations, General." It is termed "the so-called budget bill" in a veto message, Laws 1913, ch. 6, and constitutes sections 653a-653i herein. Its title reads as follows: "An Act to Appropriate Money for the Expenses of the State Government and for Other Purposes; to Repeal Section 1737 of the Revised Codes of 1905, as Amended by Chapter 1 of the Session Laws of 1911, Chapter 73 of the Session Laws of 1909, Chapter 195 of the Session Laws of 1909, Chapter 284 of the Session Laws of 1911, and Sections 1295 and 1298 of the Revised Codes of 1905 and Section 1296 of the Revised Codes of 1905, as Amended by Chapter 31 of the Session Laws of 1909, so far as the Same Relates to Appropriations; Chapter 186 of the Session Laws of 1907; Sections 1287, 1288 and 1289 of the Revised Codes of 1905, as amended in Chapter 148 of the Session Laws of 1909; Chapter 175 of the Session Laws of 1911 and to repeal all Acts in so far as they conflict with the Provisions of This Act; Specifying the Amount and Time for Which Such Appropriations Shall be Available, and Providing the Manner in Which the Appropriations Herein Made Shall be Paid."

Apart from appropriations of stated amounts, the "budget bill" above mentioned, contains some provisions that will remain in force until the appropriations expire July 1, 1915. Some of the express repeals enumerated in section 653i, as well as in the title of the act, are not limited to appropriation provisions in the repealed laws, but are in terms absolute, as are some of the repeals in section 653e. Whether the whole or any part of some of the laws thus repealed will revive at the expiration of the period covered by the appropriations, viz., July 1, 1915, may be a debatable question. See, for example, a provision unqualifiedly repealed, that is mentioned in the note to section 582. In *Collins v. Smith*, 6 Whart. 294, 36 Am. Dec. 228, Chief Justice Gibson writing the well-con-

sidered opinion, it was held to be the rule at common law that "the expiration of a statute by its own limitation ipso facto revives a statute which had been repealed and supplied by it." See also 1 Fed. Stat. Anno. cxxv, note 3. This conclusion was deduced from "an admitted rule of the common law that the repeal of a repealing statute revives the original,"—a rule expressly abrogated, however, in section 4319, such abrogation extending perhaps to an expiring statute by virtue of the liberal construction expressly required in section 4319. On the other hand, it is to be observed that whenever such statutory provision abrogating the common-law rule appears in the Revised Codes of 1895, which is the only compilation that has been enacted by the legislative assembly, it is expressed to be the rule of construction for "this code," i. e., the "Political" or other code in which it is placed, and has never been enacted as a rule applicable to the Session Laws, and therefore the statutory rule does not explicitly apply to any Session Laws that are not by their terms assigned to any particular code. Furthermore, the section abrogating the common-law rule is omitted, possibly by inadvertence, not only in the Probate Code and the Justices' Code, but also in the Penal Code, and many provisions in the Session Laws can be as appropriately placed in the Penal Code as in the Political Code; for the chapter in the latter code which deals with "Police of the State" (sections 2496-3176 herein) teems with penal provisions.

§ 653a. Appropriation. The sums hereinafter stated, or so much thereof as may be found necessary, are hereby appropriated out of any state moneys in the treasury, for the purposes named in the following sections of this act [sections 653d-653g], to be available in such sums and for the time specified. [1913, ch. 41, § 1.]

§ 653b. How appropriations shall be paid. The appropriations hereinafter named shall be paid out by the state auditor only on vouchers fully itemized and sworn to, when approved by the state auditing board, provided that the salaries of the elected officials shall be paid without requiring the filing of any voucher. [1913, ch. 41, § 2.]

§ 653c. Changes made by other laws. In any instance where another law provides, or pretends to provide, for certain expenses, it shall be stated what law is being changed, and the section or chapter shall be named, and the intended change stated. [1913, ch. 41, § 3.]

"It is well settled and very obvious that one legislature has no power to bind a subsequent legislature, even as to the form of expressions to be used in repealing or modifying a prior statute." *Baines v. Janesville*, 100 Wis. 369, 76 N. W. 481.

§ 653d. Salaries of elected officials. The following sums are appropriated for salaries of the elected officials named, for the period beginning July 1, 1913, and ending July 1, 1915:

Governor	\$10,000.00
Lieutenant governor	2,000.00
Secretary of state.....	6,000.00
State auditor	6,000.00
State treasurer	6,000.00
Commissioner of insurance.....	6,000.00
Attorney-general	7,200.00
Superintendent of public instruction.....	6,000.00
Commissioner of agriculture and labor.....	6,000.00
Judges of supreme court (5).....	50,000.00
Judges of district courts (12).....	96,000.00
Railroad commissioners (3).....	12,000.00

[1913, ch. 41, § 4.]

§ 653e. Salaries of appointed officials. The following sums are appropriated for salaries of the appointed officials named, for the period beginning July first, 1913, and ending July first, 1915, to be paid on sworn vouchers filed monthly with the state auditor:

Adjutant-general (repeals section 1737, Revised Codes of 1905, and chapter 1, Session Laws of 1911) [See section 2360d herein], \$3,600.00.

Clerk of supreme court (repeals chapter 73, Session Laws of 1909), \$4,000.00.

Supreme court reporter (repeals section 461, Revised Codes of 1905, and salary shall cover expense of office), \$3,000.00.

Secretary of railway commission (repeals chapter 195, Session Laws of 1909), \$4,000.00.

Dairy commissioner (this salary in addition to appropriation in chapter 4, Session Laws of 1911), \$4,800.00.

State law librarian (repeals chapter 284, Session Laws of 1911, as to appropriation only), \$2,400.00.

State oil inspector (as provided in chapter 171, Session Laws of 1909), \$5,000.00.

State examiner (named in chapter 215, Session Laws of 1909), \$6,000.00.

Assistant attorneys-general (2) (salaries named in chapter 219, Session Laws of 1909), \$10,000.00.

State board of health (superintendent) (salary named in section 256, Revised Codes of 1905), \$2,400.00.

High school inspector (as named in chapter 46, Session Laws of 1911), \$4,000.00.

Inspector rural and graded schools (as named in chapter 35, Session Laws of 1911), \$4,000.00.

[1913, ch. 41, § 5.]

In the appropriation paragraph for the high school inspector the reference to Laws 1911, ch. 46, is erroneous. Probably the reference intended is Laws 1911, ch. 267, § 2, which as amended in 1913 constitutes section 1433 herein.

§ 653f. Clerk hire for the state departments, names following. The following named amounts are hereby appropriated for clerk hire in the departments and offices specified. This clerk hire shall be paid only on sworn vouchers, approved by the heads of the departments, and approved by the state auditing board. The appropriations following are for a period of thirty (30) months, beginning with January 1, 1913, and ending July 1, 1915. Section 390 of the Revised Codes of 1905 is repealed only so far as it shall pertain to the amounts appropriated for each office:

Governor's office	\$8,750.00
Secretary of state.....	28,000.00
State auditor	17,000.00
State treasurer.....	17,000.00
Commissioner of insurance.....	12,000.00
Attorney-general	6,000.00
Superintendent of public instruction.....	17,000.00
Adjutant-general (repeals chapter 1, Session Laws of 1911).....	3,750.00
Supreme court (clerk's office).....	3,000.00
Stenographers (supreme court) (4).....	11,250.00
Commissioner of agriculture and labor.....	11,250.00

[1913, ch. 41, § 6.]

§ 653g. Appropriations for miscellaneous expenses. The following amounts are appropriated for the purposes stated, and shall be for a period of thirty (30) months, beginning on the first day of January, 1913, and ending on the first day of July, 1915. All bills against the following appropriations shall be fully itemized, sworn to by the person filing, and filed with the state auditor for the approval of the auditing board if found correct, and a proper charge against any of the accounts named. Receipted sub-vouchers for all payments of one dollar or more shall be taken and filed with the expense bill:

For legal expense of the attorney-general (to cover necessary traveling expenses of attorney-general and assistants, as intended by section 127 [125], Revised Codes of 1905), \$6,000.00.

For expenses of the supreme court (for postage, express, telegrams, stationery and other miscellaneous expenses of the clerk and members of the supreme court), \$2,000.00.

Expenses of state oil inspector (to cover all miscellaneous office expense of the inspector and deputies, not to include salaries of deputies), \$7,000.00.

Transportation of patients to hospital for insane (chapter 275, Session Laws

of 1911 [sections 3521, 3522 herein], shall not govern in charging for transportation of patients; charges shall be the same as provided in section 2602, Revised Codes of 1905 [section 3515 herein]), \$30,000.00.

Transportation of convicts to reform school (same laws as is stated above to cover transportation of insane shall hold with transportation of convicts to reform school), \$3,000.00.

Transportation of convicts to penitentiary (same law and rule shall hold with transportation of convicts as is hereinbefore provided with regard to patients to hospital for insane), \$10,000.00.

Per diem trustees: Agricultural college (section 1104, Revised Codes of 1905 [section 1608 herein]), \$3,000.00.

School of forestry (section 2131, Revised Codes of 1905 [R. C. 1905, § 1231, which is section 1674 herein]), \$700.00.

State university (section 1056, Revised Codes of 1905 [section 1555 herein]), \$1,100.00.

Live stock sanitary board (chapter 169, Session Laws of 1911 [1907; section 2678 et seq. herein]), \$900.00.

State library commission, for salaries and expenses, \$20,000.00.

Prosecution escaped prisoners (as provided in section 6689 [8689], Revised Codes of 1905), \$500.00.

State law library, \$5,000.00.

Stallion registration board (as provided in chapter 161, Session Laws of 1909 [section 2764 herein], expense trustees or members board), \$400.00.

Traveling expense, clerk supreme court (as provided section 454, Revised Codes of 1905 [section 730 herein]), \$150.00.

Salary marshal supreme court (as provided in section 462, Revised Codes of 1905 [section 738 herein]), \$600.00.

Expenses judges district court while called to sit with supreme court judges (as provided in chapter 176, Session Laws of 1911 [section 773 herein]), \$1,000.00.

Expense high school inspector (as provided by chapter 267, Session Laws of 1911 [section 1433 herein]), \$2,500.00.

List new taxable lands (as provided by chapter 292, Session Laws of 1911, and Revised Codes of 1905 [section 2222 herein]), \$2,000.00.

Board of experts, penitentiary (all expense of this board and salary and expense of parole officer, as provided in Session Laws of 1911, chapter 226 [sections 10,955, 10,956, herein]), \$6,000.00.

Public printing (to repeal chapter 186, Session Laws of 1907. This appropriation shall pay for printing public reports and documents, and printing supplies of elected officials and their departments, and others not having expense appropriations, where it is specifically provided their printing shall be paid out of this fund), \$100,000.00.

Maintenance of the capitol building (to pay janitor service, operation of car line, power house, water supply, coal, executive mansion, furniture, postage and other miscellaneous expense not provided for in special expense appropriations to other departments), \$90,000.00.

[1913, ch. 41, § 7.]

§ 653h. Law shall become effective. This law [article] shall become effective July first, 1913, and at that time the state auditor shall have the authority to credit the appropriations which are made for the period from January first, 1913, to the first of July, 1915, with such amounts as shall be due the appropriation for the full year 1913. This is provided for the reason that this is the first time the general appropriations bill provided in section 62 of the constitution of the state of North Dakota has been attempted, and some sections now in effect, but vague as to appropriations, have been repealed, and it is essential that there be a certain credit to take care of the payments of the year 1913. [1913, ch. 41, § 8.]

§ 653i. Repeal. Section 1737 of the Revised Codes of 1905, as amended by chapter 1 of the Session Laws of 1911; chapter 73 of the Session Laws of 1909; chapter 195 of the Session Laws of 1909; chapter 284 of the Session Laws of 1911, and sections 1295, 1297 and 1298 of the Revised Codes of 1905, and section 1296 of the Revised Codes of 1905, as amended by chapter 31 of the Session Laws of 1909, so far as the same relates to appropriations; chapter 186 of the Session Laws of 1907; sections 1287, 1288 and 1289 of the Revised Codes of 1905, as amended by chapter 148 of the Session Laws of 1909; chapter 175 of the Session Laws of 1911, and all other acts in so far as they conflict with the provisions of this article, are hereby repealed. [1913, ch. 41, § 9.]

See also the repeals specified in section 653e, and the recital of repeals in the title quoted in the note immediately preceding section 653a.

ARTICLE 6.—STANDING APPROPRIATIONS.

FOR SALARIES OF STATE OFFICERS.

§ 654. Annual appropriation. There is hereby annually appropriated out of any funds in the state treasury not otherwise appropriated such sums as may be necessary to pay the salaries of the various state officers. [R. C. 1905, § 391; 1891, ch. 10, § 1; R. C. 1899, § 336.]

§ 655. Salaries payable monthly. Unless otherwise provided by law the state auditor is directed to draw his warrant for such salaries monthly as the same become due. [R. C. 1905, § 392; 1891, ch. 10, § 2; R. C. 1899, § 337.]

See sections 653a, 653b.

FOR MAINTENANCE OF PUBLIC OFFICES.

§ 656. Powers of board of trustees. Appropriation. The board of trustees of public property is authorized and empowered to provide all necessary furniture, fuel, lights, stationery, postage, express, freight, drayage, and all other necessary supplies for the state offices and executive mansion and the public grounds and parks connected therewith, and to make all necessary repairs upon the capitol building and executive mansion, and there is hereby annually appropriated out of any money in the state treasury, not otherwise appropriated, the sum of thirty-seven thousand five hundred dollars, or so much thereof as may be necessary to carry out the provisions of this section, and the state auditor is empowered to draw his warrants for such sums as shall be found due on account of claims or accounts against such appropriation, upon approval thereof by the state auditing board, and upon said approval the state treasurer is hereby directed to pay such warrants from the general fund of the state. [1909, ch. 7; 1907, ch. 10; R. C. 1905, § 393; 1889, ch. 26; R. C. 1899, § 338; 1901, ch. 21; 1903, ch. 28; 1905, ch. 17.]

Laws 1911, ch. 11, provides as follows: "The board of trustees of public property is authorized and empowered to make such repairs upon the capitol building as may be found necessary, and to defray the expenses incurred in making such necessary repairs, there is hereby appropriated out of any moneys in the state treasury in the fund known as permanent fund capitol building not otherwise appropriated, the sum of twenty-five thousand dollars, or so much thereof as may be necessary; all claims so incurred to be audited and allowed by the state auditing board and warrants to be drawn upon said fund by the state auditor and paid by the state treasurer out of said fund, as other warrants are paid."

§ 657. Claims against the state verified, how. No bill, claim, account or demand against the state, except in cases of salaries fixed by law, shall be audited, allowed or paid until a full itemized statement in writing shall be filed with the officer, or officers, whose duty it may be to audit the same, and where charges are made for money expended in the performance of official duties, all items of one dollar or more shall be covered by a sub-voucher signed by the party to whom the money was paid. The sub-voucher shall show the date, at what place, and for what the money was paid. The sub-vouchers shall

be forwarded with the statement and said statement shall be verified by the oath of the party making it, substantially in the following form:

State of North Dakota, } ss.:
County of }

I do solemnly swear that the within account and claim is just and true; that the money therein charged was actually paid for the purpose therein stated; that the services therein charged were actually rendered and of the value therein charged; and that no part of such account, claim or demand has been paid; and that the goods therein charged were actually delivered and of the value charged.

(Sign here)

Subscribed and sworn to before me this day of.....
A. D. 190.. [1907, ch. 26, § 1; R. C. 1905, § 394; 1901, ch. 49.]

What claims are valid demands against state. 42 L.R.A. 33.

§ 658. Exception. Section 657 shall not apply to charges for expenses as a member of any board of trustees or management of any state institution, except as to the form of oath prescribed. [1907, ch. 261, § 2.]

See sections 653a, 653b.

ARTICLE 7.— STATE ENGINEER.

§ 658a. Custodian government plats. The state engineer, with the approval of the governor, is hereby authorized to receive and receipt to the secretary of state for all field notes, maps, records and other papers appertaining to land titles within the state of North Dakota, and for such other property and records as were turned over to the secretary of state by the government on July first, 1908, and the said state engineer shall be custodian of all the above named property and for all other plats, field notes and records as may hereafter be turned over to the state by the government. [1909, ch. 218, § 1.]

§ 658b. Care and custody. Suitable rooms shall be provided in the capitol building containing vaults for fireproof protection and the safe keeping of such records, and free access to any such field notes, maps, records, and other papers for the purpose of taking extracts therefrom or making copies thereof without charge of any kind, shall be allowed to all officers or employes of the United States during office hours. [1909, ch. 218, § 2.]

§ 658c. Furnishing copies. It shall be the duty of the state engineer to furnish on application exemplified copies of all maps, field notes and records upon the payment to him of such fees for the copying and certifying such field notes, maps and records, as may be prescribed by the governor, secretary of state and attorney-general. All fees paid to the state engineer for copies of plats, field notes and records shall be paid into the state treasury and placed to the credit of the fund for the promotion of irrigation. [1909, ch. 218, § 3.]

CHAPTER 7.

OFFICES AND OFFICERS.

ARTICLE 1. QUALIFICATION FOR OFFICE, §§ 659-682.

2. VACANCIES AND SUPPLYING THE SAME, §§ 683-700.
3. DEPUTIES, §§ 701-707.

ARTICLE 1.— QUALIFICATION FOR OFFICE.

§ 659. Civil officers to qualify. Except as otherwise specially provided, all civil officers shall qualify substantially in the manner and form herein set forth. [R. C. 1905, § 400; R. C. 1899, § 339.]

Who are officers. 13 L.R.A. 177; 17 L.R.A. 243.

Who are city officers. 14 L.R.A. 646.

§ 660. Certain officers to give bonds. Each civil officer elected by the people or appointed by the governor or by any other authority provided by

law, except the governor and the officers and members of the legislative assembly, judges of the supreme and district courts, county commissioners, court stenographers, the mayor and aldermen in cities, the president and trustees in villages, but including township treasurers, clerks, justices of the peace and constables, shall, before entering on his duties, give a bond conditioned for the faithful and impartial discharge of the duties of his office (naming it fully), and render a true account of all moneys and property of every kind that shall come into his hands as such officer and pay over and deliver the same according to law. [R. C. 1905, § 401; 1887, ch. 47, § 24; R. C. 1899, § 340.]

Fund created by payments required by section 876, Code 1905 [section 1377 herein] is public fund, and superintendent of public instruction is accountable for unexpended balance. *State v. Stockwell*, 23 N. D. 70, 134 N. W. 767.

§ 661. Oath of civil officers. Each civil officer in this state before entering upon the duties of his office shall take and subscribe the oath prescribed in section 211 of the constitution. Such oath shall be indorsed upon the back of or attached to his bond, in case of an officer required to give bond, or indorsed upon the back of or attached to the commission, appointment or certificate of election, in case of an officer not required to give bond. [R. C. 1905, § 402; 1890, ch. 105, § 1; R. C. 1895, § 341.]

§ 662. Approval of bonds. The bonds of all state and district officers shall be given to the state, shall be approved by the governor as to sufficiency, and by the attorney-general as to form, and such bonds, and a duplicate original of the oaths of all other such officers shall be deposited in the office of the secretary of state. The secretary of state shall keep a book in which shall be made a correct copy of such bond, which book shall be called the "bond record," and, when such bonds have been recorded they shall be deposited with and kept on file in the office of the state treasurer, except the bonds of the state treasurer, which shall be deposited with and kept on file in the office of the state auditor. The secretary of state and state treasurer on receipt of such bonds shall issue a receipt therefor, and such receipt shall be filed in the office of the state auditor. The bonds of all county, township and municipal officers shall be given to the county; those of all county and municipal officers under the county shall be approved by the state's attorney as to form, and by the board of county commissioners as to sufficiency, and such bonds and a duplicate original of the oaths of office of all other such officers shall be filed with the county auditor, except the bond and oath of such auditor, and the bonds and oaths of all county justices of the peace, which shall be filed with the clerk of the district court for the county or judicial subdivision. The bonds of township officers shall be approved by the chairman of the board of supervisors of the township. [R. C. 1905, § 403; 1890, ch. 32, § 1; R. C. 1895, § 342; 1903, ch. 128.]

See as to bonds of various officers, section 193.

Where state's attorney has given bond approved by county auditor and served fifteen months, commissioners cannot remove for failure to qualify. *Howard v. Burns*, 14 S. D. 383, 85 N. W. 920.

Bond of county treasurer complying with statute except that it runs to county commissioners instead of county, is valid. *Custer Co. v. Alvien*, 7 S. D. 482, 64 N. W. 533.

Bond running to county instead of state enforceable in name of state for use of person injured. *State v. Barnes*, 10 S. D. 306, 73 N. W. 80.

Fund created by payments required by section 876, Code 1905 [section 1377 herein] is public fund, and superintendent of public instruction is accountable for unexpended balance. *State v. Stockwell*, 23 N. D. 70, 134 N. W. 767.

§ 663. Amounts of bonds of various officers. The bond of each state officer required to give a bond, the amount of which is not otherwise provided by law, shall be in the penal sum of five thousand dollars; of the county auditor, register of deeds and clerk of the district court in the penal sum of ten thousand dollars each, except in counties having a population of less than ten thousand inhabitants, in which counties such bonds shall be in the penal sum of five thousand dollars each; of the state's attorney and county judge in

the penal sum of two thousand dollars each; of the county superintendent of schools, justices of the peace, constables and notaries public in the sum of five hundred dollars each. The bond of the sheriff, coroner and county treasurer shall each be in a penal sum to be fixed by the board of county commissioners; but that of the county treasurer shall not be in a less penal sum than four thousand dollars, except when the total amount of taxes to be collected by him in any year is less than two thousand dollars, then in double the amount of taxes to be collected. [R. C. 1905, § 404; 1879, ch. 6, § 1; 1883, sub-ch. 1, ch. 112, § 38; 1887, ch. 161, § 1; 1890, ch. 132, § 31; R. C. 1899, § 343.]

Fund created by payments required by section 876, Code 1905 [section 1377 herein] is public fund, and superintendent of public instruction is accountable under his bond for unexpended balance. *State v. Stockwell*, 23 N. D. 70, 134 N. W. 767.

§ 664. Official bonds. Every person hereafter elected to the office of treasurer of any county within the state of North Dakota is hereby required to give an official bond in a penal sum to be fixed by the board of county commissioners, which bond shall not be in a less penal sum than four thousand dollars, except when the total amount of taxes to be collected by him in any year is less than two thousand dollars, then in double the amount of taxes to be collected; but in no case shall the amount of such bond be less than two thousand dollars, and such bond shall be executed by some responsible surety or fidelity company, authorized and qualified to do business within the state of North Dakota, and subject to approval as provided by law. The amount of the premium for such surety or fidelity bond shall be audited by the board of county commissioners, and paid out of the general fund of the county. [R. C. 1905, § 405; 1899, ch. 116; R. C. 1899, § 343a.]

See as to bonds of county officials, section 193.

Courts must take judicial notice of surety business as conducted by surety companies where statute requires filing of bonds. *State ex rel. Dakota Trust Co. v. Stutsman*, 24 N. D. 68, 139 N. W. 83.

§ 665. Additional bond may be required of county treasurer. The board of county commissioners may require the county treasurer to give additional sureties whenever in the opinion of the board the existing security shall have become insufficient; and such board is authorized and empowered to require from the county treasurer an additional bond as required by law with good and sufficient sureties in such sum as the board may direct, whenever in their opinion more money shall have passed or is about to pass into the hands of such treasurer than is or would be recovered by the penalty in the previous bond. [R. C. 1905, § 406; R. C. 1899, § 344.]

§ 666. Failure to give additional bond. Effect. If any county treasurer shall fail or refuse to give such additional bond or sureties for ten days from and after the day on which such board shall require him so to do, his office shall become vacant and another treasurer shall be appointed according to law. [R. C. 1905, § 407; R. C. 1899, § 345.]

§ 667. County commissioners furnish bond. Every person hereafter elected or appointed to the office of county commissioner of any county within the state of North Dakota is hereby required to give to the county an official bond before entering upon the duties of his office, conditioned on the faithful performance and discharge of the official duties of his office, and to render a true, accurate and full account of all business transactions, powers and trusts of every kind and nature that shall come before him, or into his hands as such officer, according to law. Such bond shall include all the business of the county done by him and protect the county against all acts of omission as well as commission, including all errors caused by carelessness or inattention in office; such bond shall be executed by some responsible surety or fidelity company, authorized and qualified to do business in the state of North Dakota, and be subject to the approval of the state's attorney as to form, and be subject to the approval of the state's attorney, county judge and clerk of the district court as to the responsibility of the county issuing the same; which said bond shall be in a penal sum of five thousand dollars, and the amount

of the premium for such surety or fidelity bond shall be audited by the state's attorney, county judge and the clerk of the district court, and the said premium to be paid out of the general funds of the county. [1911, ch. 114, § 1.]

But see in the act creating the state bonding department, section 193.

§ 668. Cumulative. No repeal. Nothing in section 667 contained shall in any manner be construed as repealing or, in any manner, altering any other act or part of acts heretofore adopted by the legislature of this state, but the remedies herein [section 667] provided shall be cumulative and in addition to all other remedies now existing in relation thereto. [1911, ch. 114, § 2.]

§ 669. Fidelity bonds. Whenever any county, township, city, village or school district officer, hereafter elected, shall be required by law to give or furnish a bond for the faithful performance of his duties, such bond may be executed by some responsible surety, fidelity insurance or bonding company, authorized and qualified to do business within the state of North Dakota, and approved by the board of commissioners, trustees, supervisors, council or directors charged with the approval of same; the premium for such bond shall be audited by such board and paid out of the general fund of the county, township, city or school district, as the case may be, for whose benefit the same is given. This section shall not affect the provision of section 664 relating to county treasurers, nor the furnishing of a personal bond by any officer as may be provided for by any existing law. [R. C. 1905, § 408; 1903, ch. 127.]

See section 193.

§ 670. Bonds of township officers and school district officers. It shall be the duty of each county auditor on or before the first day of March in each year to procure the proper blank bonds and send them to the clerk of each township and school district, and all such officers required by law to give bonds shall procure such bonds from the proper clerk; and shall immediately after the execution and approval thereof hand the same to the clerk of the township, whose duty it shall be forthwith to file such bonds, except those of justices of the peace, with the county auditor, and the county auditor shall on receipt thereof examine such bonds and see that they are properly executed and, if he finds that any bonds are not executed according to law, he shall note thereon any errors and return them to the clerk for correction, and it is hereby made the duty of the clerk to have such bonds corrected forthwith and return the same to the county auditor. The county auditor shall not issue any order upon the county treasurer for funds or money belonging to a civil township or school district to any person as treasurer of such township or school district until his bond has been filed as in this section provided. [R. C. 1905, § 409; 1893, ch. 94, § 1; R. C. 1895, § 346.]

See section 193.

§ 671. Township clerk to require officers elected to qualify. It shall be the duty of the clerk of the township to require all legally elected officers, who accept the office to which they are elected, to qualify within the time prescribed by law and in accordance with all other provisions thereof. If any clerk refuses or neglects to file the bonds of township officers as above provided, he shall be liable to a fine of not less than ten nor more than fifty dollars. [R. C. 1905, § 410; 1893, ch. 94, § 2; R. C. 1899, § 347.]

§ 672. Fee for filing township officers' bonds. An appropriation of fifty cents for each bond required to be filed shall be made by the township and paid to the county auditor for the proper filing and entering of such bond. [R. C. 1905, § 348; 1893, ch. 94, § 3; R. C. 1899, § 348.]

§ 673. Sureties to bond. Each official bond shall be given with at least two sureties, but the bond of the state treasurer shall have at least four, and that of the county treasurer at least three sureties. [R. C. 1905, § 412; R. C. 1899, § 349.]

See section 193.

Bonds of officers, irregularities in which do not release sureties. 90 Am. St. Rep. 188.

§ 674. Governor may require additional bond of state officers. Whenever the governor shall deem the bond filed by any state officer insufficient, he may require another bond to be furnished with sufficient sureties, and for failure to give such bond within ten days after being so required such office shall be deemed vacant. [R. C. 1905, § 413; R. C. 1895, § 350.]

§ 675. Approval of bond must be signed by officer approving. The approval shall in all cases be indorsed upon the bond and signed by the officer approving the same; but in case the board of county commissioners or the chairman of the township board of supervisors shall decide that a bond presented to them is insufficient, a reasonable time, not exceeding five days, shall be allowed the officer to supply a sufficient bond, and such board or officer may take three days to consider the approval of any bond. If such board or officer refuses or neglects to approve a bond of any county or township officer elect, he may upon three days' notice to such board or officer present the same to the judge of the district court, who shall, unless good cause for delay is shown, proceed to hear and determine the sufficiency of such bond, and may approve or disapprove the same as the facts warrant. [R. C. 1905, § 414; R. C. 1899, § 351.]

See section 193.

One who takes no steps to have bond approved after commissioners have refused to approve, forfeits office. *Chandler v. Hughes Co.*, 9 S. D. 24, 67 N. W. 946.

§ 676. Bonds must be recorded. The bonds of all county officers shall immediately after the approval of the same be recorded at length in the office of the register of deeds of the county in a book to be provided for that purpose. When such bonds are so recorded they shall be forthwith filed as provided in section 662. [R. C. 1905, § 415; 1885, ch. 120, § 1; R. C. 1899, § 352.]

On proof of loss of original, record of bond admissible in evidence. *Connor v. Corson*, 13 S. D. 550, 83 N. W. 588.

§ 677. When term of office begins. Except when otherwise specially provided, the regular term of office of each county, township and precinct officer, when elected for a full term, shall commence on the first Monday of January next succeeding his election, but, if the office to which he was elected was vacant at the time of his election, although he was not elected to fill such vacancy, he shall forthwith qualify and enter upon the duties of his office. [R. C. 1905, § 416; R. C. 1895, § 353.]

§ 678. When officers shall qualify. Except when otherwise specially provided, all state, district, county and precinct officers shall qualify on or before the first Monday of January next succeeding their election, or within ten days thereafter, and on said first Monday of January or within ten days thereafter, enter upon the discharge of the duties of their office, provided that county auditors shall qualify on or before the first Monday of April next succeeding their election or within ten days thereafter, and on said first Monday of April or within ten days thereafter enter upon the discharge of the duties of their office, and provided further, that county treasurers shall qualify on or before the first Monday of May next succeeding their election, or within ten days thereafter, and on said first Monday of May or within ten days thereafter, enter upon the discharge of the duties of their office. [1911, ch. 197; R. C. 1905, § 417; R. C. 1899, § 354; 1905, ch. 140.]

§ 679. Failure to qualify. Vacancy. If any person elected to any office mentioned in the preceding section shall fail to qualify and enter upon the duties of such office within the time fixed by law, such office shall be deemed vacant and shall be filled by appointment as provided by law; but if there is a contest for such office, or if the person elected to such office is prevented or obstructed in any manner from entering upon the duties thereof, the time above prescribed shall not govern, and he shall be allowed twenty days after the day such contest is determined or such obstruction removed in which to qualify. [R. C. 1905, § 418; R. C. 1899, § 355.]

Refusal to qualify creates a vacancy and commissioners are authorized to fill by ap-

pointment, in office of county treasurer. *Stutsman Co. v. Mansfield*, 5 Dak. 78, 37 N. W. 304.

Ineligibility not ground for commissioners to declare vacancy after qualification by state's attorney. *Howard v. Burns*, 14 S. D. 383, 85 N. W. 920.

Vacancy in office by failure to file bond within time prescribed. 16 L.R.A. 140.

§ 680. Bonds construed to cover all duties. The bonds of all civil officers shall be construed to cover duties required by laws passed subsequent to giving them, and no bond shall be void for failure to comply with the law as to matters of form or substance, but it shall be valid as to all matters contained therein, if it complies substantially with the law. [R. C. 1905, § 419; R. C. 1895, § 356.]

Action on sheriff's bond brought in name of real party in interest. *Guernsey v. Tuthill*, 12 S. D. 584, 82 N. W. 190; *Hollister v. Hubbard*, 11 S. D. 461, 78 N. W. 949.

Bond voluntarily executed for greater amount than required by statute may be enforced in full. *State v. Taylor*, 10 S. D. 182, 72 N. W. 407, 65 A. S. R. 707.

County treasurer and bondsmen liable for loss of county funds by fire. *Clay County v. Simonsen*, 1 D. 387, 46 N. W. 592.

Surety signing upon condition known to obligee, not liable thereon, unless condition performed. *State v. Welbes*, 12 S. D. 330, 81 N. W. 629.

Sureties liable for money paid out by mistake. *Custer County v. Tunley*, 13 S. D. 7, 82 N. W. 84.

Bond must be signed by principal, or sureties are not bound. *Board of Ed. v. Sweeney*, 1 S. D. 642, 48 N. W. 302, 36 A. S. R. 767.

Bonds of officers, effect of adding further duties. 42 Am. Rep. 404.

Liability of sureties on bonds after the expiration of term of office. 103 Am. St. Rep. 932.

Successive bonds, liability of sureties upon. 10 Am. St. Rep. 843.

Sureties on bonds, acts for which liable. 91 Am. St. Rep. 497.

Trespasses of principal, liability of sureties on bonds for. 78 Am. St. Rep. 420.

Penalty as limit of liability on bonds of public officers generally. 55 L.R.A. 393.

Condition in official bond against taking effect until signed by others. 45 L.R.A. 335.

Effect of delivery of official bond unsigned by principal obligor. 12 L.R.A.(N.S.) 1108.

Form of judgment on official bonds. 62 L.R.A. 448.

Liability of surety in case of fraud of obligee. 21 L.R.A. 413.

Exemption of homestead from liability on official bonds. 24 L.R.A. 790.

Who is real party in interest by whom action on bond must be brought. 64 L.R.A. 607.

May a bond of public official, intended as a statutory bond, but not binding as such, be enforced as a common-law bond. 21 L.R.A.(N.S.) 766.

Right of sureties who have made good a loss occasioned by their principal's default or misconduct, to be subrogated to the rights of the obligee or beneficiary of the bond against a third person. 14 L.R.A.(N.S.) 155.

Right to interest on official bonds. 28 L.R.A.(N.S.) 11.

Liability of bond of public officer for interest received on public money. 30 L.R.A.(N.S.) 855.

Admissibility against sureties of statements by principal after expiration of term of office. 40 L.R.A.(N.S.) 662.

Effect on surety of judgment against principal. 52 L.R.A. 165; 40 L.R.A.(N.S.) 704, 732.

Suits on official bonds for trespasses or unauthorized acts of officer done *colore officii*. 21 L.R.A. 738.

Liability on official bond for making arrest. 51 L.R.A. 222; 33 L.R.A.(N.S.) 275.

Liability of sureties on the bond of a peace officer for the death of a person due to the act or default of the principal or one of his deputies. 11 L.R.A.(N.S.) 758.

Liability of sureties on bond of peace officer for latter's act in killing or injuring one person while attempting to execute criminal process against another. 29 L.R.A.(N.S.) 463.

Liability of sureties on constable's bond for assault made in serving or executing civil writ or process. 8 L.R.A.(N.S.) 1223.

Liability of bondsmen of peace officer for acts of latter in respect of property taken from prisoner. 37 L.R.A.(N.S.) 873.

Liability of officer's bond for failure to return money deposited to avoid execution of writ. 39 L.R.A.(N.S.) 577.

Liability on official bond for loss of money by theft or bank failure. 22 L.R.A. 449; 36 L.R.A.(N.S.) 285.

Liability of a postmaster or his sureties for illegal acts done in accordance with directions of a superior officer. 24 L.R.A.(N.S.) 309.

Liability of public officer to sureties of another public officer for loss sustained by them through former's neglect to require proper settlement of accounts. 28 L.R.A.(N.S.) 115.

Liability of tax officers or their bond for failure of tax purchaser's title on account of irregularities in procedure. 41 L.R.A.(N.S.) 967.

Constitutionality of statute releasing public officer or his surety from liability for loss of public fund. 41 L.R.A.(N.S.) 97.

Liability of sureties on bond of public officer for default of principal during prior term. 23 L.R.A.(N.S.) 131.

Extension of liability on official bond while officer is holding over after expiration of regular term. 35 L.R.A. 88.

Extensions of time to principal by legislature, when releases their sureties. 45 Am. Rep. 406.

§ 681. Re-elected incumbent to account before qualifying. When the incumbent of any office is re-elected he shall qualify as above required; but his bond shall not be approved until he has produced and fully accounted for all public funds and property in his control under color of his office during the expiring term to the person or authority to whom he should account, and the fact and date of such satisfactory exhibit shall be indorsed upon the new bond before its approval. [R. C. 1905, § 420; R. C. 1899, § 357.]

Superintendent of public instruction is bound to pay into state treasury unexpended balance of examining fees at expiration of each term of office. *State v. Stockwell*, 23 N. D. 70, 134 N. W. 767.

§ 682. Public property must be delivered to successor. Every officer elected or appointed under the laws of this state shall on going out of office deliver to his successor in office all public moneys, books, records, accounts, papers, documents and property in his possession belonging or appertaining to such office. [R. C. 1905, § 421; R. C. 1899, § 358.]

Superintendent of public instruction is bound to pay into state treasury unexpended balance of examining fees at expiration of each term of office. *State v. Stockwell*, 23 N. D. 70, 134 N. W. 767.

Mandamus to compel surrender of office. 31 L.R.A. 343.

Mandamus to compel one usurping office to turn over papers. 35 L.R.A.(N.S.) 528.

ARTICLE 2.— VACANCIES AND SUPPLYING THE SAME.

§ 683. Vacancies, how caused. Every office shall become vacant on the happening of either of the following events:

1. Death of the incumbent.
2. His insanity judicially determined.
3. His resignation.
4. His removal from office.
5. His failure to discharge the duties of his office, when such failure has continued for sixty consecutive days, except when prevented from discharging such duties by sickness or other unavoidable cause.
6. His failure to qualify as provided by law.
7. His ceasing to be a resident of the state, district, county or township in which the duties of his office are to be discharged, or for which he may have been elected.
8. His conviction of a felony or of any offense involving moral turpitude or a violation of his official oath.
9. His ceasing to possess any of the qualifications of office prescribed by law.
10. The decision of a competent tribunal declaring void his election or appointment. [R. C. 1905, § 422; R. C. 1895, § 359.]

1. Vacancy in office by death of person elected thereto before beginning of his term. 14 L.R.A. 858.

6. Vacancy in office by failure to file bond within the time prescribed. 16 L.R.A. 140.

7. County commissioner will not lose office by moving to another district in county. *Gray v. Beadle County*, 21 E. D. 97, 110 N. W. 36.

Office of sheriff becomes vacant in part of county which is segregated from that portion in which he resides. *Holtan v. Beck*, 20 N. D. 5, 125 N. W. 1048.

One who was former incumbent of office cannot be de facto officer, upon his removal from state. *Chandler v. Starling*, 19 N. D. 144, 121 N. W. 198.

Treasurer of school district appointed to fill vacancy caused by removal of incumbent from state, ceased to have right to hold office, upon election and qualification of person

to fill vacancy of original incumbent. *State ex rel. Alexander v. Biggina*, 28 S. D. 41, 132 N. W. 677.

Constitutionality of statute making residence within the district a qualification of a public officer. 32 L.R.A.(N.S.) 835.

RESIGNATIONS.

§ 684. Resignations, to whom made. Resignations must be in writing and made as follows:

1. Of the governor and lieutenant governor, to the legislative assembly if it is in session, and if not, to the secretary of state.

2. Of all other state and district officers, to the governor.

3. Of all members of the legislative assembly, to the presiding officer of their branches respectively, when in session; and when not in session, to the governor; and when made to the presiding officer he shall at once notify the governor thereof.

4. Of all the officers of the legislative assembly, to the respective branches thereof.

5. Of all elective county officers, by filing or depositing such resignation in the office of the county auditor, except that of county auditor, which shall be filed or deposited with the board of county commissioners, which resignation, unless a different time is fixed therein, shall take effect upon such filing or deposit.

6. Of officers of civil townships, to the board of supervisors of the township, except the members of such board, which shall be to the township clerk; and notice shall forthwith be given by the township clerk to the county auditor of the resignation of all officers whose bonds are filed with such officer.

7. Of all officers holding their office by appointment, to the body, board, court or officer that appointed them. [R. C. 1905, § 423; 1881, ch. 137, § 1; R. C. 1895, § 360.]

Resignation, effect of and right to resign. 36 Am. St. Rep. 524.

Necessity of an acceptance to complete resignation of an office. 23 L.R.A. 681; 12 L.R.A.(N.S.) 1010.

Right to repudiate or withdraw resignation of office. 16 L.R.A.(N.S.) 1058.

Liability on official bond after resignation of office. 35 L.R.A. 93.

REMOVAL OF OFFICERS.

§ 685. What officers removable by governor. Grounds. The governor may remove from office any county commissioner, clerk of the district court, county judge, sheriff, coroner, county auditor, register of deeds, state's attorney, county treasurer, superintendent of schools, county commissioners, surveyor, public administrator, mayor, chief of police, deputy sheriff or other police officer, or any custodian of public moneys, except the state treasurer, whenever it appears to him by competent evidence and after a hearing as hereinafter provided that such officer has been guilty of misconduct, malfeasance, crime in office, or for habitual drunkenness or gross incompetency. [1913, ch. 132, § 1.]

This section and the following sections 686-694 are substituted for R. C. 1905, §§ 424-426.

Strict construction of statute when officer is removed on charge highly penal. *Minnehaha County v. Thorne*, 6 S. D. 449, 61 N. W. 688.

Removal only as provided in Codes of Civil and Criminal Procedure. *Wishek v. Becker*, 10 N. D. 63, 84 N. W. 590.

Appointee for definite term subject to removal for specified causes, removable only after notice. *State v. Hewitt*, 3 S. D. 187, 52 N. W. 875, 16 L.R.A. 413, 44 A. S. R. 788.

As to what constitutes willful neglect of duty. *Bon Homme County v. McLouth*, 19 S. D. 555, 104 N. W. 256.

Removal of officers for cause. 135 Am. St. Rep. 250.

Mandamus to compel exercise of power to remove or suspend public officer. 28 L.R.A.(N.S.) 194.

Privilege as to proceedings for removal of officer. 25 L.R.A.(N.S.) 455.

Right to remove officers summarily. 15 L.R.A. 95.

Attempted appointment for fixed term as restriction of power to remove officers at pleasure. 35 L.R.A.(N.S.) 866.

Intentional disregard of law without corrupt intent as ground for removal of officer. 31 L.R.A.(N.S.) 566.

§ 686. Charges, how made and by whom prosecuted. The complaint or charges against any such official authorized to be removed by the governor shall be entitled in the name of the state of North Dakota and shall be filed with the governor. It may be made on the relation of any five qualified electors of the county in which the person charged is an officer or the state's attorney of such county, and such complaint or charges shall be filed by the attorney-general when directed so to do by the governor. When the officer sought to be removed is one other than the state's attorney, it shall be the duty of the state's attorney to appear and prosecute, and when proceedings are brought to remove the state's attorney the governor shall request the attorney-general or some other competent attorney to appear on behalf of the state and prosecute such proceedings. [1913, ch. 132, § 2.]

§ 687. Requisites of complaint. Amendment. The complaint or charges shall state the charges against the accused, and unless filed by the state's attorney or attorney-general shall be verified, and may be amended as in ordinary actions; provided, that if such amendment of the complaint or charges include any new or additional charge, then a reasonable time should be allowed the accused to prepare his defense thereto. [1913, ch. 132, § 3.]

§ 688. Special commissioner to take testimony. Suspension of officer. Whenever charges are made against any such officer, the governor shall appoint a special commissioner to take and report the testimony for and against the accused, to be used on the hearing. Such testimony shall be reduced to writing and each witness shall subscribe his name to his testimony, when same is so reduced, and the governor in his discretion may, if in his judgment the best interests of the state shall require it to be done, by written order to be delivered to such officer suspend such accused officer from the performance of duty during the pendency of the hearing. If the governor shall so suspend the accused, he shall immediately notify the board or persons authorized to fill a vacancy in such office and thereupon such board or person shall, within five days after receipt of such notice, appoint some competent person to fill such office and perform the duties thereof ad interim. [1913, ch. 132, § 4.]

§ 689. Notice of charges and of taking testimony. Upon the filing of any such complaint or charges the governor shall, within ten days, cause a copy thereof to be made and served upon the accused, together with a notice of the time and place of taking testimony and the name of the special commissioner before whom such testimony will be taken, and the date fixed for the taking of such testimony shall not be more than twenty days from the service of the copy of charges against the accused. [1913, ch. 132, § 5.]

§ 690. Report, hearing, removal, filling vacancy, appeal. Whenever testimony has been taken upon charges filed against any officer, as hereinbefore provided, it shall be the duty of the special commissioner to forthwith report all such testimony to the governor and file the same in his office, and thereupon the governor shall fix a time and place for hearing on a day not more than ten days from the date of the filing of the commissioner's report, and not less than five days from the date of the service of notice of such hearing upon the accused at which hearing the accused shall be entitled to be heard in person or by attorney. If upon the hearing the charges are sustained, the governor shall forthwith make his order in writing, removing such officer from his office and cause a copy of such order to be delivered to the accused and one copy to be delivered to the board or person having authority to fill a vacancy in such office, and thereupon such board or person shall, within five days thereafter, appoint some competent person to fill such office

and perform the duties thereof, unless the accused had, prior to the final hearing, been suspended as hereinabove provided, and an ad interim appointment made. In such case the person appointed to such office ad interim shall continue until the expiration of the term for which the accused had been elected or appointed; provided, however, that in all cases where the accused person so removed deems himself aggrieved thereby, he shall be entitled to appeal from the decision of removal so made by the governor to any district court in this state upon filing a notice of appeal therefrom in the office of the secretary of state within fifteen days after the date thereof. Such notice to set forth the grounds of appeal and thereupon such accused person shall be entitled to a trial de novo in such court as now provided by law, provided, that such trial be not held in the county wherein the accused resides. [1913, ch. 132, § 6.]

§ 691. **Fees of commissioners, witnesses and stenographer.** The fees of the special commissioner herein provided for shall be the same as allowed by law to referees, and witnesses giving testimony for the prosecution before such commissioner shall be allowed the same fee as witnesses in district court. In case of removal of a county officer, such fees shall be paid by the county upon allowance by the county board in the same manner as other claims against the county, and if a municipal or township officer, then by the city council, commission or township board, in the same manner as other claims against such municipality. If in such proceedings the commissioner shall authorize the taking of the testimony by a shorthand reporter, the fees of such reporter shall be the same as allowed the district court reporter for like services, and such fees shall be allowed in the same manner as the fees of the commissioner and witnesses. [1913, ch. 132, § 7.]

§ 692. **Oath of commissioner; subpoenas for witnesses.** When a special commissioner shall have been appointed as herein provided for, such commissioner shall forthwith take an oath and file same with the governor that he will impartially and to the best of his knowledge and ability, without fear, favor or prejudice cause to be taken all the testimony and evidence offered at the hearing for and on behalf of the prosecution and accused, together with all papers and other exhibits offered by either party, and carefully preserve the same; that he will cause all of the oral testimony offered at the hearing to be correctly and fully transcribed, and as speedily as may be after the hearing attest the same as a full, true and complete record of all the evidence and testimony, including all exhibits offered at said hearing by either party, and cause same to be filed with the governor. Upon having taken and filed such oath the commissioner shall have authority to issue subpoenas for persons and subpoenas duces tecum, and administer oaths to witnesses, the same as now conferred upon justices of the peace, and such subpoenas may be directed to any sheriff, constable, chief of police or city marshal, who shall immediately serve the same, and such officer shall be entitled for his services in serving the same to the same fees as are now allowed to constables for serving subpoenas in civil cases in justice court, and such fees when served for the prosecution, shall be paid in the same manner as herein provided for witness fees for the prosecution, and commissioner fees; when served for the accused the accused shall be liable therefor to the officer serving the same. Provided, that such officer may demand of the accused his fees in advance for serving any subpoena for which the accused is liable, and that any witness subpoenaed by the accused may demand in advance from the accused his mileage and one day's witness fee before he shall be compelled to attend the hearing for which he has been subpoenaed. [1913, ch. 132, § 8.]

§ 693. **Costs on dismissal of charges.** When charges are preferred against any of the officers mentioned in this act [section 685] by qualified electors other than the state's attorney or attorney-general as provided in section 686,

and upon the hearing it should appear that such charges were not reasonably sustained by the facts proven at such hearing, or that such charges were not preferred in good faith, then all of the costs of the proceedings under this act [sections 685-694] not exceeding in the amount of one hundred dollars, may in the discretion of the governor be taxed to the persons making such charges. [1913, ch. 132, § 9.]

§ 694. Collection of such costs. If costs shall be taxed against the persons preferring charges against any of the officers mentioned in this act [section 685] it shall be the duty of the governor to certify such costs to the state's attorney of the county affected and it shall then be the duty of such state's attorney to proceed to put the same into judgment and to cause such judgment to be filed in the office of the clerk of district court in such county; and such certificate of the governor shall be prima facie evidence of the amount of costs therein stated. [1913, ch. 132, § 10.]

§ 695. Property delivered to successor. Upon the death, resignation, suspension or removal from office of any officer all books and papers belonging to his office and all moneys and property in his hands of whatever kind shall be delivered to his successor. [R. C. 1905, § 427; R. C. 1899, § 364.]

FILLING VACANCIES.

§ 696. Vacancies, how filled. All vacancies, except in the office of a member of the legislative assembly, shall be filled by appointment as follows:

1. In state and district offices, by the governor.
2. In county and precinct offices, by the board of county commissioners, except vacancies in such board.
3. In offices of civil townships, by the justices of the peace of such township, together with the board of supervisors or a majority of them, and if a vacancy occurs from any cause in the board of supervisors, the remaining members of the board shall fill such vacancy. [R. C. 1905, § 428; R. C. 1895, § 365.]

County commissioners may fill vacancy occurring when county treasurer is re-elected and refuses to qualify. *Stutsman County v. Mansfield*, 5 D. 78, 37 N. W. 304.

Circuit judge appointed to fill vacancy holds for unexpired term. *State v. Gardner*, 3 S. D. 553, 54 N. W. 606.

"Next general election" means next general election at which office may be legally filled; supreme judge appointed holds for unexpired term. *In re Supreme Court Vacancy*, 4 S. D. 532, 57 N. W. 495.

Appointment by county commissioners to fill vacancy in office of sheriff must be in writing, and by formal action of board. *Holtan v. Beck*, 20 N. D. 5, 125 N. W. 1048.

Right of governor or president to make an ad interim appointment to an office whose fixed term expires before the senate's adjournment, where the incumbent is authorized to hold over until successor is appointed. 46 L.R.A.(N.S.) 1202.

§ 697. Vacancies in board of county commissioners, how filled. When a vacancy occurs in the board of county commissioners, it shall be the duty of the remaining members of the board, with the county judge and auditor, immediately to appoint some suitable person to fill such vacancy from the district in which such vacancy occurred. In case a majority of such officers fail to agree upon a person to fill such vacancy the county treasurer shall be called in and act as an additional member of such board, to fill such vacancy. The appointee shall hold office until his successor is elected at the next general election and qualified. [1907, ch. 66; R. C. 1905, § 429; 1885, ch. 148, § 1; R. C. 1899, § 366.]

County treasurer refusing to qualify, commissioners may fill vacancy. *Stutsman Co. v. Mansfield*, 5 Dak. 78, 37 N. W. 304.

Where number of county commissioners has been increased by vote of county as provided by law, vacancy arises in office of county commissioner of each of new districts. *State ex rel. Atty.-Gen. v. Davies*, 23 N. D. 334, 136 N. W. 955.

§ 698. Brief vacancies, not to be filled. If a vacancy occurs thirty days previous to an election at which it may be filled, no appointment shall be made unless it is necessary to carry out such election and the canvass of the

same according to law; in which case an appointment may be made at any time previous to such election to hold until after such election or until his successor is elected and qualified. [R. C. 1905, § 430; R. C. 1899, § 367.]

§ 699. Appointments to be made in writing. Term. Appointments under the provisions of this article shall be made in writing and shall continue in force until the expiration of the term in which the vacancy occurs and until his successor is elected and qualified, except as otherwise expressly provided by law. [R. C. 1905, § 431; R. C. 1899, § 368.]

Appointment by county commissioner to fill vacancy in office of sheriff must be in writing, and by formal action of board. *Holtan v. Beck*, 20 N. D. 5, 125 N. W. 1048.

One appointed to fill vacancy, where incumbent died after being re-elected before expiration of old term, holds office until next general election. *State ex rel. Hellier v. Vincent*, 20 S. D. 90, 104 N. W. 914.

Appointment of district judge holds for unexpired term. *Supreme judge to next general election. State v. Gardner*, 3 S. D. 553, 54 N. W. 606; Sec. 98, N. D. Const.

"Next general election" defined. *In re Supreme Court*, 4 S. D. 532, 57 N. W. 495.

First and last days in computing time. 49 L.R.A. 244.

§ 700. Appointees, how to qualify. A person appointed to office as herein provided shall qualify within the time and in the manner required of a person elected or appointed to such office for a full term thereof. [R. C. 1905, § 432; R. C. 1895, § 369.]

ARTICLE 3.—DEPUTIES.

§ 701. Deputies may be appointed by certain officers. The state auditor, treasurer, superintendent of public instruction and secretary of state, the county treasurer, county auditor, sheriff, register of deeds, surveyor, clerk of the district court, county superintendent of schools and district and city assessors may each appoint a deputy for whose acts as such he shall be responsible; and each officer required to give a bond may require a bond from any deputy appointed by him, which bond shall be in the penal sum of not greater than half the penal sum of his own bond, and such bond may be retained by the officer for his own protection. Such appointment shall be in writing and shall be revocable in writing at the pleasure of the principal and all such appointments and revocations shall be filed as and where required for the bond and oath of the principal. [R. C. 1905, § 433; 1890, ch. 59, § 1; R. C. 1895, § 370; 1905, ch. 100, § 1.]

Appointment of deputy sheriff valid though signed by sheriff as individual, and not as sheriff. *Guernsey v. Tuthill*, 12 S. D. 534, 82 N. W. 190.

Deputy state's attorney may be under twenty-five years of age. *State v. Phelps*, 5 S. D. 480, 59 N. W. 471.

Court may appoint assistant clerk during term time. *White v. Hughes County*, 9 S. D. 12, 67 N. W. 855.

Salary of deputy superintendent of public instruction may be increased while in office. *Somers v. State*, 5 S. D. 321, 58 N. W. 804.

Deputies, contracts to employ persons as. 42 Am. Rep. 220.

In whose name acts by deputy officers to be performed. 19 L.R.A. 177; 42 L.R.A. (N.S.) 877.

Change of salary of deputy or other subordinate, as violation of constitutional provision against change of salary of public officer during term of office. 37 L.R.A. (N.S.) 388.

§ 702. Sheriff may appoint deputies. The sheriff may appoint such number of deputies as he may deem necessary. [R. C. 1905, § 434; 1883, ch. 43, § 1; R. C. 1895, § 371.]

Veto of amendment to this section, see Laws 1907, p. 458.

§ 703. Oath of deputy. Each deputy shall take and subscribe the same oath as his principal (naming his deputyship), which shall be indorsed upon and filed with his certificate of appointment. [R. C. 1905, § 435; R. C. 1899, § 372.]

Fees of deputy sheriff are taxable although he has not filed appointment and oath. *Williamson v. Lake County*, 17 S. D. 353, 96 N. W. 702.

§ 704. Certain persons ineligible as deputy. No state officer can appoint as his deputy any other state or district officer, nor can a state treasurer appoint as his deputy any county treasurer, county judge, register of deeds,

sheriff, or county commissioner; nor can either the clerk of the district court, the register of deeds or sheriff appoint as his deputy either of the others as their deputies. [R. C. 1905, § 436; R. C. 1899, § 373.]

§ 705. Officials to be residents and citizens. No person shall be appointed as deputy in any state, county or municipal office, or as a member or officer upon any official board of any kind whatsoever of the state or of any county or municipality of the state, who is not a citizen of the United States, and who shall not be a bona fide resident of the state. [1911, ch. 120.]

§ 706. Offices, where kept. No county, township or municipal officer in this state shall keep his office or any books, papers, records or other property pertaining to his office at any place other than that in which he is required by law to keep such office. [R. C. 1905, § 438; 1883, ch. 90, § 1; R. C. 1895, § 375.]

Mandamus to compel holding of offices at county seat. *State v. Langlie*, 5 N. D. 594, 67 N. W. 958.

Office which county officer is required by statute to maintain must be at county seat. *State v. Porter*, 15 S. D. 387, 89 N. W. 1012.

Granting of temporary injunction restraining county officers from removing their offices pending determination of contest of election in relation thereto, was not abuse of discretion. *Shaw v. Circuit Ct.*, 27 S. D. 49, 129 N. W. 907.

§ 707. Penalty for violation of last section. Any officer violating any of the provisions of the last section is guilty of a misdemeanor. [R. C. 1905, § 439; 1883, ch. 90, § 2; R. C. 1895, § 376.]

CHAPTER 8.

STATE BUDGET.

§ 708. Statement of desired appropriations to be filed with the state auditor. Not less than forty days before the beginning of each regular session of the legislative assembly, the state auditor shall send to the head of each administrative department of the state government, and to each officer, board or commission in charge of any educational, charitable, penal or other institution or undertaking supported wholly or in part by appropriation from the state treasury, a suitable blank form to be filled out by such head of such department, officer, board or commission, with an itemized statement of the amounts of money which, in the opinion of said department, officer, board or commission, will be required for the proper maintenance, extension or improvement of the department, institution or undertaking in his or their charge during the two fiscal years next ensuing. The officers, boards and commissions receiving such blank forms shall return them, properly filled out, on or before December tenth, to the state auditor, together with statement of purpose for which any appropriation is desired at the ensuing session of the legislative assembly by such officer, department, board or commission. The state auditor may also from time to time, and in his discretion, require any department, board or commission to report to him as to such other fiscal affairs as the auditor shall deem necessary for the proper compilation provided for by section 710. [1913, ch. 63, § 1.]

See sections 1739-1742.

§ 709. Claims against the state. Statements to be filed. Statements to be public records. Any person having a claim against the state which requires action by the legislative assembly, shall file with the state auditor a statement of the amount of such claim, together with a brief statement of the facts upon which it is based, not later than December first, preceding the meeting of the legislative assembly.

All reports and statements filed with the state auditor under the provisions of sections 708, 709, 710 shall be public records. [1913, ch. 63, § 2.]

§ 710. Duties of the state auditor as to tabulation of statements. Within five days after the opening of each regular session of the legislative assembly, the state auditor shall furnish the governor and to each member of the

legislative assembly, a tabulated statement in printed form, showing the several amounts asked for, the total for each department, institution or undertaking, the grand total, and a brief explanation of the purpose of or reasons for each proposed appropriation, as given by each department. Such tabulated statement shall also be accompanied by a statement showing the estimates of income from each and every source, and such other data as the auditor may deem necessary and proper for the full comprehension of such tabulation. [1913, ch. 63, § 3.]

CHAPTER 9.

AUDIT STATE DEPARTMENTS.

§ 711. Public accountants to examine and report. Uniform system of accounting contemplated. The governor is hereby authorized to employ chartered public accountants to make a complete examination, audit and check of each and all of the departments of the state government, such examinations to be independent and not in conjunction with any other examination required by law or otherwise.

The report of such chartered public accountants shall be made to the governor, and detail in full of the findings of such chartered public accountants of the condition of each department of the state government; shall contain a list of the state securities and their appraised value, in the possession of each department head.

The report of such chartered public accountants as shall be employed by the governor shall include also an inventory on a date certain of all public property of the state of North Dakota, including the state house at Bismarck, all penal, charitable and educational institutions of the state, and all personal property belonging to the state, with a detailed appraisalment of the value of such public property.

The governor is further authorized to have such chartered public accountants as may be employed by him under the provisions of this act [sections 711-714, 225], to cause a careful research to be made of the business methods, system of accounts, bookkeeping and making of reports of the various state officers, and all penal, charitable and educational institutions of the state, also all city auditors, city treasurers and county officials, who, under the provisions of law, now or hereafter are subject to examination by the state examiner, to confer and advise with the state examiner's office as to the best methods of bookkeeping of the state banks and financial institutions under the supervision of the state examiner's department, and the best methods of making examinations and obtaining reports from said state officials, state banks and financial institutions to the end that economy be exercised in the administration of the state's affairs, and that full, complete and uniform reports and statistics be obtained, and the interests of the public protected.

To facilitate the research work herein provided for and on which to base a uniform system of accounting, an examination of the county offices of not less than two counties or more than four counties of the state, and offices of auditors and treasurers of not more than two cities, shall be made by the chartered public accountants employed under this act [sections 711-714, 225] in conjunction with the proper officials from the state examiner's department. When such research work and examinations shall have been made, the chartered public accountants employed by the governor under this act [sections 711-714, 225] shall make a report in detail to the governor of its work and formulate a system of uniform bookkeeping and accounting, with blank forms for books and reports to be filed as part of said report.

After due consideration of said report, the governor is hereby authorized and empowered to have a system of accounting, bookkeeping and reports installed in all of the offices designated in this act [sections 711-714, 225]

and where there is more than one official whose office is under supervision of the state, the system in all respects shall be uniform. The use of said uniform system of accounting, bookkeeping and reports to begin at a certain future date to be fixed by the order of the governor. All officers whose duty it is to purchase blanks, account books and record books under the present system of accounts and laws governing the same are hereby empowered and directed to procure blanks, books and records which shall become necessary to the uniform system which shall have been adopted. [1913, ch. 10, § 1.]

See also sections 225 and 1807 et seq.

§ 712. Penalty for neglect to use system prescribed. Any public officer or employe who neglects or refuses to make use of the uniform system of keeping accounts in the form prescribed shall be removed from office by the governor on proper hearing and a successor chosen as provided by law. [1913, ch. 10, § 2.]

§ 713. Governor to cause examinations, etc., biennially or oftener. The governor shall have an examination, audit and check of all departments of the state government made before July first, nineteen hundred and fourteen, as provided for in section 711, and once every two years thereafter. In case in the judgment of the governor it is necessary to protect the interests of the state, then an audit should be made of any department of the state government before the biennial examination, audit and check as provided for in section 711, authority is hereby given him to order the same to be done forthwith. [1913, ch. 10, § 4.]

§ 714. Appropriation. The sum of fifteen thousand dollars (\$15,000), or so much thereof as is necessary, is hereby appropriated out of any funds in the state treasury not otherwise appropriated, for carrying out the provisions of this act. [1913, ch. 10, § 5.]

"This act" consists of sections 711-714, 225.

CHAPTER 10.

THE JUDICIAL DEPARTMENT.

ARTICLE 1. THE SUPREME COURT, §§ 715-721.

2. THE CLERK OF THE SUPREME COURT, §§ 722-730.
3. THE SUPREME COURT REPORTER, §§ 731-737.
4. MARSHALS OF THE SUPREME COURT, §§ 738-740.
5. BAILIFF FOR SUPREME COURT, §§ 741, 742.
6. DISTRIBUTION OF SUPREME COURT REPORTS, §§ 743-745.
7. THE DISTRICT COURTS, §§ 746-769.
8. GENERAL PROVISIONS RELATING TO DISTRICT COURTS, §§ 770-773.
9. COURT STENOGRAPHERS, §§ 774-781.
10. STATE BOARD OF BAR EXAMINERS, §§ 782-793.
11. ATTORNEYS AND COUNSELORS AT LAW, §§ 794-813.
12. JURORS, §§ 814-832.
13. ADMINISTRATION OF OATHS, §§ 833, 834.
14. NOTARIES PUBLIC, §§ 835-850.

ARTICLE 1.—THE SUPREME COURT.

§ 715. General and special terms. There shall be four general terms of the supreme court held at the seat of government each year, to be known as the March, June, September and December terms, each of said terms to be held on the first Tuesday of each of said respective months; provided, that nothing herein contained shall prevent the holding of special terms at cities other than Bismarck, whenever, in the opinion of the court, or a majority of the judges thereof, the public interests require a special term to be held elsewhere, which special term shall be held at a time and place to be determined and after the giving of ten days' notice thereof by advertisement in a newspaper published at the seat of government. [1913, ch. 277,

§ 1; 1909, ch. 72, § 1; R. C. 1905, § 440; 1899, ch. 153, § 1; R. C. 1899, § 377; 1903, ch. 193.]

Sections 715 and 716 are in lieu of R. C. 1905, §§ 440, 441, 442, which were expressly repealed in Laws 1909, ch. 72, § 2.

§ 716. The calendar. At each of said general terms of the supreme court, all cases shall be placed on the calendar of said court, and be liable for call for argument and final disposition, in which the record on appeal has been filed in said court not less than twenty days prior to the first day of said term. [1913, ch. 277, § 2.]

§ 717. Stenographer. The supreme court or any judge thereof is hereby authorized to employ a stenographer whenever said court or any judge thereof, either in term time or in vacation, shall require the services of a stenographer, in the preparation of the opinions or decisions of the court, or otherwise in connection with their respective official duties. [R. C. 1905, § 443; 1897, ch. 137, § 1; R. C. 1899, § 378b.]

§ 718. Bills for service. The bills for services rendered by any stenographer so employed after being verified by the affidavit of the stenographer and certified to as correct by the court or any judge thereof, shall be audited by the state auditor and a warrant drawn therefor. [1907, ch. 80; R. C. 1905, § 444; 1897, ch. 137, § 2; R. C. 1899, § 378c.]

§ 719. Salaries of supreme judges. The judges of the supreme court shall each receive an annual salary of five thousand dollars. [R. C. 1905, § 445; R. C. 1895, § 379; 1903, ch. 194.]

See appropriation in section 653d.

§ 720. Expenses paid. Each judge of the supreme court of this state shall receive the sum of five hundred dollars per annum for traveling expenses and moneys expended by him while absent from his home and while engaged in the discharge of his official duties, to be paid in quarterly payments without filing any itemized statement. [1907, ch. 82.]

See also appropriation for expenses in section 653g.

§ 721. Judge having the shortest term shall be chief justice. Duties. The judge of the supreme court having the shortest term to serve, not holding office by election or appointment to fill a vacancy, shall be chief justice and shall preside at all terms of the supreme court; provided, that whenever no member of said court is qualified for the office of chief justice under the above provisions, then the judges of said court shall select the chief justice. In the absence of the chief justice the judge having the next shortest term to serve, or a judge selected by the court, as the case may be, shall preside in his stead. [1909, ch. 71.]

See Constitution, § 92.

ARTICLE 2.—THE CLERK OF THE SUPREME COURT.

§ 722. Clerk of supreme court, how appointed. There shall be a clerk of the supreme court, who shall be appointed by the judges thereof, and who shall hold his office during the pleasure of such judges. [R. C. 1905, § 446; 1890, ch. 170, § 1; R. C. 1899, § 380.]

§ 723. Oath. Bond. Deputy. Such clerk before entering upon his duties shall qualify by taking the oath provided in the constitution and by giving a bond in the sum of three thousand dollars with sufficient surety to be approved by the governor, conditioned for the faithful performance of his duties. Such clerk may appoint a deputy who shall take and subscribe the oath prescribed in the constitution and file the same in said court. The clerk shall be responsible for the acts of his deputy. [R. C. 1905, § 447; 1890, ch. 170, § 2; R. C. 1899, § 381.]

§ 724. Clerk procures necessary records, seal, stationery, etc. Such clerk, unless otherwise provided for by law, shall procure the necessary records, seal, stationery, postage, lights, fuel and furniture for the use of the supreme

court, and the expenses thereof shall be audited and paid as in other cases. [R. C. 1905, § 448; 1890, ch. 170, § 3; R. C. 1899, § 382.]

§ 725. Clerk personally performs all duties. When deputy can act. He shall personally perform all the duties assigned him by law and the rules of said court. When he is unavoidably absent or unable for any cause to perform his duties, his deputy may perform the same. [R. C. 1905, § 449; 1890, ch. 170, § 4; R. C. 1899, § 383.]

§ 726. To furnish syllabus for publication. Whenever a syllabus is filed by the judges of the supreme court as required by law, the clerk shall immediately thereafter make and furnish a copy thereof together with the title of the action in which the same is rendered to the publishers of such daily newspapers in the state of North Dakota as consent to publish the same without charge. [R. C. 1905, § 450; 1890, ch. 170, § 5; R. C. 1899, § 384.]

§ 727. Salary fixed. Until otherwise provided by law and commencing January first, nineteen hundred and nine, the annual salary of the clerk of the supreme court is hereby fixed at two thousand dollars per year, which said salary shall be paid by the state auditor monthly as other state officers' salaries are paid. [1909, ch. 73; R. C. 1905, § 451; 1890, ch. 170, § 6; R. C. 1899, § 385.]

This section was expressly repealed in sections 653e, 653i. See comments in note immediately preceding section 653a.

§ 728. Fees in supreme court. The following fees shall be charged and collected by the clerk:

For drawing any process issued under the seal of said court, one dollar.
Affixing the seal to any process of the court, twenty-five cents.

Filing papers, ten cents each.

Reading and filing any petition relating to any proceeding in court, ten cents.

Entering the appearance or default of appellant or plaintiff, or of defendant or respondent, fifteen cents.

Entering every rule or order, fifteen cents per folio.

A certified copy of every such rule or order, and of all papers, pleadings and proceedings filed with him, ten cents per folio.

Entering a decree or sentence, ten cents per folio.

Entering a judgment or order, fifteen cents for every judgment debtor; ten cents for each folio more than two.

Engrossing a remittitur to be sent to the district court, ten cents per folio.

Every certificate, twenty-five cents.

Taxing costs, fifty cents.

Entering satisfaction of record, fifteen cents.

Taking security, fifty cents.

Entering each cause on the calendar and making a copy for the bar, ten cents.

Searching records and files in his office, twenty cents for the records and files for each year.

For services required by law or the rules of the court not hereinbefore provided for, such fees as the court directs.

Admission of attorneys, three dollars. [R. C. 1905, § 452; 1890, ch. 170, § 7; R. C. 1899, § 386.]

§ 729. Fees covered into state treasury quarterly. He shall keep an accurate account of all fees received by him, and on the first days of January, April, July and October of each year he shall file with the state auditor a detailed statement of such fees, which statement must be verified by the affidavit of such clerk. He shall also file with such statement a receipt from the state treasurer, showing that all of such fees so received by him have been covered into the state treasury. [R. C. 1905, § 453; 1890, ch. 170, § 8; R. C. 1899, § 387.]

Fees to be covered into treasury at end of each month, see section 639.

§ 730. When clerk to receive additional fees. In addition to the salary hereinbefore prescribed he shall receive for his expenses in attending sessions of the supreme court, when held at points other than at the seat of government, the sum of five cents per mile for each mile necessarily traveled in going to and returning from such sessions and the sum of two dollars for each day he is in actual attendance thereat, which mileage and per diem shall be in lieu of all other traveling expenses to be allowed such clerk. Upon filing with the state auditor an itemized statement, verified by oath, showing the mileage and per diem aforesaid, the state auditor shall draw a warrant upon the state treasurer in favor of such clerk for the amount so shown to be due under such statement. [R. C. 1905, § 454; 1890, ch. 170, § 9; R. C. 1899, § 388.]

See appropriation for traveling expense, section 653g.

ARTICLE 3.—THE SUPREME COURT REPORTER.

§ 731. Supreme court reporter, how appointed. The judges of the supreme court shall appoint a person of known integrity, experience and learning in the law, reporter of the decisions thereof, and such person shall hold such office during the pleasure of the judges. [R. C. 1905, § 455; 1879, ch. 56, § 2; Const. § 93; R. C. 1899, § 389.]

§ 732. Bond and how approved. Such reporter shall give a bond to the state, with at least two sufficient sureties, to be approved by the chief justice, in the sum of two thousand dollars, conditioned for the faithful performance of his official duties. [R. C. 1905, § 456; 1890, ch. 171, § 1; R. C. 1899, § 390.]

§ 733. Duties of reporter. Such reporter shall, as soon as practicable after opinions of the supreme court are filed, prepare accurate copies of such opinions and of all dissenting opinions filed, prefixing thereto copies of the syllabi prepared by the court, the names of counsel in each case, a statement of the facts or pleadings and an abstract of the briefs of counsel, when he may deem such statement or abstract necessary or helpful to a full understanding of the case. He may, in his discretion, add a brief note referring to prior adjudications. [R. C. 1905, § 457; 1890, ch. 171, § 2; R. C. 1899, § 391.]

§ 734. Clerk to furnish reporter copies of records and opinions. It shall be the duty of the clerk to furnish the reporter with a copy of the record and opinions in each case at the expiration of twenty days after the decision is filed, except when a rehearing is granted, and such reporter may retain the same for such reasonable time as he may require to prepare the report thereof, when it shall be returned to and remain in the office of the clerk. [R. C. 1905, § 458; 1890, ch. 171, § 3; R. C. 1899, § 392.]

§ 735. To supervise publication of reports. Copyright for state. It shall be the duty of the reporter to correct proof, prepare suitable indices for and supervise the publication of all volumes of reports of the decisions of the supreme court, which may hereafter be published under the authority of the state; and to secure a copyright of each volume of such reports before the same are distributed for the exclusive use and benefit of the state, the procurement of such copyright to be properly printed in each volume, and until provision for such publication shall have been made, all copies of decisions, syllabi, statements of facts and pleadings, abstracts of briefs and notes prepared by such reporter under the provisions of this article shall be filed with the clerk of such court. [R. C. 1905, § 459; 1890, ch. 171, § 4; R. C. 1899, § 393.]

§ 736. Reports, how printed. Number. After sufficient opinions are announced and recorded to make a volume, the reporter shall forthwith deliver to the person, persons or corporation having the contract with the state for publishing the same, copies of such opinions, and with each opinion a syllabus,

and a brief statement of the facts involved, together with other matters as contemplated in section 733. Within twenty days after the proofsheets for a volume have been furnished to him by the publishers at his office, he shall furnish to such publishers an index and table of cases to such volume. The publishers shall furnish to the reporter without delay, as soon as they shall be issued, seven copies of the revised proofsheets of the opinions, head notes, index and table of cases of each volume, for correction and approval by the reporter and judges of the supreme court, and shall cause such corrections to be made therein as shall be indicated by the reporter or said judges. Each of said volumes shall contain not less than six hundred and fifty pages, exclusive of the table of cases and index, and the workmanship and quality of material shall be approved and accepted by a majority of the judges of the supreme court. The secretary of state shall, in the first week in April and every eight years thereafter, advertise weekly, in six different newspapers in different localities in this state, for the term of six weeks, that sealed proposals will be received at the office of the secretary of state, for printing, publishing and selling the said reports for the term of eight years next after the first day of June of said year, at a certain rate per volume, to be stated in said proposal, not exceeding two dollars and twenty-five cents per volume. Each bidder shall deposit with the state treasurer the sum of one thousand dollars either in cash or by certified check, before making his proposal, to be forfeited to the state in case he shall not make a contract according to his proposal, if accepted, and according to the requirements of this chapter [section 736], and shall take a receipt from said treasurer and deposit the same with his proposal, and, upon entering into the contract herein provided, or upon the proposal being rejected, the said sum shall be returned. The successful bidder shall enter into a contract that he will publish the supreme court reports of the state, of the quality, style and character in all respects as required in this chapter [section 736].

First: Each volume shall contain at least six hundred and fifty pages of four and one-half inches in width and equal in style and quality to the best of those heretofore published.

Second: Three hundred and twenty-five copies shall be published and delivered to the secretary of state within sixty days after the complete manuscript thereof shall be delivered by the reporter of said court to said contracting party; provided, however, that such time that said reporter shall retain the proof of any one volume after the same shall have been submitted to him for revision shall not be computed as a part of said sixty days.

Third: That at the time said party to whom said contract shall be awarded shall deliver said copies of said report to said secretary of state, said party shall deliver to said secretary of state, free of charge, a true and correct paper matrix of said report, to be preserved by said secretary of state as a part of the records of his office.

Fourth: That the party to whom said contract shall be awarded shall agree to publish and sell the same to the citizens of North Dakota, and at all times keep the same on sale at the price agreed upon in said contract, and shall agree to stereotype the same and at all times keep the same on sale at contract price, and furnish the state any number of additional copies that may be thereafter required at said contract price, the copyright of all reports published under said contract vesting in the secretary of state for the benefit of the people of this state; provided, however, that nothing herein contained shall be so construed as to prevent the contractors by whom any such volume is published, their representatives or assigns, from continuing the publication and sale of such volumes so long as they shall comply in all respects with the requirements of this act [section 736] in respect to the character, sale and price of such volume. [1909, ch. 83; R. C. 1905, § 460; 1890, ch. 171, § 7; 1891, ch. 123, § 1; R. C. 1895, § 394.]

§ 737. Salary of reporter. The supreme court reporter for performing the duties required of him by law, shall receive an annual salary of fifteen hundred dollars, payable quarterly, and no extra compensation for proof-readers or stenographic assistance shall be allowed, but the expense of such assistance shall be borne by said reporter out of his salary. [R. C. 1905, § 461; 1890, ch. 171, § 5; 1899, ch. 154; R. C. 1899, § 395.]

This section is expressly repealed in section 653e, which provides the same salary until July first, 1915. See comments in note immediately preceding section 653a.

ARTICLE 4.—MARSHALS OF THE SUPREME COURT.

§ 738. Marshals of supreme court. Compensation. The sheriffs of the counties of Burleigh, Cass and Grand Forks are hereby constituted and made the marshals of the supreme court, and they and each of them are authorized to serve all process of the court, and shall be entitled to charge and receive the same fees and mileage for the service of process issued by the court or otherwise, relating to the business of the court, and the same compensation for attendance upon the court as is now allowed by law to sheriffs for performing similar duties in the district courts of the state, which fee shall be paid out of the state treasury as other expenses are paid. [R. C. 1905, § 462; 1890, ch. 90, § 1; R. C. 1899, § 396.]

See appropriation for "salary" of marshal, section 653g.

§ 739. When respective marshals to act. The sheriff of each of the counties aforesaid shall act as marshal during the term of such court in his county. [R. C. 1905, § 463; 1890, ch. 90, § 2; R. C. 1899, § 397.]

§ 740. Liability of sheriffs acting as marshals. Such sheriffs shall be liable on their official bonds given as sheriffs of their respective counties for the faithful and proper performance of their duties as marshals of the supreme court. [R. C. 1905, § 464; 1890, ch. 90, § 3; R. C. 1899, § 398.]

ARTICLE 5.—BAILIFF FOR SUPREME COURT.

§ 741. Court may designate bailiff. The judges of the supreme court may designate the librarian of the state law library or any of the assistants employed in such library, from time to time, to act as bailiff of the supreme court, and his duties as such shall be prescribed by that court. [1911, ch. 286, § 1.]

§ 742. Compensation. No person appointed bailiff of the supreme court, as provided in section 741, shall receive any compensation therefor in addition to that received in his capacity as librarian or assistant librarian of the state law library. [1911, ch. 286, § 2.]

ARTICLE 6.—DISTRIBUTION OF SUPREME COURT REPORTS.

§ 743. Supreme court reports, how distributed. It shall be the duty of the secretary of state to deliver one copy of each volume of the North Dakota reports to the following officers and organizations: Each judge of the supreme court of this state, each of the judges of the district courts of this state, the United States attorney for North Dakota, the attorney-general for the state, the library of the congress of the United States, the library of the supreme court of the United States, the attorney-general of the United States, the governor of the state, the public library of each state and organized territory of the United States that exchanges reports with this state, and three copies to the clerk of the supreme court of this state for the use of the court when in session, and to deposit ten copies in the state library to be retained therein; provided, that any of the above named officers or bodies which have been once supplied with any of the above named volumes need not be supplied with additional copies; and it is made the duty of each state officer above specified to deliver to his successor in office upon the expiration

of his term of office all such volumes in his possession. [R. C. 1905, § 465; 1887, ch. 154, § 1; R. C. 1899, § 399.]

§ 744. Secretary of state to supply auditors. It is the duty of the secretary of state to furnish to each county auditor in this state four copies of each volume of such reports, and it is the duty of such auditor upon receipt of the volumes above specified to mark conspicuously upon the outside of the cover thereof with red ink or to brand thereon the words, "Property of the County of" (inserting the name of the county of which he is an officer). [1907, ch. 244; R. C. 1905, § 466; 1887, ch. 154, § 3; R. C. 1899, § 400.]

§ 745. County officers supplied. The county auditor must deliver one copy of each volume so marked or branded into the custody of the clerk of the district court, county judge and state's attorney of his county, and retain one copy to be filed in his office, and each of such officers shall at the expiration of his term of office deliver such volume to his successor in office. [1907, ch. 244; R. C. 1905, § 467; 1887, ch. 154, § 3; R. C. 1899, § 401.]

ARTICLE 7.—THE DISTRICT COURTS.

§ 746. Judicial districts. The state is divided into judicial districts as provided by law, and terms of court shall be held in each district as provided in this article. There shall be elected in each judicial district a judge of the district court, whose term of office shall be four years from the first Monday in January next succeeding his election and until his successor is elected and qualified. [1911, ch. 169; 1907, ch. 159; R. C. 1905, § 468; 1895, ch. 103, § 1; R. C. 1899, § 402; 1903, ch. 116.]

Creation of ninth district not fully provided for. *State ex rel. Erickson v. Burr*, 16 N. D. 581, 113 N. W. 705.

Circuit judge appointed to fill vacancy holds for unexpired term. *State v. Gardner*, 3 S. D. 553, 54 N. W. 606.

FIRST JUDICIAL DISTRICT.

§ 747. Boundaries and terms of court. The first judicial district consists of the counties of Grand Forks and Nelson, and terms of the district court shall be held each year at the county seat of each of said counties as follows:

In Grand Forks county commencing on the first Tuesday in each month, excepting the months of August and September; but a jury shall not be called for any term unless, in the opinion of the judge, there is sufficient business to demand a jury; provided, that a jury shall be called for at least two terms of said court each year.

In Nelson county commencing on the first Monday after the fourth day of July and the first Monday after the first day of January. [1907, ch. 160; R. C. 1905, § 469; 1897, ch. 62; R. C. 1899, § 403.]

As to regular term within section 10307 meaning jury term. *State v. Foster*, 14 N. D. 561, 105 N. W. 938.

Provision that court may be held at given time does not necessarily constitute it a regular term of court. *State v. Fleming*, 20 N. D. 105, 126 N. W. 565.

SECOND JUDICIAL DISTRICT.

§ 748. Boundaries and terms of court. The second judicial district consists of the counties of Ramsey, Towner, Rolette, Benson and Eddy, and two terms of the district court shall be held each year at the county seat of each of said counties as follows:

In Ramsey county commencing on the first Monday in March and the second Monday in November;

In Towner county commencing on the third Monday in March and the fourth Monday in November;

In Benson county commencing on the first Monday in June and the second Monday in December;

In Rolette county commencing on the third Monday in June and the first Monday in January;

In Eddy county commencing on the third Monday in May and the second Monday in October. [1913, ch. 139; 1911, ch. 172; R. C. 1905, § 470; 1899, ch. 49; R. C. 1899, § 404; 1903, ch. 110.]

THIRD JUDICIAL DISTRICT.

§ 749. Boundaries and terms of court. The third judicial district consists of the counties of Cass, Steele and Traill, and terms of the district court shall be held at the county seat in each of such counties each year as follows:

In Cass county commencing on the first Tuesday after the first Monday in January, the fourth Tuesday in April, the first Tuesday in September, and the first Tuesday in November. A jury must be called for the November term and for the April term, unless a jury shall have been called for the previous January term, in which case a jury at the April term may be dispensed with. No jury shall be called at the September term.

In Steele county commencing on the third Tuesday in June and the third Tuesday in October.

In Traill county commencing on the second Tuesday in February and the first Tuesday in June. [R. C. 1905, § 471; 1893, ch. 53, § 1; R. C. 1899, § 405; 1903, ch. 62.]

FOURTH JUDICIAL DISTRICT.

§ 750. Boundaries and terms of court. The fourth judicial district consists of the counties of Richland, Ransom, Sargent, Dickey and McIntosh.

Two terms of the district court shall be held each year at the county seat of each of the following named counties, to wit:

In Richland county commencing on the first Tuesday in January and the first Tuesday in June.

In Sargent county commencing on the first Tuesday in February and the first Tuesday in September.

In Dickey county commencing on the first Tuesday in March and the first Tuesday in October.

In McIntosh county commencing on the first Tuesday in April and the first Tuesday in November.

In Ransom county commencing on the first Tuesday in May and the first Tuesday in December. [1911, ch. 170; R. C. 1905, § 472; 1899, ch. 50; R. C. 1899, § 406; 1903, ch. 63; 1905, ch. 84.]

FIFTH JUDICIAL DISTRICT.

§ 751. Boundaries and terms of court. The fifth judicial district shall consist of the counties of Stutsman, Barnes, LaMoure, Wells, Griggs and Foster and two terms of the district court shall be held each year at the county seat of each of said counties as follows:

In Stutsman county commencing on the third Monday in June and the second Monday in December;

In Barnes county commencing on the first Monday in January and the first Monday in June;

In LaMoure county commencing on the first Monday in February and the fourth Monday in September;

In Wells county commencing on the third Monday in July and the third Monday in January;

In Griggs county commencing on the second Monday in May and the second Monday in November;

In Foster county commencing on the first Monday in May and the second Monday in October. [1913, ch. 141; 1909, ch. 74; R. C. 1905, § 473; 1897, ch. 64; R. C. 1899, § 407; 1903, ch. 61; 1905, ch. 85.]

An act defining boundaries of this district and fixing the terms of court was vetoed in Laws 1911, ch. 323.

SIXTH JUDICIAL DISTRICT.

§ 752. Boundaries and terms of court. The sixth judicial district consists of the counties of Burleigh, Emmons, Kidder, McLean, Sheridan and Logan and is divided into judicial subdivisions as follows:

1. The first subdivision consists of the county of Burleigh and four terms of the district court shall be held each year at the county seat thereof, commencing on the third Tuesday in February, the second Tuesday in May, the first Tuesday in September and the second Tuesday in December, but a jury shall not be called for the February and September term of court unless in the opinion of the judge there is sufficient business of the court to require a jury.

2. The second subdivision consists of the county of Emmons and two terms of the district court shall be held each year at the county seat thereof commencing on the first Tuesday in February and the first Tuesday in October.

3. The third subdivision consists of the county of Kidder and two terms of the district court shall be held at the county seat thereof each year commencing on the second Tuesday in January and the third Tuesday in June.

4. The fourth subdivision consists of the county of McLean and two terms of the district court shall be held each year at the county seat thereof commencing on the second Wednesday in June and the second Wednesday in November.

5. The fifth subdivision consists of Sheridan county and two terms of the district court shall be held therein at the county seat each year commencing on the second Tuesday in March and the third Tuesday in October.

6. The sixth subdivision consists of the county of Logan and two terms of the district court shall be held each year at the county seat thereof commencing on the first Tuesday in April and the fourth Tuesday in November. [1913, ch. 142; 1911, ch. 171; R. C. 1905, § 474; 1890, ch. 82, §§ 1-9; R. C. 1899, § 408; 1905, chs. 82, 83; 1905, ch. 73, § 6.]

SEVENTH JUDICIAL DISTRICT.

§ 753. Boundaries, chambers and terms of court. The seventh judicial district consists of the counties of Pembina, Walsh and Cavalier, and terms of court shall be held in each of said counties in each year as follows:

In the county of Pembina, at Cavalier, commencing on the first Tuesday of January, the first Tuesday in June, the first Tuesday in April and the first Tuesday in October.

In the county of Cavalier, at Langdon, commencing on the first Tuesday of December, the second Tuesday in June, the first Tuesday in March and the second Tuesday in September.

In the county of Walsh, at Grafton, commencing on the fourth Tuesday in January, the fourth Tuesday in June, the third Tuesday in November and the third Tuesday in March.

Provided, that at the terms of court appointed to be held in such counties for the months of March, April, September, October and November, no jury shall be called unless called by the court for the trial of criminal cases. [1913, ch. 143; 1909, ch. 75; R. C. 1905, § 475; 1895, ch. 103, § 5; R. C. 1899, § 409.]

EIGHTH JUDICIAL DISTRICT.

§ 754. Boundaries and terms of court. The eighth judicial district consists of the counties of Ward, Renville, Burke and Divide, and terms of court shall be held in each of said counties at the county seat thereof as follows:

In Ward county commencing on the second Monday in November, the third Monday in July and the first Monday in February; provided, that the said term appointed to be held in the month of February, no jury shall be called, except in the discretion of the court for the trial of criminal cases.

In Renville county commencing on the second Monday in October, the fourth Monday in June and the fourth Monday in January; provided, that at the said term appointed to be held in January no jury shall be called, except in the discretion of the court for the trial of criminal cases.

In Burke county commencing on the fourth Monday in October, the first Monday in July and the second Monday in January; provided, that at said term appointed to be held in the month of January no jury shall be called, except in the discretion of the court for the trial of criminal cases.

In Divide county commencing on the fourth Monday in September, the second Monday in June and the third Monday in January; provided, that at the said term appointed to be held in the month of January, no jury shall be called except in the discretion of the court for the trial of criminal cases. [1913, ch. 173; 1907, ch. 161, § 1; R. C. 1905, § 476; 1903, ch. 116, § 5.]

§ 755. Chambers, when and where. The court of the eighth judicial district shall, except at those times when the court shall be actually engaged in the holding of a term of court in any of the counties of the said district, have its chambers for the purpose of hearing and transacting such business as may come before it, in each of the counties comprising the eighth judicial district, in each year, at the county seats of such counties as follows:

In the county of Ward, on the first Monday in the months of January, March, May, July, September and November.

In the county of McHenry, on the first Monday in the months of February, April, June, August, October and December.

In the county of Bottineau, on the third Monday in the months of January, March, May, July, September and November.

In the county of Williams, on the third Monday in the months of February, April, June, August, October and December.

Provided, that any matter or application or motion set for hearing before the judge of the said district, at any of the said times and places designated for the holding of chambers, which do not come on for a hearing and determination at such time and place, by reason of the absence of the judge therefrom, shall be continued until the next regular day set for the holding of chambers at the said place, where said application or motion was noticed for hearing, without any further order or notice to that effect. [R. C. 1905, § 477; 1903, ch. 116, § 6.]

Of the counties named in this section Ward county is the only one remaining in the eighth judicial district. See section 754. But as the legislative assembly has made no change whatever, it is here retained.

NINTH JUDICIAL DISTRICT.

§ 756. Boundaries. District No. 9 shall consist of the counties of Bottineau, McHenry and Pierce. [1907, ch. 161, § 1.]

§ 757. Actions and judgments. All actions brought and now pending in the counties of Bottineau, McHenry and Pierce shall be continued in and tried in the ninth judicial district. The court on its own motion shall direct and authorize said actions to be entitled in the ninth judicial district, and any judgments rendered thereon shall be in full force and effect in said district. [1907, ch. 161, § 2.]

§ 758. Terms of courts. The terms of the district court in the ninth judicial district shall be held at the county seat of each county in said district, as follows:

In the county of Bottineau, on the second Monday in February, the fourth Monday in April, the fourth Monday in June, the third Monday in September, and the third Monday of November of each year; provided, that no jury shall be called for the terms of court beginning on the fourth Monday in April, the fourth Monday in June and the third Monday in September, except in the discretion of the district judge.

In the county of McHenry, on the second Monday in March, the second Monday in May and the third Monday in July, the first Monday in October and the third Monday in December of each year; provided, that no jury shall be called for the terms of court beginning the second Monday in May, the third Monday in July, and the first Monday in October, except in the discretion of the district judge.

In the county of Pierce, on the third Monday in January, the first Monday in April, the first Monday in June, the first Monday in September and the third Monday in October of each year; provided, that no jury shall be called for the terms of court beginning the first Monday in April, the first Monday in September, and the third Monday in October, except in the discretion of the district judge.

Any terms of court now called for the ninth judicial district by the presiding judges of the second and eighth judicial districts shall be duly held, unless continued by the judge of the ninth judicial district, for cause. [1909, ch. 76, § 3; 1907, ch. 161, § 3.]

Laws 1907, ch. 161, §§ 4, 5, provided as follows:

"§ 4. Judge, when chosen. There shall be chosen a judge of the district court for the ninth judicial district at the general election to be held in November, 1908, and thereafter as provided by law.

"§ 5. Old boundaries remain until new judge qualifies. Until the election and qualification of the judge of the ninth judicial district as herein provided for, all of the territory comprehended in said ninth judicial district shall be and remain a part of the judicial district to which it belongs under existing laws."

TENTH JUDICIAL DISTRICT.

§ 759. Defined. Terms of court. The tenth judicial district consists of the counties of Stark, Billings, Dunn, Hettinger, Bowman, Adams and Golden Valley, and all unorganized territory lying within the boundaries of any of said counties, and said district is divided into judicial subdivisions as follows:

1. The first subdivision consists of the county of Stark, and four terms of the district court shall be held therein each year at Dickinson, the county seat of said county, commencing on the third Tuesday in May, the first Tuesday in September, and the first Tuesday in December, and the first Tuesday in March; provided, that no jury shall be summoned for the September and March terms, excepting upon the order of the judge of said court.

2. The second subdivision consists of the county of Billings, and three terms of the district court shall be held therein each year at Medora, the county seat of said county, commencing on the first Tuesday in January, and the first Tuesday in June, and at such other time as the judge of the district court may designate but no jury shall be called for the third term, excepting by order of the judge.

3. The third subdivision consists of the county of Dunn, and two terms of the district court shall be held therein each year at Manning, the county seat of said county, commencing at such time as the judge of said court shall direct.

4. The fourth subdivision consists of the county of Hettinger, and two terms of the district court shall be held therein each year at Mott, the county seat of said county, commencing on the second Tuesday in February and the first Tuesday in October.

5. The fifth subdivision consists of the county of Bowman, and two terms of the district court shall be held therein each year at Bowman, the county seat of said county, commencing on the third Tuesday in June and the second Tuesday in November.

6. The sixth subdivision consists of the county of Adams, and two terms of the district court shall be held therein each year at Hettinger, the county seat of said county, commencing on the first Tuesday in April and the third Tuesday in October.

7. The seventh subdivision consists of the county of Golden Valley, and two terms of court shall be held therein each year at Beach, the county seat of said county, commencing on the third Tuesday in January, and the second Tuesday in July. [1913, ch. 144, § 1; 1911, ch. 168, § 1; 1909, ch. 77, § 1; 1907, ch. 162, § 1.]

§ 760. New counties. In the event of any new county or counties being created within the said tenth judicial district it shall be the duty of the judge of said court to hold two terms of the district court in each year in each new county that is created out of the territory within the said tenth judicial district at such times as the judge of said court shall direct. [1913, ch. 144, § 2; 1911, ch. 768, § 2; 1907, ch. 162, § 5.]

§ 761. Chambers of the judge. The court of the tenth judicial district shall, excepting such times as the court is actually engaged in the holding of a term of said court in any of the counties of said district, have its chambers for the purpose of holding and transacting such business as may come before it, at Dickinson, the county seat of Stark county, on the first Monday in each month. [1913, ch. 144, § 3; 1911, ch. 168, § 3; 1909, ch. 77, § 2; 1907, ch. 162, § 2.]

ELEVENTH JUDICIAL DISTRICT.

§ 762. Boundaries and terms of court. The eleventh judicial district shall consist of the counties of Williams, Mountrail and McKenzie. The terms of the district court in the eleventh judicial district shall be held at the county seat of each county in said district as follows:

In the county of Williams, on the fourth Monday in June, the first Monday in October, and the second Monday in December, of each year; provided that no jury shall be called for the term of court opening on the first Monday in October, except in the discretion of the district judge.

In the county of Mountrail on the third Monday in July, the third Monday in November, and the third Monday in January, of each year; provided that no jury shall be called for the term of court opening on the third Monday in January, except in the discretion of the district judge.

In the county of McKenzie on the second Monday in June, and the third Monday in October of each year.

Any terms of court now called by the presiding judges of the eighth and tenth judicial districts shall be duly held, unless continued by the judge of the eleventh judicial district for cause. [1911, ch. 166, §§ 1, 2.]

§ 763. Judge. When appointed and chosen. Governor shall appoint. There shall be appointed by the governor a judge of the district court for the eleventh judicial district who shall hold office until the next general election, and until his successor is duly elected and qualified. [1911, ch. 166, § 3.]

§ 764. Actions and judgments in full force. All actions brought and now pending in the counties of Williams, Mountrail and McKenzie, and entitled in the eighth and tenth judicial districts shall be continued in and tried in the eleventh judicial district, and any judgment rendered therein shall be in full force and effect in the said eleventh judicial district and the court upon its own motion shall direct and authorize said actions to be entitled in the eleventh judicial district. [1911, ch. 166, § 4.]

TWELFTH JUDICIAL DISTRICT.

§ 765. Boundaries. There is hereby created the twelfth judicial district of the state of North Dakota, which shall consist of the counties of Morton, Oliver and Mercer, and all that portion of the Sioux Indian Reservation lying north of the seventh standard parallel and south of the southern boundary of Morton county, and is divided into judicial subdivisions as follows:

1. The first subdivision consists of the county of Morton and all that portion of the Sioux Indian Reservation lying north of the seventh standard parallel and south of said county.

2. The second subdivision consists of the county of Oliver.

3. The third subdivision consists of the county of Mercer. [1911, ch. 167, § 1.]

§ 766. Terms of court. Four terms of the district court for the first subdivision of the twelfth judicial district consisting of the county of Morton, shall be held each year at Mandan, the county seat of said county; which said terms shall commence on the fourth Monday in March and the third Monday in June, the third Monday in September and the first Monday in December; provided, that no jury shall be called for the March and September terms, except upon the order of the judge for the trial of criminal cases, but when a jury is called at such terms, the court may in its discretion take up the trial of civil jury cases in addition to such criminal cases.

Two terms of the district court of the second subdivision of the twelfth judicial district, consisting of the county of Oliver, shall be held each year at the county seat of said county; which said terms shall commence on the first Monday in June and the third Monday in October.

Two terms of the district court of the third subdivision of the twelfth judicial district, consisting of the county of Mercer, shall be held each year at the county seat of said county, which said term shall commence on the second Monday in March and the third Monday in November. [1913, ch. 145, §§ 1-3; 1911, ch. 167.]

§ 767. Judge. Election of. The governor shall appoint a judge of the twelfth judicial district, who shall hold his office until the next general election and until his successor is duly elected and qualified. [1911, ch. 167, § 2.]

§ 768. Actions and judgments. All actions now pending in the counties of Oliver, Morton and Mercer and entitled in the tenth judicial district shall be continued in and tried in the twelfth judicial district, and the court on its own motion, shall direct and authorize said actions to be entitled in the twelfth judicial district. [1911, ch. 167, § 3.]

§ 769. New counties. Whenever any county is created and organized out of any of the territory designated as composing said twelfth judicial district, there shall be held in such newly created and organized county two terms of court each year, at the county seat, at such times as the judge of said district shall fix. [1911, ch. 167, § 4.]

ARTICLE 8.—GENERAL PROVISIONS RELATING TO DISTRICT COURTS.

§ 770. Special terms of court. Nothing contained in article 7 shall be construed to restrict the power of the court or any judge to call and convene other terms of court in any of said counties and require the attendance of jurors at the same in the manner provided by law, but such special terms shall not supersede the requirement to hold any general term hereinbefore provided for. [R. C. 1905, § 478; 1893, ch. 53, § 3; R. C. 1899, § 411.]

New cases can be noticed for such term and tried thereat. 3 N. D. 17, 53 N. W. 173.

Jurors may be summoned and criminal cases tried at special terms. *State v. Boucher*, 8 N. D. 277, 78 N. W. 988.

Circuit judge is authorized to order special term of court. *Re Nelson*, 19 S. D. 214, 102 N. W. 885.

§ 771. In case of holidays. In case the day appointed for the commencement of the term in any county shall be a statutory holiday such term may commence on the following day. [R. C. 1905, § 479; 1893, ch. 53, § 2; R. C. 1899, § 412.]

Validity of court business transacted on legal holiday. 10 L.R.A.(N.S.) 791.

§ 772. Salary. The judges of the district courts shall receive an annual salary of four thousand dollars, the payment thereof to begin at the expiration of the term of each of the present incumbents, and until the expiration of the present term of each of said judges he shall receive an annual salary of three thousand five hundred dollars. [1907, ch. 77, § 2.]

See also appropriation in section 653d.

Laws 1911, ch. 175, provided for the payment by the state of expenses of a district judge performing official duties outside of his own county. It is expressly repealed in section 653i in an act which expires July first, 1915. See comments in the note immediately preceding section 653a. A bill re-enacting the provisions of chapter 175, above cited, was vetoed in Laws 1913, ch. 296.

§ 773. District judges reimbursed, in certain cases. In case a judge of the supreme court shall be in any way interested in a cause brought before said court and the remaining judges of said court shall call one of the district judges to sit with them on the hearing of said cause, the district judge so called shall be entitled to receive his actual and necessary expenses incurred while sitting as such supreme court judge, including hotel and traveling expenses, said sum to be paid out of the general fund of the state, upon an itemized account properly verified by the judge entitled thereto. [1911, ch. 176, § 1.]

This is expressly recognized in the appropriation in section 653g.

ARTICLE 9.—COURT STENOGRAPHERS.

§ 774. Appointment, how made. The judge of the district court in each judicial district may, whenever in his judgment it will expedite the public business, appoint a competent person to the office of court stenographer within his district. The order of appointment shall be filed in the office of the clerk and entered upon the records of the court in each county of the district, and the person so appointed shall take and subscribe the oath required of other civil officers and file the same in the office of the secretary of state, and shall hold his office and discharge the duties thereof in person until the order for his appointment is revoked, or another person is appointed to such office. In case such stenographer shall be incapacitated from acting the judge may appoint some suitable person to act in his place, whose minutes, transcripts and certificates shall have the same force and effect as though made by such official stenographer, but the certificates made by such person shall be under oath. [R. C. 1905, § 481; 1893, ch. 46, § 1; R. C. 1899, § 414.]

§ 775. Duties. Such stenographer shall attend the sessions of the court within the district whenever the judge shall so direct, and shall take in shorthand all testimony given orally by the witnesses and all objections and rulings made and exceptions taken, also the instructions given orally by the court and all other proceedings at the hearing or trial not reduced to writing. [R. C. 1905, § 482; 1893, ch. 46, § 2; R. C. 1895, § 415.]

Item for stenographer's fees to perfect appeal record not taxable costs. *Elfring v. New Birdsall Co.*, 17 S. D. 350, 96 N. W. 703.

May be required to attend court outside circuit; entitled to mileage. *Underwood v. Lawrence Co.*, 6 S. D. 5, 60 N. W. 147.

§ 776. Original minutes to be filed, where. The original shorthand minutes so taken with the indorsement thereon in longhand over the signature of the stenographer, giving the title of the action and stating the contents and time and place of taking, shall in every case be filed in the office of the clerk of the court of the county in which the action is pending at the conclusion of the trial or as soon thereafter as practicable, but the same may be withdrawn by the stenographer at any time for a reasonable period for the purpose of transcribing. [R. C. 1905, § 483; 1893, ch. 46, § 3; R. C. 1895, § 416.]

§ 777. Transcript of minutes, when to be made. The judge may, in a criminal action on the application of the defendant or the state's attorney, whenever in his judgment there is reasonable cause, order a transcript of the original minutes or any part thereof to be made at the expense of the county, and such stenographer shall plainly transcribe the same into longhand accordingly and file such transcript in the office of the clerk, and he shall at any time at the request of any party to a civil or criminal action, upon payment of his fees as provided by law, in like manner transcribe his original minutes or any part thereof taken in such action, and deliver the

same to the party ordering such transcript, who may file the same in the office of the clerk whenever he shall so elect. [R. C. 1905, § 484; 1893, ch. 46, § 4; R. C. 1895, § 417.]

Rule of court that suitor must procure transcript of entire testimony before settlement of statement or bill of exceptions, unauthorized. *Kaeppler v. Pollock*, 8 N. D. 59, 76 N. W. 987.

Not judge's duty to require him to read notes in settling bill of exceptions. *Myers v. Campbell*, 11 S. D. 433, 78 N. W. 353.

§ 778. Transcript available for either party. Each transcript filed as herein provided shall be available alike to either party to the action for the purposes hereinbefore set forth. [R. C. 1905, § 485; 1893, ch. 46, § 4; R. C. 1895, § 417.]

Rule of district court requiring suitor to file transcript of entire testimony, illegal. *Kaeppler v. Pollock*, 8 N. D. 59, 76 N. W. 987.

Judge not required to settle bill of exceptions without transcript of official stenographer's notes. Not duty of stenographer to read notes. *Myers v. Campbell*, 11 S. D. 433, 78 N. W. 353.

§ 779. Certificate of transcript. Such transcript must in each case be certified by the stenographer to the effect that it is a correct transcript of his original shorthand minutes and a full, true and complete statement of the testimony and other proceedings which it purports to contain, and when he has ceased to hold his office as stenographer of the court he must make such certificate under oath. [R. C. 1905, § 486; 1893, ch. 46, § 5; R. C. 1899, § 418.]

§ 780. Compensation. The stenographer shall be entitled to receive from each county in which he is required to attend court reimbursement for his traveling expenses at the rate of five cents per mile for each mile actually and necessarily traveled in going thereto and returning therefrom and compensation for his time actually employed in attending court therein in such sum as the judge shall allow, not exceeding ten dollars per day, all of which shall be audited and paid by the proper county on the order of the judge. For making transcripts as herein provided he shall be entitled to receive such compensation as the judge shall allow, not exceeding fifteen cents for each folio of one hundred words, and the same, when ordered by the judge, shall be paid by the county chargeable with the costs of the action, and in all other cases by the party requesting such transcript. [R. C. 1905, § 487; 1893, ch. 46, § 6; R. C. 1899, § 419.]

§ 781. Compensation for copies for parties. Upon request of any party the official stenographer of the district or county court shall, at the time of making a transcript of the proceedings, make four additional copies thereof, and for the making of said four copies, such stenographer shall be entitled to charge, in addition to his fee for the making of the original transcript, ten cents (\$0.10) per folio of one hundred words. [1913, ch. 131, § 16.]

This section is taken from that part of a chapter which deals with appellate procedure.

ARTICLE 10.—STATE BOARD OF BAR EXAMINERS.

§ 782. Appointment by supreme court. The justices of the supreme court of this state shall appoint from the members of the bar of this state, resident therein and who shall be learned in the law, three persons to constitute a state board of examiners in law. [R. C. 1905, § 488; 1905, ch. 50, § 1.]

§ 783. Term of office. Vacancy, how filled. The term of office of the members of the first board shall be as follows: One shall be appointed for two years, one shall be appointed for four years and one shall be appointed for six years, and their successors shall receive their appointment in a like manner for a term of six years each; but in case of a vacancy occurring by death or otherwise there shall be appointed in a like manner a person to serve through the unexpired term of the member to whose place he is appointed. [R. C. 1905, § 489; 1905, ch. 50, § 2.]

§ 784. Officers of board. Public examination. Record of proceedings. The said board shall elect one of its members president. The clerk of the supreme court shall be ex-officio secretary and treasurer of said board. The said board shall, at least two times in each year, hold public examinations for admission to the bar of this state, which examinations shall be both written and oral, in such places and at such times in this state as the said board, or a majority thereof, shall direct. The said board shall keep a record of all its proceedings and also a record of all applications for admission to the bar, and shall enroll in a book kept for that purpose, the name of each person admitted as an attorney at law. [R. C. 1905, § 490; 1905, ch. 50, § 3.]

§ 785. Report of examinations. Certificate of admission. The said board shall, as soon as practicable thereafter, report the result of all examinations to the supreme court, with such recommendations for admission as to the said board shall seem just, and the supreme court shall, after considering said report and said recommendations, by order, either in term time or in vacation, authorize the issuance of certificates of admission to the bar, upon taking the oath of office at such time and place as such order may provide. [R. C. 1905, § 491; 1905, ch. 50, § 4.]

§ 786. Examination fee, how applied. The said board shall receive from each person applying for examination the sum of twenty dollars as a fee therefor, and all fees received by said board shall be deposited with the treasurer of said board and applied towards the expenses and compensations of the respective members of such board. The secretary of said board shall be allowed such compensation for expenses and services from the fees so received as the said board may determine; upon the admission to the bar of any such person so examined, as herein provided, no fee shall be required therefor. [1913, ch. 275; R. C. 1905, § 492; 1905, ch. 50, § 5.]

§ 787. Salary of board. There shall be paid out of the treasury of said board to each examiner appointed as aforesaid a compensation not exceeding ten dollars per day and his actual necessary expenses in going to, holding and returning from any such examination; provided, that all such expenses shall be paid from the fees received by the board under the provisions of this article and no part of the compensation or expenses provided for herein shall be paid out of the state treasury. [R. C. 1905, § 493; 1905, ch. 50, § 6.]

§ 788. Admission and practice dependent upon compliance with rules of court. No person shall hereafter be admitted to practice as an attorney and counselor at law, or to commence, conduct or defend any action or proceeding in any of the courts of record of this state, in which he is not a party concerned, unless he has complied with and been admitted under and pursuant to such rules as the supreme court of this state shall prescribe. [R. C. 1905, § 494; 1905, ch. 50, § 7.]

Constitutional privilege to practice law. 14 L.R.A. 581.

Right of women to practice law. 21 L.R.A. 701.

Practice of law by corporation. 32 L.R.A.(N.S.) 56.

§ 789. Power to admit vested in the supreme court. The power to admit persons to practice as attorneys and counselors at law in the courts of this state is hereby vested in the supreme court. [R. C. 1905, § 495; 1891, ch. 119, § 1; R. C. 1899, § 420.]

Attorneys admitted before statehood entitled to admission without examination.

In re Helwig, 5 S. D. 272, 58 N. W. 674.

"Attorney" means one who holds license to practice law. Danforth v. Egan, 23 S. D. 43, 119 N. W. 1021.

§ 790. Qualification of applicants. Applicants for admission to practice as attorneys and counselors at law must be residents of this state, at least twenty-one years of age, of good moral character, and must have actually and in good faith pursued a regular course of study of the law for at least three full years, either in the office of a member of the bar of this state residing therein, and in regular practice or with and under the immediate direction of a judge of the supreme court, district court, or county court having

increased jurisdiction, of this state, or in some reputable law school of the United States, or partly in such office and partly in such law school; but in computing such period of study, the school year of any such law school, consisting of not less than thirty-five weeks, exclusive of vacation, shall be considered equivalent to one full year. [1911, ch. 57.]

One applying for application on certificate from another state must show good moral standing. *Re Olmstead*, 11 N. D. 306, 97 N. W. 943.

Legal ethics as part of attorney's qualifications. *Danforth v. Egan*, 23 S. D. 43, 119 N. W. 1021.

Charges of impropriety and corruption against judges of supreme court, sufficient to prevent admission to bar. *Re Egan*, 24 S. D. 301, 123 N. W. 478.

Power of legislature to prescribe qualifications of attorney. 10 L.R.A. (N.S.) 289.

§ 791. Must take oath. Upon being admitted to practice as an attorney and counselor at law, he shall, in open court, take the oath prescribed in section 211 of the constitution. In the case of graduates of the law department of the University of North Dakota, however, who shall have been admitted to practice by said court, it shall be sufficient if the said oath be administered by the clerk of the supreme court in or out of term time, and it shall not be necessary for the same to be administered in open court. [R. C. 1905, § 497; 1891, ch. 119, § 4; R. C. 1899, § 423; 1903, ch. 188.]

§ 792. Admission on certificate, how. Any person becoming a resident of this state, after having been admitted to the bar in any of the states of the United States, in which he has previously resided, may, at the discretion of the court, be admitted to practice in this state without examination or proof of period of study as hereinbefore provided, on proof of the other qualifications by this article required and on satisfactory proof that he has practiced law regularly for not less than three years in the state from which he comes, after having been admitted to the bar according to the laws of such state. Provided, however, that time spent while acting as official stenographer in any of the district courts of this state may be substituted in lieu of the period of regular practice of law in the state from which he comes, referred to in this section, after having been admitted to the bar according to the laws of such state. [1911, ch. 58; R. C. 1905, § 498; 1891, ch. 5, § 5; R. C. 1899, § 424; 1903, ch. 37.]

Applicant holding certificate in other state must prove that he has practiced three years. In *re Application for Admission to Practice*, 14 S. D. 429, 85 N. W. 992.

Certificate of admission in other state conclusive that holder is "learned in the law." *Howard v. Burns*, 14 S. D. 383, 85 N. W. 920.

One applying for application on certificate from another state must show good moral standing. *Re Olmstead*, 11 N. D. 306, 97 N. W. 943.

§ 793. Foreign attorneys may practice, when. Any member of the bar of another state, actually engaged in any cause or matter pending in any court in this state, may be permitted by such court to appear in and conduct such cause or matter while retaining his residence in another state without being subject to the foregoing provisions of this article. [R. C. 1905, § 499; 1891, ch. 119, § 7; R. C. 1899, § 426.]

A nonresident attorney may be allowed to assist in the prosecution of a criminal case. *State v. Kent*, 4 N. D. 577, 62 N. W. 631.

ARTICLE 11.—ATTORNEYS AND COUNSELORS AT LAW.

§ 794. Duties of an attorney. It is the duty of an attorney and counselor:

1. To maintain the respect due to the courts of justice and judicial officers.
2. To counsel and maintain no other actions, proceedings or defenses than those which appear to him legal and just, except the defense of a person charged with a public offense.
3. To employ for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never seek to mislead the judges by any artifice or false statement of fact or law.
4. To maintain inviolate the confidence, and at any peril to himself to preserve the secret of his client.

5. To abstain from all offensive personalities and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.

6. Not to encourage either the commencement or continuance of an action or proceeding from any motive of passion or interest.

7. Never to reject for any consideration personal to himself the cause of the defenseless or the oppressed. [R. C. 1905, § 500; R. C. 1899, § 427.]

On the relations of attorney to client, see *Yerkes v. Crum*, 2 N. D. 72, 49 N. W. 422; *Clark v. Sullivan*, 3 N. D. 280, 55 N. W. 733; *O'Neill v. Murry*, 6 Dak. 107, 50 N. W. 619.

Attorney's duty to make full disclosure of facts in settling a collection with client. *Riegi v. Phelps*, 4 N. D. 272, 60 N. W. 402.

Deceit ground for disbarment, what. In re *Simpson*, 9 N. D. 379, 83 N. W. 541.

Deceit and unprofessional conduct reviewed. In re *Freerks*, 11 N. D. 120, 90 N. W. 265.

Attorneys as public officers. 17 L.R.A. 244.

Right of attorney at law to solicit business. 9 L.R.A.(N.S.) 282.

Attorney's statement in court concerning decisions as contempt. 5 L.R.A.(N.S.) 916.

Reflection on judge as ministerial officer as contempt. 15 L.R.A.(N.S.) 621.

Communications between attorney and client, when must be regarded as privileged. 36 Am. Rep. 631; 66 Am. St. Rep. 213.

Right to withdraw from suit because of client's misconduct. 35 L.R.A.(N.S.) 960.

When statute of limitations begins to run against an action for negligence or misconduct of an attorney in performance of professional duties. 12 L.R.A.(N.S.) 1005.

§ 795. Punishment for deceit. An attorney and counselor who is guilty of deceit or collusion, or consents thereto, with intent to deceive a court, judge or party to an action or proceeding is liable to be disbarred and shall forfeit to the injured party treble damages, to be recovered in a civil action. [R. C. 1905, § 501; R. C. 1899, § 428.]

See reference to this section in section 884.

One fraudulently procuring judgment by misleading court is guilty of deceit and unprofessional conduct. Re *Freerks*, 11 N. D. 120, 90 N. W. 265.

Attorney stipulating in receipt for money that he will save client from alimony and costs and defeat divorce action, is guilty of fraud and deceit. Re *Elliott*, 18 S. D. 264, 100 N. W. 431.

Attorney must not permit private interests to conflict with those of his client. Re *Ramsey*, 24 S. D. 266, 123 N. W. 726.

§ 796. Power of attorneys. An attorney and counselor has power:

1. To execute in the name of his client a bond or other written instrument necessary and proper for the prosecution of an action or proceeding about to be or already commenced; or for the prosecution or defense of any right growing out of an action, proceeding or final judgment rendered therein.

2. To bind his client to any agreement in respect to any proceeding within the scope of his proper duties and powers; but no evidence of any such agreement is receivable, except the statement of the attorney himself, his written agreement signed and filed with the clerk, or an entry thereof upon the records of the court.

3. To receive money claimed by his client in an action or proceeding during the pendency thereof, or afterwards, unless he has been previously discharged by his client, and upon payment thereof, and not otherwise to discharge the claim or acknowledge satisfaction of the judgment. [R. C. 1905, § 502; R. C. 1899, § 429.]

Can acquire no interest adverse to his client in subject matter of litigation while acting as attorney. *Yerkes v. Crum*, 2 N. D. 72.

Attorney having filed answer cannot withdraw same because of nonpayment of fees. *Nichells v. Nichells*, 5 N. D. 125, 64 N. W. 73.

Attorney acting within scope of authority binds client. *Feury v. McCormick Co.*, 6 S. D. 396, 61 N. W. 162.

Agreement between attorneys giving court jurisdiction to hear motion for new trial must be in writing. *Kaslow v. Chamberlain*, 17 N. D. 449, 117 N. W. 529.

Evidence of oral agreement as to amendment of pleading, inadmissible, when denied by opponent. *Gibson v. Allen*, 18 S. D. 417, 100 N. W. 1096.

Oral stipulations of attorneys will not bind clients. *Bunday v. Smith*, 23 S. D. 308, 121 N. W. 792.

May bind client for expenses incurred in taking appeal. *Pilcher v. Trust Co.*, 12 S. D. 52, 80 N. W. 151.

Attorney has no authority to employ other attorneys to act for him. *Riebold v. Hartzell*, 23 N. D. 264, 136 N. W. 247.

Attorney's right to take acknowledgment. 33 L.R.A. 337.

Control of cause, extent to which client may exercise. 93 Am. St. Rep. 169.

Implied authority of attorney in conducting litigation. 132 Am. St. Rep. 148.

Authority to bind client. 76 Am. Dec. 256; 30 Am. Rep. 358.

Implied power to compromise cause of action. 31 L.R.A.(N.S.) 523.

Authority of attorney to satisfy judgment on payment of a sum less than that due. 41 Am. Rep. 847.

Power to satisfy judgment in favor of minor. 3 L.R.A.(N.S.) 72.

Power of attorney to submit infant's cause of action for arbitration. 70 L.R.A. 175.

Authority to enter appearance in case in behalf of infant or incompetent. 32 L.R.A. 681.

Effect of unauthorized appearance of attorney in an action. 21 L.R.A. 848.

Power of defendant's attorney to withdraw answer or appearance and permit a default judgment. 33 L.R.A. 515.

Extension of time by attorney as discharge of surety. 39 L.R.A.(N.S.) 62.

Implied power of attorney to bind client for expenses incidental to trial including associate counsel fees. 23 L.R.A.(N.S.) 702.

Right of attorney to continue on account of his compensation after collusive dismissal to defeat it. 5 L.R.A.(N.S.) 390.

Client's death as affecting attorney's authority to proceed with suit. 34 L.R.A.(N. S.) 1189.

§ 797. Proof of authority. The court may on motion of either party and on the showing of reasonable grounds thereof require the attorney for the adverse party, or for any one of the several adverse parties, to produce or prove by his oath or otherwise the authority under which he appears, and until he does so may stay all proceedings by him on behalf of the parties for whom he assumes to appear. [R. C. 1905, § 503; R. C. 1899, § 430.]

§ 798. Attorney not to be surety. No practicing attorney and counselor shall be a surety in any action or proceeding which may be instituted in any of the courts of this state. [R. C. 1905, § 504; R. C. 1899, § 431.]

Cannot become surety in any suit, or waive objection. *Peck v. Phillips*, 4 D. 430, 34 N. W. 65; *Towle v. Bradley*, 2 S. D. 472, 50 N. W. 1057.

Statute deprives of power to become such surety. *Dennett v. Reisdorfer*, 15 S. D. 466, 90 N. W. 138.

§ 799. Forfeiture of, and what courts may revoke or suspend license. The revocation of an attorney's license is, and shall constitute, a forfeiture of his office as an attorney, and the supreme court or any district court may revoke or suspend the license of an attorney and counselor at law to practice in the courts of this state, but not until a copy of the charges against him shall have been delivered to him by the clerk of the court in which the proceedings shall be had, and an opportunity shall have been given to him to be heard in his defense. [R. C. 1905, § 505; 1899, ch. 105; R. C. 1899, § 432.]

State's attorney cannot vindicate himself in disbarment proceedings by pleading ignorance of provisions of statute of state. *Re Schull*, 25 S. D. 602, 127 N. W. 541.

Court has power to reinstate. Adverse judgment as to character must be overcome by satisfactory proof. *In re Simpson*, 11 N. D. 526, 93 N. W. 918.

§ 800. Causes for revocation or suspension. The license of an attorney and counselor at law may be revoked or suspended for either of the following causes:

1. When he has committed a felony, or a misdemeanor involving moral turpitude.

2. When he is guilty of a willful disobedience or violation of an order of the court, requiring him to do or forbear an act connected with, or in the course of, the profession.

3. For a willful violation of any of the duties of an attorney or counselor as hereinbefore prescribed.

4. For doing any other act to which such a consequence is by law attached, or upon conviction for any of the offenses mentioned in sections 9417, 9426 and 9427. [R. C. 1905, § 506; R. C. 1895, § 433.]

Supreme court has inherent power to suspend and disbar. *Re Simpson*, 9 N. D. 379, 83 N. W. 541.

Although supreme court possesses power to disbar, proceedings should be initiated in district court. *Re Freerks*, 11 N. D. 120, 90 N. W. 265.

Disbarment proceeding not a criminal prosecution; laches in prosecution no defense. *Re Crum*, 7 N. D. 316, 75 N. W. 257.

Only statutory grounds for disbarment considered. *Re Eaton*, 4 N. D. 514, 62 N. W. 597.

No summary suspension or disbarment for contempt. *State v. Root*, 5 N. D. 487, 67 N. W. 590.

It is no defense to proceeding for disbarment for violation of attorney's duty to his client that client has made no complaint, and may not have been injured. *Re Ramsey*, 24 S. D. 266, 123 N. W. 726.

Constitutionality of statutes relating to disbarment. 44 L.R.A.(N.S.) 1195.

Causes and proceedings for disbarment and power of courts to disbar. 95 Am. Dec. 333; 45 Am. St. Rep. 71.

Disbarment of attorneys by courts as the result of summary proceedings. 2 Am. St. Rep. 850.

Criticism of decision or opinion after case has been determined as ground for disbarment of attorney. 17 L.R.A.(N.S.) 572.

Withholding client's money or property as ground for disbarment of attorney. 19 L.R.A.(N.S.) 414.

Advertising as ground for disbarment of attorney. 33 L.R.A.(N.S.) 941.

Disbarment in other state or concealment of that fact. 24 L.R.A.(N.S.) 531.

Extent of restriction on right of disbarred or suspended attorney to transact legal business for another. 24 L.R.A.(N.S.) 755.

As to similar provision in Mont. Code Civ. Proc. § 402, see *Re Bloor*, 21 Mont. 49, 52 Pac. 779; *Re Wellcome*, 23 Mont. 140, 58 Pac. 46; *Re Weed*, 26 Mont. 244, 67 Pac. 309; *Re Weed*, 26 Mont. 516, 68 Pac. 1118; *Re Carleton*, 33 Mont. 440, 114 Am. St. Rep. 826, 84 Pac. 788; *Re Thresher*, 33 Mont. 442, 114 Am. St. Rep. 834, 84 Pac. 876, 8 Ann. Cas. 845.

1. Act of state's attorney in gambling in public place on roulette wheel and not prosecuting keeper, is misdemeanor authorizing disbarment. *Re Voss*, 11 N. D. 540, 90 N. W. 15.

Conviction of infamous crime cause for disbarment notwithstanding writ of error of United States Supreme Court. *Re Kirby*, 84 Fed. 606.

Record of conviction of crime, conclusive evidence of moral turpitude. *Re Kirby*, 10 S. D. 322, 73 N. W. 92, 39 L.R.A. 856.

Conviction in federal court sufficient cause for disbarment in state court. *Re Kirby*, 10 S. D. 414, 73 N. W. 907.

Crimes and other misconduct which are causes for disbarment. 42 Am. Rep. 557.

Disbarment of attorneys for criminal acts in advance of their conviction. 114 Am. St. Rep. 839.

Effect of pardon on right to disbar attorney convicted of felony. 16 L.R.A.(N.S.) 272.

Conviction or commission of crime or misconduct by attorney in another state. 19 L.R.A.(N.S.) 892.

2. Act of attorney in advising and participating in violation of injunctive order is ground for disbarment. *Re Elliott*, 18 S. D. 264, 100 N. W. 431.

3. A state's attorney rendering assistance to a defendant violates his duties as an attorney. *Re Voss*, 11 N. D. 540, 90 N. W. 15.

Necessity of bad or fraudulent motive to justify disbarment of attorney. 18 L.R.A. 401.

Want of due respect toward court in legal papers as ground for disbarment of attorney. 15 L.R.A.(N.S.) 525.

§ 801. Proceedings to remove or suspend. The proceeding to remove or suspend an attorney may be commenced by direction of the court, or on motion of any individual. In the former case the court must direct some attorney to draw up the accusation; in the latter the accusation must be drawn up and sworn to by the person making it. [R. C. 1905, § 507; R. C. 1899, § 434.]

Disbarment proceedings commenced in district court, generally. In *re Freerks*, 11 N. D. 120, 90 N. W. 265.

Disqualification of judge to preside at disbarment proceedings because of membership in bar association instituting the proceedings. 39 L.R.A.(N.S.) 116.

As to similar provision in Mont. Code Civ. Proc., § 402, see *Re Bloor*, 21 Mont. 49, 52 Pac. 780; *Re Wellcome*, 23 Mont. 213, 58 Pac. 47; *Re Weed*, 26 Mont. 250, 67 Pac. 312.

§ 802. Accusations, how answered. To the accusation he may plead or demur and the issues joined thereon shall in all cases be tried by the court, all the evidence being reduced to writing, filed and preserved. [R. C. 1905, § 508; R. C. 1899, § 435.]

§ 803. Judgment of the court. If the accused fails to answer or pleads guilty, the court shall proceed to render such judgment as the case requires. [R. C. 1905, § 509; R. C. 1899, § 436.]

§ 804. Appeal from judgment. An appeal lies to the supreme court from all orders of the district court revoking or suspending the license of an attorney.

ney and counselor at law; and upon an appeal being taken from such an order all the original papers, together with the transcript of the record and proceedings therein, shall thereupon be transferred to the supreme court to be there tried and determined as the law and the evidence shall warrant. A judgment of acquittal by the district court is final. [R. C. 1905, § 510; R. C. 1899, § 437.]

Supreme court reviews facts upon appeal. In re Crum, 7 N. D. 316, 75 N. W. 257.

Disbarment proceedings should be initiated in district court. Re Freerks, 11 N. D. 120, 90 N. W. 265.

§ 805. Refusal to pay over money. An attorney who receives money or property of his client in the course of his professional business and who refuses to pay or deliver the same to the person entitled thereto within a reasonable time after demand is guilty of a misdemeanor. [R. C. 1905, § 511; R. C. 1899, § 438.]

Right of client to maintain trover or case for money collected by attorney. 30 L.R.A. (N.S.) 35.

When statute of limitations commences to run against action to recover money collected by attorney. 17 L.R.A. (N.S.) 667.

Right of client to recover property placed in the name of his attorney in order to defraud creditors. 37 L.R.A. (N.S.) 161.

§ 806. No penalty unless lien secured. When an attorney claims to be entitled to a lien upon money or property of his client in his possession, he is not liable to the penalty of the preceding section unless he neglects or refuses to pay or deliver such money or property to the person entitled thereto upon his giving a bond with sufficient surety to be approved by the clerk of the district court conditioned for the payment of the amount of such attorney's claim when legally established. [R. C. 1905, § 512; R. C. 1899, § 439.]

§ 807. No liability if security given. Nor shall he be liable as aforesaid if he shall give a sufficient bond conditioned that he will pay or deliver the whole or any portion of such money or property to the claimant in the event such claimant shall finally establish his right thereto. [R. C. 1905, § 513; R. C. 1899, § 440.]

§ 808. Reference to bar association by supreme court. Whenever it is brought to the attention of the supreme court of the state of North Dakota that any member of the bar of said state is charged with conduct warranting his disbarment or suspension from the right to practice, and it appears to said court that such charges, however made, should be investigated, the said court may, in its discretion, refer the matter to the bar association of North Dakota, with directions to such association to investigate such charges, through its committee on grievances or disbarment; and, when any such matter is so referred to the said association, the president of the association and the members of said regularly appointed committees, shall have power and authority to administer oaths to witnesses and take testimony in regard to such charges and to issue subpoenas commanding witnesses to appear before them at any place within the county where such witnesses may reside. [1913, ch. 11, § 1.]

§ 809. Report by bar association. When such association shall have completed its investigation, it shall be its duty to make report to the said supreme court, including therein, in general terms, the conclusions of the committee making such investigations as to the truth or falsity of the charges investigated and its recommendation as to whether further proceedings should be had. [1913, ch. 11, § 2.]

§ 810. Prosecution by bar association. Upon receiving the report mentioned in section 809, the said supreme court may, in its discretion, order and direct the said bar association, through its appropriate committees and officers, to take further proceedings in regard to such charges, looking to the disbarment, suspension from practice, or other discipline of the accused attorney; and, if such order is made, it shall thereupon be the duty of

said association, its officers and committees, to take such further proceedings in accordance with such order; and said association shall thereupon designate and select the attorney or attorneys to further prosecute such matters, and it shall have the authority to incur the ordinary expenses incidental to the conduct of such proceeding, and make the same a charge against the state of North Dakota. [1913, ch. 11, § 3.]

§ 811. **Expense of such investigation or prosecution.** Whenever any matter has, under the provisions of this act [§§ 808-813], been submitted by the supreme court to the bar association of North Dakota, and been investigated or prosecuted under its direction as aforesaid, the supreme court shall, upon being satisfied of the correctness or reasonableness thereof, order and direct that the state auditor issue to the said bar association of North Dakota a warrant for the payment of the expenses incurred by it in such investigation or prosecution; and the said supreme court may, in its discretion, allow to the attorney or attorneys a reasonable amount as compensation for the services rendered in investigating or prosecuting such charges; or, if such investigations or prosecutions have been conducted by the officers or committees of the said association, then it may, to the same extent, make such allowance of compensation to such officers or the members of such committee; and such court shall, by order, direct the state auditor to issue his warrant to such persons for the amount the court shall allow them. [1913, ch. 11, § 4.]

§ 812. **Remedy here provided not exclusive except, etc.** This act [§§ 808-813] shall not be construed as in any way providing an exclusive method for proceeding against attorneys to disbar or suspend them from practice nor as abridging the right of any individual or officer to bring and prosecute any proceedings for the disbarment or suspension of any attorney in all things the same as though this act had not been passed, except that no other proceedings can be maintained in court for the prosecution of an attorney for the same offense, while the charges in relation thereto are under investigation by the bar association of North Dakota, without an application for leave to start such prosecution duly made to the said supreme court upon notice duly given to the president and secretary of the said bar association. [1913, ch. 11, § 5.]

§ 813. **Appropriation.** There is hereby appropriated out of the general fund of the state not otherwise appropriated, not exceeding one thousand dollars per annum, or so much thereof as shall be necessary to carry out the provisions of sections 808-812. [1913, ch. 11, § 6.]

ARTICLE 12.—JURORS.

§ 814. **Qualifications of jurors.** All male citizens residing in any of the counties of this state having the qualification of electors, and of sound mind and discretion, and not judges of the supreme, district or county court, sheriff, coroner, jailer, attorney at law engaged in practice, and who are not subject to any bodily infirmity amounting to a disability, and who have not been convicted of a criminal offense punishable by imprisonment in the penitentiary, and not subject to disability on account of the commission of any offense which by special provision of law disqualifies him, are competent to serve on all grand and petit juries within their respective counties or judicial subdivisions; provided, that persons over sixty years of age, ministers of the gospel, county commissioners, registers of deeds, county auditors, county treasurers, county superintendents of schools, clerk of the supreme court, clerks of the district court, clerks of the county court, county judges, practicing physicians, practicing dentists, registered pharmacists, postmasters, carriers of United States mail, and members in good standing of any regularly organized fire company, shall not be compelled to serve as jurors in any of the courts of this

state. [R. C. 1905, § 514; 1883, ch. 73, § 1; R. C. 1895, § 441; 1901, ch. 114; 1905, ch. 86.]

Constitutional right to serve as juror. 14 L.R.A. 581, 584.

Constitutionality of statute requiring jurors to be taxpayers. 32 L.R.A.(N.S.) 414.

Right conferred by statutory exemption of firemen from jury or militia duty. 8 L.R.A.(N.S.) 498.

Exemption of consul from jury duty. 45 L.R.A. 587.

Inability of juror to read and write English, whether a ground for challenge. 35 Am. Rep. 728.

Qualifications of grand jurors. 28 L.R.A. 195.

§ 815. Jury summoned on order of district court. No jury shall be summoned except by order of the judge of the district court, who shall issue an order to the clerk of such court requiring a jury to be summoned, and in such order shall specify the number of petit jurors to be summoned and the time and place where they shall appear. Such order may be issued at any time within thirty days prior to the first day of the term of the district court at which the jury is to attend or at any time during the term. [R. C. 1905, § 515; 1883, ch. 74, § 1; R. C. 1899, § 442.]

Jurors may be summoned to try criminal actions at special terms. *State v. Boucher*, 8 N. D. 277, 78 N. W. 988.

§ 816. Grand jury, how summoned. A grand jury shall be summoned in the same manner provided for summoning petit juries; provided, that in all cases a grand jury shall consist of not less than sixteen nor more than twenty-three jurors. [R. C. 1905, § 516; 1895, ch. 62, § 1; R. C. 1899, § 443.]

Number necessary to form grand jury. 27 L.R.A. 783, 846.

§ 817. Drawing jurors in counties wholly or partially organized into civil townships. In each county in this state wherein terms of the district court are held the names of two hundred persons qualified to act as jurors shall be selected in the manner hereinafter provided, from which to draw the grand and petit jurors; provided, that if in any county there are not two hundred persons qualified to act as jurors then a less number, and the highest number possible, shall be selected. The board of county commissioners in each county, in which only a portion of the civil townships are organized, shall apportion to each of the organized townships and to each incorporated city and village in such county and to the unorganized portion of such county, as near as may be, its pro rata share of such names. The number of names to be selected from the portion of the county not organized into civil townships, and not embraced within the limits of any incorporated city or village, shall be selected by the board of county commissioners from the last annual tax list and furnished to the clerk of the district court of such county. In each county, in which all the townships are organized into civil townships, the board of county commissioners shall, as near as may be, apportion pro rata the number of names to be selected among the civil townships in their respective counties and among the incorporated cities and villages therein, if any. The names on the assessors' lists of the several townships, cities and villages for the preceding year shall be the basis for making such apportionment. [R. C. 1905, § 517; 1887, ch. 80, § 1; R. C. 1899, § 444.]

§ 818. Special venire to complete jurors' list, when. In counties whose assessors' lists contain less than two hundred names of persons qualified to act as jurors for the year preceding the making or filing of such lists of names for jurors, it shall be the duty of the board of county commissioners to select the highest number of names possible and when the number of names so selected shall not furnish a sufficient list from which to draw a grand and petit jury, a special venire shall be issued by the judge of the district court to complete the panels of jurors. [R. C. 1905, § 518; 1890, ch. 85, §§ 1, 2; R. C. 1895, § 445.]

§ 819. Clerks of townships to post notices. What notice contains. Whenever the county commissioners of any county shall have made the apportionment mentioned in section 817, the county auditor shall forthwith notify the clerk of each township and village and clerk or auditor of each city of the

apportionment of his township, city or village, and such clerk or auditor shall immediately thereafter cause to be posted in three public places in his township, city or village a notice that the board of supervisors of the township, or the board of aldermen or city council of the city, or the board of trustees of the village, as the case may be, will meet to draw the names of qualified jurors of the township, city or village to make up the grand or petit jurors' list for the county. Such notice shall state the time and place of such meeting within the township, city or village, designating a day not less than five nor more than ten days from the day of posting such notice. [R. C. 1905, § 519; 1887, ch. 80, § 2; R. C. 1895, § 446.]

§ 820. Council and trustees to select jurors, how. At the time and place mentioned in such notice the board of supervisors of the township, or the board of aldermen or the city council of the city, or the board of trustees of the village, as the case may be, shall meet and select from the names of the resident tax payers of such township, city or village three times as many names as are apportioned to the township, city or village by the county commissioners, and the township, city or village clerk or auditor shall at such meeting write each name so selected on a separate ticket and shall also record the list of the names so written and selected in a book to be kept for that purpose. Such board shall then compare the names on such tickets with such recorded list of names to satisfy itself that such tickets are correct. The tickets shall then be folded, placed in a box or some other receptacle and shaken up; one of the members of the board shall then select by lot from the tickets in such box or receptacle the proper number of names so apportioned to his township, city or village, as the case may be; and the clerk or auditor shall then record in a book to be kept for that purpose such names in the order in which they were drawn. [R. C. 1905, § 520; 1887, ch. 80, § 3; R. C. 1899, § 447.]

§ 821. Auditor furnishing list to clerk of court. Such clerk or auditor shall immediately thereafter forward by mail to the clerk of the district court of his county a list of the names so drawn with the post office address of each person named in such list; and the clerk of the district court shall make out and record in a book to be kept for that purpose, a list of the names so forwarded to him together with such post office addresses, but a failure of the officers of any township, city or village to comply with the provisions of the foregoing section shall not invalidate such list. [1911, ch. 122; R. C. 1905, § 521; 1887, ch. 80, § 4; R. C. 1895, § 448.]

§ 822. Formation of county board to select jurors. Within three days after the receipt of the order of the judge of the district court directing a jury to be summoned, the clerk of the district court or his deputy and the county auditor, county treasurer and sheriff, or a majority of them, shall meet together at the county seat. In case the sheriff shall be disqualified by reason of being a party to any suit pending in such court, or for any other reason, the coroner shall serve with such officers in the place of the sheriff. Notice of such meeting, stating the object thereof and the time of the meeting must be served by the clerk of the district court upon each of such other officers in the manner provided for the service of a summons and he shall also notify by mail each practicing attorney or firm of attorneys in the county of such meeting at least one day prior thereto, and such meeting must take place within one day after the service of such notice. [R. C. 1905, § 522; 1883, ch. 72, § 5; R. C. 1899, § 449.]

Provision relating to coroner drawing jury where sheriff is party to action, is mandatory. *Jones v. Woodwarth*, 24 S. D. 583, 124 N. W. 844, Ann. Cas. 1912A, 1134.

§ 823. Drawing jurors, manner of. At such meeting the clerk of the district court, or his deputy, shall strike from such juror list the names of any person known to such officers to be dead or to have removed from such county, and said clerk or his deputy, shall then write the name of each person on such juror list on a separate ticket and the remainder of the officers at such meeting

shall compare such tickets with such list, and when all of such names on such tickets are found to correspond with such list, such tickets shall be folded and placed in a box or some suitable receptacle and shaken. [R. C. 1905, § 523; 1883, ch. 72, § 6; R. C. 1899, § 450; 1901, ch. 113.]

Summoning biased or otherwise improper jurors or talesmen as a contempt. 30
L.R.A. (N.S.) 1013.

§ 824. **Drawing jurors, manner of, continued.** One of such officers, other than the clerk of court, shall then proceed to draw enough of such tickets to equal the number of jurors directed to be summoned, and such clerk or his deputy shall record such names in the order in which they were drawn, in a book to be kept for that purpose. The jurors first drawn, to the number required in the order, shall serve as grand jurors, if a grand jury shall be ordered to be summoned, and the remainder shall serve as petit jurors. [R. C. 1905, § 524; 1883, ch. 72, § 7; R. C. 1895, § 451.]

§ 825. **Duties of the clerk of court.** Such clerk shall on the day of the drawing aforesaid issue a venire, or venires, as the case may be, directed to the proper officer of the county, commanding such officer to summon the persons whose names are drawn to appear before the district court at the hour, day and place designated in the order of the judge. A separate venire shall issue for the grand jury when such jury is ordered. It shall be the duty of the clerk, when issuing such venire for jurors as aforesaid to ascertain and insert therein their post office addresses. [1913, ch. 135, § 1; R. C. 1905, § 525; 1883, ch. 72, § 8; R. C. 1899, § 452.]

§ 826. **Number of names to be always at maximum.** Such number of two hundred names shall at all times be kept full, when possible, by completing the number after each jury term of court; and at the end of each jury term of the district court the clerk shall make requisition upon the county commissioners for the furnishing of as many names as have been drawn so as to keep such list full. And at the subsequent meeting the board of county commissioners shall proceed to apportion as hereinbefore provided for making up the whole of such list, and the same proceedings shall be had as to such names so required, as are herein directed to be taken in making said list full, except that the posting of notices shall not be required, and that the board of supervisors of any township, the board of aldermen or the city council of any city, or the board of trustees of any village, need not be specially called to draw any such names, but may do so at its next regular meeting. A failure to comply with any of the provisions of this section shall not be ground for challenge of any jury, either grand or petit, or to the panel. [R. C. 1905, § 526; 1883, ch. 72, § 9; 1887, ch. 80, § 5; R. C. 1895, § 453; 1901, ch. 113.]

§ 827. **Venire, how served.** The officer receiving a venire shall forthwith serve the same by addressing to each person therein whose post office address is given in said venire, or can be promptly ascertained by such officer, a true and correct copy of such venire, containing the name only of the juror to be served, inclosed in an envelope addressed to the person to be summoned as above provided, with the postage prepaid, and shall be registered and deposited in the post office. The envelope containing such copy of venire shall have printed thereon, in the usual form, a request that the same be returned to the sender if it is not delivered within five days, and shall have written or printed thereon the words, "Return Receipt Demanded." The receipt of such registered copy of venire by the person to whom addressed shall be deemed personal service upon him of such venire, and the return registry receipt, signed by such person, or by any other by him apparently authorized to sign the same in his behalf, shall be prima facie evidence of such service, and the officer shall make return accordingly. If the copy of venire herein provided for is returned to such officer through the post office, not delivered, or when a jury is called forthwith such officer shall make, or cause to be made, personal service of the venire in the manner provided by law for the service of summons in civil actions, and shall make return

thereof with his proceedings indorsed thereon to the clerk as soon as he has made such service. [1913, ch. 135, § 2; R. C. 1905, § 527; R. C. 1895, § 454.]

§ 828. Jurors must appear. Each grand and petit juror so summoned shall appear before the court on the day and at the hour specified in the summons and shall not depart therefrom without leave of court. [R. C. 1905, § 528; R. C. 1895, § 455.]

§ 829. Court may order jury forthwith. If all persons summoned as grand or petit jurors do not appear before the court, or if for any cause the panel of the grand or petit jurors is not complete, or if no jury is drawn as above provided, the judge of the district court shall issue an order to the clerk of such court requiring a sufficient number of persons to be summoned to serve as jurors on the regular panel of grand or petit jurors, and in such order shall specify the number of jurors necessary to complete such panel, and the time and place where they shall appear. Such clerk or his deputy shall forthwith convene the county board to select jurors, being the officers named in section 822, and such board shall forthwith proceed to select the names of the number of persons possessing the qualifications of jurors directed to be summoned, which jurors may be selected by a majority of the members of said board present at the meeting to be convened as aforesaid, and thereupon a venire for the persons whose names shall have been so selected shall be issued by the clerk, or his deputy, and shall be served in like manner as provided for the service of the venire for the jurors of the regular panel. [R. C. 1905, § 529; R. C. 1899, § 456; 1901, ch. 113.]

§ 830. Summons to complete special panel. Whenever the panel of petit jurors shall be exhausted by the challenges of either party in any action, the judge of the court shall order the sheriff, deputy sheriff or coroner to summon without delay a sufficient number of persons possessing the qualifications of jurors, to complete the number requisite for a jury in that particular case; provided, that no person who shall have served as a juror in such court within one year next immediately preceding the first day of the term of court, in which such action is triable, shall be called, or be qualified to act as a juror in such case. [R. C. 1905, § 530; R. C. 1899, § 457; 1901, ch. 113.]

§ 831. Citizens to be selected as jurors in rotation. It shall be the duty of the respective boards in selecting and furnishing to the clerk the number of persons qualified to serve as grand and petit jurors so to select and arrange the names that no one person shall come on the jury a second time before all qualified persons shall have served respectively in rotation, according to the best information that can be obtained. [R. C. 1905, § 531; R. C. 1899, § 458.]

§ 832. Penalty for failure or refusal to appear. If any person summoned to appear as a grand or petit juror fails, refuses or neglects to appear, such person shall be deemed guilty of contempt of court, and may be fined by the court in any sum not less than five nor more than fifty dollars; and if any person, when a second order or attachment is issued, neglects or refuses to appear, such person may be fined as above provided and imprisoned by the court not longer than ten days in the county jail; and if the board of county commissioners, township board of supervisors, the board of aldermen or city council of any city, or the board of trustees of any village shall willfully neglect or fail to select and furnish to the clerk names of persons as hereinbefore provided, the person so offending may be fined by the court not less than five nor more than fifty dollars; and if any officer shall fail to perform any of the duties imposed upon him by this article, he shall be deemed guilty of contempt of court, and may be fined by the court not less than five nor more than fifty dollars, and if guilty of gross misconduct in office and contempt in disregarding the provisions of this article he may be imprisoned in the county jail not longer than thirty days. [R. C. 1905, § 532; R. C. 1899, § 459.]

ARTICLE 13.—ADMINISTRATION OF OATHS.

§ 833. Officers authorized to administer oaths. The following officers are authorized to administer oaths:

Each judge of the supreme court.

Each judge of the district court.

The clerk of the supreme court and his deputy.

Clerks of the district court, clerks of the county court with increased jurisdiction, county auditors and registers of deeds and their deputies within their respective counties.

County commissioners within their respective counties.

Judges of the county court.

Public administrators within their respective counties.

Justices of the peace within their respective counties.

Notaries public anywhere in the state upon complying with the provisions of sections 845 and 846.

City clerks or auditors, township clerks and village recorders within their respective cities, townships and villages.

Each sheriff and his deputy within their respective counties in the cases provided by law.

Other officers in the cases specially provided by law. [1909, ch. 170; R. C. 1905, § 533; 1890, ch. 106, § 1; R. C. 1899, § 460.]

Notary public has authority to administer oaths in any county of the state, when.

State v. Henning, 3 S. D. 492, 54 N. W. 536.

Power of consul to take affidavits. 45 L.R.A. 499.

Validity of oath taken over telephone. 30 L.R.A. (N.S.) 358.

§ 834. Persons may affirm, when. Persons conscientiously opposed to swearing may affirm, and shall be subject to the penalties of perjury as in case of swearing. [R. C. 1905, § 534; R. C. 1895, § 461.]

ARTICLE 14.—NOTARIES PUBLIC.

§ 835. Appointment and qualifications of notaries public. The governor shall appoint in each county in this state from among the citizens of either sex one or more notaries public, who shall hold office for six years, unless sooner removed by the governor, each of whom shall have power and authority anywhere in the state to administer oaths and perform all other duties required of them by law; but the person to be eligible to such appointment must at the time of appointment have the qualifications of an elector as to age, residence and citizenship. [R. C. 1905, § 535; 1893, ch. 76, § 1; R. C. 1895, § 462.]

Seal not essential to verification of pleading; judicial notice that person subscribing is notary. *Wiley v. Carson*, 15 S. D. 298, 89 N. W. 475.

May perform official acts anywhere in state. *State v. Henning*, 3 S. D. 492, 54 N. W. 536.

Omission of notary's seal to jurat in notice for mechanics' lien not cured by parol evidence. *Hill v. Building Co.*, 6 S. D. 160, 60 N. W. 752.

Right of woman to be notary. 38 L.R.A. 214; 5 L.R.A. (N.S.) 415.

Place at which official acts of notaries may be performed. 33 L.R.A. 92.

Power as to contempt. 36 L.R.A. 822.

Right to attach or correct certificate of acknowledgment after date of acknowledgment. 22 L.R.A. (N.S.) 216.

Liability of notaries. 82 Am. St. Rep. 380.

Power to take affidavits and do other acts where interested. 95 Am. Dec. 378; 33 L.R.A. 332.

Omission to affix seal. 74 Am. Dec. 368.

§ 836. Commission. Record. Fee and notice. The secretary of state shall issue a commission and duplicate thereof to each notary public appointed by the governor, one of which shall be by such notary posted in a conspicuous place in his office; and the secretary of state shall collect and receive five dollars for the issuance of such commission and duplicate, which sum shall be

paid into the state treasury and credited to the general fund. The secretary shall keep in his office a record of such appointments and the date of the expiration of the same, and shall notify each notary public by mail at least thirty days before the expiration of his term of the date upon which his commission expires, which notice shall be addressed to such notary public at his last known place of residence. [R. C. 1905, § 536; 1893, ch. 76, § 2; R. C. 1895, § 463.]

§ 837. Oath and bond. Each notary public before entering upon the duties of his office shall take the oath prescribed in section 211 of the constitution; and he shall give a bond to the state with one or more sureties, to be approved by the clerk of the district court of his county or of the county to which the same is attached for judicial purposes, in the penal sum of five hundred dollars conditioned for the faithful discharge of the duties of his office. [R. C. 1905, § 537; 1893, ch. 76, § 3; R. C. 1895, § 464.]

§ 838. Vacancy. Disposition of records. Whenever the office of any notary public shall become vacant, the record of such notary together with all papers relating to the office shall be deposited in the office of the clerk of the district court of the county or judicial subdivision in which such notary public resides, and any notary public who on resignation or removal from office, or any executor or administrator of any notary public who neglects to deposit such records and papers as aforesaid for the space of three months, or any person who knowingly destroys, defaces or conceals any records or papers of any notary public, shall forfeit and pay a sum of not less than fifty nor more than five hundred dollars, and he shall also be liable in a civil action for damages to any party injured. [R. C. 1905, § 538; 1893, ch. 76, § 4; R. C. 1895, § 465.]

§ 839. Duty of notary. Each notary public, when any bill of exchange, promissory note or other written instrument, shall be by such notary public protested for nonacceptance or nonpayment, shall give notice in writing thereof to the maker, and to each and every indorser of such bill of exchange, and to the maker of each security or the indorsers of any promissory note or other written instrument immediately after such protest shall have been made. [R. C. 1905, § 539; 1893, ch. 76, § 5; R. C. 1895, § 466.]

§ 840. Service of notice. Each notary public shall serve notice personally upon each person protested against, or by properly folding the notice, directing it to the person to be charged at his place of residence according to the best information that the person giving the notice can obtain, depositing it in the United States mail or post office most conveniently accessible and prepaying the postage thereon. [R. C. 1905, § 540; 1893, ch. 76, § 6; R. C. 1899, § 467.]

§ 841. Protest fee. The notary public making such protest shall be entitled to charge and receive the sum of twenty-five cents and postage for each notice so made out and served. [R. C. 1905, § 541; 1893, ch. 76, § 7; R. C. 1899, § 468.]

§ 842. Record of notices. Each notary public shall keep a record of all such notices and of the time and manner in which the same were served and of the names of all the persons to whom the same were directed, also the description and amount of the instrument protested, which record or a copy thereof certified by the notary under seal shall at all times be competent evidence to prove such notice in any court of this state. [R. C. 1905, § 542; 1893, ch. 76, § 8; R. C. 1895, § 469.]

Certificate of protest prima facie evidence of dishonor of commercial paper. *Ashe v. Beasley*, 6 N. D. 191, 69 N. W. 188.

Admissibility in evidence of entries or memoranda of notice of dishonor of negotiable paper. 53 L.R.A. 525.

§ 843. Clerks of district courts to preserve records. The clerk of the district court shall receive and safely keep all the records and papers directed by this article to be deposited in his office and furnish certified copies thereof when required, and such copies shall have the same force and effect as if the

same were certified to by the notary public by whom the record was made. [R. C. 1905, § 543; 1893, ch. 76, § 9; R. C. 1895, § 470.]

§ 844. Impression of seal. Filing oath and bond. Each notary public before entering upon the duties of his office shall provide an official seal and deposit an impression of the same together with his oath and bond in the office of the secretary of state. [R. C. 1905, § 544; 1893, ch. 76, § 10; R. C. 1895, § 471.]

§ 845. Commission recorded with clerk of the district court. He shall before entering upon the duties of his office file his commission for record with the clerk of the district court of the county or judicial subdivision and shall deposit with such clerk an impression of his seal together with his official signature; and such clerk shall record the same in a book to be kept for that purpose; and it shall be deemed sufficient evidence to enable such clerk to certify that the person so commissioned is a notary public during the time such commission is in force. [R. C. 1905, § 545; 1893, ch. 76, § 11; R. C. 1899, § 472.]

§ 846. Removal from county. Requirements. Whenever a notary public shall change his place of residence from the county or subdivision in which he was first appointed to another county or subdivision, it shall be necessary to comply with the preceding section before performing any official act in such county or subdivision. [R. C. 1905, § 546; 1893, ch. 76, § 12; R. C. 1899, § 473.]

§ 847. Revocation of commission. Notice. In case the commission of any person so appointed is revoked, the secretary of state shall immediately give notice thereof by mail to such person and to the clerk of the district court of the proper county. [R. C. 1905, § 547; 1893, ch. 76, § 13; R. C. 1895, § 474.]

§ 848. Date of expiration. Every notary public taking an acknowledgment to any instrument shall, immediately following his signature to the jurat or certificate of acknowledgment, indorse the date of the expiration of such commission; such indorsement may be legibly written, stamped or printed upon the instrument, but must be disconnected from the seal, and shall be substantially in the following form:

My commission expires, 19... [R. C. 1905, § 548; 1903, ch. 126.]

§ 849. Acting when disqualified. Penalty. Any notary public who exercises the duties of his office with knowledge that his commission has expired or that he is otherwise disqualified, or who appends his official signature to any document when the parties thereto have not appeared before him, is guilty of a misdemeanor and on conviction is punishable by a fine of one hundred dollars for each offense, and shall also be removed from office by the governor. [R. C. 1905, § 549; 1893, ch. 76, § 15; R. C. 1895, § 475.]

§ 850. Official acts valid in certain cases. All acknowledgments, affidavits or protests heretofore taken or made by any officer or stockholder of any corporation, who was at the time of taking the same, a duly appointed and qualified notary public in this state or the former territory of Dakota, and all other official acts of said notary public are hereby declared to be valid, notwithstanding the corporation, of which said notary was an officer or stockholder, was interested in or a party to the instrument acknowledged or protested, or that the affidavit was one that was required to be taken by some person on behalf of, or against, such corporation, or that any other official act performed by said notary, was one that in some manner related to the business of such corporation. [R. C. 1905, § 550; 1899, ch. 54; R. C. 1899, § 475a.]

CHAPTER 11.

ELECTIONS.

- ARTICLE 1. PRIMARY ELECTIONS, §§ 851-898.**
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 16. ABSENT VOTERS, §§ 992-1004.
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 19. PRESIDENTIAL ELECTORS, §§ 1037, 1038.
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 21. CONTESTING ELECTIONS, §§ 1046-1058.
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 23. CONTEST OF LEGISLATIVE ELECTIONS, §§ 1070-1089.
 24. REGISTRATION OF VOTERS, §§ 1090-1104.

ARTICLE 1.—PRIMARY ELECTIONS.

§ 851. Intent of article. It is the intention of this article to reform the methods by which political parties shall make nominations of candidates for all public offices by popular vote. It shall be liberally construed so that the real will of the electors may not be defeated by any informality or failure to comply with all provisions of law in respect to either the giving of any notice or the conducting of the primary or certify the results thereof. [1907, ch. 109, § 1; R. C. 1905, § 551; 1905, ch. 109, § 1.]

Primary election law provides for party nominations by popular vote of electors of parties entitled to use election machinery provided. State ex rel. Miller v. Flaherty, 23 N. D. 313, 41 L.R.A.(N.S.) 132, 136 N. W. 76.

Primary election law must be reasonable, uniform in operation, and must bear with substantial equality upon all parties and candidates. State ex rel. Dorvan v. Hamilton, 20 N. D. 592, 129 N. W. 916.

Constitutionality of primary election laws. 22 L.R.A.(N.S.) 1136; 41 L.R.A.(N.S.) 132. "Primary elections" as elections, within constitution or statute relating to elections generally. 18 L.R.A.(N. S.) 412.

§ 852. Held, when. What offices, for. On the last Wednesday in June of every year in which occurs a general election there shall be held, in lieu of party caucuses and conventions, a primary election in the various voting precincts of this state, for the nomination of candidates for the following offices to be voted for at the ensuing general election, viz.: Members of congress, state officers, county officers, district assessors and the following officers on the years of their regular election, viz: Judges of the supreme and district courts, members of the legislative assembly and county commis-

sioners, and United States senator in the year previous to his election by the legislative assembly; provided, however, that the provisions of this article shall not be construed to include or provide for the nomination of presidential electors or delegates to national conventions. Such delegates to national conventions shall be nominated and elected and presidential electors nominated as now or hereafter may be provided for by the various state central committees. For special elections for the officers enumerated herein the nominations shall be made as otherwise provided by law. [1907, ch. 109, § 2; R. C. 1905, § 552; 1905, ch. 109, § 2.]

Primary election of national delegates and presidential electors, see sections 910-916.

Party conventions being abolished by this section, the sections of R. C. 1905, relating to state conventions are omitted in this compilation, viz., R. C. 1905, §§ 558-563; also R. C. 1905, § 573, relating to conventions for nomination of district court judges, and § 601.

Prescribes exclusive mode of nominating party candidates for state offices. *Healey v. Wipf*, 22 S. D. 343, 117 N. W. 521.

Nomination of presidential electors. 43 L.R.A.(N.S.) 297.

§ 853. Petition required. Fees for filing. Affidavit of candidates. Every candidate for United States senator, member of congress, state officers, judge of the supreme and district courts, shall, not more than sixty days nor less than thirty days prior to said primary election, present to the secretary of state a petition giving his name, post office address, the title of the office to which he aspires and the party which he represents, containing the names of 3 per cent of the total vote cast for the candidate of the party with which he affiliates, for the same position at the last general election; provided, however, that in no case shall more than three hundred names be required. Each name on the petition shall be that of a legal voter and be subscribed under a certified party heading.

Upon receipt by the secretary of state of such petition and the payment to him of an amount equal to 1 per cent of the annual salary of the office to which he aspires, and when accompanied by the following affidavit he shall place the applicant's name upon the primary election ballot in the columns of his party as hereinafter provided; provided, however, that no fee shall be required of candidates for United States senator. Said affidavit may be substantially as follows:

State of North Dakota, }
County of..... } ss.

I,, being duly sworn, depose and say that I reside in the county of and state of North Dakota; that I am a qualified voter therein and a; that I am a candidate for nomination to the office of to be chosen at the primary election to be held on the, 19.., and I do hereby request that my name be printed upon the primary election ballot as provided by law, as a candidate of the party for said office.

Subscribed and sworn to before me, this day of 19...

Notary Public, North Dakota.

The fees designated in this section to be paid to the secretary of state shall be turned over by him to the state treasurer to be covered into the general fund. [1907, ch. 109, § 3; R. C. 1905, § 553; 1905, ch. 109, § 3.]

Failure of at least twenty electors to add address to signatures renders nominating petition insufficient. *Harris v. King*, 21 S. D. 47, 109 N. W. 644.

Unconstitutional in part as to provisions for pledge of legislative candidates respecting choice of United States senator as adding another oath, declaration and test as qualification for office. *State ex rel. McCue v. Blaisdell*, 18 N. D. 55, 24 L.R.A.(N.S.) 465, 118 N. W. 141.

§ 854. County and legislative candidates. Petition, filing fee and pledge. Every candidate for a county or district office shall not more than forty days nor less than thirty days, and before four o'clock p. m. of the thirtieth

day prior to any primary election, present to the county auditor a petition giving his name, post office address, the title of the office to which he aspires and the party which he represents, containing the names of five per cent of the total vote cast for the candidate of the party which he represents, for the same position at the last general election; such names to be procured from at least one-fifth of the precincts of his district; provided, however, that in no case shall there be more than two hundred names; and, provided further, that the petitions of all candidates for members of the legislative assembly may, in addition to the requirements hereinbefore provided, contain the following pledge, namely: "I, the undersigned, a candidate for the office of member of the legislative assembly of the state of North Dakota, do obligate myself to the people of the state of North Dakota and to the people of my legislative district that during my term of office I will support and vote for that candidate for United States senator in congress of the party of which I am a member, who has received a majority of such party votes or who by law received the party nomination for that position at the primary election next preceding the election of United States senator in congress. In case such legislative candidate signs the foregoing pledge, he shall be entitled to have printed below his name upon the primary and general election ballot the following words, to wit: "pledged to the people's choice for U. S. senator." In case such legislative candidate does not sign the foregoing pledge there shall be printed below his name upon the primary election and general election ballot the following words, to wit: "not pledged to the people's choice for U. S. senator."

Each name on the petition shall be that of a qualified voter and be subscribed under a party heading. Each signer of a nomination paper shall sign but one such paper for the same office; he shall add his residence with the street number, if any, and the date of signing. Upon the receipt of such petition by the county auditor and the payment to him of the filing fee of three dollars (\$3.00), excepting candidates for county commissioners, district assessors, surveyor, coroner, county constables and county justices of the peace, who shall pay no filing fee and when accompanied by an affidavit as provided in section 853 relating to petitions required, fees and filing affidavit of candidate, such county auditor shall place the name of such applicant upon the primary election ballot in the columns of his party as hereinbefore provided.

When a legislative district is composed of more than one county, the petition herein provided for shall be filed with the county auditor of the county where the candidate resides, and such county auditor shall certify to the county auditors of the other counties comprising such legislative districts the names of the candidates filing such petitions. The filing fees received as above by the county auditor shall be turned over by him to the county treasurer to be covered into the general fund. [1911, ch. 313, § 4; 1907, ch. 109, § 4; R. C. 1905, § 554; 1905, ch. 109, § 4.]

Invalid for reason that it attaches qualification to candidates for office, not permitted by constitution. *Johnson v. Grand Forks County*, 22 N. D. 613, 135 N. W. 179.

"Primary election" is "election" within meaning of section 121 of constitution. *Johnson v. Grand Forks County*, 16 N. D. 363, 125 Am. St. Rep. 662, 113 N. W. 1071.

§ 855. Names on primary ballot, how secured. Vacancies, how filled. Applications to have a name placed on the primary election ballots for nomination may be made by five qualified electors for any office designated in this article, by presenting the petition required in sections 853 or 854 to the proper official, and paying the amount required, accompanied by the following affidavit:

"State of North Dakota, }
County of } ss.:

"I, A, B, C,
D, and E, being duly sworn, each

for himself, deposes and says that he is a qualified voter in the state of North Dakota, that he hereby makes application to have the name of printed on the primary election ballot of the party for the office of, to be voted for at the primary election to be held on the day of, 19...; that said is, to the best of his knowledge, information and belief, a and a qualified voter and eligible to hold the office of under the constitution.

.....

"Subscribed and sworn to before me this day of....., 19...

.....
 Notary Public, North Dakota."

When such application is received by the proper officer, accompanied by the necessary fee, as required in sections 853 and 854 of this article, he shall place the name on the primary election ballot as a candidate of the party named in said petition; provided, that such affidavit and petition shall not be filed without the written consent of such person to be nominated endorsed thereon; and provided, further, that when the time has expired at which a petition may be filed, and a vacancy exists in the primary election ballot of any political party by reason of no petition having been filed for such nomination, then and in that case the same may be filed by affidavit and petition as provided in this section, on the payment of one-half of the usual fee, and such affidavit and petition must be filed with the proper officers at least twenty-five days before the primary election; and provided, further, that no petition shall be circulated or signed more than ninety days previous to the time when any petition is required to be filed as herein provided for, and any signatures to a petition secured prior to ninety days shall not be counted. [1913, ch. 223; 1907, ch. 109, § 5.]

§ 856. Form of petition. The petitions required in sections 853, 854 and 855 of this act may be one continuous list of names under the proper political title or principle, or there may be a number of such petitions using the same title, giving the aggregate of names required. [1907, ch. 109, § 6; R. C. 1905, § 556; 1905, ch. 109, § 5.]

§ 857. Nominations by stickers. A candidate may be nominated by having his name written on or by printed stickers placed over the name or in a blank line left for that purpose underneath the group in each official position; but not more than one name shall be written or printed on any such stickers. [1907, ch. 109, § 7; R. C. 1905, § 557; 1905, ch. 109, § 6.]

§ 858. Eligibility of candidates. All persons nominated in accordance with the provisions of this article shall be eligible as candidates to be voted for at the ensuing general election. [1907, ch. 109, § 8; R. C. 1905, § 564; 1905, ch. 109, § 9.]

§ 859. Ballots, form of; duties of judges and inspectors. The primary election and primary election ballot shall be provided for, arranged and conducted, and all expenses paid as now provided by law for general elections, except as otherwise provided for in this article.

There shall be separate ballots for each party or principle, and they shall all be of the same size, texture and color, except sample ballots, which shall be printed on tinted paper.

The ballot shall be entitled, "Primary Election Ballot."

The names of all aspirants for nomination of each political party or principle for the different offices shall be arranged in separate groups in

their order, on separate ballots under a proper political designation, leaving one or more blank lines or spaces below each group of names on which may be written or placed a name or a printed sticker attached for the nomination of the committee. No squares shall be left at the head of the ballot.

At the head of each ballot shall be placed the title of the political party or principle that it represents.

At the left of each group shall be placed the title of the office, followed by a bracket, indicating the number of names in such group. Above each group there shall be a space, in which shall be printed the number of names in that group to be voted for as follows:

"Vote for name (on (or) names) only."

Immediately above the names of the candidates to be voted for shall be printed the following:

"To vote for a person whose name is printed on the ballot mark a cross (X) in the square at the right of the name of the person for whom you desire to vote.

"To vote for a person whose name is not printed on the ballot write or paste his name in the blank space provided for that purpose."

Each ballot shall contain two columns, and each column is to have as nearly as possible the same number of names of candidates thereon, except that no groups or spaces beneath any group shall be divided, and the candidates for the various offices shall appear upon the ballot in the following order, commencing at the column to the left, viz.:

Congressional:—

United States Senator.....	Vote for one
Representatives in Congress.....district.....	Vote for ...

State Officers:—

Governor	Vote for one
Lieutenant Governor	Vote for one
Secretary of State.....	Vote for one
State Auditor	Vote for one
State Treasurer	Vote for one
Superintendent of Public Instruction.....	Vote for one
Attorney-General	Vote for one
Commissioner of Insurance.....	Vote for one
Commissioner of Agriculture and Labor.....	Vote for one
Commissioner of Railroads.....	Vote for three

Legislative:—

State Senator	District.....	Vote for one
Member of House of Representatives.....		Vote for ...

County Officers:—

Sheriff	Vote for one	
Auditor	Vote for one	
Treasurer	Vote for one	
Clerk of District Court.....	Vote for one	
Register of Deeds.....	Vote for one	
State's Attorney	Vote for one	
County Judge	Vote for one	
Superintendent of Schools.....	Vote for one	
Public Administrator	Vote for one	
County Surveyor	Vote for one	
County Coroner	Vote for one	
County Commissioner	District.....	Vote for ...
County Constable		Vote for ...

A square shall be placed following the name to the right of every candidate, and the voter shall place a cross (X) in such square following the name of each person he desires to vote for.

The judges and inspectors of election when handing a ballot to a voter shall inform him that he must vote for the candidates of the political party such ballot represents only, and the voter shall call for the ballot representing the party or principle with which he affiliates, and he shall receive such ballot and no other. [1913, ch. 222, § 1; 1907, ch. 109, § 9; R. C. 1905, §§ 565-568; 1905, ch. 109, § 10.]

Validity and construction of law as to marking ballots. 47 L.R.A. 806.

Official marks on ballots. 47 L.R.A. 808.

Irregularities in marking ballots. 16 L.R.A. 754.

Ambiguities in ballots, evidence to explain. 10 Am. St. Rep. 317.

Distinguishing marks which invalidate ballots. 49 Am. St. Rep. 240.

§ 860. Must vote party ballot. Any citizen otherwise eligible by law, affiliated with or representing the principles enumerated in the national platform of the following parties, are eligible to nomination under this article: The republican party, the democratic party, or any party designation that cast five per cent of the votes cast for governor at the last general election and it shall be unlawful for any person to call for or vote a ballot at the primary election herein provided for, except a ballot representing the party or principle with which he affiliates, and any person who has reason to believe that the ballot called for by the voter does not represent the party or principle with which said voter affiliates, may challenge such vote, and he shall not be entitled to cast his ballot unless he makes and files with the inspector of such primary election an affidavit to the effect that such ballot represents the political party with which he affiliates. [1907, ch. 109, § 10; R. C. 1905, § 569; 1905, ch. 109, § 11.]

Courts have power to direct county auditor to file petition of candidate. *State ex rel. Williams v. Meyer*, 20 N. D. 628, 127 N. W. 834.

Primary law is not void because not furnishing method by which new parties might secure printing of tickets. *State ex rel. Hagendorf v. Blaisdell*, 20 N. D. 622, 127 N. W. 720.

§ 861. Vacancies filled by party committees. Should a vacancy occur in any of the offices for which nominations are made under this article by reason of resignation or death, where there is only one aspirant for such office, before the printing of the primary election ballot such vacancy may be filled by the regularly constituted committee of the party to which such vacancy belongs, and no petition nor fee shall be required. [1907, ch. 109, § 11; R. C. 1905, § 570; 1905, ch. 109, § 12.]

§ 862. Percentage of votes required for nomination. If the total vote cast for any party candidate or candidates for any office for which nominations are herein provided for shall equal less than twenty-five per cent of the average total number of votes cast for governor, secretary of state and attorney-general of the political party he or they represented at the last general election then no nomination shall be made in that party for such office, but if twenty-five per cent or more of such party vote is cast and there is more than one candidate for any such office the person receiving the highest number of votes shall be declared the nominee of such party for such office, provided, further, that where there is more than one person to be elected to the same office the persons to the number to be elected receiving the highest number of votes cast for such office shall be declared the nominees of the party for such offices. [1913, ch. 222, § 2; 1909, ch. 109, § 12.]

Proviso in statute limits application of the per cent rule. *State ex rel. Purcell v. Anderson*, 18 N. D. 147, 118 N. W. 29.

The per cent requirement in statute applies to county and district offices. *State ex rel. Montgomery v. Anderson*, 18 N. D. 149, 118 N. W. 22.

§ 863. Nominations for United States senator. Party candidates for the office of United States senator shall be nominated in the manner herein provided for nominations of candidates for state offices.

The candidate receiving the highest number of votes at such primary election shall be the nominee of his party for the office of United States senator, at the succeeding session of the legislative assembly which is to elect

a United States senator. The votes for candidates for United States senator shall be canvassed and returned in the same manner as the votes cast for state officers.

It is hereby made the duty of the secretary of state to certify to the next session of the legislative assembly the name of the candidate of each party who receives the highest number of votes for the office of United States senator. [1911, ch. 207; 1909, ch. 109, § 13.]

§ 864. Ballots, how prepared. The primary election ballot shall be prepared, unless otherwise provided in this article, as defined in sections 614 and 616 of the revised codes of 1905. [1907, ch. 109, § 14; R. C. 1905, § 571; 1905, ch. 109, § 13.]

R. C. 1905, § 614, is section 957 herein; R. C. 1905, § 616, has been amended and as amended is section 959 herein.

§ 865. Arrangement of names on ballot. The names of candidates for each office upon the sample ballots shall be arranged alphabetically, according to surnames. The names of candidates under headings designating each official position shall be alternated on the official ballot in the printing, in the following manner, viz.:

First: The forms shall be set up with the names in the order in which they are placed upon the sample ballots prepared by the secretary of state for the state and district offices, and by the county auditor for the county offices.

In printing each set of official ballots for the various election precincts the position of the names shall be changed in each office division as many times as there are candidates in the office division or group in which there are the most names.

As nearly as possible an equal number of tickets shall be printed after each change.

In making the changes of position the printer shall take the line of type at the head of each office division and place it at the bottom of that division, shoving up the column so that the name that was second before the change shall be first after the change.

After the ballots are printed, before being cut, they shall be kept in separate piles for each change of position, and shall then be piled by taking one from each pile and placing it upon the other pile to be cut, the intention being that every other ballot in the pile of printed sheets shall have names in different positions.

After the piles are made in this manner they shall be cut and placed in blocks as provided by the general election law. [1907, ch. 109, § 15; R. C. 1905, § 572; 1905, ch. 109, § 14.]

§ 866. List of officers to be nominated. The secretary of state shall between the first day of April and the first day of May, in such year, direct and cause to be delivered to the county auditor of each county, a notice specifying the officers to be nominated under this act, whose term of office will expire between the first Monday in December and the first Monday in March, next succeeding, also specifying the several officers to be nominated in such county at the next primary election. The auditor to whom such notice is delivered shall cause notice of the same to be given as provided in section 982. [1907, ch. 109, § 16; R. C. 1905, § 574; 1905, ch. 109, § 16.]

§ 867. Provisions of election law applicable. Excepting as herein otherwise provided, the following sections of chapter 8 of the political code of 1905, entitled "Elections," are hereby made applicable to primary elections and primary election ballots, under this act, to-wit: 605 [am'd 948], 606 [949], 607 [950], 608 [951], 609 [952], 610 [953], 611 [954], 613 [956], 614 [957], 615 [958], 616 [am'd 959], 619 [964], 620 [am'd 965], 621 [966], 622 [967], 623 [968], 624 [969], 630 [975], 635 [980], 638 [am'd 983], 639 [984], 640 [985], 641 [986], 642 [987], 643 [988], 644 [989], 645 [am'd 990], 646 [991], 647 [1005], 648 [1006], 649 [1007], 650 [am'd 1008], 654 [1012], 655

[1013], 656 [1014], 657 [1015], 658 [1016], 659 [1017], 660 [1018], 669 [1027], 671 [1029], 672 [1030], 673 [1031], 674 [1032], 681 [1039], 682 [1040], 683 [1041], 684 [1042], 685 [1043], 686 [1044], 687 [1045], 688 [1046], 689 [1047], 690 [1048], 691 [1049], 692 [1050], 693 [1051], 694 [1052], 695 [1053], 696 [1054], 697 [1055], 698 [1056], 699 [1057], and 700 [1058]. [1907, ch. 109, § 17; R. C. 1905, § 576; 1905, ch. 109, § 17.]

The figures in brackets are the numbers of the sections in this compilation for the Revised Code sections.

Contest must be initiated by serving upon contestee, within ten days after completion of canvass of ballots, affidavit of contest, setting forth grounds therefor. *Olesen v. Hoge*, 23 N. D. 648, 137 N. W. 826.

§ 868. Tally books. Arrangement of names. Two tally books or two sets of tally sheets shall be provided for each political party or principle, having candidates to be voted for, at each voting precinct, the same to be furnished by the county auditor, at the same time and in the same manner that the poll books and ballots are furnished. The names of the candidates shall be placed on the tally sheets in the order in which they appear on the official sample ballot, and in each case shall have the proper party designation at the head thereof. [1907, ch. 109, § 18; R. C. 1905, § 577, 1905, ch. 109, § 18.]

Proof of loss; waiver of notice and defects therein. *Purcell v. Ins. Co.*, 5 N. D. 100, 64 N. W. 943; *Peet v. Ins. Co.*, 1 S. D. 462, 47 N. W. 532.

Objections to proof of loss not made within reasonable time deemed waived. *Angier v. Ins. Co.*, 10 S. D. 82, 71 N. W. 761.

Proof of loss waived where adjuster investigates loss and causes assured to believe it will be paid. *Hitchcock v. Ins. Co.*, 10 S. D. 271, 72 N. W. 898.

Objection to sufficiency of proofs of loss, on specific ground, is waiver of all other grounds. *Enos v. St. Paul F. & M. Ins. Co.*, 4 S. D. 639, 57 N. W. 919, 46 A. S. R. 796.

§ 869. Polls, open when. Canvass. The polls shall be opened at eight o'clock a. m. and remain open continuously until five o'clock p. m. When the polls are closed the judges and inspectors of such primary election shall open the ballot boxes, count the votes and compare the same with the clerk's lists, and should any irregularities appear they shall proceed as now provided by law. When the ballots compare with the clerk's lists, they shall proceed to canvass and place those of each political party in separate piles. The tally of the votes shall be separate for each political designation or principle and so returned by the judges and inspectors of election, giving the full vote for every candidate. The men's and women's votes shall be kept separately and so returned by the judges. The county canvassing board shall aggregate these for the candidates voted for. [1907, ch. 109, § 19; R. C. 1905, § 578; 1905, ch. 109, § 19.]

§ 870. Returns. The judges of such primary election in each precinct shall make a statement on blanks to be provided for that purpose, which shall be subscribed by them and filed in the office of the county auditor with the returns as follows: They shall contain the names of all persons voted for at the primary election, with the number of votes cast for each candidate and for what office. A separate statement shall be made for each political party or principle. [1907, ch. 109, § 20; R. C. 1905, § 579; 1905, ch. 109, § 20.]

[§ 871. Poll lists delivered to boards of registration. Clerks of primary elections shall keep a list of the names of all persons voting at said election, and shall return one list as now required and one tally sheet that shall be a part of the record, and deliver the other list to the board of registration within thirty days following any primary election. No registration of voters shall be required under this article to vote at any primary election. The poll list so kept at a primary election and delivered to the boards of registration shall take the place of the first registration of the voters now required, and notice only shall be given of the date of the second day of registration, which shall be held and conducted as now provided, and no other shall be required to vote at the general election following.] [1907, ch. 109, § 21; R. C. 1905, § 580; 1905, § 21.]

The provision in this section that no registration of voters is required, and that the poll list shall take the place of the first registration of voters was held invalid as being

in conflict with section 61 of the state constitution, because it is an attempt to amend the registration law, which is a subject not embraced in the title of the act. *Fitzmaurice v. Willis*, 20 N. D. 372, 127 N. W. 95, following *State v. Drexel*, 74 Neb. 776, 105 N. W. 174; *State ex rel. Miller v. Flaherty*, 23 N. D. 313, 41 L.R.A.(N.S.) 132, 136 N. W. 76. Constitutionality of primary election laws. 22 L.R.A.(N.S.) 1136; 41 L.R.A.(N.S.) 132.

§ 872. County canvassing board. The county canvassing board shall be composed of the clerk of the district court, county auditor, chairman of the board of county commissioners and the chairman of the county committees of the two political parties that cast the highest votes for governor at the preceding general election. The members of said board shall meet in the county auditor's office in the court house at ten o'clock on the eighth day after any primary election, and shall proceed, after taking the usual oath of office, to open and publicly canvass the primary election returns made to the county auditor. Any three members of said board shall constitute a quorum and are authorized to make the canvass therein provided and to certify to the results thereof. [1907, ch. 109, § 22; R. C. 1905, § 582; 1905, ch. 109, § 22.]

Mandamus to compel election officers to act after they have met and adjourned. 36 L.R.A.(N.S.) 1089.

§ 873. Statement of canvassing board. Contests. The canvassing board shall make and prepare a statement, the same to be signed by said board and filed in the office of the county auditor, as follows:

First. A statement containing the names of all candidates voted for at the primary election, with the number of votes received by each and for what office, said statement to be made as to each political party or principle separately.

Second. A statement of the names of the persons or candidates of each political party who are nominated, to wit: those persons or candidates of such political party or principle who received the highest number of votes for the respective office, and where there is more than one person to be elected to a given office at the ensuing general election there shall be included in said statement of nomination the names of so many candidates of such party receiving the next highest number of votes for that office as there are persons to be elected to such office at said ensuing general election. Said statement shall in like manner be made separately as to each political party.

Third. A statement of the whole number of electors registered and the number of ballots cast, men and women separately, at such primary election.

Fourth. A separate statement shall be made of the votes cast for United States senator, member of congress, state officers, judges of the supreme and district courts and members of the legislative assembly, which shall be transmitted to the secretary of state as provided in this article.

Fifth. It shall be the duty of the county auditor upon the completion of the canvass to mail or deliver in person to each candidate so nominated for any county or district office a notice of such fact and that his name will be put upon the official ballot, except as otherwise provided. He shall also cause a copy of the findings of said board to be published in the official newspaper of the county. [1907, ch. 109, § 23; R. C. 1905, § 583; 1905, ch. 109, § 23.]

§ 874. Abstract of votes transmitted to secretary of state. It shall be the duty of the county auditor of each county, under his official seal, excepting as provided in section 875 of this article, to return to the secretary of state on or before the first Tuesday of August following any primary election, a certified abstract under separate political designation or principle, of the number of votes cast in his county for every candidate for nomination for United States senator, member of congress, state officers, judges of the supreme and district courts and members of the legislative assembly. He shall seal up such abstracts and without delay transmit them to the secretary of state by registered mail. [1907, ch. 109, § 24; R. C. 1905, § 584; 1905, ch. 109, § 24.]

§ 875. Two or more counties in district. When two or more counties are embraced in one legislative district the respective county auditors shall attend

at the office of the county auditor of the senior county of such district, within fifteen days after a primary election, and in conjunction with the auditor of the senior county shall compare the votes cast in the several counties comprising such district and such auditors shall immediately make out certificates of nomination for the persons of each political party or principle having the highest number of votes in such district for members of the legislative assembly, as provided in section 874 of this article, which certificates of nomination shall be forwarded without delay to the secretary of state by registered mail by the county auditor of the senior county, who shall give notice in writing to all the members of the legislative assembly nominated in such district. [1907, ch. 109, § 25; R. C. 1905, § 585; 1905, ch. 109, § 25.]

§ 876. State board of canvassers. For the purpose of canvassing and ascertaining the result of any primary election the state board of canvassers shall meet at the office of the secretary of state on the first Tuesday in September next following a primary election, and be composed of the following members, viz.: Clerk of the supreme court, secretary of state, superintendent of public instruction and the chairman of the state central committee of the two political parties that cast the highest votes for governor at the last general election. After taking the usual oath of office the said board shall proceed to open and publicly canvass the primary election returns made by the several county auditors. Three members of said board shall constitute a quorum and are authorized to make the canvass herein provided and to certify to the result thereof. [1907, ch. 109, § 26; R. C. 1905, § 582; 1905, ch. 109, § 22.]

§ 877. Statement by state board. The state board of canvassers shall make and prepare a statement, the same to be signed by said board and filed in the office of the secretary of state as provided in subdivisions 1, 2 and 3 of section 873 of this article. It shall be the duty of the secretary of state upon the completion of the canvass to mail to each candidate so nominated a notice of such fact, and that his name will be put upon the official ballot to be voted for at the ensuing general election, except as otherwise provided. He shall cause a copy of findings of the said board to be filed in his office and published in a newspaper printed at the seat of government. [1907, ch. 109, § 27.]

See section 974.

§ 878. Official ballot, names placed thereon. The secretary of state shall place the names of all the candidates of each political party or principle, who are shown to have been nominated for the respective offices in accordance with the certificates of nomination received from the several county auditors of this state on the official ballot to be voted for at the general election following. [1907, ch. 109, § 28.]

§ 879. Vacancies, how filled. When there is but one aspirant and a vacancy occurs by death or resignation of such aspirant for nomination before the primary election and ballots are printed in legislative districts containing more than one county, the chairman of the party in which such vacancy occurs, of each county committee of the counties of which such district is composed and the member of the state central committee from that legislative district shall meet and by the majority vote of such shall fill such vacancy and by a certificate of nomination notify the county auditors of the several counties of which such district is composed, and the auditors of such counties shall place the name on the primary election ballots where the vacancy exists. Should a vacancy occur in a legislative office in a county composed of more than one district, or in a commissioner's district, then the county central committee of the party in which such vacancy occurs shall meet and fill such vacancy. On receipt of a certificate of nomination from said committee, the county auditor shall place the name of such nominee upon the primary election ballot where such vacancy exists. [1907, ch. 109, § 29; R. C. 1905, § 586; 1905, ch. 109, § 26.]

When does vacancy in party ticket occur within statute authorizing filling of vacancies.
41 L.R.A.(N.S.) 1088.

§ 880. Errors, how corrected. Whenever it shall be made to appear by affidavit to the supreme court or to the district court of the proper county, that an error or omission has occurred or is about to occur in the placing of any name on an official primary election ballot; that any error has been or is about to be committed in printing such ballot, or that any wrongful act has been or is about to be done by any judge or clerk of a primary election, county auditor, canvassing board, member thereof, or other person charged with any duty concerning the primary election; or that any neglect of duty has occurred or is about to occur, such judge shall order the officer or person charged with such error, wrong or neglect to forthwith correct the error, desist from the wrongful act, or perform the duty, or show cause at a time and place to be fixed by the court why he should not do so. Failure to obey the order of such judge shall be contempt of court. [1907, ch. 109, § 30.]

§ 881. Nominations, how contested. Appeal. Any candidate at a primary election desiring to contest the nomination of another candidate or candidates for the same office, may proceed by affidavit within ten days after the completion of the canvass. In case the contestant shall set forth in his affidavit, upon information and belief, that the ballots in any precinct have not been correctly counted, and that he has been prejudiced thereby, the judge shall make an order requiring the custodian of such ballots to appear before him at such time and place, and abide the further order of the court. At the time and place stated, the ballot boxes shall be opened and the ballots recounted in the presence of the court. If it should be found that a mistake has been made in counting such ballots, then the contestant shall be permitted upon application, to amend his affidavit of contest by including such additional facts therein.

All testimony and depositions taken in contests brought under the provisions of this article shall be taken in the same manner as in civil actions and depositions may be taken in more than one place at the same time on leave of the court, and all matters relating to such contests shall be heard and tried as nearly as may be as civil actions are tried, except as otherwise provided herein. The court shall make its findings of fact and conclusions of law. Appeals from final judgment and decisions of such contests may be taken without making a motion for a new trial in the district court in the manner provided for in the code of civil procedure, except that the undertaking on appeal shall be in a sum to be fixed by the judge, not less than five hundred dollars, and shall be approved by the judge and by the clerk of the district court of the proper county or subdivision under the directions of the judge.

Appeals to the supreme court under the provisions of this article must be taken within ten days after notice of entry of final judgment and the party appealing must immediately procure the transmission of the record on such appeal to the clerk of the supreme court and such appeal may be brought on for hearing before the supreme court at any time such court shall be in session, upon five days' notice from either party; and the same shall be heard and determined in a summary manner, except as otherwise provided in this article. The provisions of the code of civil procedure are applicable to and constitute the rules of practice in the proceedings mentioned in this article and the provisions of the civil code of procedure relative to appeals in civil actions, except in so far as they are inconsistent herewith apply to the proceedings mentioned in this article. [1907, ch. 109, § 31.]

Contest must be initiated by serving upon contestee, within ten days after completion of canvass of ballots, affidavit of contest setting forth grounds therefor. *Olesen v. Hoge*, 23 N. D. 648, 137 N. W. 826.

§ 882. Present election statutes apply. The provisions of the statutes now in force in relation to the holding of elections, the solicitation of votes, the manner of conducting elections, of counting the ballots and making return thereof, and all other kindred subjects shall apply to all primaries in so far as they are consistent with this article, the intent of this article being to place

the primary election under the regulation and protection of the laws now in force as to election. [1907, ch. 109, § 32.]

§ 883. Tie vote, determined how. In case of a tie vote the same shall be determined by the canvassing board or boards concerned, at a time and place fixed by them in such manner as they may designate in the presence of the candidate upon at least five days' notice to such candidate. [1907, ch. 109, § 33.]

§ 884. Not repealed. Nothing herein contained [sections 851-890] shall be construed as repealing or being in conflict with section 795. [1907, ch. 109, § 34.]

§ 885. Fees paid county. All fees paid to the secretary of state by candidates for the legislative assembly shall be paid by the secretary of state forthwith to the various county auditors in the state where such candidates reside and in case any legislative district is composed of more than one county such fee shall be paid to such counties in equal proportions, which fees are to be turned into the general fund of said county by the auditor. [1907, ch. 109, § 35.]

§ 886. Act valid. In case any of the provisions of this act [sections 851-890] should be declared unconstitutional that shall not affect the validity of any of the other provisions of this act. [Sections 851-890.] [1907, ch. 109, § 36.]

§ 887. Penal code applicable. All of the provisions of chapter 5 of the penal code [sections 9250-9294 herein] in so far as the same relates to crimes against the elective franchise, are hereby made applicable to elections held pursuant to the provisions of this act. [Sections 851-890.] [1907, ch. 109, § 37; R. C. 1905, § 594; 1905, ch. 109, § 34.]

§ 888. Present committees continue. Every state, county, district and city committee of each political party now eligible under the provisions of this act [sections 851-890] shall remain the regularly constituted committee of the respective parties until succeeded as provided for in this act. [Sections 851-890.] [1907, ch. 109, § 38; R. C. 1905, § 595; 1905, ch. 109, § 35.]

§ 889. Precinct committeemen. How elected. At the primary each voter may write in the space left on his ticket for that purpose the name of one qualified elector who is a member of his own party and a resident of his precinct, and the one receiving the highest number of votes shall be the precinct committeeman. The official returns made by the election board from each precinct shall show the name and address of such precinct committeeman thus chosen by each party. Upon the canvass of the returns the county auditor shall immediately notify in writing each precinct committeeman so selected, together with those provided for in section 890 of this article, of their selection and the date of the meeting of the county central committee. [1907, ch. 109, § 39.]

§ 890. County and state committee. How selected. Time and place of meeting. The county committee of each party shall be composed of all the precinct committeemen of each party in addition to committeemen chosen at large by the following named county nominees of each party, selected in the following manner, to wit: The nominees for the following county offices; namely: clerk of court, county treasurer, county auditor, register of deeds, sheriff, state's attorney, superintendent of schools and county judge, and the legislative nominees residing in such county shall each be entitled to select and appoint in writing one committeeman at large, which appointment shall be immediately filed with the county auditor. The committeeman thus appointed, together with the precinct committeemen elected as prescribed in section 889, shall constitute the county committee of each county, and they shall meet in the courthouse at the county seat of each county at two o'clock p. m. on the third Wednesday after each primary election and organize by selecting a chairman, a secretary and a treasurer, by adopting rules and

modes of procedure, and by selecting an executive committee consisting of from five to nine persons chosen from the county committee, of which executive committee the chairman and secretary shall be members. Such county committee shall at the same time select one person who shall be a legal voter to act upon and be a member of the state central committee of such party in all counties consisting of one legislative district, and in counties having more than one legislative district the precinct committeeman from each legislative district shall select one person from their respective legislative district; and when two or more counties are embraced in one legislative district the county committee of each county shall meet at the court house of the county seat of the senior county of such district at two o'clock p. m. on the fourth Wednesday after each primary election and select one person, who shall be a legal voter, to act upon and be a member of the state central committee of such party. The members so selected as state central committeemen shall meet at the state capitol on the first Wednesday of September and organize by selecting a chairman, a secretary and treasurer, and shall adopt rules and modes of procedure and promulgate and publish a platform or principle upon which its candidates shall stand. Each member of any committee shall retain such position until his successor is chosen. Every member so selected shall be a legal voter. Vacancies shall be filled by a majority of the committee by appointment from the district in which such vacancy exists. [1907, ch. 109, § 40; R. C. 1905, § 596; 1905, ch. 109, § 36.]

§ 891. Cities exempt from provisions. The provisions of this article shall apply to cities in this state containing a population of five thousand or more according to the last government census. [R. C. 1905, § 587; 1905, ch. 109, § 27.]

See sections 902, 903.

§ 892. Municipal nominations. Primary elections for the nominations of all municipal officers shall be held on the first Tuesday of March of each year and conducted the same as city elections. Nominations shall then be made of all officers, city and ward, where the terms of office expire at the municipal election following. [R. C. 1905, § 588; 1905, ch. 109, § 28.]

§ 893. Notice of election. Thirty days prior to such election it shall be the duty of the city auditor or recorder to give public notice thereof by two publications following in the official paper of the city, and by posting three notices in each ward, in conspicuous places specifying the officers to be nominated at the primary election following, giving the date of such election and the title and term of such office. [R. C. 1905, § 589; 1905, ch. 109, § 29.]

§ 894. Petition of nominees. Fee. All aspirants for nomination shall, not more than twenty nor less than ten days prior to such primary election, present or have presented to the city auditor or recorder a petition and affidavit as required in sections 553 and 554 [see note hereto]; provided, that the fee required to be paid shall be five dollars for nominations at large and two dollars for nominations in wards, which shall be paid to the city treasurer and a receipt taken therefor; provided, further, that the petition required shall contain the names of at least five per cent of the votes cast for mayor at the preceding election for officers at large, and five per cent of such votes cast in each ward shall be required to place a name on the primary election ballot for nominations in such ward. [R. C. 1905, § 590; 1905, ch. 109, § 30.]

This section is apparently superseded, at least in large part, by the provisions in section 903.

The reference in section 894 to "sections 553 and 554," is to sections in the Revised Codes of 1905, and those sections 553, 554, are deemed to be superseded by section 854 herein; but inasmuch as section 854 does not expressly amend or otherwise refer to R. C. 1905, §§ 553, 554, the latter are here reprinted as follows:

"§ 553. Petition of candidates. Auditor's duty. Every candidate for a member of the legislative assembly shall, not more than thirty nor less than fifteen days prior to said primary election, present to the county auditor of the county in which such legislative district shall be situated, and if such legislative district shall be composed of two or more

counties, then in that event to the county auditor of each of said counties, a petition giving his name, post office address, the title of the office to which he aspires and the party which he represents, containing the names of ten per cent of the total vote cast for the candidate of the party with which he affiliates, receiving the greatest number of votes for the same position at the last general election; provided, however, that in no case shall more than one hundred names be required. Each name on the petition shall be that of a legal voter and be subscribed under a certified party heading. Upon receipt by the county auditor of such petition, and when accompanied by the following affidavit, he shall place the applicant's name upon the primary election ballot of his party, as hereinafter provided.

Said affidavit may be substantially as follows:

STATE OF NORTH DAKOTA, }
County of } ss.

I, being duly sworn, depose and say that I reside in the county of and state of North Dakota; that I am a qualified voter therein and; that I am a candidate for nomination to the office of to be chosen at the primary election to be held on 19....., and I do hereby request that my name be printed on the primary election ballot as provided by law as a candidate of the party for said office.

Subscribed and sworn to before me this day of 19....

.....
.....
Notary Public.

[1905, ch. 109, § 3.]

§ 554. Petition, how signed. Every candidate for a county or district office shall, not more than thirty days nor less than twenty days prior to any primary election, present to the county auditor a petition giving his name, post office address, the title of the office to which he aspires and the party which he represents, containing the names of five per cent of the total vote cast for the candidate of the party with which he affiliates for the same position at the last general election; provided, however, that in no case shall more than three hundred names be required. Each name on the petition shall be that of a qualified voter and be subscribed under a certified party heading. Each signer of a nomination paper shall sign but one paper for the same office; he shall add his residence, with the street number, if any, and the date of signing. [1905, ch. 109, § 4.]

§ 895. Preparation of ballots. It shall be the duty of the city auditor or recorder to prepare the primary election ballots as provided in this article and deliver the same as now provided by law. [R. C. 1905, § 591; 1905, ch. 109, § 31.]

This section being R. C. 1905, § 591, "this article" mentioned therein means R. C. 1905, §§ 551-597, which constituted the article and which have been largely superseded by the provisions in the corresponding article 1 in the present compilation. The section is, besides, apparently superseded by the provisions in section 903.

§ 896. Canvassing board. The city council shall compose the canvassing board, and shall meet within five days after any primary election and canvass the votes as required in subdivisions 1 and 2 of section 583 [section 873 herein] and make returns of same as herein provided. [R. C. 1905, § 592; 1905, ch. 109, § 32.]

§ 897. Publication of result of election. When the result of such election is announced it shall be the duty of the city auditor or recorder to notify the candidates declared nominated by written notice thereof and by publishing the same in the official paper of the city, one week prior to the municipal election. [R. C. 1905, § 593; 1905, ch. 109, § 33.]

§ 898. Usage and customs prevail. It is not the intention hereof to destroy or impair the organization of any party or principle now existing or hereafter to exist, therefore, each of such parties or principles, and each and all of the state, county, and other committees thereof shall possess all of the ordinary powers and authority heretofore established by the usages and customs of such parties not inconsistent with any of the provisions hereof. [R. C. 1905, § 597; 1905, ch. 109, § 37.]

ARTICLE 2.—REGULATING CAUCUSES AND NOMINATIONS FOR OFFICE WHERE PRIMARY ELECTION PROVISIONS DO NOT APPLY.

The following sections 899-901, if they are still in force [see sections 891, 902, 903], apply to incorporated cities, towns and villages not within the description in section 891.

§ 899. When caucus held. Certificates. All caucuses shall be held between the hours of two o'clock p. m. and nine o'clock p. m., and the polls shall be kept open at least one hour. The electors present at such caucus shall at the opening of the polls elect by viva voce vote a chairman and clerk of such caucus, whose powers and duties shall be the same as the powers and duties of judge and clerk of election, respectively, in so far as the same shall be applicable. The chairman and clerk of such caucus shall at the close of the polls immediately canvass the ballots cast for delegate or delegates and shall issue certificates of election to each delegate who shall receive a plurality of all the votes cast at such caucus. Such certificate shall be signed by said chairman and clerk. [R. C. 1905, § 598; 1899, ch. 38, §§ 4, 5, 6; R. C. 1899, § 497b; 1901, ch. 47.]

§ 900. Duty of clerk. It shall be the duty of the clerk of such caucus to carefully keep and preserve the record of the caucus, which shall include a list of the names of each person voting at the said caucus, for six months, and he shall at any time within said six months furnish a certified copy of the record of such caucus upon the request of the chairman of the county or state committee of the political party which said caucus represented. [R. C. 1905, § 599; 1899, ch. 38, § 7; R. C. 1899, § 497c.]

§ 901. Participation in more than one caucus prohibited. Any person who shall participate directly or indirectly in the election at caucus of more than one delegate or set of delegates for the nomination of each office to be filled shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than fifty or more than two hundred dollars. [R. C. 1905; § 600; 1899, ch. 38, § 8; R. C. 1899, § 497d.]

The provisions of sections 899 to 901 inclusive apply to incorporated cities, towns and villages containing less than five thousand inhabitants according to the last federal census. In cities containing five thousand inhabitants and over the provisions of sections 851 to 898 inclusive apply.

ARTICLE 3.—NONPARTISAN NOMINATION AND ELECTION OF MUNICIPAL OFFICERS.

§ 902. No party ballot. In all petitions to be filed by or in behalf of candidates for nomination to a public office in any incorporated city, town or village in this state, no reference shall be made to a party ballot or to the party affiliation of such candidates; provided, however, it shall be allowed any such candidate to state, or have stated, in all such petitions, after his name, in not more than twenty words, any particular principle, or principles of local administrative policy or policies he stands for and seeks election to promote. [1913, ch. 73, § 1.]

§ 903. Nominations, how made. A candidate for any public office in an incorporated city, town or village may be nominated by filing with the city auditor, at least twenty days prior to the holding of the election, a petition signed by not less than ten per cent of the qualified electors residing within the ward or precinct in and for which such officer or officers are to be elected, provided, however that in cities operating under the commission plan the required petition may be signed by the electors at large residing within such city, and provided further that in no case shall more than three hundred signatures be required, and such signatures may be on separate sheets of paper. No elector shall sign more than one petition for the same office. Each signer of such petition shall add to his name his post office address, giving the street and number of his residence. It shall be the duty of the auditor or clerk of such city, town or village, as the case may be, to place only the names of the person or persons so nominated upon the ballot, with the statement after or opposite the name of the candidate, of the principle or principles which he seeks to promote, in not more than twenty words and as stated in the petition or petitions filed by or on behalf of such candidate, and in such manner as to readily inform the voter of the policy or policies upon which such candidate seeks

election; and to arrange the offices upon the ballot in the order in which they are named in the statutes. The arrangement of the names of the candidates upon the ballot shall be determined by the lot by such auditor or clerk in the presence of the candidates or their representatives at noon on the day following the last day for the filing of nomination papers. [1913, ch. 73, § 2.]

ARTICLE 4.—NONPARTISAN JUDICIARY.

§ 904. **No party ballot.** In all petitions and affidavits to be filed by or in behalf of candidates for nomination at the primary election to the office of judge of the supreme or district court, no reference shall be made to a party ballot or to the party affiliation of such candidate. [1909, ch. 82, § 1.]

§ 905. **Separate ballot for judicial nominations.** All primary elections at which candidates for judge of the supreme or district court are to be nominated, there shall be separate ballots, upon which shall be placed the names of the candidates for such offices, which ballot shall be entitled the "judiciary ballot," and the names of such candidates shall be placed thereon without party designation, and there shall be designated thereon the number of judges each elector is entitled to vote for. This ballot shall be delivered to each elector by the proper election officer, and the candidate on such "judiciary ballot" receiving the highest number of votes to the extent of double the number of those to be elected, provided there are that many or more candidates running for such office or offices, shall be duly nominated. [1909, ch. 82, § 2.]

§ 906. **Ballot at general elections.** At the general election there shall be a separate ballot, upon which shall be placed the names of the candidates for judge of the supreme court and judge of the district court, who have been nominated as herein provided, which ballot shall be entitled the "judiciary ballot," and the names of all candidates shall be placed thereon without party designation, and there shall be designated thereon the number of judges each elector is entitled to vote for. This ballot shall be delivered to each elector, and the candidates on such "judiciary ballot" receiving the highest number of votes to the number of those to be elected, shall be duly elected. [1909, ch. 82, § 3.]

ARTICLE 5.—NONPARTISAN NOMINATION AND ELECTION OF STATE SUPERINTENDENT OF PUBLIC INSTRUCTION AND COUNTY SUPERINTENDENT OF SCHOOLS.

§ 907. **No party ballots.** In all petitions and affidavits to be filed by or in behalf of any candidate for nomination at any primary election to the offices of state superintendent of public instruction and county superintendents of schools, no reference shall be made to any party ballot or to the party affiliation of such candidate. [1913, ch. 153, § 1.]

§ 908. **Separate ballots for school nominations.** At all primary elections at which candidates for the offices herein referred to are to be nominated, there shall be separate ballots, which ballots shall be entitled, "Non-partisan school ballot," and the names of such candidates shall be placed thereon without party designation, and there shall be designated thereon the number of persons to be elected to each office. Except as herein provided, this ballot shall be prepared, printed, distributed, canvassed and returned in the manner now provided by law for primary election ballots, and shall be delivered to each elector by the proper election officers and, where there are three or more candidates for the same office, the two candidates receiving the highest number of votes for such office shall be duly nominated thereto, and where there are only two candidates for the same office, both candidates shall be duly nominated thereto. [1913, ch. 153, § 2.]

§ 909. **Ballots at general election.** At the general election there shall be a separate ballot upon which shall be placed the names of all candidates who

have been nominated as herein provided, which ballot shall be entitled " School Ballot," and the names of all such candidates shall be placed thereon without party designation, and there shall be designated thereon the number of candidates for each office for whom each elector is entitled to vote. Except as hereinafter provided, this ballot shall be prepared, printed, distributed, canvassed and returned in the manner now provided by law for general election ballots. This ballot shall be delivered to each elector, and the candidates for each office on such " Nonpartisan school ballot " receiving the highest number of votes shall be duly elected to such office. [1913, ch. 153, § 3.]

ARTICLE 6.—PRIMARY ELECTION OF NATIONAL DELEGATES.

§ 910. **Delegates to national conventions, presidential electors, and national committeemen.** In the presidential election years, the qualified electors of the political parties subject to this law shall have opportunity to vote for their preference, on ballots provided for that purpose, for their choice among those aspiring to be candidates of their respective parties for president and vice-president of the United States, shall have their party delegates to their national conventions, their presidential electors, and shall nominate and recommend their choice for national committeemen. The names of the aspirants in each such party for election for the office of president, for office of vice-president of the United States, for national committeemen, for delegates to their national conventions, and for presidential electors, shall be printed on the party nominating ballot, provided for that purpose, and the ballot shall be marked and the votes shall be counted; canvassed and returned under the same conditions as to names, petitions and other matters so far as the same are applicable, as the names and petitions of party aspirants for the party nominations for the office of governor and of the United States senator in congress are, or may be by law required to be marked, filed, counted, canvassed, and returned; provided, that aspirants for such presidential nominations need not file any personal petition nor signature; that certificates of the number of votes received by each such candidate shall be issued to the delegates who are elected for said party to the party national convention; that petitions to place on the nomination ballot the names and aspirants for such office or delegate to said national convention, presidential elector and national committeeman to be chosen and elected, as provided herein, shall be sufficient if they contain a number equal to one per cent of the party vote in the state at the next preceding election for representatives in congress, or not less than five hundred signatures of party voters. Every qualified voter shall have the right to vote for as many candidates for national delegates for his party and for the election of as many candidates for presidential electors as there are delegates and electors to be elected respectively, and each elector shall have a right to vote for one candidate of his party for national committeeman. A number of such candidates equal to the number of delegates to be elected and the number of presidential electors to be elected and the candidate for national committeeman, receiving, respectively, each for himself, the highest number of votes for such office or nomination, shall be declared elected. [1911, ch. 208, § 1.]

§ 911. **County canvassing board.** On the eighth day after the election provided for herein, the county canvassing board shall meet as provided in section 582 of the revised codes of 1905 [section 872 herein], and shall canvass the returns in the manner now provided by law. The powers and duties of the board shall be the same in so far as applicable, as now are prescribed by law for canvassing the returns of other elections. [1911, ch. 208, § 2.]

§ 912. **State canvassing board.** For the purpose of ascertaining the results of the election provided for in this article, the state canvassing board shall meet at the office of the secretary of state on the first Tuesday in May after such election and the secretary of state shall notify the other members of the board of canvassers of such meeting. [1911, ch. 208, § 3.]

§ 913. Candidates to file petitions. All persons desiring to be candidates for delegates to the national convention of their party and all persons desiring to be candidates for presidential electors and for national committeemen of their party shall, not later than the first day in March of each year, when a presidential election will take place, file with the secretary of state their petitions, as provided herein. [1911, ch. 208, § 4.]

§ 914. Preparation and distribution of ballots; notices of election. It shall be the duty of the secretary of state immediately after the first day in March of each year in which a presidential election will take place, to prepare and print ballots, at the expense of the state, with the names of all candidates of each party for the offices named in this act. In printing such ballots the secretary of state shall be guided by the provisions of law now in force relating to the preparation and printing of ballots for general elections. The provisions of the general election law applicable relating to the distribution of ballots, posting of sample ballots and of notices of the election shall apply to the distribution of ballots, posting of sample ballots and of notices of the election herein provided for, except as otherwise required herein. The secretary of state shall distribute the ballots among the county auditors, who in turn must deliver the same to the inspectors of election in the voting precincts of their respective counties. Notices of the election provided for herein shall be given in the manner prescribed by law for giving notices of city, village and township elections in such cities, villages and townships and in any other precincts, notice of the election shall be given as now provided by law for general elections. [1911, ch. 208, § 5.]

§ 915. Elections when; conduct of elections; city elections to conform. On the third Tuesday of March every fourth year, when a presidential election is to be held, the members of the respective political parties shall express their choice for the election of the persons and officers named in this article, and whose names appear upon the ballot according to the provisions herein. Each elector shall be handed the ballot of the party with which he declares himself affiliated, or with which he may have registered at the last preceding registration or election, and such elector shall mark and vote the same in the manner provided herein. The polls shall be open during the same hours as at general elections. For the purposes of the election herein provided for, in all cities, villages and civil townships the regular election officers thereof shall also act without further compensation as the election officers, and in unorganized townships and voting precincts outside of cities, villages and civil townships, the inspector and two judges of election, who acted as such at the last general election, or those who have been or may be appointed to fill such vacancies occurring in their offices, pursuant to law, shall act therein as the inspector and judges of election. In all matters not herein expressly otherwise provided for the provisions of any election law of this state, applicable to the case, shall govern. In every fourth year, when a presidential election is held, the time of all city elections shall take place on the third Tuesday in March so as to conform to the provisions of this article, and in such event the city officers elected to office shall have until the second Tuesday of April in which to qualify for such office. [1911, ch. 208, § 6.]

§ 916. Expenses of delegates. Oath of delegates. Every delegate to a national convention of a political party recognized as such organization by the laws of North Dakota, shall receive from the state treasurer the amount of his actual necessary traveling expenses, as his account may be audited and allowed by the secretary of state or state auditor, for actual attendance upon said convention, but not in any case to exceed two hundred dollars for one delegate. The election of such national delegates for political parties are not subject to the direct primary law shall be certified in like manner as nominations of candidates of such parties for election to public office. Every such delegate to a national convention which nominated candidates for presi-

dent and vice-president shall subscribe an oath of office that he will uphold the constitution and the laws of the United States and North Dakota, and that he will, as such officer and delegate, to the best of his judgment and ability, faithfully carry out the wishes of his political party as expressed by the voters at said election. [1911, ch. 208, § 7.]

ARTICLE 7.—GOVERNING PARTY REGISTRATION.

§ 917. **Party registration required. When.** A party registration of the voters in the respective political parties shall be taken in each precinct of this state in the following manner. In the months of April and May of each even numbered year in which a primary election is held, the assessor of each district shall at the time that he makes his assessment of the real and personal property take down in an enrollment book the name of each voter in his district, grouping alphabetically and according to the precinct of such voters in substantially the following form:

10.....	County,
11.....	City,
.....	Ward,
.....	Election Precinct.
Date Enrolled Name P. O. Address Age Nativity St. No. Party	Affilia- tion
Number	

And also have each voter sign and swear to before the assessor or notary as the case may be a registration blank "A" which shall be in the following form:

State of North Dakota, }
County of..... } ss:

I, the undersigned elector, do solemnly swear (or affirm) that my name and signature as signed below is my true name and signature. If I have not personally signed it, it is because..... and it was signed at my request by the attesting officer. My age is..... years and occupation.....; nativity.....; naturalized or declared by intention in..... court, in..... county, state, on.....19.., as appears by the naturalization papers exhibited herewith. Present residence is in section..... township....., range....., County, North Dakota; of (if city or town) at No.....street, in the city of post office address..... I belong to the.....party; that I have resided in this state for one year immediately preceding this election. In testimony whereof I sign my name two times.

(1)..... (1).....
(2)..... (2).....

Elector.

Note. "Verification to be in usual form." If unable to sign, let the officer write his name and so state. [1911, ch. 213, § 1.]

The constitutionality of this section was sustained in *State ex rel. Miller v. Flaherty*, 23 N. D. 313, 41 L.R.A.(N.S.) 132, 136 N. W. 76. As to constitutionality of primary election laws generally, see note to this case in 41 L.R.A.(N.S.) 132, also note in 22 L.R.A.(N.S.) 1136.

Registration as condition of right to vote. 25 L.R.A. 480.

§ 918. **Registration and enrollment books. How furnished.** These party enrollment books and blanks shall be prepared and furnished by the secretary of state and by him sent to each county auditor in the state and by each county auditor distributed to each assessor. The assessors shall complete this work of taking the party registration in the months of April and May of each even numbered year and shall return the blanks and enrollment books to the county auditor of the respective counties on or before thirty days before

each primary election day and shall receive as compensation the sum of ten cents (10c) for entry of the name of each party voter in addition to the compensation now allowed by law for his work as such assessor. He shall cause the names to be entered in the party enrollment book alphabetically and according to the respective precincts of the voters within that district.

Any voter who is unavoidably absent from the assessor's district during the time of taking the party registration may go before any notary public and sign and verify a registration blank as shown by form "A" and mail the same in to the county auditor of his county. [1911, ch. 213, § 2.]

§ 919. When person may cause name to be enrolled on primary day. Any person who was a qualified voter in any election precinct in this state on the day of enrollment and registration provided for in this article and who failed to have his name enrolled on that day by reason of sickness or unavoidable absence from the election precinct, and who is a qualified voter in said district at the time of the primaries thereafter held therein, or who may have become twenty-one years of age after the day of enrollment may have his name enrolled by the election board on any primary day upon making oath as provided in the general election law in relation to registration of electors on election days. Any person who was a qualified voter in any election precinct in this state on the day of enrollment provided for in this article, and who was duly enrolled as provided herein, who has had occasion to transfer his place of residence to an election precinct other than that in which he was enrolled, may be entitled to a new enrollment on primary day in such election precinct and be entitled to a vote therein, provided that he has resided in the election precinct to which he has lately removed for a period to comply with general laws governing residence of electors. He may obtain from the assessor of the precinct in which he formerly resided, a certificate stating that he was duly enrolled in such precinct and that he has changed his residence therefrom to such other precinct and that he is entitled to enrollment therein.

The county auditor shall cause duplicates to be made of all the party enrollment books on file in his office and cause a copy of the party enrollment book for each precinct to be delivered to the inspector of elections of such precinct at the same time that the other election supplies and ballot boxes are delivered to such inspector as now provided by law.

The inspector and judges at such primary elections shall require each voter to vote the party ballot under which he has registered. [1911, ch. 213, § 3.]

ARTICLE 8.—PUBLICATION OF CANDIDATES' NAMES BEFORE PRIMARY ELECTION.

§ 920. Certified lists of nominees. At least twenty-five days before any primary preceding a general election, the secretary of state shall transmit to each county auditor a certified list containing the names and post-office addresses of each person for whom nomination papers have been filed in his office and entitled to be voted for at such primary, together with a designation of the office for which he is a candidate, and the party or principle he represents. [1911, ch. 209, § 1.]

§ 921. Publication of notices. The auditor to whom such list is delivered shall forthwith upon the receipt thereof publish under the proper party designation the title of each office, the names and addresses of all persons for whom nomination papers have been filed, both in his office and the office of the secretary of state, giving the names and addresses of each, the date of the primary, the hours during which the polls will be opened, and that the primary will be held in the regular polling place in each precinct. It shall be the duty of such auditor to publish said notice once each week for at least two consecutive weeks prior to said primary in each official newspaper in the county. [1911, ch. 209, § 2.]

§ 922. Posting of notices. Such auditor shall also forthwith mail copies of such notice to each township and village clerk and inspector of elections in

unorganized townships, and to each city auditor of his county who shall immediately post copies of the same in at least three public places in each precinct in his town, city or village, designating therein the location of the polling place in each election precinct. [1911, ch. 209, § 3.]

ARTICLE 9.— ELECTION PRIVILEGES.

§ 923. Primary campaign expenses limited. No sum of money shall be paid, and no expenses authorized or incurred by or on behalf of any candidate to be paid by him, except such as he may pay to the state for printing, as herein provided, in his campaign for nomination to any public office or position in this state, in excess of fifteen (15) per cent of a year's compensation or salary of the office for which he is a candidate; provided, that no candidate shall be restricted to less than two hundred dollars (\$200) in his campaign for such nomination; provided, that the provisions of this article shall not be construed to apply to the candidate's personal traveling expenses. No sum of money shall be paid and no expenses authorized or incurred contrary to the provisions of this article, for or on behalf of any candidate for nomination. [1911, ch. 129, § 1.]

§ 924. Publicity pamphlet. Candidate's statements. Any candidate for nomination to any state or district office, when the district is composed of one or more counties, may file with the secretary of state for publication as herein provided, not later than fifty (50) days before the biennial primary nominating election, with his portrait cut if he wishes, a printed or type-written statement, on the conditions set forth, over his signature, stating the reasons why he should be nominated.

Each candidate shall be allowed one (1) page of printed matter, and those opposing him shall be each allowed one page of space on equal terms with him, as herein provided. [1913, ch. 227, § 1; 1911, ch. 129, § 2.]

§ 925. Rates. Candidates for nomination shall pay for one page of space in the publication herein provided for as follows: For office of United States senator, one hundred dollars; for representatives in congress, one hundred dollars; for justice of the supreme court, seventy-five dollars; for governor, one hundred dollars; for secretary of state, one hundred dollars; for state treasurer, one hundred dollars; for state auditor, one hundred dollars; commissioner of insurance, superintendent of public instruction, attorney-general and commissioner of labor, each seventy-five dollars; for railroad commissioner and lieutenant-governor, twenty-five dollars; for senator or representative in the legislative assembly, ten dollars; for district judge, fifty dollars; for county judge, register of deeds, county auditor, county treasurer, state's attorney, sheriff, clerk of court, and county school superintendent, each twenty-five dollars. All payments required by this section shall be made to the secretary of state when the statement is offered to him for filing, and be by him paid into the general fund of the state treasury. Any candidates for state offices may have additional space, not exceeding three pages, at the rate of one hundred dollars a page, and any candidate for county or legislative office may have additional space, not exceeding two pages, at the rate of twenty-five dollars (\$25) a page. [1913, ch. 226; 1911, ch. 129, § 3.]

§ 926. Printing statements. Not later than forty days before the primary nominating election the secretary of state shall properly complete, edit, prepare, and index for printing all of such statements and portrait cuts and cause the same to be printed in pamphlet form, printing and pictures of candidates with and as a part of their several statements, where such portrait cuts are offered; statements of those who directly oppose any candidate shall

follow next after his statement. All of the statements filed for and against all the candidates for nomination to each office shall be printed in the order in which the candidates' names are grouped under the title of their offices on the official ballot at the nominating election. No picture, statement or argument for or against any candidate for nomination shall be included in the copy of the pamphlet going to any county where such candidate is not to be voted for. The said pamphlets shall be printed and delivered to the secretary of state as quickly as possible and the delivery shall be completed not later than twenty (20) days before the nominating election. [1913, ch. 227, § 2; 1911, ch. 129, § 4.]

§ 927. Addresses to voters. The several county auditors shall obtain the post-office addresses of all voters in their respective counties, which shall be taken from the registration lists in case of party registration, and in case of no party registration then such addresses may be procured from the personal property tax books of that year and other authentic source, and on or before the thirtieth (30th) day preceding the nominating election, mail to the secretary of state the name, post-office address and party registration of every such person, and at least twenty (20) days before the regular biennial primary nominating election, the secretary of state shall forward by mail to every such person a copy of the pamphlet containing the names and statements herein provided for. The pages of the pamphlet required by this article shall be six by nine inches in size, and the printed matter therein shall be set in eight point type, single leaded, and twenty-five ems pica in width, with proper headings. [1911, ch. 129, § 5.]

§ 928. General election campaign expenses limited. No sum of money shall be paid and no expenses authorized or incurred by or on behalf of any candidate who has received the nomination to any public office or position in this state, except such as he may contribute toward payment for his political party's or independent statement in the pamphlet herein provided for, in excess of fifteen (15) per cent of the annual salary of the office for which he is nominated; provided, that no candidate shall be restricted to less than two hundred dollars. [1911, ch. 129, § 6.]

§ 929. Itemized statements filed. Every candidate for nomination or election to public office, including the offices of senators of the United States, shall within fifteen (15) days after the primary or general election at which he was a candidate, file with the secretary of state, if a candidate for senator of the United States, representative in congress, or for any state or district office, in a district composed of one or more counties, but with the county auditor for legislative districts composed of not more than one county, an itemized statement setting forth in detail all the moneys contributed, expended or promised by him to aid and promote his nomination or election, or both, as the case may be, and for the election of his party candidates, and all existing unfulfilled promises of every character and all liabilities in force at the time of such statement, and if no money or other valuable thing was paid or promised, he shall file a statement to that effect within fifteen days after the election at which he was a candidate. Any candidate who shall fail to file such statement shall be fined twenty-five dollars (\$25) for every day on which he was in default, unless excused by the court. [1911, ch. 129, § 7.]

§ 930. Actual contributors' names. No person shall make a payment of his own money or of another person's money to any other person in connection with a nomination or election in any other name than that of the person who in truth supplies such money; nor shall any person knowingly receive such payment or enter or cause the same to be entered in his accounts or record in any other name than that of the person by whom it was actually furnished. [1911, ch. 129, § 8.]

§ 931. Pre-election promises of appointments. No person shall, in order to aid or promote his nomination or election, directly or indirectly promise to

appoint another person or to secure or aid in securing the appointment, nomination or election of another person to any public or private position or employment, or to any position or honor, trust or emolument. [1911, ch. 129, § 9.]

§ 932. Charitable contributions by candidates or office-holders, and solicitation thereof. No person shall demand, solicit, ask or invite any payment or contribution for any religious, charitable or other such cause from any person who seeks to be, or has been, nominated to any office, and no such candidate shall make any such payment or contribution, or promise or agree to make the same, if it shall be demanded or asked during the time he is a candidate for nomination or election. No payment or contribution for any purpose shall be made a condition precedent to the putting of a name on any caucus or convention ballot or nominating paper or petition, or the performance of any duty imposed by law on a political committee.

Provided, however, that this section shall not be construed as prohibiting any candidate for office from making contributions for a religious or charitable purpose to any organization or purpose to which he has theretofore ordinarily or customarily contributed; and no person shall be deemed prohibited at any time from contributing to any church organization or association of which he is actually a member.

Provided, further, this section shall not be construed as making it unlawful for a candidate for office to make contribution to the central committees of the political party with which he is affiliated, but any such contribution so made shall be deemed a part of the expenditures limited in section 928. [1913, ch. 157; 1911, ch. 129, § 10.]

§ 933. Campaign contributions by corporations prohibited. No corporation, trustee or officer thereof as such, shall pay or contribute in order to aid, promote or prevent the nomination or election of any person, or in order to aid or promote the interest, success or defeat of any person or any political party or organization. And no person shall solicit or receive such payment from any corporation. [1911, ch. 129, § 11.]

§ 934. Treating. Any person or candidate who shall, either by himself or by any other person, either before or after election, or while such person or candidate is seeking a nomination or election, directly or indirectly, give or provide, or pay, wholly or in part, the expense of giving or providing any drink or intoxicating liquors to or for any person for the purpose or with the intent or hope to influence that person or any other person to give or refrain from giving his vote at such election to or for any candidate or political party ticket or measure before the people, or on account of such person or any other person having voted or refrained from voting for any candidate or the candidates of any political party or organization or measure before the people or being about to vote or refrain from voting at such election, shall be guilty of treating. Every elector who accepts or takes any such drink or intoxicating liquors shall also be guilty of treating, and such acceptance shall be ground of challenge to his vote and of rejecting his vote on a contest. [1911, ch. 129, § 12.]

§ 935. Penalty. Any person shall be guilty of corrupt practice within the meaning of this article if he expends any money for election purposes contrary to the provisions of this statute, or if he is guilty of treating, undue influence, personation, or the giving or promising to give any money or valuable thing to an elector with the intent to induce him to vote or to refrain from voting for any candidate for public office. [1911, ch. 129, § 13.]

§ 936. Expenses of voting. Transportation prohibited. It shall be unlawful for any person to pay another for any loss or damage due to attendance at the polls, or in registering or for the expense of transportation to or from the polls. No person shall pay for personal services to be performed on the day of a caucus, primary convention or any election for any purpose connected

therewith, tending in any way, directly or indirectly, to affect the result thereof, except for the hiring of persons whose sole duty is to act as challengers and watch the count of official ballots. No person shall buy, sell, give or provide any political badge, button or any insignia to be worn at or about the polls on the day of an election, and no such political badge, button or insignia shall be worn at or about the polls on any election day. [1911, ch. 129, § 14.]

§ 937. Political advertising labeled paid. No publisher of a newspaper or other periodical shall insert either in its advertising or reading columns or any paid matter which is designed or tends to aid, injure or defeat any candidate or political party or organization or measure before the people, unless it is stated therein that it is a paid advertisement. No person shall pay the owner, editor, publisher or agent of any newspaper or other periodical to induce him to editorially advocate or oppose any candidate for nomination or election, and no such owner, editor, publisher, or agent shall accept such payment. Any person who shall violate any of the provisions of this section shall be punished as for a corrupt practice. [1911, ch. 129, § 15.]

§ 938. Rates for political announcements. No newspaper in this state shall charge for the publication of political announcements of candidates before any primary or election any more than the legal rates for the publication of legal notices. All paid political matter and political announcements shall be labeled "Political Advertisement." Any person violating any provision of this section shall be deemed guilty of a misdemeanor. [1911, ch. 210.]

§ 939. Electioneering on election day. It shall be unlawful for any person at any place on the day of any election to ask, solicit or in any manner try to induce or persuade any voter on such election day to vote or refrain from voting for any candidate, or the candidates or ticket of any political party or organization, or any measure submitted to the people, and upon conviction thereof, he shall be punished by a fine of not less than five dollars, nor more than one hundred dollars for the first offense, and for the second and each subsequent offense occurring on the same or different election days he shall be punished by a fine as aforesaid, or by imprisonment in the county jail not less than five nor more than thirty days, or both such fine and imprisonment. [1911, ch. 129, § 16.]

§ 940. Failure to file statement. Name omitted from ballot. The name of a candidate chosen at a primary nominating election or otherwise, shall not be printed on the official ballot for the ensuing election unless there has been filed by or on behalf of said candidate the statements of accounts and the expenses relating to nominations required by this article, but delay in making such statement beyond the time prescribed shall not preclude its acceptance or prevent the insertion of the name on the ballot, if there is a reasonable time therefor after the receipt of such statements. [1911, ch. 129, § 17.]

§ 941. Candidacy bona fide. It shall be unlawful for any person to accept, receive or refrain from becoming a candidate for nomination or election, or by himself or in combination with any other person or persons to become a candidate for the purpose of defeating the nomination or election of any person and not with a bona fide intent to obtain the office. [1911, ch. 129, § 18.]

§ 942. Corrupt practice. Forfeiture of office or nomination. If upon the trial of any action or proceeding under the provisions of this article for the contesting of the right of any person declared to be nominated to any office or elected to any office, or to annul or set aside such election, or to remove any person from his office, it shall appear that such person was guilty of any corrupt practice, illegal act, or undue influence in or about such nomination or election, he shall be punished by being deprived of the nomination or office as the case may be, and the vacancy therein shall be filled in the manner provided by law. [1911, ch. 129, § 19.]

§ 943. Contest commencement. Any action to contest the right of any person declared elected to any office, or to annul and set aside such election, or to remove from or deprive any person of an office of which he is the incumbent for any offense mentioned in this article must, unless a different time be stated, be commenced within forty (40) days after the return of the election at which such offense was committed, unless the ground of the action or the proceeding is for illegal payment of money or other valuable things subsequent to the filing of the statements prescribed by this article, in which case the action or the proceeding may be commenced within forty (40) days after the discovery by the complainant of such illegal payment. [1911, ch. 129, § 20.]

§ 944. General penalty. Whoever violates any provision of this article, the punishment of which is not specifically provided by law, shall on conviction thereof be punished by imprisonment in the county jail for not more than six months, or by a fine of not more than one thousand dollars or by both such fine and imprisonment. [1911, ch. 129, § 21.]

ARTICLE 10.—GENERAL PROVISIONS.

§ 945. Governs all but special elections. All elections for state, district, county, township, city and ward and other officers provided by law, shall hereafter be held and conducted in the manner prescribed in this chapter, except as otherwise specially provided by law. [R. C. 1905, § 602; R. C. 1895, § 476.]

Applicability of constitutional or statutory provisions relating to general elections, to elections other than for the selection of officers. 14 L.R.A.(N.S.) 850.

§ 946. General election, when held. On the first Tuesday after the first Monday in November of each even numbered year an election shall be held in the several election districts of the state which shall be known as the general election, and the several state, district and county officers, judges of the supreme and district courts, members of the legislative assembly and members of the congress of the United States, shall be elected at the general election next preceding the expiration of the term of each of such officers, respectively, except such officers as are required by law to be elected at special elections, and on a year when a president and a vice-president of the United States are to be chosen a number of electors of president and vice-president of the United States equal to the number of senators and representatives to which this state is entitled in the congress of the United States shall be elected at such election. [R. C. 1905, § 603; R. C. 1899, § 477.]

§ 947. Highest number of votes elects. In all elections for the choice of any officer, unless it is otherwise expressly provided, the person receiving the highest number of votes for any office shall be deemed to have been elected to that office. [R. C. 1905, § 604; R. C. 1899, § 478.]

§ 948. Who entitled to vote. Every male person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state one year, and in the county six months, and in the precinct ninety days next preceding any election, shall be a qualified elector at such election:

First. Citizens of the United States.

Second. Civilized persons of Indian descent who shall have severed their tribal relations two years next preceding such election, provided he has complied with the provisions of any law which is now or may in the future be in force relating to the registration of voters, and all persons possessing the qualifications mentioned in this section, and who have resided in this state one year, shall be eligible to any office in this state, except as otherwise provided in the constitution. [1911, ch. 131; R. C. 1905, § 605; 1885, ch. 52, § 1; Const. § 121; R. C. 1895, § 479; 1903, ch. 89.]

Proposed amendment to constitution qualifying Indians and women, see Laws 1913, ch. 97.

Laws 1913, ch. 151, entitled "An act to amend and to re-enact section 605 of the Revised Code of North Dakota for 1905, and chapter 131 of the Session Laws of North Dakota for the year 1911, relating to who is entitled to vote, and providing for woman suffrage," provides as follows:

"§ 605. Who Entitled to Vote. Every person of the age of twenty-one years or upwards, belonging to either of the following classes, who shall have resided in the state one year and in the county six months, and in the precinct ninety days next preceding any election, shall be a qualified elector at such election:

"First: Citizens of the United States.

"Second: Civilized persons of Indian descent who shall have severed their tribal relations two years next preceding such election, provided they have complied with the provisions of any law which is now or may in the future be in force relating to the registration of voters, and all persons possessing the qualifications mentioned in this section, and who have resided in this state one year, shall be eligible to any office in this state, except as otherwise provided in the constitution.

"This act shall not be in force until adopted by a majority of the electors of the state, voting at the general election to be held in the year 1914, and this act shall be submitted for adoption to the electors at such general election in 1914."

Presumption of naturalization from fact of voting. *Kadlec v. Pavik*, 9 N. D. 278, 83 N. W. 5.

How far right to vote is absolute. 25 L.R.A. 480.

Nature of occupancy of premises as affecting elective franchise. 4 L.R.A.(N.S.) 698, 704, 711.

Does "residence," as a qualification of voters mean "domicil." 19 L.R.A.(N.S.) 759.

Acquiring residence as a voter while attending school or public institution. 23 L.R.A. 215; 40 L.R.A.(N.S.) 168.

Payment of poll taxes as a qualification of electors. 29 L.R.A. 414.

Tax or property qualification of voters. 25 L.R.A. 482.

Disqualification of voters for crime. 25 L.R.A. 483.

Effect on public election of wrongful disqualification of sufficient number of voters to have changed the result. 38 L.R.A.(N.S.) 1007.

[§ 949. **Qualifications of Indian voters.** No Indian or person of Indian descent who has not received a final patent conveying the title in fee of lands allotted to him within the boundaries of this state, pursuant to an act of the congress of the United States, approved February eighth, 1887, and entitled "An act to provide for the allotment of lands in severalty to Indians on the various reservations, and to extend the protection of the laws of the United States and the territories over the Indians, and for other purposes," shall be deemed a qualified elector of the state of North Dakota, or be entitled to the rights and privileges of an elector therein unless he was born within the limits of the United States, and has voluntarily taken up his residence within this state separate and apart from any tribe of Indians therein, and adopted the habits of civilized life, and is in no manner subject to the authority of any Indian chief or council or Indian agent of the United States.] [R. C. 1905, § 606; 1895, ch. 58, § 1; R. C. 1899, § 480.]

Unconstitutional in so far as it restricts the right of suffrage. *State ex rel. Thompson v. Denoyer, et al*, 6 N. D. 586, 75 N. W. 1014.

ARTICLE 11.—ELECTION PRECINCTS.

§ 950. **Precincts, how formed.** The board of county commissioners of each county in the state shall, at its first session after the taking effect of this section, divide its county into election precincts and establish the boundaries of the same, if it has not heretofore done so, and the said board of county commissioners, whenever deemed necessary, shall subdivide any precinct containing two or more congressional townships; providing, that every precinct so established shall comprise at least one congressional township. The entirety of civil townships, cities or villages as voting precincts shall be preserved when possible, except when such preservation would conflict with the provisions of this section. In such case the civil township, city or village, except as hereinafter provided, shall be divided into two or more precincts, but in no case shall a precinct be composed of parts of two civil townships, or part of a township and city or village, excepting as hereinafter provided. Such board of commissioners shall designate one voting place in each precinct.

No precinct shall contain more than three hundred electors. If at any election hereafter held, more than three hundred votes shall be cast at any voting place, it shall be the duty of the inspector in such precinct to report such fact to the board of county commissioners, which board shall, at its next regular meeting divide such precinct as nearly as possible, so that the new precincts formed therefrom shall each contain two hundred and fifty electors, as nearly as practicable; provided, that nothing in this section shall be construed as prohibiting townships adjoining or having within their boundaries an incorporated city, town or village, of less than fifteen hundred inhabitants, from holding their election and having their voting place within the corporate limits of such city, town or village; provided, further, that when the combined vote of any township and incorporated city, town or village, or the combined vote of any township and any portion of any incorporated city, town or village, within its boundaries or within the town lines or section lines which form the boundaries thereof, does not exceed three hundred, such township and incorporated city, town or village, may have but one voting place. [R. C. 1905, § 607; 1891, ch. 66, § 7; 1897, ch. 44; R. C. 1895, § 481; 1903, ch. 90.]

Validity of apportionment of election districts. 15 L.R.A. 561.

Interference with election districts by annexation of property to municipality. 27 L.R.A. 744.

Effect of laches in questioning unconstitutional apportionment of election districts. 10 L.R.A.(N.S.) 1184.

ARTICLE 12.—ELECTION OFFICERS AND THEIR DUTIES.

§ 951. **Inspectors and judges of elections. Qualifications of. Duties.** The chairman of the board of supervisors in organized townships shall by virtue of his office be inspector of elections. In case the township contains more than three hundred voters, such chairman shall be inspector of elections in the precinct in which he resides, and shall appoint the inspector in all other precincts which are component parts of the township of which he is chairman. In case the township and any incorporated town or village within its limits contain less than three hundred voters and such township or incorporated town or village have but one voting place, the chairman of the township board of supervisors shall be inspector of elections. In all cities in which the aldermen are elected in different years, the senior alderman shall be inspector of elections for the precinct in which he resides; and in cities in which the aldermen are not so elected, the alderman who shall act as inspector of elections shall be determined by lot in such manner as the city council shall prescribe. In case a ward in any city contains more than three hundred votes, the senior alderman or the alderman chosen by lot shall be inspector of elections for the precinct in which he resides, and shall appoint the inspectors in all other precincts which are component parts of the ward of which he is alderman. In incorporated towns and villages the president of the town or village board of trustees shall act as inspector, and, if the town or village contains more than three hundred voters, he shall act as inspector of the precinct in which he resides, and appoint the inspectors in the other precincts. In case the alderman designated or selected to act as inspector in any ward is disqualified from acting, the other alderman of the ward shall act as inspector, and appoint other inspectors when necessary; and in case the president of the board of trustees of any town or village is disqualified, the remaining members of the board shall select one of their number to act as such inspector, and appoint other inspectors when necessary. The inspector shall, prior to the opening of the polls in his precinct, appoint as judges of election two qualified electors of such precinct who shall have been resident freeholders therein for at least ninety days next preceding such election, and who are members of different political parties and of the parties which cast the

highest number of votes at the preceding general election; provided, that if at least one week prior to such election the chairman of the county central committee of either of the two parties that cast the largest number of votes in the state at the last general election, shall nominate a member of such party as judge, having the qualifications above prescribed, presenting a certificate of such nomination signed by such chairman, he shall be appointed by the inspector, and such judges together with the inspector shall constitute the board of elections. No person shall be a member of the board of elections who has anything of value bet or wagered on the result of such election, or who is a candidate or is the father, father-in-law, son, son-in-law, brother or brother-in-law of any candidate at such election. If at any time before or during an election it shall be made to appear to any inspector, by the affidavit of two or more qualified electors of the precinct, that either of the judges is disqualified under the provisions of this section, he shall at once remove such judge and fill the place with a qualified person of the same political party as the judge removed, and in case such person so disqualified shall have taken the oath of office as prescribed by law, the inspector shall place such oath and affidavit before the state's attorney of the county; provided, that in case such inspector is disqualified from acting, the other two members of the board of township supervisors and the clerk shall, at least ten days before the date of holding the election, hold a meeting for the purpose of filling such vacancy. Such vacancy shall be filled by appointing an inspector who shall belong to the same political party as the disqualified inspector, and the name of the inspector so appointed shall at once be reported to the county auditor by such clerk. [R. C. 1905, § 608; 1893, ch. 60, § 5; 1897, ch. 78; R. C. 1895, § 483.]

§ 952. Inspectors of election in unorganized townships, how appointed. In precincts consisting of unorganized townships the board of county commissioners shall at the July session of such board next preceding an election appoint in each precinct, as inspector of such election, some qualified elector of such precinct. Such inspector shall before the time of opening the polls in his precinct appoint two judges of election as provided in the preceding section and such judges and inspector shall constitute the board of election for that precinct. If any member of the board of election shall fail to appear at the hour appointed for the opening of the polls the remainder of the board shall select a member of his political party to serve in his stead; provided, that if the qualified electors of his party present at the polls shall nominate a qualified person for such vacancy, such nominee shall be appointed. If none of the members of the election board shall appear at the hour appointed for opening the polls the qualified electors present shall elect a board viva voce as nearly as possible in conformity with the provisions hereof. [R. C. 1905, § 609; 1891, ch. 66, § 16b; R. C. 1895, § 484.]

§ 953. Poll clerks. Such board of election shall appoint as poll clerks two qualified electors of the precinct, one from each of the two parties that cast the largest vote at the last state general election. [R. C. 1905, § 610; 1891, ch. 66, § 16c; R. C. 1899, § 485.]

§ 954. Oath of election officers. Previous to the votes being taken the inspectors, judges and clerks of election shall severally take and subscribe an oath in the following form: "I, A. B., do solemnly swear (or affirm as the case may be), that I will perform the duties of inspector, judge or clerk (as the case may be) according to law and the best of my ability; and that I will studiously endeavor to prevent fraud, deceit and abuse in conducting the same." Such oath may be taken before any officer authorized to administer oaths, and in case no such officer is present at the opening of the polls the inspector or judges of election are authorized to administer such oath to each other and to the clerks of election and the person administering

such oaths shall cause an entry thereof to be made and subscribed by him and prefixed to the poll book. [R. C. 1905, § 611; R. C. 1899, § 486.]

§ 955. **Poll list, clerk to keep.** Each clerk of election shall keep a poll list which shall contain in numerical order the names of all the persons voting at such election. [R. C. 1905, § 612; R. C. 1899, § 487.]

§ 956. **Duty of inspector and judge to challenge.** If any inspector or judge of election shall know or have reason to believe that any person offering to vote is not a qualified elector it shall be his duty to challenge the right of such person to vote. [R. C. 1905, § 613; R. C. 1895, § 488.]

Duty of election officer to accept sworn vote. 36 L.R.A.(N.S.) 968.

ARTICLE 13.—ELECTION SUPPLIES.

§ 957. **Ballots to be printed and distributed at public expense.** At all general or special elections for state, district, county, city, township, village or other public officers within this state, including elections in cities, towns and villages incorporated by special act, all ballots cast shall be printed and distributed at public expense, as hereinafter provided. The printing of ballots and cards of instruction for the electors in each county and the delivery of the same to the election officers as hereinafter provided shall be a county charge and for municipalities a municipal charge, the payment of which shall be provided for in the same manner as other county and municipal expenses; provided, that the provisions of this chapter shall not apply to elections for civil township or school district officers, nor to elections in incorporated cities and villages having less than three hundred legal voters as evidenced by the vote cast therein at the last preceding city or village election. [R. C. 1905, § 614; 1891, ch. 66, § 1; 1893, ch. 60, § 1; R. C. 1895, § 489.]

Ballot provision is mandatory to extent that ballot must be provided substantially meeting statutory requirements permitting elector to vote for place thereon by making cross after it. *Miller v. Norton*, 22 N. D. 196, 132 N. W. 1080.

§ 958. **Elector may write name of candidate on ticket, when.** Except as otherwise provided in this chapter it shall be the duty of the auditor of each county to provide printed ballots for every election for public officers in which the electors or any of the electors within the county participate and he shall cause to be printed on the ballots the name of each candidate whose name has been certified to or filed with him in the manner provided for in this chapter. Ballots other than those printed by the respective county auditors shall not be cast or counted in any election. Nothing in this chapter shall prevent any voter from writing or pasting on his ballot the name of any person for whom he desires to vote and such vote shall be counted the same as if printed on the ballot and marked by the voter. [R. C. 1905, § 615; 1891, ch. 66, § 15; R. C. 1899, § 490.]

Official ballot is not invalidated by addition of printed stickers. *Roberts v. Bope*, 14 N. D. 311, 103 N. W. 935.

Supreme court may, by mandamus, direct county auditor which of two sets of nominees to put on ballot. *State ex rel. Howells v. Metcalf*, 18 S. D. 393, 67 L.R.A. 331, 100 N. W. 923.

§ 959. **Ballots. How prepared.** All ballots prepared under the provisions of this chapter shall be white and of uniform quality of paper printed in black ink, and of sufficient width to contain all of the tickets to be voted for, under the appropriate party designation for each and of sufficient length to contain all the names of the candidates to be voted for at said election. On the left hand of said ticket shall be a column designating the office to be voted for, and on the same line in the column under the appropriate party designation of each, all the names of the candidates duly nominated for that office shall be printed. Where there is more than one person to be elected to an office, there shall be printed in plain type immediately under the designation of the office to be voted for, the following words, "Vote for (number)

names only; Mark X after name to be voted for and cross out names not desired. The names of the greatest number of candidates for such an office appearing in either of the two left hand columns, or if said two left hand columns have an equal number of names, then the first left hand column, and every second column to the right thereof on said ballot shall be alternated in the printing of said official ballot for each precinct by changing the position of the names in each office division as many times as there are candidates for such office." There shall be a space between the party designation at the top of each column and the names at the head of the ticket of five-eighths of an inch, in the center of which there shall be a square formed of black lines, in which the voter by his mark may declare that he voted for all names printed in that column, except such as are erased, or pasted or written over, or where the voter places a cross (X) or mark following the name of a candidate in another column, such name shall be counted in lieu of the name for the same office in the column voted for at the head of the ticket; provided, further, that where there are groups of names for a like position and a cross (X) is placed at the head of a party designation, and the voter places a cross or mark, following the name of one or more candidates in a group, in another column and fails or neglects to strike out the same number of names in the column originally voted for, the intention of the voter shall be construed to having voted for the name or names in the group so marked and the name or names in the same line on the opposite group shall not be counted. There shall also be left under the name of each candidate sufficient space to write, or paste a name therein, in lieu of the one printed on the ticket, and on the same line with the name of each candidate, and at the end of his name there shall be a space enclosed in a square of black lines, in which the voter may designate by a cross or other mark, his choice for each candidate opposite the name of such candidate. The fact that a name has been written or pasted opposite the office to be voted for shall be deemed sufficient evidence that the person depositing such ballot intended to vote for the person whose name he has written or pasted thereon, and not for the person whose name was originally printed on the ballot whether he shall make a mark or cross opposite such written or pasted name or not. The names of candidates under headings designating each official position shall be alternated on the official ballot in the printing in the manner as provided by the primary election law.

(Persons nominated by paper or by petition shall be placed in one or more columns under the designation of "Individual Nominations," on the same line with the offices for which they are nominated.)

Constitutional amendments duly certified to the auditor by the secretary of state or any question to be voted for aside from the election of public officers, shall be printed on a separate ballot and shall be deposited in a box separate from that provided to receive the ballots for public officers. The ballots must embrace the constitutional amendments in full, and there shall be printed at the bottom of the amendments the word "yes" and underneath the same word "no," and opposite each a square formed of black lines, and the elector shall designate by a cross or other mark within the square how he desires his vote recorded. If the question be other than a constitutional amendment, it shall be stated fully and fairly on such ballot, and the words "yes" and "no," shall be printed on the ballot at the close of the statement of the question in separate lines with a square formed of black lines after each in which the voter may indicate by cross or other mark how he desires to vote on the question. Where two or more amendments or questions are to be voted on they shall be printed on the same ballot. [1911, ch. 130; R. C. 1905, § 616; 1891, ch. 66, § 17; 1893, ch. 60, § 6; R. C. 1899, § 491; 1905, ch. 109.]

Note:—Provisions of paragraph inclosed in parenthesis in this section apply only to those cities not coming under the provisions of article 1 of chapter 11 of this code.

Duty of secretary of state to certify proposition for new constitutional convention to county auditors, when. *State ex rel. Wineman v. Dahl*, 6 N. D. 81, 68 N. W. 418.

A reasonable regulation of the manner of exercising the right of suffrage is valid and constitutional. *State v. Porter*, 13 N. D. 406, 100 N. W. 1080.

Supreme court may, by mandamus, direct county auditor which of two sets of nominees to put on ballot. *State ex rel. Howells v. Metcalf*, 18 S. D. 393, 67 L.R.A. 331, 100 N. W. 923.

An elector must mark his ballot substantially as required by law. *Vallier v. Brakke*, 7 S. D. 343, 64 N. W. 180; *Church v. Walker*, 10 S. D. 90, 72 N. W. 101.

Cross at the head of party ticket, but not within circle, is a nullity. Cross at the right of the candidate's name of no effect. Straight diagonal line at the left of candidate's name should be disregarded. Informality in making cross should be disregarded, when intention is clearly apparent. *Vallier v. Brakke*, 7 S. D. 343, 64 N. W. 180.

Circles at the head of two different tickets makes the ballot void. *Moody v. Davis*, 13 S. D. 86, 82 N. W. 410; *McKittrick v. Pardee*, 8 S. D. 39, 65 N. W. 23; *Vallier v. Brakke*, 7 S. D. 343, 64 N. W. 180.

Cross stamped within circle at head of party ticket not nullified by another cross made inadvertently just outside of circle. *McMahon v. Polk*, 10 S. D. 296, 73 N. W. 77, 47 L.R.A. 830.

Marking within square mandatory. *Howser v. Pepper*, 8 N. D. 484, 79 N. W. 1018; *Perry v. Hackney*, 11 N. D. 148, 90 N. W. 483.

Official ballot is not invalidated by addition of printed stickers. *Roberts v. Bope*, 14 N. D. 311, 103 N. W. 935.

As to necessity for majority vote on question of increased jurisdiction of county court. *State ex rel. Davis v. Fabrick*, 18 N. D. 402, 121 N. W. 65.

Irregularities in marking ballots. 16 L.R.A. 754.

Validity and construction of law as to marking ballots. 47 L.R.A. 806.

Official marks on ballots. 47 L.R.A. 808.

Name not on official ballot, right of electors to vote for. 91 Am. St. Rep. 682.

§ 960. Printing of constitutional amendments. Whenever required by law that ballots shall have printed thereon the full text of any proposed amendment to the constitution, each ballot on which is printed such a proposed amendment shall have the particular new word, words, phrase or phrases comprising such amendment emphasized as follows:

(a) In case the proposed amendment consists of the addition of new words or phrases the heading shall read:

To amend section of article of the constitution, by adding the words (here insert the words added) so as to read as follows: (followed by the article as amended).

(b) In case the proposed amendment consists of the omission of certain words or phrases, the heading shall read:

To amend section of article of the constitution, by omitting the words (here insert the words omitted) so as to read as follows: (followed by the article as amended).

(c) In case the proposed amendment causes a rearrangement and reconstruction of the particular article to be amended, then the heading shall state briefly the object of such amendment. [1913, ch. 221, § 1.]

§ 961. Advertisement of proposed constitutional amendment. Any advertisement relating to the proposed amendment to the constitution which is published in any newspaper or pamphlet under the authority of the secretary of state shall also have the particular words or phrases forming the amendment printed in different type and in the same manner as provided in section 960. [1913, ch. 221, § 2.]

§ 962. Candidate's name in one column only. When the same candidate has been nominated for the same office by more than one assembly, convention or body of electors qualified to make nominations for public office, such candidate shall file with the proper officer designated in section 971, on or before the day fixed by law for the filing of certificates of nomination for such office, a statement in writing signed by himself designating one of the columns upon such ballot allotted to one of the parties, assemblies, conventions or bodies of electors by whom said candidate has been nominated, as to the column upon such ballot in which such candidate desires his name to appear upon such ballot, and such candidate's name shall be printed upon such

ballot in such column, but in no other. But if such candidate shall refuse or neglect to give notice to the proper officer, as above provided, specifying in which column he wishes his name printed on the ballot, then in such case the said officer shall cause his name to be printed in the column of the party or political organization from which he received first notice of such person's nomination. [R. C. 1905, § 617; 1891, ch. 66, § 17; 1893, ch. 60, § 6; 1897, ch. 76; R. C. 1899, § 491.]

Not unconstitutional as interference with right of suffrage. *State ex rel. Fisk v. Porter*, 13 N. D. 406, 67 L.R.A. 473, 100 N. W. 1080, 3 A. & E. Ann. Cas. 794.

Constitutionality of legislation affecting party representation on official ballot. 35 L.R.A.(N.S.) 353.

Constitutionality of legislation restricting candidate to one place on ballot. 37 L.R.A.(N.S.) 825.

§ 963. Arrangement of names. The candidates of the party casting the highest number of votes in the combined congressional districts of the state for members of congress at the last preceding general election shall be arranged in the first or left-hand column of such ballot; of the party casting the next highest number of votes, in the second column; of the party casting the next highest number of votes, in the third column; and of any other party as the secretary of state may direct for state officers, or the county auditor for county officers, the municipal or city auditor, or, in municipalities or cities not having a municipal or city auditor, the municipal or city clerk, for municipal or city officers; or the president of the board of trustees of incorporated villages for village officers, in presidential years. The names of electors of president and vice-president of the United States presented in one certificate of nomination shall be arranged in a group inclosed in brackets, to the right and opposite the center of which shall be printed in bold type the surname of the presidential candidate represented. To the right and in a line with such surname, near the margin, shall be placed a single square, and a mark within such square shall be designated a vote for all the electors, and such group shall be placed at the head of the column under the party designated or represented in such certificate. The auditor shall prepare the necessary ballots whenever any question is required by law to be submitted to a vote of the electors of any subdivision and not the state generally. The municipal or city auditor, or clerk, as the case may be, shall prepare and direct the printing and distributing of all ballots for municipal or city elections and for all questions that may be submitted to a vote of the electors of such municipality, except as provided in section 957. [1913, ch. 152; R. C. 1905, § 618; 1891, ch. 66, § 17; 1893, ch. 60, § 6; 1897, ch. 76; R. C. 1899, § 491.]

It is the duty of city auditor to furnish ballots for election of city commissioners under chapter 45 of Laws of 1907. *State ex rel. Shaw v. Thompson*, 21 N. D. 426, 131 N. W. 231.

An elector must mark his ballot substantially as required by law. *Vallier v. Brakke*, 7 S. D. 343, 64 N. W. 180.

Circles at head of two different tickets makes the ballot void. *Moody v. Davis*, 13 S. D. 86, 83 N. W. 410; *McKittrick v. Pardee*, 8 S. D. 39, 65 N. W. 23; *Vallier v. Brakke*, 6 S. D. 343, 64 N. W. 180.

Cross stamped within circle at head of party ticket, not nullified by another cross made inadvertently just outside of circle. *McMahon v. Polk*, 10 S. D. 296, 73 N. W. 77, 47 L.R.A. 830.

Marks outside square are not to be counted. *Howser v. Pepper*, 8 N. D. 484, 79 N. W. 1018.

Official ballot is not invalidated by addition of printed stickers. *Roberts v. Bope*, 14 N. D. 311, 103 N. W. 935.

On mandamus by supreme court to direct county auditor which of two sets of nominees to put on ballot. *State ex rel. Howells v. Metcalf*, 18 S. D. 393, 67 L.R.A. 331, 100 N. W. 923.

Does marking some but not all of the candidates on a party ticket defeat the effect of marking under the party emblem as a vote for the omitted candidates, where no votes were cast for their opponents. 28 L.R.A.(N.S.) 461.

§ 964. County auditor to prepare ballots. Number. Poll books. The county auditor of each county shall provide for each election precinct in his

county two ballots for each vote cast in such precinct at the last general election. Such ballots shall be distributed in packages or blocks containing no more than one hundred and fifty ballots each. The county auditor may provide for any such precincts such additional ballots as he may deem necessary. Each county auditor shall, at least five days before any election, have the ballots printed and the same may be inspected in the office of such auditor by any person. Such auditor shall also, at least five days before any election, send to the inspector in each precinct five copies of such ballot printed upon tinted paper, and such inspector shall post the same in five public places in his precinct, one of such copies to be posted at the polling place therein, for which services such inspector shall receive two dollars. The auditor shall at the time of distributing such copies cause to be delivered to the several inspectors the necessary number of blank forms of poll books and also blanks for the election returns with the proper captions, forms of oath and forms of certificates and tally sheets necessary to carry out the provisions of this chapter. [R. C. 1905, § 619; 1891, ch. 66, § 18; 1893, ch. 60, § 7; 1895, § 492.]

Tally sheet no part of official returns. *State ex rel. Sunderall v. McKenzie*, 10 N. D. 132, 86 N. W. 231.

Mandamus will lie to compel auditor to print and distribute ballots. *State ex rel. Mitchell v. Larson*, 13 N. D. 420, 101 N. W. 315.

§ 965. Ballots, how delivered. Official stamps. Each county auditor shall deliver or cause to be delivered by mail or other reliable method, to the inspector of election in each precinct in his county, the official ballot prepared by him, together with suitable manilla wrappers as hereinafter provided, at least twenty-four hours before the hour of opening of polls on election day. Such ballots and manilla wrappers shall be delivered in sealed packages marked on the outside plainly designating the number of ballots inclosed and the precinct for which they are intended. He shall also deliver or cause to be delivered to such inspector, or if that is impracticable, to one of the judges of election of such precinct, a stamp with an ink-pad for the purpose of stamping each ballot with the words "official ballot" and name or number of the precinct, the name of the county and the date of the election, and also a metal stamp with the name of the county inscribed thereon for the purpose of stamping the wrapper containing the ballots as provided in section 1008. [1913, ch. 154, § 1; R. C. 1905, § 620; 1891, ch. 66, § 20; R. C. 1895, § 493.]

Validity of statute as to marking official ballot. 47 L.R.A. 806.

§ 966. Instructions to be printed. Each county auditor shall cause to be printed on cards in large type full instructions to electors as to the manner of obtaining and preparing ballots and also containing a copy of sections 1041, 1042, 9279 and 9280. He shall furnish ten such cards to the judges of election in each election precinct and the judges of election shall at the opening of the polls post at least one of such cards in each booth or compartment provided for the preparation of ballots and at least three of such cards in and about the polling place. There shall also be posted in each booth or compartment one of the official ballots without the official stamp hereinbefore provided for, and not less than three of such ballots shall be posted in other places in and about the polling place upon the morning of election. [R. C. 1905, § 621; 1891, ch. 66, § 29; R. C. 1899, § 494.]

Instructions to voters should be sufficiently explicit so as to fully inform electors of proper method of preparing their ballots. *State ex rel. Shaw v. Harmon*, 23 N. D. 513, 137 N. W. 427.

§ 967. Poll books, contents of and how delivered. It shall be the duty of the county auditor to provide uniform poll books for the use of his county, each poll book to contain a copy of the law prescribing the qualifications of electors and so much of this chapter as relates to the duties of inspectors, judges, and clerks of election, and the penalties imposed for offenses; such poll book shall also contain blanks for all entries required to be made therein; he shall also deliver to the sheriff two copies of said poll books for each election precinct in the county, and the sheriff shall deliver the same to each inspector

of election, and such inspector of election shall deliver or cause the same to be delivered to the clerks of election in his precinct on the day of election. [R. C. 1905, § 622; R. C. 1895, § 495.]

§ 968. Ballot boxes to be provided by board of county commissioners. The board of county commissioners shall at the expense of the county provide suitable ballot boxes for each election precinct in its county, and a separate ballot box in which the ballots of women entitled to vote under this chapter shall be deposited. [R. C. 1905, § 623; R. C. 1895, § 496.]

§ 969. Blanks to be transmitted by secretary of state. The secretary of state shall at least thirty days before each general election transmit to each county auditor blank forms and envelopes for all returns of votes required to be made to his office, with such printed directions on the envelope as he deems necessary for the guidance of such officers in making returns according to law; and the expenses of furnishing such blanks and envelopes shall be paid for by the state. [R. C. 1905, § 624; R. C. 1899, § 497.]

§ 970. State nominations certified how. All nominations made by state conventions shall be certified as follows: The certificate of nomination, which shall be in writing, shall contain the name of each person nominated, his post office address and the office for which he is named and shall designate in not more than five words the party or principle which such convention represents, and it shall be signed and verified by the presiding officer and secretary of such convention who shall add to their signatures their post office address. Such certificate made out as herein required shall be delivered by the secretary or president of such convention by registered letter or in person, without charge, to the secretary of state. [R. C. 1905, § 625; 1891, ch. 66, § 3; R. C. 1895, § 499; 1905, ch. 109.]

This section is deemed to be annulled by force of the provisions in section 852, et seq.

Certificate of nomination must designate the office. *Anderson v. Falley*, 9 N. D. 464, 83 N. W. 913.

Verification of certificate of nomination is not required. *State ex rel. Cooper v. Blaisdell*, 17 N. D. 575, 118 N. W. 225.

§ 971. Certificates of nomination, where filed. Certificates of nomination for candidates for offices to be filled by the electors of the entire state or of any division or district greater than a county and for legislative offices shall be filed with the secretary of state. [R. C. 1905, § 626; 1891, ch. 66, § 4; 1893, ch. 60, § 4; R. C. 1899, § 500; 1905, ch. 109.]

Supreme court has jurisdiction to issue mandamus to compel county auditor to receive and file certificates of nomination for county officers. *State v. Lavik*, 9 N. D. 461, 83 N. W. 914.

Secretary of state must certify to the proper county officer the names of all persons whose nominations for office have been filed with him. *State v. Falley*, 9 N. D. 450, 83 N. W. 860.

No substitution of names when certificate of original nomination not filed in the office of the secretary of state. *Lucas v. Ringsrud*, 3 S. D. 355, 53 N. W. 426.

§ 972. Certificate to contain but one name. No certificate of nomination shall contain the name of more than one candidate for each office to be filled. No person shall participate directly or indirectly in the nomination at caucus, in convention or by petition of more than one person for each office to be filled, and no person shall accept a nomination for more than one office. No political party shall be entitled to have placed upon the official ballot more than one set or list of nominees for any state, county, city or other municipal office to be voted for in said state, county, city or municipality; and in case two or more organizations claiming or purporting to represent the same political party, shall file certificates of nomination under the same party designation, or such certificates indicate that the nominations therein mentioned were made by any person or any organization representing the same political party, the secretary of state, in cases where such certificates are filed in his office, shall within the time prescribed by law for certifying state nominations to the county auditor, determine from the best available sources of information which organization filing such certificates has been longest in existence

as a political organization representing such party; and only the nominees named by such organization, longest in existence, shall be certified to the county auditor, and such nominations only shall be printed on the official ballot. [And in case two or more organizations claiming or purporting to represent the same political party shall file certificates of nomination with the county auditor, city auditor, or clerk of any municipality, or such certificates indicate that the nominations therein mentioned were made by persons or organizations representing the same political party, the county auditor shall determine from the best available sources of information which organization, filing such certificates, has been longest in existence as a political organization representing such party; and only the nominations made by such organization longest in existence shall be printed on the official ballot; provided, however, that the decision of the officer determining which organization has been the longest in existence in representing such party, shall be subject to review by the court in a proper action instituted for such purpose; and provided, further, that this section shall not be construed to prohibit any new organization from nominating any person or persons for an office and having such nomination placed on the official ballot, but such organization shall not adopt the name or designation of the political party represented by the older organization, if still in existence, and the certificate of nomination filed by it shall, by clear and distinct language, indicate and show that the organization filing it represents a separate and distinct political party.] [R. C. 1905, § 627; 1891, ch. 66, § 6; R. C. 1895, § 502; 1901, ch. 48.]

This section was for the most part impliedly amended or repealed by chapter 109, Laws 1905 — R. C. 1905, sections 501-597 — the latter being in turn largely superseded by sections 859-898 herein.

Inapplicable to case where both conventions claim under same party call. State ex rel. Buttz v. Lindahl, 11 N. D. 320, 91 N. W. 950.

§ 973. Certificate of nomination. When to be filed. Certificates of nomination to be filed with the secretary of state shall be filed not less than thirty days before the days fixed by law for election of persons in nomination. Such certificates of nomination may be sent by registered letter deposited in the post office on or before the last day, and the receipt therefor filed with the county auditor (certificates of nomination herein directed to be filed with the auditor shall be filed not less than twenty-five days before the election, but the provisions of this section shall not apply to nominations for special elections to fill vacancies caused by death, resignations or otherwise). The secretary of state and the several county auditors shall cause to be preserved in their respective offices for six months all certificates of nomination filed therein under the provisions of this article. All such certificates shall be open to public inspection under proper regulations to be made by such officers. [1913, ch. 156, § 1; R. C. 1905, § 628; 1891, ch. 66, § 8; R. C. 1895, § 503.]

Mandatory as to time. Effect when last day falls on Sunday. State ex rel. Anderson v. Falley, 9 N. D. 464, 83 N. W. 913.

§ 974. Secretary of state to certify nominations for state office. Not less than thirty days nor more than thirty-five days before an election to fill any state or district office, the secretary of state shall certify to each county auditor within which any of the electors may by law vote for candidates for such office, the name and post office address of each person nominated for such office as specified in the certificates of nomination filed with him. [1913, ch. 156, § 2; R. C. 1905, § 629; 1891, ch. 66, § 9; 1895, § 504.]

See section 877.

§ 975. Nominations to be published, when. At least ten days before an election to fill any public office under the provisions of this chapter the county auditor of each county shall cause to be published in one or more newspapers within the county the nominations certified to him under the provisions of this chapter. The auditor shall make such publications daily until the election, in counties where daily newspapers are published; but if there is no daily

newspaper published within the county two publications in each newspaper will be sufficient; and if there is no newspaper published in any county, written or printed notices shall be posted in at least three public places in each precinct. [R. C. 1905, § 630; 1891, ch. 66, § 10; R. C. 1895, § 505.]

Four weeks' publication of notice of submission of county division proposition is not necessary. *State ex rel. Miller v. Miller*, 21 N. D. 324, 131 N. W. 282.

§ 976. In case nominee declines, certificate void. Whenever any person nominated for public office as in this chapter provided, shall, at least thirty days before election, in writing notify the officer with whom the certificate nominating him is filed that he declines such nomination, such nomination shall be void. [1913, ch. 156, § 3; R. C. 1905, § 631; 1891, ch. 66, § 11; R. C. 1899, § 506.]

See sections 861, 879.

§ 977. Vacancies on ticket, how filled. Should any person so nominated die before the printing of the tickets or decline the nomination as in this chapter provided or should a vacancy occur upon the ticket for any other cause the vacancy thus occasioned may be filled in the manner required for original nominations. If the original nomination was made by a party convention which had delegated to a committee the power to fill vacancies, the committee of the political party in whose ticket such vacancy occurs may fill the same. The chairman and secretary of such committee shall thereupon make and file with the proper officer a certificate setting forth the cause of the vacancy, the name of the person nominated, the name of the office for which he was nominated, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies and such further information as is required to be given in an original certificate of nomination. When such certificate shall be filed with the secretary of state he shall, in certifying the nomination to the various auditors, insert the name of the person who has thus been nominated to fill a vacancy in place of that of the original nominee. And if he has already forwarded his certificate he shall forthwith certify to the auditor of the proper county the name and post office address of the person so nominated to fill a vacancy, the office he is nominated for, the party or political principle he represents and the name of the person for whom such nominee is substituted. A failure to publish the name of a person so substituted shall not invalidate the election. [R. C. 1905, § 632; 1891, ch. 66, § 12; R. C. 1895, § 507.]

But see now the provisions in sections 852 et seq., 861, 879.

No substitution of names when certificate not filed. *Lucas v. Ringsrud*, 3 S. D. 355, 53 N. W. 426.

When does vacancy in party ticket occur within statute authorizing filling of vacancies. 41 L.R.A. (N.S.) 1088.

§ 978. Vacancy occurring after tickets are printed. When any vacancy occurs before election day and after the printing of the tickets and any person is nominated according to the provisions of this chapter to fill such vacancy the officer whose duty it is to have the tickets printed and distributed shall thereupon have printed on a requisite number of stickers the name of such substituted candidate and no other name, and shall mail them by registered letter or send by other reliable method to the judges of election in the various precincts affected by such vacancy, and the judges of election whose duty it is to distribute the tickets shall affix such stickers in the proper place on each ticket before it is given out to the electors. [R. C. 1905, § 633; 1891, ch. 66, § 13; R. C. 1899, § 509.]

§ 979. Constitutional amendments to be advertised. Whenever a proposed constitutional amendment or other question is to be submitted to the people of the state for popular vote the secretary of state shall, not less than thirty days before election, certify the same to the auditor of each county in the state and the auditor of each county shall include the same in the publication provided for in section 975. Questions to be submitted to the people of the

county shall be advertised as provided for nominees for office in such section. [R. C. 1905, § 634; 1891, ch. 66, § 14; R. C. 1899, § 509.]

Courts will not enjoin submission of constitutional amendment. *State v. Thorson*, 9 S. D. 149, 68 N. W. 202, 33 L.R.A. 582.

Four weeks' publication of notice of submission of county division proposition is not necessary. *State ex rel. Miller v. Miller*, 21 N. D. 324, 131 N. W. 282.

§ 980. Publication of names. Error, how corrected. Whenever it shall appear by affidavit that an error or omission has occurred in the publication of the names of the persons nominated or in the printing of the ballots the judge of the district court may upon application of an elector make an order requiring the auditor to show cause why such error should not be corrected and upon the hearing thereof he may make such order as the facts warrant. [R. C. 1905, § 635; 1891, ch. 66, § 19; R. C. 1895, § 510.]

Supreme court may, by mandamus, direct county auditor which of two sets of nominees to put on ballot. *State ex rel. Howells v. Metcalf*, 18 S. D. 393, 67 L.R.A. 331, 100 N. W. 923.

ARTICLE 14.—NOTICE OF ELECTION.

§ 981. Notice of election, how given. The secretary of state shall, between the first days of July and September in such year, direct and cause to be delivered to the county auditor of each county a notice specifying all the state officers whose term of office will expire between the first Monday in December and the first Monday in January next succeeding and specifying also the several officers to be chosen in such county at the next general election. The auditor to whom such notice is delivered shall cause notice of the same to be given as provided in the next section. [R. C. 1905, § 636; 1892, Sp.; R. C. 1899, § 511.]

§ 982. Notice of election to be published. Form. Posted, when. The county auditors of the several counties shall cause notice of any election to be published in each of the newspapers designated by the board of county commissioners for the publication of their official proceedings at least once in each week for four consecutive weeks next preceding such election. Such notice shall be as nearly as circumstances will admit, as follows:

Notice is hereby given that on Tuesday, the.....day of.....next, at.....in the township or precinct of....., in the county of....., an election will be held for state, district or county officers (naming the offices to be filled as the case may be), which election will be opened at eight o'clock in the morning and will continue open until five o'clock in the afternoon of that day. Dated this.....day of.....A. D. 19..

(Signed) A. B., County Auditor.

In case there shall be no newspaper published in the county in which such election is to be held, the county auditor shall deliver three copies of such notice for each precinct to the sheriff, coroner or other person designated by the board of county commissioners and such sheriff, coroner or other person shall post in three of the most public places in each precinct the notice pertaining to such precinct, at least twenty days previous to the time of holding any general election and at least eight days previous to the time of holding any special election, and in cases where townships are not set off by law as election districts, such notices shall be posted as follows: One at the house where the election is authorized to be held and two at two of the most public places in that vicinity. The officer or person shall thereafter file with the county auditor an affidavit of such posting which shall be prima facie evidence of the facts therein stated. [R. C. 1905, § 637; 1887, ch. 51, § 5; R. C. 1899, § 512.]

Notice of special election posted in one precinct of a county only is fatally defective. *Territory v. Steele*, 4 Dak. 78, 23 N. W. 91.

Necessity for notice or proclamation. 120 Am. St. Rep. 794.

First and last days in computing time of elections. 49 L.R.A. 244; 15 L.R.A. (N.S.) 691.

Irregularities in calling and conducting election. 83 Am. Dec. 749.

ARTICLE 15.— CONDUCT OF ELECTIONS.

§ 983. When polls are to be opened and closed. At all elections held under the provisions of this chapter the polls shall be open at eight o'clock a. m., and closed at five o'clock p. m. Twenty minutes prior to five o'clock p. m. the inspector shall proclaim to the electors outside the number of minutes before the polls will be closed and that such closing will be precisely at five o'clock p. m.; provided, however, that whenever it is made to appear to the satisfaction of the board of county commissioners that the conduct of any primary or general election may be facilitated or that the convenience of the people of any one or more precincts may be better subserved by the opening of the polls in said precinct or precincts at an earlier hour, not earlier than six a. m., or the keeping of the polls in such precinct or precincts open until a later hour, not later than eight p. m., the board shall, at the same meeting at which election precincts are designated and election officers named, by resolution designate the hours at which the polls in such precinct or precincts shall open and close, and that such resolution be published as a part of the notice of election. [1907, ch. 110; R. C. 1905, § 638; 1891, ch. 66, § 40; R. C. 1899, § 513.]

§ 984. Examination of ballots and box at opening of polls. On the opening of the polls the inspector in each precinct shall produce the sealed package of official ballots and publicly open the same and deliver one block of ballots to the ballot clerk, retaining the other blocks if any until they are needed for voting. Before declaring the polls open such inspector shall see that the ballot box is empty and allow the judges to satisfy themselves thereof after which such box shall be locked. [R. C. 1905, § 639; 1891, ch. 66, § 21; R. C. 1899, § 514.]

§ 985. Official ballot, how given to elector. The inspector or one of the judges of election shall deliver ballots to the qualified electors. Before delivering any ballot to an elector the inspector or judge shall print on the back and near the top of the ballot with a stamp provided for that purpose, the designation " official ballot " and the other words provided for in section 965 and also write his initials thereon. Each qualified elector shall be entitled to receive from the judges one ballot. [R. C. 1905, § 640; 1891, ch. 66, § 23; R. C. 1899, § 515.]

Ballot provision is mandatory to extent that ballot must be provided substantially meeting statutory requirements permitting elector to vote for place thereon by making cross after it. *Miller v. Norton*, 22 N. D. 196, 132 N. W. 1080.

Effect of officers numbering or otherwise supplying means of identifying ballots. 38 L.R.A. (N.S.) 730.

Failure to indorse ballot. 47 L.R.A. 808.

§ 986. Only one person in booth. Not more than one person shall be permitted to occupy any one booth or compartment at one time and no person shall remain in or occupy a booth or compartment longer than may be necessary to prepare his ballot and in no event longer than five minutes when the other booths or compartments are occupied. [R. C. 1905, § 641; 1891, ch. 66, § 25; R. C. 1899, § 517.]

§ 987. In case elector spoils ballot. No person shall take or remove any ballot from the polling place before the close of the polls. If any voter spoils a ballot he may successively obtain others, one at a time, not exceeding three in all, upon returning each spoiled ballot. The ballots thus returned shall be immediately cancelled and together with those not distributed to the voters shall be preserved and secured in sealed packages and returned to the county auditor from whom received. [R. C. 1905, § 642; 1891, ch. 66, § 26; R. C. 1899, § 518.]

§ 988. In case of disability of elector. Any voter, who declares to the judges of election or when it appears to the judges of election that he cannot read or that by blindness or other physical disability he is unable to mark his ballot, shall, upon request, receive the assistance of two of the election officers

in the marking thereof who shall be chosen from different political parties, and such officers shall give no information regarding the same. [^] The judges may in their discretion require such declaration of disability to be made by the voter under oath and they are authorized to administer such oath. No elector, other than one who is unable to read or on account of physical disability is unable to mark his ballot, shall divulge to any one within the polling place the name of any candidate for whom he intends to vote or ask or receive the assistance of any person within the polling place in the preparation of his ballot. [R. C. 1905, § 643; 1891, ch. 66, § 27; R. C. 1895, § 519.]

Assisting voter. 40 L.R.A.(N.S.) 535.

Assistance in preparing ballots, rendered by unauthorized person, as affecting their validity. 29 L.R.A.(N.S.) 1170.

§ 989. Judges to deposit ballot in box. When a ballot shall be received one of the judges without opening the same or permitting it to be opened or examined except to ascertain whether it is a single ballot or not shall deposit it in the ballot box. [R. C. 1905, § 644; R. C. 1899, § 520.]

Only one ballot box in each voting precinct with separate one for women, is authorized. State ex rel. Byrne v. Wilcox, 11 N. D. 329, 91 N. W. 955.

§ 990. Election booths. False swearing. Penalty. The inspectors of election shall provide in their respective polling places a sufficient number of booths or compartments which shall be furnished with such supplies and conveniences as to enable the voter conveniently to prepare his ballot for voting, and in which electors may mark their ballots, screened from observation and a guard rail with an opening so constructed that only persons within such rail can approach within ten feet of the ballot boxes or booths or compartments herein provided for; provided, that the number of booths or compartments shall not be less than one for each fifty electors or fraction thereof, in the precinct. No election shall be held in a room in which spirituous or malt liquors are commonly sold. Not more than one elector for each booth shall be permitted within the railing at any one time. One challenger appointed and designated from each of the political party organizations shall be entitled to stand at the opening of the railing at the outside. If any person offering to vote shall be challenged by one of such challengers or by any member of the board of election, such person shall, unless such challenge is withdrawn, stand aside and shall not vote unless he makes an affidavit that he is a legally qualified elector of the precinct, and any one who falsely swears in order to cast his vote shall be guilty of perjury, and upon conviction thereof shall be punished as prescribed in section 8702, chapter 12, penal code of the revised codes of 1905 [section 9375 herein]. The expense of providing such booths or compartments and guard rails shall be a public charge and shall be provided for in the same manner as other election expenses. [1909, ch. 94; R. C. 1905, § 645; 1891, ch. 66, § 22; R. C. 1895, § 521.]

A violation as to arranging guard rail and booths will not destroy secrecy of ballot. Perry v. Hackney, 11 N. D. 148, 90 N. W. 483.

§ 991. Ballots of women to be deposited in separate box. No ballot offered by any woman entitled to vote under this chapter shall contain the name of any person to be voted for at such election, except candidates for a school office, and no such ballot shall contain any proposition to be voted for except such as pertain solely to school matters; and all such ballots shall be deposited in a separate ballot box, but shall be canvassed with the ballots cast for candidates for school office by the male voters at such election. [R. C. 1905, § 646; R. C. 1895, § 522.]

Only one ballot box in each voting precinct, with separate one for women, is authorized. State ex rel. Byrne v. Wilcox, 11 N. D. 329, 91 N. W. 955.

Right of women to vote. 21 L.R.A. 662; 27 L.R.A.(N.S.) 522.

ARTICLE 16.— ABSENT VOTERS.

§ 992. **Absent voter. Who may vote.** Any qualified elector of this state having complied with the laws in regard to registration, who is absent from the county of which he is an elector on the day of holding any general or primary election, may vote at any such election as hereinafter provided. [1913, ch. 155, § 1.]

§ 993. **Application for ballots, made when.** At any time within thirty days next preceding such election, any voter expecting to be absent on the day of election from the county in which his voting precinct is situated, may make application to the county auditor of such county for an official absent voter ballot to be voted at such election. [1913, ch. 155, § 2.]

§ 994. **Absent voter ballots, how printed.** For all elections, either general or primary, there shall be prepared and printed for each precinct, official ballots to be known as absent voter ballots, which ballots shall be prepared and printed in the same form and shall be of the same size and texture as the regular official ballots, except that they shall be printed upon tinted paper of a tint different than that of the sample ballots. [1913, ch. 155, § 3.]

§ 995. **Absent voter ballot, form of application for.** Application for such ballot shall be made on a blank to be furnished by the county auditor of the county of which the applicant is an elector, and shall be substantially in the following form:

I,a duly qualified elector of the township ofor of the village of.....or of the.....precinct of the.....ward of the city of....., in the county of..... and state of North Dakota, and to my best knowledge and belief entitled to vote in such precinct at the next election, expecting to be absent from the said county on the day for holding such election, hereby make application for an official absent voter ballot to be voted by me at such election.

Date.....

(Signed).....

Post Office Address.....

Provided, that if the application be made for a primary election ballot such application shall also give the name of the political party with which the applicant is affiliated. [1913, ch. 155, § 4.]

§ 996. **Application blank, how obtained.** Such application blank shall upon request therefor, be sent by such county auditor to any absent voter by mail, and shall be delivered to any voter upon application made personally at the office of such auditor. [1913, ch. 155, § 5.]

§ 997. **Ballots sent how, affidavit of voter, and certificate.** Upon receipt of such application properly filled out and duly signed, or as soon thereafter as the official absent voter ballot for the precinct in which the applicant resides has been printed, the said county auditor shall send to such absent voter by mail, postage prepaid, one official absent voter ballot, or if there be more than one such absent voter ballot to be voted by an elector of such precinct, one of each kind, and shall enclose with such ballot or ballots an envelope to be furnished by such auditor; which envelope shall bear upon the front thereof the name, official title and post office address of such county auditor and upon the other side a printed affidavit in substantially the following form:

State of.....} ss.
County of.....}

I,, do solemnly swear that I am a resident of the township of....., or the village of....., or of theprecinct of the.....ward in the city of....., residing at.....in said city, county of.....and state of North Dakota, and entitled to vote in such precinct at the next election;

that I expect to be absent from the said county of my residence on the day of holding such election and that I will have no opportunity to vote in person on that day.

Subscribed and sworn to before me this.....day of.....
19....; and I hereby certify that the affidavit [affiant] exhibited the enclosed ballots to be unmarked, that he then, in my presence and in the presence of no other person, and in such manner that I could not see his vote, marked such ballot, and enclosed and sealed the same in this envelope. That the affiant was not solicited or advised by me to vote for or against any candidate or measure.

Provided, that if the ballot enclosed is to be voted at a primary election, the affidavit shall state the name of the political party with which the absent voter is affiliated.

Note. If such absent voter is unable to sign his name, he shall make his mark (X) and the officer taking such affidavit shall sign such voter's name, and shall state the reason for such affidavit being signed in such manner in his certificate attached to such affidavit. [1913, ch. 155, § 6.]

§ 998. Manner of marking ballot. Such absent voter shall make and subscribe the said affidavit before an officer authorized by law to administer oaths and who has an official seal, and such absent voter shall thereupon, in the presence of such officer and of no other person, mark such ballot or ballots, but in such manner that such officer cannot see the vote, and such ballot or ballots shall thereupon, in the presence of such officer, be folded by such voter so that each ballot will be separate, and so as to conceal the vote, and be in the presence of such officer deposited by such envelope, and the said envelope securely sealed. Said envelope shall be mailed by such absent voter, postage prepaid. [1913, ch. 155, § 7.]

§ 999. Care of ballot by auditor. Upon receipt of such envelope, such county auditor shall forthwith enclose the same, unopened, together with the written application of such absent voter, in a larger envelope which shall be securely sealed and endorsed with the name of the proper voting precinct, the name and official title of such auditor, and the words, "This envelope contains an absent voter ballot and must be opened only on election day at the polls while the same are open," and such auditor shall thereafter safely keep the same in his office until the same is delivered by him as provided in the next section. [1913, ch. 155, § 8.]

§ 1000. Transmission of ballot to election inspector. In case such envelope is received by such auditor prior to the delivery of the sealed package containing the official ballots to the inspector of elections of the precinct in which such absent voter resides, such ballot, envelope and application sealed in such envelope shall be enclosed in such package and delivered therewith to the inspector of such precinct. In case the official ballots for such precinct shall have been delivered to such inspector of elections at the time of the receipt by the auditor of such absent voter ballot, such auditor shall immediately enclose such application and such ballot with the envelope containing such ballot, unopened, in a larger envelope which shall be securely sealed by him and endorsed on the front with the name, official title, name of precinct and post office address of the inspector of elections of the precinct in which such absent voter resides, and the words "This envelope contains an absent voter ballot and must be opened only on election day at the polls while the same are open," and forthwith mail the same, postage prepaid, to such inspector of elections. [1913, ch. 155, § 9.]

§ 1001. Manner of voting. Cold (void) or rejected ballots. At any time between the opening and closing of the polls on such election day, the in-

spector or judges of election of such precinct shall first open the outer envelope only, and compare the signature of such voter to such application with the signature to such affidavit. In case the judges find the affidavit is sufficient and that the signatures correspond, and that the applicant is then a duly qualified elector of such precinct and has not voted at such election, they shall open the absent voter envelope, in such manner as not to destroy the affidavit thereon, and take out the ballot or ballots therein contained, and without unfolding the same, or permitting the same to be opened or examined, and having endorsed the same in like manner that other ballots are endorsed, deposit the same in the proper ballot box or boxes, showing by the records of such election such elector to have voted. In case such affidavit is found to be insufficient, or that the said signatures do not correspond, or that such applicant is not then a duly qualified elector of such precinct, such vote shall not be allowed, but without opening the absent voter envelope, the election inspector or a judge of such election shall mark across the face thereof, "Rejected as defective," or "Rejected as not an elector," as the case may be. The absent voter envelope when such absent vote is voted, and the absent voter envelope with its contents, unopened, when such absent vote is rejected, shall be deposited in the ballot box containing the general or party ballots, as the case may be, retained and preserved in the manner as now by law provided for the retention and preservation of official ballot voted at such election. [1913, ch. 155, § 10.]

§ 1002. Elector may vote before leaving county. The provisions of this act shall be construed so as to permit any qualified elector of this state who is present in this (his) county after the official absent voter ballots of such county have been printed, and who has reason to believe that he will be absent from such county on election day as before provided in section 993, to vote before he leaves his county, in like manner as absent voter, and any qualified elector who has marked his ballot as hereinbefore provided, who shall unexpectedly return to his precinct before or on election day, shall be permitted to vote in person, provided his ballot has not already been deposited in the ballot box. [1913, ch. 155, § 11.]

§ 1003. Ballots furnished auditor, when. It shall be the duty of the secretary of state, county auditor, or any other officer by law required to prepare any general or primary election ballot, to prepare and have printed and delivered to the county auditor, at least fifteen days prior to the holding of such election, a sufficient number of absent voter ballots provided for in section 994, for the use of all voters likely to be absent from such county on the day of such election. [1913, ch. 155, § 12.]

§ 1004. Penalty for violations. If any person shall wilfully swear falsely to the affidavit in section 997 provided for, he shall upon conviction thereof be deemed guilty of perjury and shall be punished as in such case by law provided. If the secretary of state or any county auditor or any election officer shall refuse or neglect to perform any of the duties prescribed by this article, or shall violate any of the provisions thereof, or if any officer taking the affidavit provided for in section 997 shall make any false statement in his certificate thereto attached, he shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred (\$100) dollars, or by imprisonment in the county jail not exceeding thirty (30) days, or by both such fine and imprisonment. [1913, ch. 155, § 13.]

ARTICLE 17.—CANVASS OF RETURNS.

§ 1005. Canvass of votes. As soon as the polls of the election shall be finally closed the inspectors shall proceed immediately to canvass publicly in the presence of all persons desiring to attend the same the votes received at such polls and continue without adjournment until the canvass is completed and the statements hereinafter required are made. They shall commence by a

comparison of the poll lists and the correction of any mistakes therein until they shall be found or made to agree. The box shall then be opened and the ballots taken out and counted by the inspectors, unopened, except so far as to ascertain whether each ballot is single; and if two or more ballots are found so folded together as to present the appearance of a single ballot they shall be laid aside until the count of the ballot is completed; and if, upon a comparison of the count and the appearance of such ballot, a majority of the inspectors shall be of the opinion that the ballots thus folded together were voted by one elector, they shall be destroyed. If the ballots in the box shall be found to exceed in number, after any such ballots folded together are destroyed, the whole number of votes on the poll lists, they shall be replaced in the box and one of the inspectors shall publicly draw therefrom by chance and without examination thereof and destroy as many ballots unopened as shall be equal to such excess. The number of ballots agreeing, or so as aforesaid being made to agree with the poll lists, the inspectors shall then proceed to open, count and ascertain the number of votes. [R. C. 1905, § 647; 1891, ch. 66, § 35; R. C. 1899, § 523.]

Construction of marking of ballots is question for court, and not for jury. *Church v. Walker*, 10 S. D. 90, 72 N. W. 101.

Where a cross within the circle is made with an official stamp, a cross just outside made with pencil is presumed to be an identifying mark. *Church v. Walker*, 10 S. D. 90, 72 N. W. 101.

Requirement that names be printed on the ballot is constitutional. *Chamberlain v. Wood*, 15 S. D. 216, 88 N. W. 109.

Writing a name which appears in print upon ballot immediately beneath erased name of an opposing candidate invalidates vote for both candidates. *Farmley v. Healy*, 7 S. D. 401, 64 N. W. 186; *Vallier v. Brakke*, 7 S. D. 343, 64 N. W. 180.

Ballots which are not officially stamped should not be counted. *Miller v. Schallern*, 8 N. D. 395, 79 N. W. 865.

Where result of election is contested, whole vote of precinct will not be thrown out because of illegal votes, unless fraud on part of officials is shown by competent proof. *Briggs v. Ghrist*, 28 S. D. 562, 134 N. W. 321.

§ 1006. Ballots, when void. In the canvass of the votes, any ballot which is not indorsed as provided in this chapter by the official stamp and initials shall be void and shall not be counted, and any ballot or parts of a ballot from which it is impossible to determine the elector's choice shall be void and shall not be counted; provided, that when a ballot is sufficiently plain to gather therefrom a part of the voter's intention it shall be the duty of the judges of election to count such part. [R. C. 1905, § 648; 1891, ch. 66, § 30; R. C. 1899, § 524.]

Mandatory. Unstamped ballots illegal. *Miller v. Schallern*, 8 N. D. 395, 79 N. W. 865; *Lorin v. Seitz*, 8 N. D. 404, 79 N. W. 869; *Howser v. Pepper*, 8 N. D. 484, 79 N. W. 1018.

Votes not stamped and initialed must be excluded. *Perry v. Hackney*, 11 N. D. 148, 90 N. W. 483.

Ballot ought to have been rejected where cross made was to the left of circle intended therefor. *Treat v. Morris*, 25 S. D. 615, 127 N. W. 554.

Provisions in relation to second choice voting, under chapter 212 of Laws of 1911, are not mandatory, and failure to vote for second choice will not affect validity of vote for first choice. *State ex rel. Shaw v. Harmon*, 23 N. D. 513, 137 N. W. 427.

Validity and construction of law as to marking ballots. 47 L.R.A. 806.

Official marks on ballots. 47 L.R.A. 808.

Ambiguities in ballots, evidence to explain. 10 Am. St. Rep. 317.

Does marking some but not all of the candidates on a party ticket defeat the effect of marking under the party emblem as a vote for the omitted candidates, where no votes were cast for their opponents. 28 L.R.A.(N.S.) 461.

§ 1007. Result of canvass to be immediately announced. The inspectors shall as soon as the count is completed publicly announce the result thereof, specifying the whole number of votes cast for each office and for each candidate respectively; also the number of votes cast for and against each proposition voted for at such election. They shall immediately prepare in duplicate a statement in writing setting forth at length, in words and figures, the whole number of votes cast for each office and the names of all the persons for whom

such votes were cast, together with the number of votes cast for each person; also the number of votes cast for and against each proposition voted upon at such election which statement they shall certify to be correct. [R. C. 1905, § 649; 1891, ch. 66, § 36; R. C. 1899, § 525.]

§ 1008. Returns, how and where made. Compensation of officers. The inspector of election or one of the judges appointed by him, shall forthwith deliver to the clerk of the town, city or village, one of such statements and one of such poll lists, together with the stamp inscribed with the words "official ballot," to be filed and preserved in his office, and shall with all convenient dispatch and within three days after the election, deliver the other statement to the county auditor, said statement having been by the judges carefully sealed up, together with the other poll lists, and with the oaths of inspectors and clerks affixed, under cover, properly directed to the county auditor, and the person delivering such returns shall receive as compensation therefor the sum of two dollars and mileage at the rate of ten cents per mile, for each mile necessarily traveled in going to and from such auditor's office, to be paid out of the county treasury on the warrant of the county auditor.

The statement and poll list aforesaid, having been duly prepared for delivery to the county auditor as aforesaid, the inspector and judges of election shall cause the ballots of each kind cast at such election to be smoothly spread upon a wrapper of strong durable paper of the same width of such ballots and of sufficient strength to permit of its being folded with the said ballots and form a complete wrapper therefor when folded. Such ballots and wrappers shall then be tightly folded together and the said wrapper securely pasted or glued at the outer end so as to completely envelope and firmly hold such roll together.

Provided, that ballots which are void shall be wrapped in a separate wrapper and so marked on said wrapper.

In the folding and sealing of the ballots as aforesaid, the various classes of ballots shall be kept separate.

The judges shall fold in two folds and lay in tiers all ballots counted by them except those which are void, and fold same securely in manilla wrappers not exceeding two hundred (200) to each wrapper, on which shall be endorsed in writing or print, the number of the precinct, date on which the election was held, and securely seal such wrappers by sealing them with sealing wax and stamping on said wax the name of the county with a metal stamp, provided for that purpose, so that said wrappers cannot be opened without breaking the seal, and return said ballots, together with those found void, to the county judge. Immediately upon receiving such ballots, the county judge shall give a receipt therefor to said judges of election, and shall place them properly arranged in the order of the precinct numbers in boxes which shall be securely locked. Said boxes shall be placed in a fire proof vault and shall be securely kept for six months, not opening or inspecting them nor allowing anyone else to do so, except upon order of court, in case of contested election, or when it shall be necessary to produce them at a trial for any offense committed at elections. At the end of six months after said election, said ballots shall be destroyed; provided, that if any contest of the election of any officer voted for at such election, or prosecution under this article shall be pending at the expiration of said time, the said ballots shall not be destroyed until such contest or prosecution be finally determined. In organized townships or in cities or villages, the inspector of elections shall deliver, if he is not himself the officer in question, the ballot boxes together with said metal stamp to the chairman of the board of supervisors of the civil township, or mayor of the city or president of the village, in which the election precinct is situated, as the case may be; and this officer shall keep in safe custody such boxes and stamp until the next election, or hand them over to his successor

in office to be safely kept by him until such time. At the following general or primary election it shall be the duty of these officers to hand the ballot boxes and said stamp over to the inspector of elections. In unorganized townships the inspector of elections shall cause the ballot boxes to be delivered to the county auditor, at the same time, by the same person returning the ballots, and no extra compensation shall be allowed for such delivery. Any person violating any of the provisions of this section is guilty of a misdemeanor.

It is the purpose of this act [section] to provide a safe place for the keeping of the ballots and to make them readily accessible for use in legal proceedings, and such ballots shall be received in evidence without further identification or foundation being laid, and any failure on the part of the election officers to comply with any of the formalities required hereby as to the return of said ballots, shall not invalidate any election or cause any ballot otherwise regular to be disregarded and any omission or irregularities in the manner of identifying or returning the ballots of any precinct may be obviated by proof under the ordinary rules of evidence. [1913, ch. 154, § 2.]

Candidate who unlawfully opens ballot box cannot assail official canvass on which certificate of election issued to his opponent. *McMahon v. Crockett*, 12 S. D. 11, 80 N. W. 136.

Scope and effect of provisions in election law for preservation of ballots. 30 L.R.A. (N.S.) 602.

§ 1009. Abstract of votes. Certificates of election. Tie, how decided. Publication of returns. On the fifteenth day after the close of any election, or as soon as the returns are received, the county auditor shall call to his assistance a majority of the county commissioners of the county or the county treasurer, county judge and one county commissioner, and none of the persons so called shall be a candidate for office, unless there is not sufficient of such officers who are not candidates, and shall proceed to open such returns and make abstracts of votes in the manner following from the certified statements prepared by the different inspectors of election in the various precincts. The abstract of votes for member of congress, governor, state auditor, commissioner of insurance, commissioner of agriculture and labor, state treasurer, secretary of state, attorney-general, commissioners of railroads, superintendent of public instruction and lieutenant-governor shall be on one sheet; the abstract of votes for members of the legislative assembly shall be on one sheet; the abstract of votes for county and precinct officers shall be on one sheet; and it shall be the duty of the county auditor immediately to make out a certificate of election to each of the persons having the highest number of votes for county and precinct officers respectively, and to deliver such certificate to the person entitled thereto on his making application to the county auditor therefor; provided, that when a tie shall exist between two or more persons for the senate or house of representatives, if such district is within the boundary of one county, the auditor of such county and if such district is within the boundaries of more than one county, then the county auditor of the county casting the greater number of votes for the office of governor, shall immediately by registered letter addressed to the respective candidates at their post-office address, give notice to the several persons so having the highest and equal number of votes to attend at his office at a time appointed by him, which shall not be more than twenty days after the tie shall have been declared by such county auditor and they shall then proceed publicly to decide by lot which of the persons so having the highest and equal number of votes shall be declared duly elected and such auditor shall make and deliver to the person thus declared duly elected a certificate of his election as hereinbefore provided. It shall be the duty of the county auditor of each county, on receipt of the returns of any election, to make out his certificate, stating therein the compensation to which the judges and clerks of election may be entitled for their services, and lay the same before the board of county commissioners at

their next session, and the said board shall order the compensation aforesaid to be paid out of the county treasury. Immediately after canvassing the returns and making the abstract of votes as provided in this section, the county auditor shall make a certified copy of each abstract and forward it to the secretary of state, and also cause to be published in the official newspapers of the county, in tabular form, the vote by precincts for each officer and proposition voted for at said election; such publication to be paid for at a rate not exceeding the rate paid for publishing county commissioners' proceedings. If the county auditor is a candidate for office, he shall take no part in the canvass, but shall act as clerk of such board of canvassers, and the two officers called to the assistance of the county auditor to make such canvass, shall call to their assistance a justice of the peace, and it shall thereupon be their duty at once to attend and canvass such returns as provided by law. [1909, ch. 95; R. C. 1905, § 651; 1881, ch. 71, § 1; 1899, ch. 87; R. C. 1899, § 527; 1901, ch. 81; 1903, ch. 119.]

Board of canvassers cannot refuse to canvass votes because no nominations were made as prescribed by law. *Chamberlain v. Hedger*, 12 S. D. 135, 80 N. W. 178.

State board of canvassers required to canvass all votes cast in every county if duly authenticated returns are obtainable. *Woods v. Sheldon*, 9 S. D. 392, 69 N. W. 602.

Mandamus is proper proceeding to compel board of canvassers to act when it refuses to do so; adjournment sine die is not a ground for refusing the writ. *Smith v. Lawrence*, 2 S. D. 185, 49 N. W. 7.

Tally list not part of the returns. *State v. McKenzie*, 10 N. D. 132, 82 N. W. 231.

Abstract of vote, upon division proposition which shows on its face that it is incomplete, is not prima facie evidence of result of election. *State ex rel. Minehan v. Thompson*, 24 N. D. 273, 139 N. W. 960.

§ 1010. Tie vote. Duty of county auditor. If the requisite number of officers shall not be elected by reason of two or more persons having an equal and highest number of votes for one and the same office, the county auditor whose duty it is to compare the polls shall give notice to the several persons so having the highest and equal number of votes to attend at his office at a time appointed by him, and they shall then proceed publicly to decide by lot which of the persons so having an equal number of votes shall be declared duly elected, and such auditor shall make and deliver to the person thus declared duly elected a certificate of his election as hereinbefore provided. [R. C. 1905, § 652; R. C. 1899, § 528.]

Decision of tie vote. 47 L.R.A. 551.

Right of candidate receiving next highest number of votes in the event that the person receiving the highest number is ineligible. 13 L.R.A.(N.S.) 1013; 34 L.R.A.(N.S.) 240.

§ 1011. State board of canvassers, how constituted. The secretary of state, state auditor, state treasurer, attorney-general and superintendent of public instruction shall constitute the state board of canvassers, three of whom shall be a quorum for the transaction of business, and if less than a quorum of said officers attend on the day appointed for a meeting of the board, then those so attending are hereby authorized to summon others of the state officers sufficient to constitute a quorum, who on being notified by the officer or officers so attending, shall attend without delay and act as a member of such board. [R. C. 1905, § 653; 1892, Sp.; R. C. 1895, § 530.]

§ 1012. When member disqualified. When a member of such board is a candidate for any office as to which the votes are to be canvassed by him, the governor shall designate some other state officer who shall act in his stead at the session of the board while the votes given for such member are being canvassed. [R. C. 1905, § 654; 1892, Sp.; R. C. 1899, § 531.]

§ 1013. County auditor to forward abstract of votes. It shall be the duty of the county auditor of each county, under his official seal, to return to the secretary of state on or before the first Tuesday of December following any general election, and within thirty days following any special election, a certified abstract of the number of votes cast in his county at such election for each candidate for state and congressional offices, electors for president and

vice-president, judges of the supreme and district courts, members of the legislative assembly and for amendments to the constitution or proposition submitted by the legislative assembly; provided, that the county auditor shall make a separate certified abstract of the votes cast for persons for electors of president and vice-president of the United States. He shall seal up such separate abstract and indorse it: "Presidential Elector Returns" and without delay transmit it to the secretary of state by registered mail. [R. C. 1905, § 655; 1892, Sp.; R. C. 1895, § 532.]

§ 1014. Secretary of state to file abstract of votes. The secretary of state upon receipt of the certified abstract of votes from the several counties shall record the result of such election by counties and shall file and carefully preserve the certified statements so received from the county auditors, and if no such statement shall be received by him from the county auditor of any county prior to the time specified for the meeting of the state board of canvassers he may and it is his duty to dispatch a special messenger to obtain such statement, at the expense of such county, and such auditor shall on demand of such messenger make and deliver to him the statement required which the messenger shall deliver to the secretary of state to be recorded and filed by him as aforesaid. Such messenger shall be allowed the sum of ten cents per mile for each mile necessarily traveled in going to and returning from the office of such county auditor, the same to be audited by the state auditor upon the certificate of the secretary of state and the state treasurer shall present a bill for the amount so audited against the county failing to send up such returns as above provided, which bill so presented shall be audited by the board of county commissioners of such county and paid by the county treasurer. [R. C. 1905, § 656; 1892, Sp.; R. C. 1895, § 533.]

Abstract of vote, upon division proposition which shows on its face that it is incomplete, is not prima facie evidence of result of election. *State ex rel. Minehan v. Thompson*, 24 N. D. 273, 139 N. W. 960

§ 1015. State canvassing board, meeting of. For the purpose of canvassing and ascertaining the result of such election the state board of canvassers shall meet at the office of the secretary of state on the second Tuesday in December next after a general election and within forty days after a special election, and the secretary of state shall notify the other members of the board of the same. [R. C. 1905, § 657; 1892, Sp.; R. C. 1899, § 534.]

§ 1016. Duty of board. The board when thus formed shall examine such certified statements of the county canvassers, and if it shall appear that any material mistake has been made in the computation of votes given for any person, or that the county canvassers in any county have omitted to canvass the votes, or any part thereof, cast in any precinct in their county, the board may dispatch a messenger to the county auditor of such county at the expense of such county, with its requirement in writing to him to certify the facts concerning such mistake and the reason why such votes were not canvassed; and the county auditor to whom any such requirement is delivered shall forthwith make a true and full answer thereto under his hand and official seal, and deliver the same to such messenger who shall deliver the same with all convenient dispatch to the secretary of state. [R. C. 1905, § 658; 1892, Sp.; R. C. 1895, § 535.]

May adjourn for a reasonable time to obtain properly authenticated returns. *Woods v. Sheldon*, 9 S. D. 392, 69 N. W. 602.

§ 1017. Adjournment of board. Such board may adjourn from day to day, not exceeding three days in all, except to await the return of a messenger dispatched, as provided in the preceding section, and then only for such time as may be necessary. [R. C. 1905, § 659; 1892, Sp.; 1897, ch. 34; R. C. 1899, § 536.]

Mandamus to compel election officers to act after they have met and adjourned. 36 L.R.A. (N.S.) 1089.

§ 1018. Canvass of votes to be public. Upon the certified statements and returns so received the board shall proceed publicly to examine and make

a statement of the whole number of votes given at any such election for each and all state officers; and another statement of the votes given for members of congress, each of which statements shall show the names of the persons to whom such vote shall have been given for either of said offices, and the whole number of votes given to each, distinguishing the several districts and counties in which they are given. A majority of such canvassers shall decide all matters of disagreement, and they shall disregard all technicalities and misspelling, the use of initial letters and abbreviations of the names of candidates, if it can be ascertained from the returns for whom the votes were intended. In case there shall be no choice by reason of any two or more persons having an equal and the highest number of votes the governor shall by proclamation order a new election. [R. C. 1905, § 660; 1892, Sp.; R. C. 1895, § 537.]

§ 1019. Certificate of result. They shall certify such statements to be correct and subscribe their names thereto and they shall thereupon determine what persons have been by the greatest number of votes duly elected to such offices, or either of them, and shall make out and subscribe on each statement a certificate of such determination and deliver the same to the secretary of state. [R. C. 1905, § 661; 1892, Sp.; R. C. 1899, § 538.]

Abstract of vote upon division proposition which shows on its face that it is incomplete, is not prima facie evidence of result of election. *State ex rel. Minehan v. Thompson*, 24 N. D. 273, 139 N. W. 960.

§ 1020. Certificates of election, secretary of state to issue. The secretary of state shall record in his office each certified statement and determination so made by said board, and shall forthwith make out and transmit to each of the persons thereby declared to be elected a certificate of election as hereinafter provided and he shall also forthwith cause a copy of such certified statement and determination to be published in a newspaper printed at the seat of government. [R. C. 1905, § 662; 1892, Sp.; R. C. 1899, § 539.]

§ 1021. Certificate for members of congress. Certificates of the election of members of congress shall be signed by the governor with the great seal affixed and be countersigned by the secretary of state and the governor shall cause same to be delivered to the persons elected. [R. C. 1905, § 663; 1892, Sp.; R. C. 1899, § 540.]

§ 1022. Presidential electors. The board in examining and making a statement of the votes and in determining and certifying the persons chosen as electors of president and vice-president shall proceed in the manner prescribed by law to be pursued by them in the canvass for state officers, and the secretary of state shall likewise file and record such statement and determination. In canvassing the returns for presidential electors the persons having the greatest number of votes are to be declared elected; and if more than the requisite number of persons are found to have the greatest and an equal number of votes the election of one of them shall be determined by lot, to be drawn by the governor in the presence of the other canvassers. The secretary of state shall prepare three lists of the names of such electors elected at any election, procure thereto the signature of the governor, and affix the great seal of the state to the same, and deliver such certificate thus signed and sealed to said electors on or before the second Monday in January next after such election. [R. C. 1905, § 664; 1892, Sp.; R. C. 1895, § 541.]

§ 1023. Form of certificate. A certificate shall be prepared by the secretary of state for each person elected, in substance as follows:

At an election held on theday of.....A. B. was elected to the office of.....of said state for the term of....years from the.....day of.....in the year.....or, if to fill a vacancy, say for the residue of the term ending on the.....day of.....A. D. 19....

Given at Bismarck this..... day of.....A. D. 19....

Which certificate shall be signed by the governor and the secretary of state,

and the seal of the state affixed, and be attested by at least one of the other canvassers. [R. C. 1905, § 665; 1892, Sp.; R. C. 1899, § 542.]

§ 1024. **Certificates of election.** The secretary of state shall issue certificates of election to all members of the legislative assembly at the time that certificates of election to state officers by him are issued. [R. C. 1905, § 666; 1903, ch. 119.]

§ 1025. **Constitutional amendments, etc. Certificate as to.** For the purpose of canvassing and ascertaining the result of the votes taken at any election upon any proposed amendment to the constitution, or proposition submitted to a vote of the people by the legislative assembly, the state board of canvassers shall proceed to examine such statements, and to ascertain and determine the result and shall certify under their hands a statement of the whole number of votes given for and the whole number of votes given against such amendment or proposition, and they shall thereupon determine whether such amendment or proposition has been approved and ratified by a majority of the electors voting thereon, and shall make and subscribe on such statement a certificate of such determination. [R. C. 1905, § 667; 1892, Sp.; R. C. 1899, § 543.]

§ 1026. **Record of result.** The secretary of state shall record in his office such certified statements and determination; and if it shall appear that such amendment or proposition has been approved, ratified or adopted as aforesaid, he shall also make a record thereof, and cause such record to be bound in the volume containing the original enrolled laws passed at the next succeeding session of the legislative assembly, and cause such record to be published with such laws. [R. C. 1905, § 668; 1892, Sp.; 1899, § 544.]

§ 1027. **What returns shall be canvassed.** The board of state canvassers, in canvassing to ascertain the result of any election, shall canvass only the regular returns made by the county board of canvassers, as provided in this chapter. [R. C. 1905, § 669; 1892, Sp.; R. C. 1899, § 545.]

§ 1028. **Proclamation of result by governor.** The governor shall, within ten days after the completion of the canvass by the state board of canvassers of the votes cast for presidential electors, as certified by the auditors of the respective counties, declare by proclamation, to be printed in some newspaper printed and published at the seat of government, the names of the several persons who have received not less than one-fifth of all the votes cast, and the number of votes received by each person, and the several persons, who have received the highest number of votes so returned, and whose election shall not have been contested and notice of such contest given to the governor within ten days after the date of such proclamation, shall be deemed and taken to be elected, and the governor shall thereupon transmit to each person so chosen a certificate of his election. [R. C. 1905, § 670; 1892, Sp.; R. C. 1899, § 546.]

§ 1029. **Informality in returns disregarded.** No election returns shall be refused by any county auditor for the reason that the same may be returned or delivered to him in any other than the manner directed in this chapter, nor shall he refuse to include any returns for any informality in holding an election or in making returns thereof; but all returns shall be received and the votes canvassed and a certificate given to the person who may by such returns have the greatest number of votes. [R. C. 1905, § 671; R. C. 1899, § 547.]

§ 1030. **Canvassers, how to proceed.** The county auditor and other persons constituting the county board of canvassers shall, in canvassing the election returns, disregard technicalities and misspelling, the use of initial letters or abbreviations of the name of the candidates for office, if it can be ascertained from such vote for whom they were intended; but they shall not count votes polled in any place except at established precincts, and a breach of the provisions of this section shall be deemed a misdemeanor in office and punished

accordingly. A majority of the members of such board shall decide all matters of disagreement. [R. C. 1905, § 672; R. C. 1895, § 548.]

§ 1031. Defective returns. Duty of canvassing board. Penalty. When the returns of the election precinct officers are made to the county canvassing board as now provided by law, in case any provision of the law relative to the duties of said election precinct officers has not been complied with by said election precinct officers, and which is capable of correction or compliance by said board, the county canvassing board is authorized and empowered to issue its subpoenas to the officers of the election precinct wherein the defect occurs, requiring said officers to appear forthwith before said county canvassing board and correct any omission or mistake according to the facts, and said amended or corrected returns shall then be acted on by said county canvassing board, and said county canvassing board shall issue its certificate of election to the party entitled thereto, as shown by the returns as amended or corrected. In case any officer of any election precinct so subpoenaed should neglect or refuse to obey said subpoena, the said person so refusing shall be arrested by bench warrant issued out of the office of the clerk of district court, in the county where said proceedings occur, and brought before said canvassing board and there make the necessary correction according to the facts, and a refusal of said officer to make the said correction shall be deemed a contempt of the district court, to be punished as provided for ordinary contempt of court, upon the proper showing, and the procedure shall be the same as in ordinary cases of contempt of court. [R. C. 1905, § 673; 1903, ch. 91.]

Canvassing board in county division election must procure returns from each voting precinct. *State ex rel. Minehan v. Thompson*, 24 N. D. 273, 139 N. W. 960.

Unless applicant for mandamus requiring county board of canvassers to reconvene, states facts showing that if writ issue, new abstract will show result reverse of former, writ will not issue. *State ex rel. Davis v. Willis*, 19 N. D. 222, 124 N. W. 706.

§ 1032. Returns indorsed by secretary of state. A memorandum of the date of the reception of all returns of votes at the secretary's office shall be made at such office on the envelope containing them. [R. C. 1905, § 674; R. C. 1899, § 549.]

ARTICLE 18.—RESIGNATIONS AND VACANCIES.

§ 1033. Resignations and vacancies. Special election. Any person who shall receive a certificate of his election as a member of the legislative assembly, county auditor, county treasurer, register of deeds, sheriff, state's attorney, clerk of the district court, county judge or county commissioner, shall be at liberty to resign such office, although he may not have entered upon the execution of the duties thereof or taken the requisite oath of office, and when any vacancy shall happen in the legislative assembly by death, resignation or otherwise it shall be the duty of the county auditor of the county in which such vacancy occurs officially to notify the governor thereof; whereupon the governor shall issue a writ of election directed to the sheriff of such county commanding him to notify the several boards of election in his county or district to hold a special election to fill such vacancy at a time to be appointed by the governor; provided, that if there is no session of the legislative assembly between the time such vacancy occurs and the time of holding the next general election, it shall not be necessary to order a special election to fill such vacancy; and when any vacancy occurs in the office of a member of congress from this state, it shall be the duty of the governor to issue his proclamation appointing a day to hold a special election to fill such vacancy. [R. C. 1905, § 675; R. C. 1899, § 550.]

§ 1034. Duty of governor in case of certain vacancies. Should a vacancy occur in the office of a member of the legislative assembly, while in session, by death, resignation, removal or otherwise, it shall be the duty of the governor immediately upon receiving official notice thereof to proceed in the

same manner as is prescribed for other cases in the preceding section. [R. C. 1905, § 676; R. C. 1899, § 551.]

§ 1035. Division of legislative district subsequent to election. If a vacancy occurs in the legislative assembly for any cause, and the county or counties comprising the district in which such vacancy occurs shall have been divided after the election of the member whose seat is vacant, and before the election to fill such vacancy, such election shall be ordered in each county in which any part of the original county or district may be situated; but no person shall be permitted to vote at such election who does not at the time reside within the limits of the county or district in which such vacancy occurred. [R. C. 1905, § 677; R. C. 1895, § 552.]

§ 1036. Canvass and returns of elections to fill vacancies. Votes cast at elections to fill vacancies shall be canvassed and returned as provided in other cases, and the county auditor shall without delay forward to the secretary of state the abstracts of the same. [R. C. 1905, § 678; R. C. 1895, § 553.]

ARTICLE 19.—PRESIDENTIAL ELECTORS.

§ 1037. When electors convene. Vacancies, how filled. The electors of president and vice-president shall convene at the seat of government of this state on the second Monday in January next after their election at the hour of twelve o'clock noon of that day, and if there shall be any vacancy in the office of an elector, occasioned by the death or refusal to act, neglect to attend or other cause, the electors present shall immediately proceed to fill such vacancy by ballot, by a plurality of votes, and when all the electors shall appear, or the vacancies shall have been filled as above provided they shall proceed to perform the duties required of such electors by the constitution and laws of the United States. [R. C. 1905, § 679; 1890, ch. 109, § 1; R. C. 1895, § 554.]

§ 1038. Per diem and mileage. The electors of president and vice-president of the United States shall receive the same per diem and mileage as is allowed to members of the legislative assembly, and there is hereby appropriated as a standing and continuing appropriation such a sum of money as may be necessary to pay such per diem and mileage. [R. C. 1905, § 680; 1892, Sp.; R. C. 1899, § 555.]

ARTICLE 20.—MISCELLANEOUS PROVISIONS.

§ 1039. Penalty for depositing unstamped ballot. No inspector or judge of election shall deposit in any ballot box any ballot upon which the official stamp as hereinbefore provided for does not appear. Every person violating the provisions of this section is guilty of a misdemeanor. [R. C. 1905, § 681; 1891, ch. 66, § 28; R. C. 1899, § 556.]

§ 1040. Penalty for rejecting legal vote. Any board of election or any member of any board of election who willfully and knowingly rejects any legal vote shall be subject to a fine of fifty dollars to be collected in a civil action before any justice of the peace in the name and for the benefit of the person aggrieved. [R. C. 1905, § 682; R. C. 1899, § 557.]

Duty of election officer to accept sworn vote. 36 L.R.A.(N.S.) 968.

Personal liability of an election officer for rejecting ballots. 11 L.R.A.(N.S.) 501.

Right to damages for being prevented from voting at a public election. 31 L.R.A.(N.S.) 1106.

§ 1041. Penalty for failure of officer to perform duty. Any public officer upon whom any duty is imposed by this chapter who shall willfully do or perform any act or thing herein prohibited or who willfully neglects or omits to perform any duty imposed upon him by the provisions of this chapter is guilty of a misdemeanor and upon conviction thereof is punishable by forfeiture of his office and by imprisonment in the county jail for not less than one month nor more than six months or by a fine of not less than fifty nor

more than five hundred dollars, or both. [R. C. 1905, § 683; 1891, ch. 66, § 33; R. C. 1899, § 558.]

It is to be observed that "this chapter" mentioned in the foregoing section has become, by reason of amendments and interpolation of new articles, materially different from what it was when the section was enacted.

Defective summons; waiver of irregularity. *Nashua Sav. Bank v. Lovejoy*, 1 N. D. 211, 46 N. W. 411.

Summons; amendment of. *Gans v. Beasley*, 4 N. D. 140, 52 N. W. 714.

§ 1042. Electioneering prohibited. Secret ballot. No electioneering shall be done on election day by any officer of election nor by any person within the polling place or any building in which an election is being held or within fifty feet thereof, nor obstruct the doors or entrance thereto or prevent free ingress to or egress from said building. And the inspector and judges of election shall, if they deem it necessary, appoint an election officer; such election officer, or the sheriff, constable, or other peace officer is authorized and it is his duty to clear the passageway and prevent such obstruction and to arrest any person creating such obstruction. No person shall remove any ballot from the polling place before the closing of the polls. No person shall show his ballot, after it is marked, to any person in such a way as to reveal the contents thereof or the name of any person for whom he has marked his vote nor shall any person solicit the elector to show the same; nor shall any person except a judge of election receive from any elector a ballot prepared for voting. No elector shall receive a ballot from any other person than the inspector or one of the judges of election having charge of the ballots nor shall any person other than such inspector or judges of election deliver a ballot to such elector. No elector shall vote or offer to vote any ballot except such as he has received from the inspector or a judge of election having charge of the ballots. No elector shall place any mark upon his ballot by which it may afterwards be identified as the one voted by him. Any elector who does not vote a ballot delivered to him by the judges of election having charge of the ballots shall, before leaving the polling place, return such ballot to such judges. Whoever violates any of the provisions of this section is guilty of a misdemeanor and upon conviction thereof is punishable by a fine not exceeding one hundred dollars and shall be adjudged to pay the costs of prosecution. [R. C. 1905, § 684; 1891, ch. 66, § 34; R. C. 1899, § 559.]

Ballot having upon its back distinct cross made by impression of instrument furnished by election officers to mark ballots, which cross was plainly visible when ballot was folded, should not be counted. *Treat v. Morris*, 25 S. D. 615, 127 N. W. 554.

§ 1043. Penalty for violation of election laws. If any inspector, judge or clerk of election, county auditor or other person in any manner concerned in conducting an election shall corruptly violate any of the provisions of this chapter he shall forfeit and pay to the county a sum not less than fifty nor more than five hundred dollars to be recovered in a civil action in the name of the proper county. [R. C. 1905, § 685; R. C. 1895, § 560.]

See note to section 1041.

§ 1044. No civil process served on election day. During the day on which any general or special election shall be held in this state or in any district, county, city, village or precinct therein, no civil process shall be served on any person entitled to vote at such election. [R. C. 1905, § 686; R. C. 1899, § 561.]

§ 1045. Compensation of election officers. There shall be allowed to the several inspectors, judges and clerks of election of each county two dollars per day to be paid out of the county treasury on the warrant of the auditor. [R. C. 1905, § 687; R. C. 1895, § 562.]

ARTICLE 21.—CONTESTING ELECTIONS.

§ 1046. Notice of contest, how served. Any person claiming the right to hold an office, or any elector of the proper county desiring to contest the validity of an election or the right of any person declared duly elected to

any office in such county, shall give notice thereof in writing to the person whose election he intends to contest within twenty days after the canvass of the votes of such election, which notice shall be served in the same manner as a summons in a civil action. But if the person whose election is contested cannot be found and shall have ceased to have residence in such county or state, then the notice shall be served by leaving the same at the house where such person last resided, and if no service as above provided can be made, or if no such residence can be found in the state the district court or judge thereof may expressly direct the manner of such service, which notice of contest shall be in writing and shall set forth the facts and grounds upon which the contestant relies in his contest, and shall be verified as a pleading in a civil action. [R. C. 1905, § 688; 1885, ch. 54, § 1; R. C. 1899, § 563.]

Title to county office may be tried under this and following sections, or by civil action in nature of quo warranto. *State v. Callahan*, 4 N. D. 481, 61 N. W. 1025.

The term "canvass" includes the time until the decision of a tie vote. *Bowler v. Eisenhood*, 1 S. D. 577, 48 N. W. 136, 12 L.R.A. 705.

Allegation that contestant "was duly elected" sufficiently states legal qualifications for office. *Church v. Walker*, 10 S. D. 90, 72 N. W. 101; *McMahon v. Polk*, 10 S. D. 296, 73 N. W. 77, 47 L.R.A. 830; *Church v. Walker*, 10 S. D. 450, 74 N. W. 198.

Notice of contest; what it must contain. *Batterton v. Fuller*, 6 S. D. 257, 60 N. W. 1071.

Necessity of execution and filing of equivalent of certificate of election on canvass of county division election. *State ex rel. Minehan v. Thompson*, 24 N. D. 273, 139 N. W. 960.

Election submitting question, "shall intoxicating liquor be sold at retail" may be contested by elector giving notice, etc. *Treat v. Morris*, 25 S. D. 615, 127 N. W. 554.

Provides remedy for determination of election contests, and certiorari will not be granted. *State ex rel. Cormick v. Ramsey*, 27 S. D. 302, 130 N. W. 768.

Contest must be initiated by serving upon contestee, within ten days after completion of canvass of ballots, affidavit of contest, setting forth grounds therefor. *Olesen v. Hoge*, 23 N. D. 648, 137 N. W. 826.

Election contest in case of decision of tie vote. 47 L.R.A. 559.

Right of candidate receiving next highest number of votes in the event that the person receiving the highest number is ineligible. 13 L.R.A.(N.S.) 1013; 34 L.R.A.(N.S.) 240; 12 Am. Rep. 341.

Adequacy of provision for contesting an election other than for selection of offices, upon the grounds and in the manner prescribed by a statute which has reference only to the election of officers. 18 L.R.A.(N.S.) 566.

Irregularities which will avoid election. 90 Am. St. Rep. 46.

Contesting because of illegal votes, admissibility of evidence to show what votes were illegal and for whom they were cast, and power to compel unqualified voter to disclose for whom he voted. 84 Am. Dec. 268.

Effect of, where ineligible candidate receives a majority of the votes. 124 Am. St. Rep. 211.

§ 1047. Answer to notice of contest. Any person, upon whom the notice mentioned in the preceding section is served, shall within ten days after such service answer such notice, admitting or denying the facts alleged therein, and he shall state any other grounds upon which he rests the validity of his election, and shall serve a copy of such answer upon the contestant and all allegations set forth in the notice and not denied in the answer shall be taken as admitted. Such answer shall be served as a pleading in a civil action, and when the contestant appears by attorney the service thereof may be made upon the attorney. [R. C. 1905, § 689; 1885, ch. 54, § 2; R. C. 1895, § 564.]

§ 1048. Contest may be brought by whom. Such contest may be brought by a person claiming such office on his own motion, in his own name as plaintiff, but such contest cannot be brought by any other person unless the notice of contest is indorsed with the approval of the state's attorney of the county, or in case of his absence or refusal to approve it, with the approval of the judge of the district court. [R. C. 1905, § 690; 1885, ch. 54, § 3; R. C. 1895, § 565.]

§ 1049. Trial of contest. The judge of the district court, in case no term of such court occurs in such county within twenty days after the service of the answer in such contest, may appoint a term of such court therein; but if a term of court occurs in such county before that time, then the contest

shall be tried at such term, unless otherwise ordered by the court. The district court or the judge thereof may, upon ten days' notice by either party, try such contest at chambers at any place fixed by the court; or he may on such application or on his own motion, if the pleadings involve a question of fact, order such issues to be tried before a jury, or refer the same as provided in this chapter, and postpone the trial thereof until it can be had in such county, regard being had to the speediest possible trial. If the issues are ordered to be tried by a jury the question to be tried must be distinctly stated in the order of trial, and the place of such trial must be designated in such order. [R. C. 1905, § 691; 1885, ch. 54, § 4; R. C. 1899, § 566.]

Trial not confined to limited period; purpose is a speedy method of trial; jurisdiction continues until contest is tried or dismissed. *Howsar v. Pepper*, 8 N. D. 484, 79 N. W. 1018; *Eakin v. Campbell*, 10 N. D. 416, 87 N. W. 991.

Right of judge who may be affected by the result to hear election case. 42 L.R.A. (N.S.) 788.

§ 1050. Testimony and procedure in contests. All testimony and depositions taken in contests brought under the provisions of this article shall be taken in the same manner as in civil actions, and depositions may be taken in more than one place at the same time on leave of the court, and all matters relating to such contests shall be heard and tried as nearly as may be as civil actions are tried, except as otherwise provided in this article; and the costs shall be taxed in the same manner as in civil actions, and the court shall have power to order amendments to the notice and answer and to all other proceedings as provided in the code of civil procedure, and he shall have power to make all orders and enter final judgment in such contests the same as in civil actions. [R. C. 1905, § 692; 1885, ch. 54, § 5; R. C. 1895, § 567.]

§ 1051. Contests of elections for removal of county seat, etc. In any county where there is a vote for the election or for the removing or changing of the county seat of such county, or changing the county lines thereof, any elector of such county on leave of the district court may contest the validity of such election as to the right of the place declared and selected as the county seat, or as to any county line declared to be established or changed by a vote. Such elector shall give notice in writing of such contest to the county commissioners or a majority of them, of the county in which such vote was taken, by serving a notice as provided in section 1046, within thirty days after the result of such vote is canvassed. Such notice shall specify the grounds of such contest, and shall be filed with the clerk of the district court within ten days after the service thereof upon the county commissioners as aforesaid, and such contest shall be tried and determined by the district court or by a jury as provided for in this article for the contest of county officers. The county commissioners of such county shall appear and defend such contests, but in case they fail to appear and defend the same, any elector of such county may at any time before such trial, on leave of the court, appear and defend the same, and all testimony and depositions shall be taken in the same manner as in civil actions. [R. C. 1905, § 693; 1885, ch. 54, § 6; R. C. 1895, § 568.]

Validity of county seat election tested only in direct proceeding. *Remington v. Higgins*, 6 S. D. 313, 60 N. W. 73.

Mandamus will lie to compel county officers to hold their offices at county seat, to determine whether county seat has been legally changed. *State v. Langlie*, 5 N. D. 594, 67 N. W. 958.

Elector can maintain action where election for removal was under an invalid law. *Adams v. Smith*, 6 D. 94, 50 N. W. 720.

On conclusiveness of finding of canvassing board after time for making contest expires. *State ex rel. Minehan v. Thompson*, 24 N. D. 273, 139 N. W. 960.

§ 1052. Contests may be tried by referee. All contests brought under the provisions of this article may be referred by the court or judge thereof to a referee as provided in the code of civil procedure, and when the parties to such contest do not consent to a reference the court or a judge thereof

may in his discretion order such reference. [R. C. 1905, § 694; 1885, ch. 54, § 7; R. C. 1899, § 569.]

§ 1053. Surety for costs must be furnished. Any person bringing a contest under the provisions of this article must before bringing the same furnish good and sufficient surety for costs as provided in the code of civil procedure, and the obligation of such surety shall be complete by simply indorsing the notice of contest as surety for costs. [R. C. 1905, § 695; 1885, ch. 54, § 8; R. C. 1899, § 570.]

Motion for additional security must be granted and time for giving same lapse, before court can dismiss election contest because of insufficient security for costs. *Murtha v. Howard*, 20 S. D. 152, 105 N. W. 100.

§ 1054. Appeals in contest cases. Appeals from final judgment or decisions in such contests may be taken without making a motion for a new trial in the district court in the manner provided for in the code of civil procedure, except that the undertaking on appeal shall be in the sum to be fixed by the judge, not less than five hundred dollars, and shall be approved by the judge or by the clerk of the district court of the proper county or subdivision under the direction of the judge. [R. C. 1905, § 696; 1885, ch. 54, § 9; R. C. 1895, § 571.]

Appeal does not lie from order vacating default judgment. *Jensen v. Petty*, 14 S. D. 434, 85 N. W. 923.

§ 1055. Appeals to the supreme court. Appeals to the supreme court under the provisions of this article must be taken within sixty days after notice of the entry of final judgment, and the party appealing must immediately procure the transmission of the record on such appeal to the clerk of the supreme court, and such appeal may be brought on for hearing before the supreme court at any time such court shall be in session upon ten days' notice from either party; and the same shall be heard and determined in a summary manner. Such notice of hearing may be served during the term or in vacation. [R. C. 1905, § 697; 1885, ch. 54, § 10; R. C. 1899, § 572.]

Appeal does not suspend right of successful party to perform the duties of his office. *Fylpaa v. Brown Co.*, 6 S. D. 634, 62 N. W. 962.

Appeal dismissed unless taken within sixty days from entry of final judgment. *Murray v. Whitmore*, 9 S. D. 288, 68 N. W. 745.

§ 1056. Construction of this article. This article shall not be construed to affect any of the remedies or rights of action or proceedings provided for in the code of civil procedure. [R. C. 1905, § 698; 1885, ch. 54, § 11; R. C. 1899, § 573.]

The foregoing sections do not prevent testing the result of an election by mandamus. *Smith v. Lawrence*, 2 S. D. 185, 49 N. W. 7; *State v. Langlie*, 5 N. D. 594, 67 N. W. 953; *State v. Callahan*, 4 N. D. 481, 61 N. W. 1025.

May be tried by either statutory or civil action. *State ex rel. Butler v. Callahan*, 4 N. D. 481, 61 N. W. 1025.

Provision for testing election of city officer before city council or other municipal body as exclusive of mandamus. 26 L.R.A.(N.S.) 211.

Right to try question, who is de facto officer in mandamus proceeding. 13 L.R.A.(N.S.) 661.

Mandamus to compel acceptance of office. 24 L.R.A. 493.

Mandamus to restore to office one who has been illegally removed. 19 L.R.A.(N.S.) 49.

Necessity of a demand and refusal as condition of right to mandamus to compel surrender of office. 31 L.R.A. 348.

§ 1057. Provisions of code of civil procedure applicable, when. Except as otherwise provided in this article, the provisions of the code of civil procedure are applicable to and constitute the rules of practice in the proceedings mentioned in this article. [R. C. 1905, § 699; 1885, ch. 54, § 12; R. C. 1899, § 574.]

§ 1058. Provisions of code of civil procedure applicable as to appeals. The provisions of the code of civil procedure relative to appeals in civil actions, except in so far as they are inconsistent herewith, apply to the proceedings mentioned in this article. [R. C. 1905, § 700; 1885, ch. 54, § 13; R. C. 1895, § 575.]

ARTICLE 22.—CONTEST OF ELECTION OF PRESIDENTIAL ELECTORS.

§ 1059. Court for trial. Contests of presidential electors. The board for the trial of contests of elections for presidential electors shall consist of the chief justice of the supreme court, who shall be president of the board, and two judges of the district court, to be designated by the governor. If the chief justice shall for any cause be unable to attend at such trial, the next senior judge on the supreme bench shall preside in place of the chief justice. The secretary of state shall be the clerk of the board, or in his absence or inability to act the clerk of the supreme court shall be the clerk. Each member of the court before entering upon the discharge of his duties shall take an oath before the secretary of state or some officer qualified to administer oaths, that without fear, favor, affection or hope of reward he will, to the best of his knowledge and ability, administer justice according to law and the facts of the case. [R. C. 1905, § 701; 1892, Sp.; R. C. 1895, § 576.]

§ 1060. Contestant may apply to court. Any person who by the proclamation of the governor as hereinbefore provided, appears to have received not less than one-fifth of the votes cast at an election for electors of president and vice-president of the United States may apply to the board provided for in the preceding section for a declaration of his election as elector. [R. C. 1905, § 702; 1892, Sp.; R. C. 1895, § 577.]

§ 1061. Application to state grounds of contest. Such application shall be made by petition in writing to be filed in the office of the secretary of state within ten days from the date of the proclamation provided for in section 1028, who shall forthwith convene the board. The petition shall set forth the names of the persons whose election is contested, and the ground for such contest. The petitioner shall before any proceedings are had upon the petition, except the convening of the board, file a bond to the state in such sum and with such surety as the court shall order, conditioned for the payment of all costs incurred in the prosecution of such contest in case he shall not prevail. [R. C. 1905, § 703; 1892, Sp.; R. C. 1895, § 578.]

§ 1062. Notice to party contested, how given. Upon the filing of such petition and the giving of such bond the board shall order notice of the petition to be given, in such manner as it may direct, to the governor and to the person whose election is contested, which notice shall be published in such newspaper as the board shall order. Such notice shall contain a concise statement of the facts alleged in the petition and shall designate the time and place fixed by the board for the hearing of the same, which time shall not be less than three nor more than fifteen days from the filing of the petition. [R. C. 1905, § 704; 1892, Sp.; R. C. 1895, § 579.]

§ 1063. Appearance by parties to contest. At the time fixed for the hearing the petitioner shall appear and produce his evidence and the person whose election is contested may appear and produce evidence in his behalf. Either party may appear in person or by attorney, and no other person shall be entitled to be made a party to such proceedings or to be heard personally or by counsel therein; provided, that if more than one petition is pending, or more than one election is contested the board may order the contests to be heard together in its discretion. [R. C. 1905, § 705; 1892, Sp.; R. C. 1895, § 580.]

§ 1064. Hearing, how conducted. The board shall thereupon hear the contest and decide all questions of law and fact involved. The burden of proof in each case shall be upon the petitioner and the hearing shall be confined to the grounds stated in the petition, but the board may in its discretion allow the petition to be amended. No *ex parte* affidavits shall be competent evidence at such hearing. No person shall be excused from testifying or from producing papers or documents at such hearing on the ground that such testimony will tend to criminate himself; but no person so

testifying shall be liable to any suit or prosecution, civil or criminal, for any matters or causes in respect to which he shall be so examined or to which his testimony shall so relate. The board shall have the same power to compel the attendance of witnesses as the district courts of this state possess, and nothing in this article contained shall be held to limit the power of the board to make such regulations as to the conduct of the proceedings as it may deem proper, not inconsistent with the provisions of this article, and the board shall have all powers necessary to the complete carrying out and performance of the authority conferred upon it by this article. [R. C. 1905, § 706; 1892, Sp.; R. C. 1895, § 581.]

§ 1065. **Determination of board, how certified.** The board shall determine in each case which of the parties to the proceedings is entitled to the office of elector, and shall cause such determination to be entered of record in such manner and form as it shall direct, and shall forthwith certify the same to the governor and secretary of state, and such determination so certified shall be final and conclusive that the person therein stated to have been elected is duly elected, and the governor shall forthwith transmit to such person a certificate of his election, and every such certificate shall recite that it is issued pursuant to a determination under this article, referring to this article. The court shall so arrange and conduct the trial of such contest that a final determination thereof shall be rendered at least six days prior to the second Monday in January next following. [R. C. 1905, § 707; 1892, Sp.; R. C. 1895, § 582.]

§ 1066. **Failure of petitioner to appear, effect of.** If any petitioner shall fail to appear and prosecute his petition against any person who has been made a respondent thereto, according to the requirements of this article and of such rules as the board shall make, the board shall determine that he has so failed, and shall cause such determination to be entered of record in such manner and form as it shall direct, and shall forthwith certify such determination to the governor and secretary of state; and the same shall be a final and conclusive bar to the claim of the petitioner against such respondent as fully and completely as if such claim had been heard and determined on its merits, and the governor shall issue such certificate as provided in the preceding section. [R. C. 1905, § 708; 1892, Sp.; R. C. 1895, § 583.]

§ 1067. **Costs, taxation of.** The costs of all proceedings under this article shall be taxed under the direction of the board, and if two or more cases are heard together the costs shall be apportioned as the board shall direct, and in each case in which the petitioner shall not finally prevail the costs shall be paid by him, and in each case in which the petitioner shall finally prevail the costs shall be borne by the state, in which case the board shall certify the costs to the state auditor, who shall issue his warrant upon the state treasurer in payment of the same. [R. C. 1905, § 709; 1892, Sp.; R. C. 1895, § 584.]

§ 1068. **Final hearing, how determined.** The final hearing and determination under this article shall be by a majority of the board, but any single member may exercise any other of the powers given to the board by this article. [R. C. 1905, § 710; 1892, Sp.; R. C. 1899, § 585.]

§ 1069. **Mileage and per diem of members of board.** The members shall be entitled to receive for their travel and attendance the sum of six dollars per day and ten cents per mile for each mile necessarily traveled, to be paid from the state treasury upon the warrant of the state auditor. [R. C. 1905, § 711; 1892, Sp.; R. C. 1899, § 586.]

ARTICLE 23.—CONTEST OF LEGISLATIVE ELECTIONS.

§ 1070. **Notice of contest in legislative elections.** When any person intends to contest the election of a member of the legislative assembly, he may, within ten days after the result of such election shall have been determined by the

board of canvassers, give notice in writing to the member whose seat he desires to contest of his intention to contest the same, and in such notice shall specify particularly the grounds upon which he relies in the contest. [R. C. 1905, § 712; R. C. 1895, § 587.]

§ 1071. **Answer to notice.** Any member elect, upon whom the notice mentioned in the preceding section may be served, shall within ten days after the service thereof answer such notice admitting or denying the facts alleged therein and stating specifically any other grounds upon which he rests the validity of his election and shall serve a copy of his answer upon the contestant or his attorney. All allegations contained in the notice and not denied in the answer shall be taken as admitted. [R. C. 1905, § 713; R. C. 1895, § 588.]

§ 1072. **Testimony taken, when.** In all such contests the contestant may begin taking testimony as soon as the notice of contest is served and the person whose election is contested may commence taking testimony as soon as his answer is served, and both parties may continue to take testimony for ten days after the time for serving the answer has expired, after which time the contestant may take testimony in rebuttal only for five days. [R. C. 1905, § 714; R. C. 1895, § 589.]

§ 1073. **Notice to take depositions same as in code of civil procedure.** Depositions taken under the provisions of this article may be taken in the manner and upon the notice prescribed in the code of civil procedure for taking depositions in civil actions. [R. C. 1905, § 715; R. C. 1895, § 590.]

§ 1074. **Testimony taken at only two places at a time.** Testimony taken under the provisions of this chapter shall not be taken at more than two places at the same time by either party, except by order of the court or the judge thereof. [R. C. 1905, § 716; R. C. 1895, § 591.]

§ 1075. **Subpoena to compel attendance of witnesses.** When either party to such contest desires to take testimony therein, he may apply to any notary public or justice of the peace in the county where the testimony is to be taken for a subpoena to compel the attendance of witnesses, and the officer to whom such application is made shall thereupon issue his subpoena directed to such witnesses as shall be named to him, requiring their attendance before him at such time and place as may be named in the subpoena to give testimony relating to such contests. [R. C. 1905, § 717; R. C. 1899, § 592.]

§ 1076. **Depositions taken without notice on stipulation.** It shall be competent for the parties to such contest by consent in writing to take depositions without notice. Such written consent shall be returned with the depositions. [R. C. 1905, § 718; R. C. 1895, § 593.]

§ 1077. **Subpoena served, how.** Witnesses may be subpoenaed in the manner provided in the code of civil procedure. [R. C. 1905, § 719; R. C. 1895, § 594.]

§ 1078. **Attendance compelled only in county.** No witness shall be required to attend an examination out of the county in which he resides or is served with a subpoena. [R. C. 1905, § 720; R. C. 1899, § 595.]

§ 1079. **Failure to attend and testify. Penalty.** Any person who, having been summoned in the manner above prescribed, refuses or neglects to attend and testify in obedience to such subpoena, unless prevented by sickness or unavoidable necessity, shall forfeit the sum of twenty dollars to be recovered with costs of suit in a civil action in the name and for the use of the party at whose instance the subpoena was issued, and such person is also guilty of a misdemeanor. [R. C. 1905, § 721; R. C. 1895, § 596.]

§ 1080. **Depositions of nonresident witnesses may be taken.** Depositions of witnesses residing outside of the district and beyond the reach of a subpoena may be taken before any officer authorized to take testimony in a civil action. [R. C. 1905, § 722; R. C. 1899, § 597.]

§ 1081. **Examination of witnesses.** All witnesses, who attend in obedience to a subpoena or who attend voluntarily at the time and place appointed, of

whose examination notice has been given as provided in this article, shall then and there be examined on oath by the officer who issued the subpoena, or in case of his absence, by any other officer authorized to issue such subpoena, or by the officer before whom the depositions are to be taken by written consent, as the case may be, touching all such matters respecting the election being contested as shall be proposed by either of the parties or attorneys. [R. C. 1905, § 723; R. C. 1899, § 598.]

§ 1082. **Testimony must be confined to issue.** The testimony to be taken by either party to such contest shall be confined to the issues raised by the notice of contest and answer thereto. [R. C. 1905, § 724; R. C. 1895, § 599.]

§ 1083. **Testimony must be reduced to writing.** The officer shall cause the testimony of the witnesses to be reduced to writing in his presence and in the presence of the parties or their attorneys, if in attendance, and each witness shall sign his name at the end of his testimony. [R. C. 1905, § 725; R. C. 1895, § 600.]

§ 1084. **Production of papers may be required.** The officer before whom any deposition is taken shall have power to require the production of papers, and, on the refusal or neglect of any person to produce and deliver up any papers in his possession pertaining to such election, or to produce certified or sworn copies of the same in case they are official papers, such person shall be liable to all the penalties prescribed in section 1079. All papers thus produced and all certified or sworn copies of official papers shall be transmitted by the officer, with the testimony of the witnesses, to the secretary of state for the use of the legislative assembly. [R. C. 1905, § 726; R. C. 1899, § 601.]

§ 1085. **Adjournments.** The taking of the testimony may, if so stated in the notice, be adjourned from day to day. [R. C. 1905, § 727; R. C. 1899, § 602.]

§ 1086. **Papers to be attached to deposition.** The notice to take depositions with the proof or admission of service thereof and a copy of the subpoena, where any has been served, shall be attached to the deposition when completed together with a copy of the notice of contest and answer, which shall be annexed to the deposition taken and transmitted with them to the secretary of state. [R. C. 1905, § 728; R. C. 1899, § 603.]

§ 1087. **Testimony to be forwarded to the secretary of state.** All officers taking testimony to be used in a contested election case shall, when the taking of the same is completed, immediately certify to the same as required by law in other cases, and inclose the same in a sealed envelope and after indorsing on such envelope the title of the contest forward the same by mail to the secretary of state; and the secretary of state is authorized to open the same at the instance of either party or his attorney. [R. C. 1905, § 729; R. C. 1895, § 604.]

§ 1088. **Fees of officers and witnesses.** Each witness attending in obedience to a subpoena as herein provided, and all officers employed in taking testimony in such contested election cases or serving any subpoena or notice herein authorized shall be entitled to receive, from the party at whose instance the service or attendance shall have been performed, such fees as are allowed for similar services in civil actions in courts of record in this state. [R. C. 1905, § 730; R. C. 1895, § 605.]

§ 1089. **No legislative expense.** No payment shall be made by the legislative assembly out of its contingent fund or otherwise to either party to such contest for expenses incurred in prosecuting or defending the same. [R. C. 1905, § 731; R. C. 1899, § 606.]

ARTICLE 24.—REGISTRATION OF VOTERS.

§ 1090. **Registration of voters. When board shall meet.** The persons authorized by law or appointed pursuant to any village or city ordinance to

act as judges of election in any village, city, ward or other election precinct in this state shall, together with the inspector of election for such precinct, constitute a board of registry for their respective precincts, and they shall meet on Tuesday, two weeks preceding any general election, or annual city election, at nine o'clock a. m. and make a list, as hereinafter prescribed, of all persons qualified to vote at the ensuing election in such election precinct, which list when completed shall constitute and be known as the register of electors of such precinct. [R. C. 1905, § 732; 1881, ch. 122, § 1; 1899, ch. 133; R. C. 1899, § 607.]

Requirements as to, are not mere regulations but qualifications that the elector must have before voting. *Farren v. Commissioners*, 5 D. 36, 37 N. W. 756.

No registration is contemplated except of electors and women are not required to register or furnish affidavit, to entitle them to vote for school officers. *Wagar v. Prindle*, 21 N. D. 245, 130 N. W. 224.

Validity of statutory regulation of registration. 25 L.R.A. 484.

Constitutionality of registration laws. 23 Am. Dec. 642; 54 Am. Rep. 843.

§ 1091. Registers, what to contain. Such registers shall each contain a list of the qualified electors of such precinct, alphabetically arranged according to their respective surnames, so as to show in one column the name at full length, and in another column the residence by the number of the dwelling, if there is a number, and the name of the street or other location of the dwelling place of each elector. It shall be the duty of such board to enter in such lists the names of all persons residing in its election precinct whose names appear on the poll list made in such precinct at the last preceding election, the number of the dwelling and name of the street or other location if the same is known to or can be ascertained by such board, and for this purpose the board is authorized to take from the office in which it is filed the poll list made and filed by the judges or inspector of such precincts at the election held next prior to the making of such register. In making such register the board shall enter therein in addition to the names on the poll list, the names of all other persons who are known to them to be qualified electors in such precinct, or shall be proved to be qualified electors by the oath of the person applying to be registered, or by the oath of some elector whose name has been already placed upon the poll list; and the names of all persons on the poll list who have died or removed from the precinct shall be omitted from the register. It shall also be the duty of said board to enter in such register, alphabetically in separate columns as provided herein, the names of all women entitled to vote for candidates for school offices and on questions pertaining solely to school matters in all cities of three thousand inhabitants or over. Such board shall complete as far as practicable such register on the day of their meeting aforesaid, and shall make two copies thereof and certify the register and each of the copies to be a true list of the voters in its precinct so far as the same are known, within ten days thereafter; such original list, together with the list taken from the office aforesaid, shall be filed with the board and shall be kept by one of the judges or by the inspector and carefully preserved for its use on the day hereinafter mentioned for the revision and correction of the same. One copy of such list shall immediately after its completion be posted in some public and conspicuous place at or near the place where the last preceding election in such precinct was held, and be accessible to any elector who may desire to examine the same or make copies thereof. Any person who shall tear down, deface or destroy any list so posted, is guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the jail not exceeding five years, or by such fine and imprisonment. [1911, ch. 127; R. C. 1905, § 733; 1881, ch. 122, § 2; R. C. 1895, § 608.]

Effect of loss or destruction of registry lists. 28 L.R.A.(N.S.) 989.

Is "general election law in relation to registration of electors on election days" referred to in chapter 213, Laws of 1911. *State ex rel. Miller v. Flaherty*, 23 N. D. 313, 41 L.R.A.(N.S.) 132, 136 N. W. 76.

§ 1092. Registry list in new precinct. In case any election precinct shall be formed by the organization of a new precinct or by division of any village, ward or precinct, or the incorporation of a city or village, the judges or the inspector of elections in the new precinct thus formed, may make a registry of electors on the day prescribed by this article in such manner as a majority of them may direct, and for this purpose they may make a list or cause to be made a certified copy of the poll list or lists of the precinct or precincts in which such new precinct was situated, or they may dispense with such list and proceed to make a register of electors from the best means at their command. Such lists shall only embrace the names of such persons as are known to them to be electors in their precinct or proved to be such by the oath of an elector whose name has already been entered upon such register, or by the oath of the applicant; and such list shall be preserved and a copy posted up as prescribed in the preceding section and shall be revised and corrected in the same manner as other lists are corrected. [R. C. 1905, § 734; 1881, ch. 122, § 3; R. C. 1895, § 609.]

§ 1093. Board of registration, second meeting. Such boards shall again meet on Tuesday of the week preceding such election in their respective election precincts at the place designated for holding the polls for the purpose of revising, correcting and completing such lists, and for this purpose they shall meet at eight o'clock a. m. and remain in session until eight o'clock p. m. [R. C. 1905, § 735; 1881, ch. 122, § 4; R. C. 1899, § 610.]

§ 1094. Proceedings of board to be public. The proceedings of such board shall be open, and all persons residing and entitled to vote in such precincts shall be entitled to be heard by such board in relation to corrections or additions to such register, and the judges or the inspector are empowered to administer oaths for this purpose. One of the lists so kept by the judges or inspector as aforesaid shall be used by them on the day of making corrections or additions for the purpose of completing the registry of such precinct. [R. C. 1905, § 736; 1881, ch. 122, § 6; R. C. 1899, § 611.]

§ 1095. Registry list to be revised. It shall be the duty of such board at its meeting for revising and correcting such lists to erase therefrom the name of any person inserted therein who shall be proved by the oath of two legal voters of such precinct to the satisfaction of such board to be nonresidents of such precinct or otherwise not entitled to vote therein at the election then next to be held. Any elector residing in such precinct and entitled to vote therein may appear before such board and require his name to be recorded in such list. Any person requiring his name to be recorded shall make the same statement as to street and number thereof and where he resides which is required by the provisions of this article of persons offering their votes at the polls, and shall be subject to the same penalties for refusing to give such information or for falsely giving the same, and shall also be subject to challenge either by the judges or the inspector or by any elector whose name appears on such list, and the same oath may be administered by the judges or inspector or other duly authorized person as is provided in case of persons offering to vote at an election; and in case no challenge is made to any person requiring his name to be registered or in case of challenge, if such person makes oath as aforesaid, then the name of any such person shall be added to such list. [R. C. 1905, § 737; 1881, ch. 122, § 7; R. C. 1899, § 612.]

Good faith as affecting criminal responsibility for illegal registration. 37 L.R.A. (N.S.) 1177.

§ 1096. Receiving vote from person not on registry list. After such lists shall have been fully completed such board shall within two days cause two copies of the same to be made, each of which shall be certified by it to be a correct list of the qualified electors of the precinct so far as known, which list the judges or inspector shall carefully keep and preserve for use on election day; and at the opening of the polls the judges or inspector shall designate two of their number to check the name of each voter voting in

such precinct whose name is on the register. No vote shall be received at any election in this state if the name of the person offering such vote is not on the register, unless such person shall furnish to the judges of election his affidavit, stating therein that he is a resident of such precinct, giving his place of residence and length of time he has resided there, and also prove by the oath of a householder and registered voter of the precinct that he knows such person to be a resident therein, giving his place of residence. Such oath may be administered by the inspector or one of the judges of election, or any other person authorized to administer oaths, but no person shall receive any compensation for administering such oath. Such oath shall be preserved and filed by the judges of election. Any person may be challenged and the same oath required as is now or hereafter may be prescribed by law. Provided, that nothing herein contained shall be construed as rendering void the vote of any duly qualified elector whose vote has been received contrary to the provisions of this section; but the person claiming the benefit of such vote in any action or judicial proceeding shall have the burden of establishing the fact that such vote was cast by a duly qualified elector. [1911, ch. 128; R. C. 1905, § 738; 1881, ch. 122, § 8; R. C. 1899, § 613.]

Votes of nonregistered voters who furnish their affidavits must be received and counted.

Power v. Hamilton, 22 N. D. 177, 132 N. W. 664.

Votes received in violation of statute are invalid, as statute is mandatory. *Fitzmaurice v. Willis*, 20 N. D. 372, 127 N. W. 95.

Oath may be taken giving new voter right to vote after return of enrollment books to auditor, where such voter reaches age of majority after such return. *State ex rel. Miller v. Flaherty*, 23 N. D. 313, 41 L.R.A. (N.S.) 132, 136 N. W. 76.

Registration as condition of right to vote. 25 L.R.A. 480.

Power of the state to require and to prescribe mode of proof of registration. 28 Am. St. Rep. 260.

§ 1097. Duty of clerks of election. The clerks of election in each precinct shall enter on the poll list kept by them in columns prepared for that purpose, opposite the name of each person voting, the same statement or minute heretofore required of the board in making the registry; but such entry shall not be made by them if the register correctly contains the name and residence of such voter; and in all cases such clerk shall enter in a column opposite the name of each person not registered the words "not registered." And the clerks in case the name of such voter is not registered shall enter in the appropriate columns of the poll list the name and residence as in other cases. Any person making a false statement as to his residence or dwelling place shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred dollars nor more than five hundred dollars, or imprisonment in the penitentiary not exceeding two years, at the discretion of the court. [R. C. 1905, § 739; 1881, ch. 122, § 9; R. C. 1895, § 614.]

§ 1098. Register must be filed. Within three days after the canvass of the votes the register so kept and checked as aforesaid shall be filed with the county auditor of the county in which such precinct is situated, and shall be retained and carefully preserved therein as a public record. [R. C. 1905, § 740; 1881, ch. 122, § 10; R. C. 1899, § 615.]

§ 1099. Registers to remain public record. Such registers shall at all times be open to public inspection without charge. [R. C. 1905, § 741; 1881, ch. 122, § 11; R. C. 1895, § 616.]

§ 1100. Compensation of members of board of registry. The members of the board of registry shall receive the same compensation as is now or may hereafter be allowed by law, not to exceed two dollars per day. [R. C. 1905, § 742; 1881, ch. 122, § 12; R. C. 1899, § 617.]

§ 1101. Board has power to preserve order. The members of such board shall have and exercise the same powers in preserving order at their meetings under this article as are given to judges of election for preserving order on election day, and vacancies may be filled in such board in the same manner

as vacancies of judges are now filled at elections. [R. C. 1905, § 743; 1881, ch. 122, § 13; R. C. 1899, § 618.]

§ 1102. Penalty for registering in more than one precinct. Any person who shall cause his name to be registered in more than one election precinct, or who shall cause his name to be registered knowing that he is not a qualified voter in the precinct where such registry is made, or who shall falsely personate any registered voter, and any person aiding or abetting any person in any manner in either of such acts, shall be punished for each and every offense by imprisonment in the penitentiary for not less than two nor more than five years. If any member or officer of such board shall willfully violate any of the provisions of this article, or be guilty of any fraud in the execution of the duties of his office, he shall be punished by imprisonment in the penitentiary for a period not exceeding two years. [R. C. 1905, § 744; 1881, ch. 122, § 14; R. C. 1899, § 619.]

Good faith as affecting criminal responsibility for illegal registration. 37 L.R.A. (N.S.) 1177.

§ 1103. County auditor to provide blank registers and blanks. The county auditors shall provide the board of registry of the several precincts within their respective counties with the necessary blank registers and blanks at the expense of their respective counties. [R. C. 1905, § 745; 1887, ch. 48, § 1; R. C. 1899, § 620.]

§ 1104. What cities governed by this article. All cities and villages containing eight hundred or more inhabitants shall be subject to the provisions of this article. To determine the number of inhabitants the number of votes cast at the last preceding general election shall be multiplied by five. [R. C. 1905, § 746; 1899, ch. 133; R. C. 1899, § 621.]

CHAPTER 12.

EDUCATION.

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ARTICLE 1.—SUPERINTENDENT OF PUBLIC INSTRUCTION.

§ 1105. **Qualifications of, term of office.** There shall be elected by the qualified electors of the state at the time of choosing members of the legislative assembly, a superintendent of public instruction, who shall have attained the age of twenty-five years, who shall have the qualifications of an elector for that office, and be the holder of a teacher's certificate of the highest grade, issued in this state. He shall hold his office at the seat of government for the term of two years, commencing on the first Monday in January following his election, and until his successor is elected and qualified. [1911, ch. 266, § 1; R. C. 1905, § 747; 1890, ch. 62, § 1; R. C. 1899, § 622.]

Nonpartisan nomination and election of superintendent of public instruction, see sections 907-909.

Right of woman to be superintendent or other officer of schools. 38 L.R.A. 212.

§ 1106. **To preserve miscellaneous documents.** He shall preserve in his office all books, maps, charts, works on education, school reports and school laws of other states and cities, plans for school buildings and other articles of educational interest and value which may come into his possession as such officer, and at the expiration of his term he shall deliver them together with the reports, statements, records and archives of his office to his successor. [1911, ch. 266, § 2; R. C. 1905, § 748; 1890, ch. 62, § 2; R. C. 1899, § 623.]

§ 1107. **Supervision of schools.** He shall have the general supervision of the public schools of the state and shall be ex officio a member of the board of university and school lands and of the normal school board of the state. [1911, ch. 266, § 3; R. C. 1905, § 749; 1890, ch. 62, § 3; 1891, ch. 56, § 1; R. C. 1899, § 624.]

§ 1108. **To furnish school supplies, blanks, etc.** He shall prepare, cause to be printed and furnished to the proper officers or persons all district clerks' record books and warrant books, school treasurers' record books, school registers, reports, statements, notices and returns needed or required to be used in the schools or by the school officers of the state. He shall prepare and furnish to school officers, through the county superintendents, lists of publications approved by him as suitable for district libraries; such lists shall contain also the lowest price at which each publication can be purchased and such other information relative to the purchase of district libraries as he may deem requisite. [1911, ch. 266, § 4; R. C. 1905, § 750; 1890, ch. 62, § 4; 1891, ch. 56, § 2; 1889, ch. 81; R. C. 1899, § 625.]

§ 1109. **Prescribe course of study.** He shall prepare and prescribe a course of study for all the common schools of the state. [1911, ch. 266, § 5; R. C. 1905, § 752; 1890, ch. 62, § 6; R. C. 1899, § 627.]

Power of legislature to prescribe subjects to be taught in public schools. 47 L.R.A. (N.S.) 200.

§ 1110. **Advise county superintendents.** He shall counsel with and advise county superintendents and boards of education in special or independent

school districts upon all matters involving the welfare of schools and he shall, when requested, give them written answers to all questions concerning the school law. He shall decide all appeals from the decision of the county superintendents and may for such decisions require affidavits, or verified statements or sworn testimony as to the facts in issue. He shall prescribe and cause to be enforced, rules of practice and regulations pertaining to the hearing and determination of appeals and necessary for carrying into effect the school laws of the state. [1911, ch. 266, § 6; R. C. 1905, § 754; 1890, ch. 62, § 8; 1891, ch. 56, § 4; R. C. 1899, § 629.]

Report by superintendent, as privileged communication. 5 L.R.A.(N.S.) 164.

Privilege of school superintendent or other officer in reporting to school authorities on character of teacher. 30 L.R.A.(N.S.) 200.

§ 1111. Conference with county superintendents. He shall meet with any or all of the county superintendents of the state at such time and place as he shall appoint, giving them due notice of such meeting, and it shall be their duty to attend such meetings. The object of such meetings shall be to accumulate valuable facts relative to schools, to compare views, to discuss principles, to hear discussions and suggestions relative to the examinations and qualifications of teachers, methods of instruction, text books, institutes, visitation of schools and other matters relating to the public schools. [1911, ch. 266, § 7; R. C. 1905, § 757; 1890, ch. 62, § 11; R. C. 1895, § 632.]

§ 1112. Rules for teachers' institutes. He shall prescribe rules and regulations for the holding of teachers' institutes and teachers' training schools, and after counseling and advising with the county superintendent shall appoint conductors and assistants therefor. He shall prescribe the course of instruction for teachers' institutes and for teachers' training schools. [1911, ch. 266, § 8; R. C. 1905, § 753; 1890, ch. 62, § 7; 1891, ch. 56, § 3; 1897, ch. 75; R. C. 1899, § 628.]

§ 1113. To assist at teachers' institutes. He shall when practicable, attend and assist at teachers' institutes and aid and encourage generally, teachers in qualifying themselves for the successful discharge of their duties; he shall labor faithfully in all practicable ways for the welfare of the public schools of the state, and shall perform such other duties as shall be required of him by law. [1911, ch. 266, § 9; R. C. 1905, § 9; 1890, ch. 62, § 13; R. C. 1899, § 634.]

§ 1114. Record of official acts. He shall keep a complete record of all his official acts and shall file in his office all appeals and the papers pertaining thereto. [1911, ch. 266, § 10; R. C. 1905, § 755; 1890, ch. 62, § 9; R. C. 1899, § 630.]

§ 1115. Seal. He shall provide and keep a seal by which all his official acts may be authenticated. [1911, ch. 266, § 11; R. C. 1905, § 758; 1890, ch. 62, § 12; R. C. 1895, § 623.]

§ 1116. Biennial report, what to contain. He shall, on or before the first day of November preceding the biennial session of the legislative assembly, make and transmit to the governor a report showing:

1. The number of school districts, schools, teachers employed and pupils taught therein and the attendance of pupils and studies pursued by them.

2. The financial condition of the schools, their receipts and expenditures, value of school houses and property, cost of tuition and salary of teachers.

3. The condition, educational and financial, of the normal and higher institutions connected with the school system of the state and as far as it can be ascertained, of the private schools, academies and colleges of the state.

4. Such general matters, information and recommendations relating to the educational interests of the state, as he may deem important. [1911, ch. 266, § 12; R. C. 1905, § 760; 1890, ch. 62, § 14; R. C. 1895, § 635.]

As to the time for making reports to the governor and the contents thereof, see sections 95, 97, 98, 633.

§ 1117. Reports to be printed. Three thousand copies of the report of the superintendent of public instruction shall be printed biennially in the month of December preceding the session of the legislative assembly. One copy shall be furnished to each of the members of the legislative assembly, five to each state educational institution, one copy to each county superintendent of the state, one copy to the president of each school board, one copy to each state officer, one copy to each state and territorial superintendent, and twenty copies shall be filed in the office of the superintendent of public instruction and ten copies in the state library. Copies may be distributed among the various colleges, universities and libraries of the United States. [1911, ch. 266, § 13; R. C. 1905, § 761; 1897, ch. 75; R. C. 1899, § 636.]

§ 1118. School laws to be printed. He shall in the year 1911, and every four years thereafter, cause to be printed, the school laws of the state, with such notes and decisions thereon as may seem to him advisable, and shall furnish them through the office of the county superintendent of schools, to the school officers of the state, and to public libraries within the state. At the close of any biennial session of the legislature he shall publish in pamphlet form the laws pertaining to education enacted at that session and shall distribute them as provided for the distribution of the school laws. [1911, ch. 266, § 14; R. C. 1905, § 756; 1890, ch. 62, § 10; R. C. 1899, § 631.]

§ 1119. Publication of proceedings of educational association. The state superintendent of public instruction is hereby authorized and required to publish annually, as public matter, not to exceed one thousand five hundred copies of the proceedings of the North Dakota Educational Association, the same to be distributed throughout the state by the department of public instruction; provided, that a copy of the proceedings of said association shall be filed by the secretary or other officer of said association with the superintendent of public instruction, on or before the first day of February of each year. [1911, ch. 266, § 15; R. C. 1905, § 762; 1903, ch. 87.]

§ 1120. Salary. Traveling expenses. He shall receive an annual salary of three thousand dollars and in addition thereto his actual and necessary traveling expenses incurred in the discharge of his official duties, not exceeding one thousand two hundred dollars in any one year, such expenses to be paid monthly on the warrant of the state auditor upon his filing with such auditor an itemized statement of such expenses properly verified. The state superintendent may appoint a deputy for whose official acts he shall be responsible. He may also appoint an assistant whose duty shall be to assist the state superintendent in visiting schools, institutes, attending school officers' meetings and to perform such other duties as the state superintendent may direct. The state superintendent may also appoint such clerks as shall be necessary in carrying on the work of his department. [1911, ch. 266, § 16; R. C. 1905, § 763; 1890, ch. 62, § 16; R. C. 1899, § 637; 1903, ch. 192.]

Laws 1909, ch. 216, § 4, provided that "the * * * superintendent of public instruction * * * shall * * * receive an annual salary of three thousand dollars, and shall reside at the capital of the state." Appropriation for clerk hire, see section 653f.

ARTICLE 2.—COUNTY SUPERINTENDENT OF SCHOOLS.

§ 1121. Election, term of office. There shall be elected in each organized county, at the same time other county officers are elected, a county superintendent of schools, whose term of office shall be two years, commencing on the first Monday in January following his election, and until his successor is elected and qualified. [1911, ch. 266, § 17; R. C. 1905, § 764; 1897, ch. 77; R. C. 1899, § 638.]

Nonpartisan nomination and election of county superintendent of schools, see sections 907-909.

Provides for term of two years for county superintendent and any additional time which may elapse before qualification of successor. *State v. Fabrick*, 16 N. D. 94, 112 N. W. 74.

Word "elected" as used in this section signifies election of qualified successor to incumbent. *Jenness v. Clark*, 21 N. D. 150, 129 N. W. 357, Ann. Cas. 1913B, 675.

§ 1122. Qualifications of. No person shall be deemed qualified for the office of county superintendent in any county, who is not a graduate of some reputable normal school or higher institution of learning, or does not hold at least a second grade professional certificate, and who has not had at least two years' successful experience in teaching, one year of which shall have been in this state. [1911, ch. 266, § 18.]

County auditor will not be prohibited from placing upon ballot name of one who was nominated as candidate for office of superintendent of schools, at suit of elector of his party on ground that such candidate would be ineligible. *State ex rel. Ochsenreiter v. Blegen*, 26 S. D. 106, 128 N. W. 488.

§ 1123. General duties. The county superintendent of schools shall have the general superintendence of the common schools in his county, except those in districts which employ a city superintendent of schools. [1911, ch. 266, § 19; R. C. 1905, § 765; 1890, ch. 62, § 20; R. C. 1899, § 639.]

Schools in special districts are not to be considered in computing salary of county superintendents. *Dickey County v. Hicks*, 14 N. D. 73, 103 N. W. 423.

§ 1124. General duties, visits. He shall visit each common school at least once each year and carefully observe the condition of the school, the mental and moral instruction given, the methods of teaching employed by the teacher, the teachers' ability, and the progress of the pupils. He shall advise and direct the teachers in regard to the instruction, classification, government and discipline of the school and the course of study. He shall keep a record of such visits and by memoranda indicate his judgment of the teachers' ability to teach and govern, and the condition and progress of the school, which shall be open to inspection by any school director. [1911, ch. 266, § 20; R. C. 1905, § 766; 1890, ch. 62, § 21; R. C. 1899, § 640.]

§ 1125. General duties, blanks, teachers' meetings. He shall carry into effect all instructions of the superintendent of public instruction given within his authority. He shall distribute to the proper officers and to teachers all blanks furnished him by such superintendent, and needed by such officers and teachers. Acting under the instructions of the superintendent of public instruction, he may convene the teachers of his county not to exceed one Saturday in each month during which the public schools are in progress, or if the distance is too great he may convene the teachers of two or more districts in each of the several portions of his county in county or district meetings, for professional instruction and for such other work as may be approved by the superintendent of public instruction. Each teacher shall attend the full sessions of such meetings when required, and participate in the exercise thereof, or forfeit one day's wages for each day's absence therefrom, unless such absence is occasioned by sickness of the teacher or others to whom his attention is due; but when, on account of distance or otherwise, it would impose a hardship upon any teacher to attend, or would cause such teacher to neglect his school, the county superintendent may excuse such teacher from attendance. [1911, ch. 266, § 21; R. C. 1905, § 767; 1897, ch. 75; R. C. 1899, § 641.]

§ 1126. Meetings with school officers. He may arrange for meetings with school officers at designated times and places, due notice of which has been given, for the purpose of inspecting the district records and instructing in the manner of keeping the same, and of preparing the reports of district officers. He shall visit the officers of the several school districts as often as may be necessary to secure the correct keeping of the records. [1911, ch. 266, § 22; R. C. 1905, § 769; 1890, ch. 62, § 24; 1891, ch. 56, § 6; R. C. 1899, § 643; 1901, ch. 84; 1903, ch. 86, § 1.]

§ 1127. Annual meeting of school officers. He shall convene the members and clerks of the school boards in his county, or such representatives of the school officers of each district as the president or members of the school boards

may appoint, in case he or they cannot attend personally, for the purpose of discussing plans and methods for the improvement and general care of the schools; provided, further, such general meeting shall not occur more than once in each year. [1911, ch. 266, § 23; R. C. 1905, § 769; 1890, ch. 62, § 24; 1891, ch. 56, § 6; R. C. 1899, § 643; 1901, ch. 84; 1903, ch. 86, § 1.]

§ 1128. **Record of official acts.** He shall keep a record of all his official acts, and shall preserve all books, maps, charts and apparatus sent him as a school officer, or belonging to his office. He shall file all reports and statements from teachers and school boards and shall turn them over to his successors in office. He shall be provided with a seal by which his official acts may be authenticated. [1911, ch. 266, § 24; R. C. 1905, § 768; 1897, ch. 75; R. C. 1899, § 642.]

§ 1129. **Prepare maps.** He shall, on or before the first day of April of each year, prepare and furnish to the several assessors of the county a correct sectional map of their respective districts, showing the boundaries and names or numbers of all school districts therein. [1911, ch. 266, § 25; R. C. 1905, § 769; 1890, ch. 62, § 24; 1891, ch. 56, § 6; R. C. 1899, § 643; 1901, ch. 84; 1903, ch. 86, § 1.]

§ 1130. **File lists.** Immediately after the July meeting of the school boards, the county superintendent shall file with the county auditor and the county treasurer a list of the names of all persons chosen as presidents and clerks of the several school boards in his county. [1911, ch. 266, § 26.]

§ 1131. **Apportionment of state tuition fund.** He shall make apportionment of the state tuition fund among the school corporations of the county, as provided in this chapter. [1911, ch. 266, § 27; R. C. 1905, § 773; 1890, ch. 62, § 28; R. C. 1899, § 647.]

§ 1132. **To decide questions of controversy.** He shall decide all matters in controversy arising in his county in the administration of the school law or appealed to him from the decision of school officers or boards. An appeal may be taken from his decision to the superintendent of public instruction, in which case a full written statement of the facts, together with the testimony and his decision in the case shall be certified to the superintendent of public instruction for his decision in the matter, which decision shall be final, subject to adjudication or the proper legal remedies in the courts. [1911, ch. 266, § 29; R. C. 1905, § 770; 1890, ch. 62, § 25; R. C. 1899, § 644.]

§ 1133. **Power to administer oaths.** He shall have power to administer the oath of office to all subordinate school officers, and to witnesses and to examine them under oath in all controversies pending before him arising in the administration of the school laws; but he shall not receive pay for administering such oath. [1911, ch. 266, § 30; R. C. 1905, § 771; 1890, ch. 62, § 26; R. C. 1895, § 645.]

§ 1134. **Report delinquent teachers, when.** He shall see to it that the pupils are instructed in the several branches of study required by law to be taught in the schools, as far as they are qualified to pursue them. If any teacher neglects or refuses to give instruction as required by law in physiology and hygiene and the nature and effect of alcoholic drinks and other narcotics, the county superintendent shall promptly notify the secretary of the board of examiners. [1911, ch. 266, § 31; R. C. 1905, § 774; 1890, ch. 62, § 29; R. C. 1899, § 648; 1905, ch. 106, § 1.]

§ 1135. **Report to state superintendent.** He shall, on or before the fifteenth day of September in each year, make and transmit a report to the superintendent of public instruction, containing such statistics, items and statements relative to the schools of the county, as may be required by such superintendent. Such report shall be made upon and conform to the blanks furnished by the superintendent of public instruction for that purpose. He shall not be paid his salary for the last month of his official year until he presents to the county commissioners the receipt of the superintendent of public instruction for such annual report. [1911, ch. 266, § 32; R. C. 1905, § 775; 1897, ch. 75; R. C. 1899, § 649.]

§ 1136. Deputies. How appointed. Salary. In counties having fifty or more schools, the county superintendent may appoint an office deputy, for whose acts as such he shall be responsible, which deputy shall be entitled to a salary equal to fifty per cent of the county superintendent's salary, provided, that in counties having one hundred and fifty or more schools, the county superintendent shall be allowed one deputy for each one hundred schools or major fraction thereof under the supervision of said superintendent. Such deputies shall be for the purpose of assisting the county superintendent in visiting schools and in the general supervision of the educational work of the county. They shall possess the qualifications of the county superintendent of schools specified in section 1122 of this chapter and shall each receive a salary of two hundred (200) dollars per annum in excess of that paid to the office deputy. [1911, ch. 266, § 33; R. C. 1905, § 777; 1897, ch. 75; R. C. 1899, § 652; 1903, ch. 88; 1905, ch. 100, § 2.]

Superintendents not custodians of funds or authorized to audit accounts of clerks paid therefrom. *State ex rel. Wiles v. Heinrich*, 11 N. D. 31, 87 N. W. 734.

§ 1137. Salary and expenses. The county superintendent of schools shall receive an annual salary equal to that paid to the register of deeds of his county, which salary shall be paid monthly on the warrant of the county auditor on the county treasurer, and in addition thereto he shall receive ten cents per mile for the distance actually and necessarily traveled by him or his field deputy in the discharge of his duties within the county and in attendance at meetings of county superintendents called by the superintendent of public instruction as provided by law. He shall at the end of every three months make and furnish to the county commissioners an itemized statement subscribed and sworn to of the distance so traveled in the discharge of his duties, which shall be audited and ordered paid by the board of county commissioners. [1911, ch. 266, § 34; R. C. 1905, § 777; 1897, ch. 75; R. C. 1899, § 652; 1903, ch. 88; 1905, ch. 100, § 2.]

Where the auditor has a discretion to exercise in his official duties, mandamus will not lie to cause him to act. *State ex rel. Wiles v. Albright*, 11 N. D. 22, 88 N. W. 734.

County superintendents-compensation. *Wiles v. McIntosh County*, 10 N. D. 594, 88 N. W. 710.

County auditor is vested with discretion in issuing warrants for salaries of county officers. *State ex rel. Wiles v. Albright*, 11 N. D. 22, 88 N. W. 729.

Appropriation to create fund to pay clerks in county superintendent's office. *State ex rel. Wiles v. Heinrich*, 11 N. D. 31, 88 N. W. 734.

Schools in special districts are not to be considered in computing salary of county superintendents. *Dickey County v. Hicks*, 14 N. D. 73, 103 N. W. 423.

§ 1138. Office postage and stationery. He may provide for himself a suitable office for the transaction of official business when not provided therewith by the county commissioners, and such commissioners shall audit and pay his reasonable accounts for the use and furniture of such office. They shall also furnish him with all necessary books, stationery and postage. [1911, ch. 266, § 35; R. C. 1905, § 776; 1897, ch. 75; R. C. 1899, § 651.]

§ 1139. Shall not absent himself from county. No county superintendent of schools shall engage in any profession or occupation, nor shall he absent himself from the county or district for which he is elected, to engage in any occupation, profession or pursuit during the term for which he is elected for such time and in such manner as to interfere with the proper discharge of his duties as county superintendent of schools. [1911, ch. 266, § 36; R. C. 1905, § 780; 1895, ch. 46, § 2; R. C. 1899, § 655.]

ARTICLE 3.—COMMON SCHOOL DISTRICTS.

§ 1140. Each school district a corporation. Each and every school district in this state now legally organized or which shall be organized hereafter shall be and is hereby constituted a public corporation to be known and designated as school district No. of County, State of North Dakota, with its proper name or number inserted in the blank

space provided and with the name of the county inserted in the blank before the word county; and in its own proper name, or number, as such corporation it may sue and be sued, contract, and be contracted with and may acquire, purchase, hold and use personal and real property for school purposes or for the purposes mentioned in this act [§§ 1105-1422] and may sell and dispose of the same. [1911, ch. 266, § 37; R. C. 1905, § 784; 1890, ch. 62, § 35; R. C. 1899, § 658.]

R. C. 1905, sections 784-786 (for which sections 1140 and 1141 herein have been substituted) discussed and construed in *State ex rel. Laird v. Gang*, 10 N. D. 331, 87 N. W. 5.

Liability of school district or school corporation to action for damages from negligence. 37 L.R.A. 301.

Liability of district on paper executed by school district. 21 L.R.A. (N.S.) 1078.

§ 1141. What territory may be organized into district school corporations.

The county commissioners of each county in this state shall organize into a school district any territory not, at the taking effect of this act [sections 1105-1422], already organized into a school district upon being petitioned so to do by at least one-third of the residents of such territory having the care and custody of any child of school age; provided, such territory shall consist of not less than one congressional township and shall have at least twelve thousand dollars in taxable property and at least ten children of school age residing therein. [1911, ch. 266, § 38; R. C. 1905, § 786; 1899, ch. 143; R. C. 1899, § 660.]

Proviso as to cities of eight hundred inhabitants not constitutional. All laws required to have uniform operation. *Plummer v. Boraheim*, 10 N. D. 565, 80 N. W. 690.

Mandamus will lie to compel school board to maintain school, or provide transportation for children to some other school. *Swenehart v. Strathman*, 12 S. D. 313, 81 N. W. 505.

Parol evidence admissible to show that contract signed by members of school board was delivered upon unfulfilled conditions. *Manufacturers' Fur Co. v. Kremer*, 7 S. D. 463, 64 N. W. 528.

Presumed in absence of a showing to contrary, that a board was authorized to change location of building. *Burkhardt v. School Twp.*, 9 S. D. 315, 69 N. W. 16.

Organization of civil township in 1906 did not have effect of altering boundary lines of general school districts. *State ex rel. Nicholson v. Ferguson*, 23 N. D. 153, 134 N. W. 872.

Duty of county commissioners and county superintendent to consolidate school districts on receipt of proper petition is ministerial and may be enforced by mandamus. *Stephens v. Jones*, 24 S. D. 97, 123 N. W. 705.

Action of county commissioners and county superintendent of schools, in granting petition for segregation of territory of school district, and organization of new district operated ipso facto to create distinct school corporation. *Farley v. Lawton School Dist.*, 23 N. D. 565, 137 N. W. 821.

§ 1142. When school corporations may be divided and attached to other districts. If a portion of any such school district having not more than ten children of school age residing therein is separated from the other portion of such district by any natural obstacle which practically prevents such children from attending school in such other portion, the county commissioners of the county may annex such portion so separated, to an adjoining school district, and the portion so annexed shall constitute a part of such adjacent school district. If such adjacent district lies in another county, the county commissioners of the two counties may jointly make such annexation; provided, that whenever portions of a school district lie in different civil townships there may be created therefrom two or more district school districts, when in the judgment of such commissioners and the county superintendent, such change can be made without detriment to the school or to the pupils therein, and the division can be made by following the boundary line or lines of congressional townships, or the meander lines of the government survey. [1911, ch. 266, § 39; R. C. 1905, § 788; 1890, ch. 62, § 39; R. C. 1899, § 662; 1901, ch. 189.]

New school district formed from part of an old one not liable for a bonded indebtedness of old district. *Livingston v. School Dist.*, 9 S. D. 102, 68 N. W. 167; *Fordham School Township v. Darlington School Twp.*, 6 S. D. 489, 61 N. W. 1128.

County commissioners and superintendent may create new districts. *School Dist. No. 74 v. Board of Com.*, 9 S. D. 291, 68 N. W. 746; *State v. Gang*, 16 N. D. 331, 87 N. W. 5.

Liability of territory annexed to school district to pay proportionate share of existing debts. 27 L.R.A.(N.S.) 1147.

Effect of changing boundaries of school district on rights in real property. 26 L.R.A.(N.S.) 486.

Who may maintain quo warranto to test validity of organization of school district. 21 L.R.A.(N.S.) 685.

§ 1143. Annexation of school districts. If a town or village not organized into a special district is divided by a civil township line or if such town or village is divided by any county line, the county commissioners of such county, or the county commissioners of such adjacent counties acting in joint session, as the case may be, may, when petitioned so to do by a majority of the voters of each part of said town or village, annex one part of such town or village to the adjacent school district which includes the other part of such town or village and the part so annexed shall constitute a portion of such adjacent district. [1911, ch. 266, § 40; R. C. 1905, § 789; 1890, ch. 62, § 40; 1891, ch. 56, § 9; R. C. 1899, § 663.]

Who may petition in relation to school matters. 43 L.R.A.(N.S.) 293.

Right to withdraw name from petition. 11 L.R.A.(N.S.) 372.

§ 1144. When civil townships may consolidate into school districts. In any county in this state, if a civil township, having less than fifteen persons of school age residing therein, by reason of the irregular course of natural boundary, contains less than twelve square miles of territory, it shall constitute a portion of the adjacent school district with which it has the longest common boundary line. [1911, ch. 266, § 41; R. C. 1905, § 790; 1890, ch. 62, § 42; R. C. 1899, § 664.]

§ 1145. School districts. How named. Each school district constituted or formed under the provisions of this article, shall be designated a school district as distinguished from a civil township or congressional township, and shall be named as follows: Each school district which consists of a civil township shall be named "..... School District of County, State of North Dakota," with the name of the civil township which constitutes the districts inserted in the blank before the word "school," and the name of the county in which it is situated inserted before the word "county." Each school district which consists of territory not organized into a civil township, but which has been named by a distinctive name shall have such distinctive name inserted in the blank before the word "school." Each school district consisting of territory not organized into a civil township which has no distinctive name shall be named "School District No. of County, State of North Dakota," with its school purposes under the district system at the taking effect of this act [§§ 1105-1422], the several school districts shall retain and be known by the number which they have respectively at the time of the taking effect of this act and any school district hereafter formed in any such county shall be known by the number next higher than that of the highest pre-existing numbered district. [1911, ch. 266, § 42; R. C. 1905, § 791; 1890, ch. 62, § 43; R. C. 1899, § 665.]

§ 1146. Boundaries, how changed. The board of county commissioners and county superintendent of schools may change the boundaries of any school district or consolidate two or more districts already organized if in their judgment such change is desirable or necessary upon being petitioned so to do by a majority of the school voters residing in the districts whose boundaries will be affected by such change. [1911, ch. 266, § 43; R. C. 1905, § 793; 1897, ch. 75; R. C. 1899, § 667; 1903, ch. 174.]

Action of county commissioners and county superintendent of schools, in granting petition for segregation of territory of school district, and organization of new district, operated ipso facto to create distinct school corporation. *Farley v. Lawton School Dist.*, 23 N. D. 565, 137 N. W. 821.

Remonstrance signed by school officers of district affected, acknowledging receipt of a notice of proposed change in boundaries, is prima facie evidence that notice was duly given. *School Dist. No. 56 v. School Dist. No. 27*, 9 S. D. 336, 69 N. W. 17.

Territory may be detached from independent school district in country and attached to another school district in adjoining county. Independent School Dist. No. 2 v. District No. 37, 20 S. D. 349, 106 N. W. 302.

Who may petition in relation to school matters. 43 L.R.A.(N.S.) 293.

Right to withdraw name from petition. 11 L.R.A.(N.S.) 372.

§ 1147. New common school districts. How organized. The board of county commissioners and county superintendent may organize a new school district from portions of school districts already organized, if in their judgment the organization of a new district is desirable and necessary, upon being petitioned so to do by at least a majority of the school voters residing in the districts, whose boundaries will be affected by the organization of a new district, and by at least three-fourths of the residents of the territory to be included in the new district. No school district shall be organized under the provisions of this section which shall have less than twenty thousand dollars assessed valuation and shall have residing therein less than twelve children of school age; provided, that when the districts from portions of which such new district is sought to be organized, lie in two or more adjoining counties, such new district shall be organized by the concurrent action of the boards of county commissioners and county superintendents of such counties; provided, further, that action on such organization shall be taken only at the July meeting of the county commissioners when petitioned by a majority of the voters residing in each of the districts to be affected. [1911, ch. 266, § 44.]

§ 1148. Public notice given. Whenever the board of county commissioners and county superintendent of schools shall be petitioned to organize a new school district or to change the boundaries of districts already organized, the county superintendent shall give public notice, for at least thirty days, to the residents of the districts whose boundaries will be affected by the organization of the new district, by mailing a notice to that effect to each school officer of such districts, and by publishing the same in the official newspaper of the county published nearest that district. [1911, ch. 266, § 45.]

§ 1149. Plats of school districts prepared by county auditor. Record. The county auditor shall prepare a record or plat of his county showing the boundaries, name or number of school districts in said county which record shall remain on file in his office. Whenever the boundaries of a school district are changed or a new school district organized the county auditor shall make a record of the same. [1911, ch. 266, § 46; R. C. 1905, § 795; 1890, ch. 62, § 47; R. C. 1899, § 669.]

§ 1150. Legalizing irregularities. All school districts, whether duly and legally organized under the provisions of statute, or not, which for one year or more last past had a de facto organization, and also all school districts, whether duly and legally organized under the provisions of statute or not, which have heretofore attached or attempted to attach territory outside of the limits thereof and adjacent to such district, and now included in the territory comprising or exercising the powers of such school district, are hereby declared to be legally organized and are authorized to exercise all the functions of school districts which have been duly and legally organized as provided by statute, with the boundaries which they may have at the time of going into effect of this article, and all contracts and obligations of said districts and the acts of the officials thereof are hereby ratified and confirmed so far as to give them the same validity which they would have had if such districts had been legally organized. [1911, ch. 266, § 47; R. C. 1905, § 796; 1899, ch. 144; R. C. 1899, § 669a.]

ARTICLE 4.—ELECTION OF OFFICERS IN COMMON SCHOOL DISTRICTS.

§ 1151. Officers to be elected. On the first Tuesday in June of each year there shall be elected one school director for the term of three years and on the first Tuesday in June of each even numbered year a school treasurer for the term of two years. Such officers shall hold their respective offices from

the second Tuesday in July following their election for the number of years respectively for which they were elected, and until their successors are elected and qualified. At the first election for the organization of a new school district there shall be elected at large for such school district three directors, one to serve until the first annual election, one to serve until the second annual election thereafter and one to serve until the third annual election thereafter, and a school treasurer to serve until the annual election in the next even numbered year and until his successor is elected and qualified. [1911, ch. 266, § 48; R. C. 1905, § 797; 1890, ch. 62, § 48; R. C. 1895, § 670; 1905, ch. 104, § 1.]

Officers of school district as public officers. 17 L.R.A. 247.

§ 1152. Polling places, how established. Appointment of election officers. The county superintendent in each county shall, at least twenty-one days prior to the first election in the new district, fix and designate some polling place in each school district so located as to be convenient for the voters of such district, and shall appoint two persons to act as judges and two to act as clerks of the election of such school officers; such judges and clerks shall be qualified voters in their respective districts. The county superintendent shall notify in writing such judges and clerks of their appointment, and of the place fixed and designated as the polling place in their respective districts and shall furnish them with the necessary blanks and poll books for such election. He shall also furnish one of such clerks with three notices of such election specifying the time and place at which such election is to be held. The officers to be elected and term of each which notices such clerk shall post in three of the most public places in the district at least fourteen days prior to such election. The county superintendent shall fix the date and perform such other duties as devolve upon him by the provisions of this section for the first election in any school district hereafter formed under the provisions of this chapter, and such election shall be called by the county superintendent within thirty days after the formation of such school district. [1911, ch. 266, § 49; R. C. 1905, § 798; 1897, ch. 75; R. C. 1899, § 671.]

Action of county commissioners and county superintendent of schools, in granting petition for segregation of territory of school district and organization of new district, operated ipso facto to create distinct school corporation. *Farley v. Lawton School Dist.*, 23 N. D. 565, 137 N. W. 821.

§ 1153. Who qualified to vote or hold office. At any election of school officers in any school district in this state all persons who are qualified electors under the general laws of the state and all women twenty-one years of age having the necessary qualifications as to citizenship and residence required of male voters by law, shall be qualified voters and shall be eligible to the office of county superintendent of schools, school director, district treasurer, school district clerk, or member of the board of education, or may be judge or clerk of such election; provided, however, that the county superintendent shall possess the educational qualifications named in section 1122. [1911, ch. 266, § 50; R. C. 1905, § 799; 1890, ch. 62, § 50; R. C. 1899, § 672.]

Registry law as affecting right to vote applies only to males. *Wagar v. Prindeville*, 21 N. D. 245, 130 N. W. 224.

Right of women to vote in school election. 21 L.R.A. 662; 27 L.R.A. (N.S.) 522.

§ 1154. Hours polls open. At all elections for school district officers the polls shall be opened at two o'clock p. m. and closed at five o'clock p. m. [1911, ch. 266, § 51; R. C. 1905, § 800; 1890, ch. 62, § 52; R. C. 1899, § 673.]

§ 1155. Notice of annual election. At least fourteen days before the first Tuesday in June of each year the district school board of each school district shall designate one polling place as convenient as possible to the voters of such district at which such annual election shall be held, and shall cause notice of such election to be posted in at least three of the most public and conspicuous places within the district. Such notices shall be signed by the clerk or in his absence by the president of the district school board, and shall

state the time and place of holding such election, and the officers to be elected and their terms of office, and shall be substantially in the following form:

Notice is hereby given that on Tuesday, the day of June A. D. 19...., an election will be held at (here insert polling place) for the purpose of electing (here insert officers to be elected and term each is to serve) for School District No. or for (Here insert name of school district). The polls will be opened at two o'clock p. m. and closed at five o'clock p. m. of that day.

By order of School Board,

Signed.....

[1911, ch. 266, § 52; R. C. 1905, § 801; 1890, ch. 62, § 53; R. C. 1895, § 674; 1905, ch. 104, § 2.]

§ 1156. Judge's oath. At such annual election any two of the directors of the school district may act as judges and the clerk of the district school board and one other person to be chosen by the voters present at the opening of the polls, shall act as clerks. The voters present at the opening of the polls shall choose a person to fill any vacancy caused by the absence of either of such officers to act as judge or clerk of such election. Before opening the polls each of the judges and clerks of election shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will perform my duties as judge or clerk (as the case may be) according to law and the best of my ability." Such oath or affirmation may be administered by any officer authorized to administer oaths or by either of the judges or clerks. Any school officer elected and qualified under the provisions of this chapter [sections 1105-1422] is authorized and empowered to administer any oath or affirmation pertaining in any manner to school offices. [1911, ch. 266, § 53; R. C. 1905, § 802; 1890, ch. 62, § 54; R. C. 1899, § 675.]

§ 1157. Election, how conducted, canvass of votes. Such election shall be conducted and the votes canvassed as provided by law for general elections, except as otherwise provided in this chapter [sections 1105-1422]. Immediately after the polls are closed the judges shall proceed to count and canvass the votes for each person voted for at such election for any office, and the person receiving the highest number of votes for the office of director shall be declared elected. If the election results in a tie the district clerk shall immediately notify in writing the parties having received such tie votes, and a time shall be agreed upon by the parties, within three days after the election, at which the election shall be decided in the manner that may be agreed upon by the parties in the presence of the judges and clerks of election, and a record of the proceedings shall be made in the records of the district clerk. [1911, ch. 266, § 54; R. C. 1905, § 803; 1897, ch. 75; R. C. 1899, § 676.]

Decision of tie vote in the absence of statutory provisions. 47 L.R.A. 554.

§ 1158. Certificate of election. The clerk of the school district shall within five days after such election furnish each person elected to any district office, a written notice of his election and of his duty to take the oath of office as such officer on or before the second Tuesday in July following such election. He shall also forward to the county superintendent within ten days after such election, a certified list of all the officers elected thereat. [1911, ch. 266, § 55; R. C. 1905, § 804; 1890, ch. 62, § 56; R. C. 1895, § 677.]

§ 1159. Oath of office. Each person elected to the office of school director or district treasurer shall before entering upon the duties of his office take and subscribe the oath prescribed in section 211 of the constitution, which oath shall be filed with the clerk of the school district board. [1911, ch. 266, § 56; 1890, ch. 62, § 57; R. C. 1895, § 678.]

ARTICLE 5.— ORGANIZATION MEETINGS AND DUTIES OF COMMON SCHOOL OFFICERS.

§ 1160. **Organization, clerk.** The school board shall meet annually on the second Tuesday in July and organize by choosing one of the members president, and a competent person, not a member of the board, clerk, who shall hold office during the pleasure of the board. [1911, ch. 266, § 57; R. C. 1905, § 807; 1890, ch. 62, § 60; R. C. 1899, § 680.]

§ 1161. **District school board quorum.** The three school directors in each school district shall constitute the district school board. A majority of the board shall constitute a quorum and the agreement of a majority shall be necessary to the validity of any contract entered into by the board. [1911, ch. 266, § 58; R. C. 1905, § 806; 1890, ch. 62, § 59; R. C. 1899, § 679.]

§ 1162. **Meetings of board. Fees.** The board shall, on the second Tuesday in January, April, July and October of each year, hold regular meetings for the transaction of business at such hour and place as may be fixed by the board. A special meeting may be held upon the call of the president or the other two members. Written notice of the time and place of any special meeting shall be given to each member of the board at least forty-eight hours before the time of such meeting. Each member of the board shall be paid the sum of eight dollars per annum, less two dollars for each regular meeting which he fails to attend; provided, that in any common school district which contains a graded school of three or more departments the board shall hold regular meetings for the transaction of business on the second Tuesday of each month at such time and place as may be fixed by the board, and in such districts the members of the board shall receive a compensation of one dollar for each meeting attended; provided, further, the members and clerks receive ten cents a mile for the distance necessarily traveled in attending general meetings of school officers convened by the county superintendent and also a salary of two dollars, but the total sum of such salary and mileage shall not exceed seven dollars for each officer at any one meeting. [1911, ch. 266, § 59; R. C. 1905, § 808; 1890, ch. 62, § 61; R. C. 1899, § 681; 1901, ch. 84, § 2; 1903, ch. 86, § 2; 1905, ch. 102.]

Mandamus will not lie to control action of school officers in discretionary matters. *Heintz v. Moulton*, 7 S. D. 272, 64 N. W. 135.

§ 1163. **Duties of the president.** The president shall preside at all meetings of the board, and shall perform such duties as usually pertain to such office, and in accordance with the customary rules of order. In his absence a president pro tempore shall preside. The president shall perform such other duties as are prescribed in this chapter. [1911, ch. 266, § 60; R. C. 1905, § 809; 1897, ch. 62, § 62; R. C. 1899, § 682; 1901, ch. 84, § 3; 1903, ch. 86, § 3.]

§ 1164. **Duties of clerk. Compensation.** The clerk of the board shall keep an accurate record of all proceedings of the board, give or post all notices, make out all reports and statements and perform all other duties required by law or by the board. He shall receive such compensation as shall be fixed by the board, not less than ten dollars for one school and five dollars for each additional school in his district; provided, that such salary shall not exceed fifty dollars in any one year; provided, further, that the clerk shall receive such additional compensation for taking the annual school census as the board may allow. [1911, ch. 266, § 61; R. C. 1905, § 810; 1897, ch. 75; R. C. 1899, § 683.]

§ 1165. **Treasurer's bond. How approved. Vacancy. How filled.** The school treasurer shall on or before the second Tuesday in July following his election and before entering upon his duties, give a bond to the school district conditioned for the honest and faithful discharge of his duties and that he will render a true account of all funds and property that shall come into his hands and pay and deliver the same according to law. Such bonds shall be in such sum as may be fixed by the board but not less than double the sum to come into his hands in any one year as nearly as may be ascertained, which bond shall be signed by two or more sufficient sureties, to be approved by the

school board. In case the school board neglects or refuses to approve the bond of such treasurer and the sureties thereon, such treasurer may present the same to the county superintendent and serve notice thereof upon the board and due proof of such notice being made to the county superintendent, he shall, unless good cause for his delay appears, proceed to hear and determine the sufficiency of the bond and the sureties thereon, and may approve or disapprove the same as the facts warrant. In case of a failure to elect a successor to any school treasurer at the expiration of his term of office, the said treasurer holds over and he shall be required to give a new bond, within ten days after notice by the board. In case of a failure so to do, a vacancy shall be deemed to exist in said office and shall be filled as provided by law. In case a vacancy occurs in the office of the school treasurer, it shall be the duty of the county treasurer of the county wherein such school district is located, upon being notified by the county superintendent or clerk of such school district that such vacancy exists, to perform the duties of treasurer of such school district until the vacancy is duly filled. [1911, ch. 266, § 62; R. C. 1905, § 811; 1890, ch. 62, § 64; R. C. 1899, § 684.]

School treasurers must now be bonded in the state bonding department as required in section 193.

§ 1166. When additional bonds required. Whenever the amount in the hands of the treasurer or subject to his order exceeds two-thirds of the penal sum of his bond or when in the judgment of the board or of the county superintendent the security on such bond is impaired, the board or county superintendent shall require an additional bond. If the treasurer fails for twenty days to give such additional bond, the office shall be declared vacant and the vacancy shall be filled as provided by this chapter [section 1324 herein]. [1911, ch. 266, § 63; R. C. 1905, § 812; 1890, ch. 62, § 65; R. C. 1899, § 685.]

See note to section 1165.

§ 1167. Surety bonds. Premiums. How paid. Every person hereafter elected to the office of district treasurer within the state of North Dakota, shall be, and is, hereby required to give an official bond in a penal sum to be fixed by the board of directors, which bond shall not be in a less penal sum than double the amount of money likely to come into his hands in any one year, and such bond may by resolution require that such bond shall be executed by some responsible fidelity or surety company authorized and qualified to do business in the state of North Dakota, and subject to approval as provided by law; provided, further, if a surety bond is given it shall be for a sum fixed by the board of directors. The amount of premiums for such surety or fidelity bond shall be audited by the board of directors and paid out of the general fund of the district. [1911, ch. 266, § 63½; R. C. 1905, § 813; 1901, ch. 187.]

See note to section 1165.

§ 1168. School funds. How paid out. The school treasurer shall keep such account and make such reports as are required of him by law. He shall pay no money out of the funds in his hands except upon the warrant of the school board, signed by the president and countersigned by the clerk. He shall pay all warrants properly drawn and signed when presented, if there is any money in his hands or subject to his order for their payment. [1911, ch. 266, § 63½; R. C. 1905, § 814; 1890, ch. 62, § 66; 1891, ch. 56, § 11; R. C. 1895, § 686.]

§ 1169. Warrants to be endorsed when no funds to pay. When a school district warrant is presented to the district treasurer for payment and there is no money in his hands or subject to his order belonging to the proper fund for the payment of such warrants, he shall indorse on such warrant, "presented for payment this day of, 19.., and not paid for want of funds," and shall sign such indorsement and indorse the sum on the warrant and add "balance the part payment of such warrant, he shall make such part payment and indorse the sum on the warrant and

add 'balance not paid for want of funds,' " signing the same. He shall keep a correct register of all warrants so presented and indorsed. Each warrant thus presented and indorsed shall draw interest on the amount unpaid at a rate not to exceed seven per cent per annum from the date of such presentation and indorsement until paid; provided, that when there shall come into the hands of the treasurer or subject to his order, money applicable to the payment of any warrant which has been so presented and registered, he shall notify in writing by mail, the drawee of such warrant at his last known place of residence, to present such warrant for payment, and interest shall cease upon every warrant ten days after such notice shall have been sent, and such money shall be held for the payment of such warrant. [1911, ch. 266, § 64; R. C. 1905, § 815; 1890, ch. 62, § 67; 1891, ch. 56, § 12; R. C. 1899, § 687; 1903, ch. 83, § 1.]

§ 1170. **Warrants, what to specify.** Each warrant drawn by the clerk or the board on the district treasurer must specify the purpose for which it is drawn, the fund on which it is drawn and the person to whom payable; and no warrant shall be issued except for indebtedness incurred prior to its issue. [1911, ch. 266, § 65; R. C. 1905, § 816; 1890, ch. 62, § 68; 1891, ch. 56, § 13; R. C. 1899, § 688.]

§ 1171. **Oaths and bonds. Where to be filed.** All official oaths and bonds of school district officers shall be filed with the district clerk, who shall immediately certify to the county superintendent the fact of such oaths and bonds being filed. Said clerk shall file school treasurer's bond with the county auditor after such bond has been approved by the district school board, as provided in this chapter. In case of the breach of any of the conditions of the treasurer's bond, the board, through its president, and in case of his refusal so to do, the county superintendent, shall cause an action to be commenced and prosecuted thereon in the corporate name of the district, and any money collected for the district shall be paid to the district treasurer and any money collected for fines shall be paid into the county treasury and be credited to the general school fund of the state. If the board and county superintendent both fail or refuse to bring such action, any taxpayer in the district may commence and prosecute such action, and the necessary expense thereof shall be paid out of the district treasury unless otherwise ordered by the court. [1911, ch. 266, § 66; R. C. 1905, § 817; 1897, ch. 75; R. C. 1899, § 689.]

§ 1172. **Salary of school treasurer.** The school treasurer shall be paid for his services such sum as shall be fixed by the board not less than five nor more than twenty-five dollars per annum. [1911, ch. 266, § 66½; R. C. 1905, § 818; 1890, ch. 62, § 70; R. C. 1899, § 690.]

ARTICLE 6.—POWERS AND DUTIES OF COMMON SCHOOL BOARDS.

§ 1173. **General powers.** The district school board shall have the general charge, direction and management of the schools of the district, and the care, custody and control of all the property belonging to it, subject to the provisions of this chapter; provided that in the employment of teachers, no person related by blood or marriage to any member of the district board shall be hired without the unanimous consent of the board. [1911, ch. 266, § 819; 1890, ch. 62, § 71; R. C. 1899, § 691.]

Contract with members of school board as individuals may be enforced. *Western Pub. Co. v. Bachman*, 2 S. D. 512, 51 N. W. 214; *Western Pub. Co. v. Murdick*, 4 S. D. 207, 56 N. W. 120, 21 L.R.A. 871.

School board may not remove school house from where it has been located by majority vote of electors. *Graves v. Jasper School Twp.*, 2 S. D. 414, 50 N. W. 904.

In absence of showing to contrary board presumed to have authority to remove school house. *Burkhardt v. School Twp.*, 9 S. D. 315, 69 N. W. 16.

Power of board to appoint officer or make contract for term extending beyond its own term. 29 L.R.A. (N.S.) 652.

Ratification by school district of unauthorized contract. 20 L.R.A. 136.

Personal liability of school officer on contract in excess of his authority. 23 L.R.A. (N.S.) 428.

Power of school officials to act as determined by place of performance. 33 L.R.A. 86.

§ 1174. Power to establish schools. It shall organize, maintain and conveniently locate schools for the education of children, of school age within the district, and change or discontinue any of them as provided by law. [1911, ch. 266, § 68; R. C. 1905, § 820; 1890, ch. 62, § 72; R. C. 1899, § 692.]

§ 1175. Repairs, fuel and supplies. It shall make all necessary repairs to school houses, outbuildings and appurtenances, and shall furnish fuel and all necessary supplies for the schools and provide for janitor service. [1911, ch. 266, § 69; R. C. 1905, § 821; 1890, ch. 62, § 73; R. C. 1899, § 693.]

§ 1176. Furniture, maps, register, school library. The district school board shall, with the approval of the county superintendent of schools, furnish to each school all necessary and suitable furniture, maps, charts, globes, blackboards, and other school apparatus, including any dictionary which is recognized as a standard authority. The school register and all school blanks used shall be those furnished by the state department of public instruction. It shall appropriate and expend each year not less than ten dollars (\$10.00), or more than twenty-five dollars (\$25.00), for each school of the district for the purpose of school library, to be selected by the school board and the teacher, from any list of books authorized by the superintendent of public instruction, and furnished by him to the county superintendent for that purpose. [1913, ch. 264; 1911, ch. 266, § 70; R. C. 1905, § 822; 1890, ch. 62, § 74; 1891, ch. 56, § 14; R. C. 1895, § 694; 1903, ch. 83, § 2.]

§ 1177. Care of library. Librarian. It shall have the care and custody of the library and may appoint as librarian any suitable person, including one of their number, but whenever practicable, the library shall be kept in the school house and always so when school is in session. It shall make rules to govern the circulation and care of the books while in the hands of the pupils or other persons, subject to the general rules as may be prescribed by the state superintendent of public instruction, and may impose and collect penalties for injuries done to any book by the act, negligence or permission of the person who takes the same or while in his possession, but no book shall be loaned to any person not a resident of the district. It may at any time temporarily exchange any part or all of its library with any other district or persons, so far as different books may be obtained, but each district shall recall its books before the close of the school term. It may at any time accept donations of books for the library, but it shall exclude therefrom all books unsuited to the cultivation of good character and good morals and manners, and no sectarian publications, devoted to the discussion of sectarian differences and creeds shall be admitted to the library. It shall be held accountable for the proper care and preservation of the library, and shall report annually to the county superintendent all library statistics which may be required by the blanks furnished for that purpose by the superintendent of public instruction. [1911, ch. 266, § 71; R. C. 1905, § 822; 1890, ch. 62, § 74; 1891, ch. 56, § 14; R. C. 1895, § 694; 1903, ch. 83, § 2.]

§ 1178. Teachers. How employed. Salaries. It shall employ the teachers of the school district and may dismiss a teacher at any time for plain violation of contract, gross immorality or flagrant neglect of duty. No person shall be permitted to teach in any public school who is not the holder of a teacher's certificate or a permit to teach, valid in the county or district in which such school is situated, and every contract for the employment of a teacher must be in writing and such contract must be executed before such teacher begins to teach in such school; provided, that no teacher holding a valid certificate shall receive less than forty-five dollars per month. Nothing in this section shall be construed to mean that teachers holding the same grade certificate must necessarily receive the same salary. [1911, ch. 266, § 72; R. C. 1905, § 823; 1890, ch. 74, § 75; 1891, ch. 56, § 15; R. C. 1895, § 695; 1905, ch. 100, § 5.]

An amendment of this section was vetoed in Laws 1913, ch. 316, p. 476.

Contract with teacher not holding certificate, void. *Hardy v. Purington*, 6 S. D. 382, 61 N. W. 158; *Hosmer v. School District*, 4 N. D. 197, 59 N. W. 1035, 50 A. S. R. 639, 26 L.R.A. 383; *Goose River Bank v. School Township*, 1 N. D. 26, 44 N. W. 1002, 26 A. S. R. 605.

Power of trustees to hire teacher for period extending beyond their own term. 16 L.R.A. 257; 29 L.R.A.(N.S.) 657.

Effect of contract by teacher without license or certificate of qualification. 12 L.R.A.(N.S.) 614; 42 L.R.A.(N.S.) 412.

Privilege of school superintendent or other officer in reporting to school authorities on character of teacher. 30 L.R.A.(N.S.) 200.

§ 1179. Pupils from other districts. It shall have the power to admit to the schools in the district, pupils from other districts when it can be done without injuring or overcrowding such schools, and shall make regulations for their admission and the payment of their tuition. It shall have the power to arrange with the board of another district for sending to such district such pupils as can conveniently be taught therein, for paying their tuition, and for arranging and paying for their transportation to and from the school in such district; and when petitioned by a majority of the voters of a district it shall be the duty of the board of any district to arrange for sending to such district such pupils as can conveniently be taught therein, for paying their tuition and for arranging and paying for their transportation to and from the school in such district. It shall have the power to admit to the schools in the district, pupils residing in unorganized territory adjacent to the district, and to arrange with the parents or guardian of such pupils for paying their tuition; but in no instance shall a board refuse privileges to or collect tuition from pupils residing in such adjacent unorganized territory, if the parents of such pupils are property holders in the district and pay taxes. It shall also have the power to make proper and needful rules for the assignment and distribution of pupils to and among the schools in the district, and their transfer from one school to another. [1911, ch. 266, § 73; R. C. 1905, § 824; 1899, ch. 84; R. C. 1899, § 696; 1903, ch. 83, § 3.]

Validity of statute giving nonresident of school district right to attend school without charge. 24 L.R.A.(N.S.) 1104.

Power of school authorities to require attendance at particular school as affected by location, accessibility or distance. 22 L.R.A.(N.S.) 584.

§ 1180. Rules. Suspension of pupils. It shall assist and co-operate with teachers in the government and discipline of the schools, and may make proper rules and regulations therefor. It may suspend or expel from school any pupil who is insubordinate or habitually disobedient, but such suspension shall not be for a longer period than ten days nor such expulsion beyond the end of the current term of school. [1911, ch. 266, § 74; R. C. 1905, § 825; 1890, ch. 62, § 77; R. C. 1899, § 697.]

Exclusion of children from public schools, causes for. 65 Am. St. Rep. 330.

Forbidding student's affiliation with secret society. 7 L.R.A.(N.S.) 352.

Power of school authorities over pupils while outside of school grounds. 3 L.R.A.(N.S.) 496.

Right of school authorities to control pupils when going to and from school. 62 L.R.A. 160.

Right to exclude, suspend or expel pupils for misconduct of themselves or parents. 41 L.R.A. 593.

Separate schools for colored children. 14 L.R.A. 581.

Right of educational, charitable or religious institution to exclude person on account of race or color. 24 L.R.A.(N.S.) 447.

§ 1181. Branches of study. Subject to the approval of the county superintendent, it shall have power to determine what branches, if any, in addition to those required by law shall be taught in any school of the district. [1911, ch. 266, § 75; R. C. 1905, § 826; 1890, ch. 62, § 77; R. C. 1899, § 697.]

Power of legislature to prescribe subjects to be taught in public schools. 47 L.R.A.(N.S.) 200.

Religious exercises or instruction in public schools. 16 L.R.A.(N.S.) 860.

§ 1182. Tax levy. Notice to county auditor. It shall have power to levy upon the property in the district a tax for school purposes of not exceeding thirty mills on the dollar in any year, which levy shall be made by resolution

of the board prior to the twentieth day of July. The clerk shall immediately thereafter notify in writing the county auditor of the amount of tax so levied. It shall not have power to abate or reduce the amount of tax so levied after the county auditor has been notified of the amount of such levy. [1911, ch. 266, § 76; R. C. 1905, § 827; 1890, ch. 62, § 79; 1891, ch. 56, § 16; R. C. 1899, § 699.]

§ 1183. When school houses can be used for other purposes. It may permit a school house, when not occupied for school purposes, to be used under careful restrictions for any proper purpose, giving equal rights and privileges to all religious denominations or political parties, but for any such use or privilege it shall not be at any cost for fuel or otherwise to the district. Nor shall any furniture which is fastened to the floor be removed, and whoever removes any school furniture for any other purpose than repairing the same or for repairing the school room, shall be guilty of a misdemeanor and shall be fined not less than five nor more than ten dollars for each offense. All fines imposed and collected under the provisions of this section shall be paid into the general school fund of the state. [1911, ch. 266, § 77; R. C. 1905, § 828; 1890, ch. 62, § 80; R. C. 1899, § 700.]

Use of school buildings for private purpose. 33 L.R.A. 118.

Use of public school building or other school property for other than school purposes.

31 L.R.A. (N.S.) 588.

§ 1184. School houses and sites, how determined. Whenever in the judgment of the board it is desirable or necessary to the welfare of the schools in the district, or to provide for the children therein proper school privileges or whenever petitioned to do so by one-third of the voters of the district, the board shall call an election of the voters in the district at some convenient time and place fixed by the board, to vote upon the question of the selection, purchase, exchange or sale of a school house site, of the erection, removal or sale of a school house. Said election shall be conducted and the votes canvassed in the same manner as at the annual election of school officers. [1911, ch. 266, § 78; R. C. 1905, § 829; 1897, ch. 75; R. C. 1899, § 701.]

Sufficiency of description of school house site, selected by voters of school district.

Petersburg School Dist. v. Peterson, 14 N. D. 344, 103 N. W. 756.

School house can only be moved by majority vote of electors. *Graves v. Jasper School Twp.*, 2 S. D. 414, 50 N. W. 904; *Farmers' Nat. Bank v. School Dist.*, 6 D. 255, 42 N. W. 767.

Statutory restrictions as to site of school buildings. 43 L.R.A. (N.S.) 1024.

§ 1185. Election, how called. Plans. How prepared. Three notices of the time, place and the purpose of such election shall be posted in three of the most public places in the district at least fourteen days prior to such meeting. If a majority of the voters present at such meeting shall by vote select a school house site or shall be in favor of the purchase, exchange or sale of the school house, as the case may be, then the board shall proceed to carry out the decision of the voters of the district, provided it shall require a vote of two-thirds of the voters present and voting at such meeting to order the removal of the school house, and such school house so removed cannot again be removed within three years from the date of such meeting; and further, if the question of removing the school house fails to carry, then the question of removing such school house cannot again be raised within one year; provided, further, that whenever a school house is to be purchased, erected or constructed in a common school district, the school board shall consult with the county superintendent of schools and the county superintendent of health with regard to plans providing for the proper construction, lighting, heating and ventilating; provided, further, that it shall be the duty of the state superintendent of public instruction to furnish plans for school houses of one and two rooms that will be in accord with the best ideas pertaining to heating, lighting, ventilation and other sanitary requirements; provided, further, that school boards and county superintendents shall secure from a competent carpenter or architect complete specifications and blue prints for plans furnished by the state superin-

tendent of public instruction, or approved plans that may be furnished by said carpenter or architect, at a cost not to exceed twenty-five dollars for a one room school house and forty dollars for a two room school house. A copy of such plans and specifications shall be filed in the office of county superintendent. [1911, ch. 266, § 79; R. C. 1905, § 829; 1897, ch. 75; R. C. 1899, § 701.]

Must be located according to statutory requirement. *Farmers' National Bank v. School District*, 6 N. D. 255, 42 N. W. 767.

Can only be removed by majority vote. *Graves v. School Twp.*, 2 S. D. 414, 50 N. W. 904.

§ 1186. County board of health. Whenever the county superintendent of schools shall report to the county board of health that a school house or any school out-building is in an unsanitary or unsafe condition, or that any of the pupils or any person of school age is alleged to be defective in mind or body, it shall be the duty of the said board to investigate the report without delay and to direct the school board or a person in charge of the alleged defective building to take such action as shall seem to be for the best interests of the persons immediately concerned. [1913, ch. 263; 1911, ch. 266, § 80.]

§ 1187. School house sites, how obtained and maximum area allowed. The school board of any school district may take in the corporate name thereof any real property not less than two acres, nor exceeding five acres in area chosen as a site for school house, as provided in this chapter, and may hold and use such tract for school purposes only. It shall secure good title to any and all of the school sites in the district, and cause the same to be recorded in the office of the register of deeds. It shall be the duty of the state's attorneys to pass upon the title to any school site before the deed thereof is recorded. Should the owner of such real property refuse or neglect to grant and convey such site a site for a school house may be obtained by proceeding in eminent domain, as provided in the Code of Civil Procedure. If this site so selected is not used for the purpose for which it is taken for two successive years it shall revert to the original owner or his assigns upon payment of the sum originally paid by the school district. If such owner or his assigns neglects or refuses to make such repayment for one year after the demand therefor by the board such site shall be the property of the district. [1913, ch. 265; 1911, ch. 266, § 81; R. C. 1905, § 830; 1890, ch. 62, § 82; R. C. 1895, § 702.]

Taking of property for common schools as a public purpose. 22 L.R.A.(N.S.) 169.

§ 1188. Schools to be organized on petition. If a petition signed by the persons charged with the support and having the custody and care of nine or more children of school age, all of whom reside not less than two and one-half miles from the nearest school, is presented to the board, asking for the organization of a school for such children, the board shall organize such school and employ a teacher therefor, if a suitable room for such school can be leased or rented at some proper location not more than two and one-half miles distant from the residence of any one of such children, and if no suitable room for such school can be leased or rented, the board shall call a meeting of the voters of the district for the selection and purchase or erection of a school house, as provided for in section 1185. If at such meeting no such site is selected or if it is not voted to erect or purchase a school house for such school, the board shall select and purchase a school house site and erect, purchase or move thereon a school house at a cost of not more than twelve hundred dollars for such school house and furniture therefor; provided, that the provisions of this section shall not apply in instances where schools have been consolidated in accordance with the provisions of section 1190. [1911, ch. 266, § 82; R. C. 1905, § 831; 1890, ch. 62, § 83; 1891, ch. 56, § 18; 1899, ch. 81; R. C. 1899, § 703.]

§ 1189. School terms, how arranged and when discontinued. The district board shall determine and fix the length of time the schools in the district shall be taught each year, and when each term of school shall begin and end. It shall so arrange such terms as to accommodate and furnish school privileges

equally and equitably to pupils of all ages; provided, that every common school shall be kept in session for not less than seven months in each school year; provided, further, that any school may be discontinued when the average attendance of pupils therein for ten consecutive days shall be less than four, and all contracts between school boards and teachers shall contain a provision that no compensation shall be received by such teacher from the date of such discontinuance, if proper and convenient school facilities be provided for the pupils therein in some other school. [1911, ch. 266, § 83; R. C. 1905, § 832; 1899, ch. 81; R. C. 1899, § 704; 1903, ch. 83, § 4.]

Contract between school board and teacher is not void merely because, at date of contract, teacher did not hold teacher's certificate. *Schafer v. Johns*, 23 N. D. 593, 42 L.R.A. (N.S.) 411, 137 N. W. 481.

Separate schools for colored children. 14 L.R.A. 581.

Right of educational, charitable or religious institution to exclude person on account of race or color. 24 L.R.A. (N.S.) 447.

§ 1190. Consolidation. Conveying pupils. The district board may call, and, if petitioned by one-third of the voters in the district, shall call an election to determine the question of "conveying pupils at the expense of said district to and from schools already established," or "of consolidating two or more schools, and of selecting a site and erecting a suitable building, or of making suitable additions to buildings already erected, to accommodate the pupils of schools to be vacated." Said elections shall be conducted, both as to notices and as to manner of canvassing the votes, in the same manner as the annual school election. If a majority of the votes cast at such election are in favor of conveying the pupils at the expense of the district to and from schools already established or of consolidating two or more schools and of providing a suitable building for the accommodation of the pupils of vacated schools, then the board shall make all necessary arrangements to carry out the decision of the district. The board shall arrange for the transportation of pupils to and from such schools. It shall establish routes of travel, adopt rules and regulations for such transportation, and shall contract with responsible parties for such transportation. Provided, that whenever the school board of a district in which a consolidated school is established is unable to make suitable arrangements for the transportation of pupils to and from school, said transportation shall be provided according to the provisions of section 1342. [1913, ch. 253; 1911, ch. 266, § 84; R. C. 1905, § 832; 1899, ch. 81; R. C. 1899, § 704; 1903, ch. 83, § 4.]

Duty of public to furnish free transportation to pupils. 37 L.R.A. (N.S.) 1110.

Right to use school money for transportation of pupils. 38 L.R.A. (N.S.) 710.

§ 1191. Additional school time. If a majority of the patrons of any school averaging eight or more pupils in daily attendance for a period of three months immediately prior to the date of filing the petition with the clerk of the district board, shall petition the board to continue such school for an additional time, the board shall continue such school for that length of time if there are funds in the treasury sufficient for that purpose. [1913, ch. 266; 1911, ch. 266, § 85; R. C. 1905, § 833; 1890, ch. 62, § 85; R. C. 1899, § 705.]

§ 1192. District high schools. How established and controlled. In any district containing four or more schools, and having an enumeration of sixty or more persons of school age residing therein the board may call, and if petitioned so to do by ten or more voters in the district, shall call a meeting of the voters of such district, in the manner prescribed in section 1185 to determine the question of establishing a district high school. If a majority of the voters at such meeting vote in favor of establishing such high school, the meeting shall further proceed to select a site therefor, and to provide for the erection or purchase of a school building or for the necessary addition to some school building therefor. Thereupon the board shall erect or purchase a building or make such addition for such high school, as shall be determined at such meeting and shall establish therein a district high school containing one or more departments, and employ teachers therefor. [1911, ch. 266, § 86; R. C. 1905, § 834; 1890, ch. 62, § 86; 1891, ch. 56, § 19; R. C. 1899, § 706; 1903, ch. 85.]

§ 1193. Length of term. Such high school shall be kept in session for such time each year, not less than four months, as the board may determine. The board shall, subject to the approval of the county superintendent, grade such high school, and prescribe the studies to be pursued therein, and shall have the same management and control thereof as of the elementary schools in the district. [1911, ch. 266, § 87; R. C. 1905, § 834; 1890, ch. 62, § 86; 1891, ch. 56, § 19; R. C. 1899, § 706; 1903, ch. 85.]

§ 1194. Adjacent districts may join. Two or more adjacent school districts may join in the establishment and maintenance of such high school, or for a graded school or for both, when empowered so to do by a majority of the voters in each district, at a meeting called and held as provided for in this section [1192], in which case the building and furniture occupied and used for such high school or graded school shall belong to the districts so uniting and all the costs of maintaining such school or schools, including the wages of teachers and all necessary supplies shall be paid by such districts in proportion to the assessed valuation of the property in each; and the employment of teachers therefor, and the management, control and grading thereof shall be vested in the joint boards of such districts, subject to the approval of the county superintendent of the county in which such districts are located. [1911, ch. 266, § 88; R. C. 1905, § 834; 1890, ch. 62, § 86; 1891, ch. 56, § 19; R. C. 1899, § 706; 1903, ch. 85.]

§ 1195. School census. Annual report. The school board shall cause an enumeration to be made between the first and twentieth day of June of each year, of all unmarried persons of school age, being over six and under twenty-one, having their legal residence in the district, giving the names and ages of such persons and the names of parents and guardians having the care and custody of each; also the name and age of each deaf and dumb, blind and feeble minded person between the ages of five and twenty-five years, residing in the district, including all such persons as may be too deaf or feeble minded to acquire an education in the common schools, and the names and post office address of the parents or guardians of such persons. The enumeration shall be made upon and in accordance with the blanks furnished therefor for the county superintendent, and shall be returned to the county superintendent prior to the tenth day of July. [1911, ch. 266, § 89; R. C. 1905, § 835; 1899, ch. 81; R. C. 1899, § 707; 1903, ch. 78; 1905, ch. 103.]

§ 1196. Reports. To whom sent. A copy of the enumeration of such deaf and dumb persons shall be furnished the superintendent of the school for the deaf; a copy of the enumeration of such blind persons shall be furnished to the superintendent of the school for the blind; and a copy of the enumeration of such feeble minded persons shall be furnished the superintendent of the institution for the feeble minded, by the county superintendent immediately upon the receipt of the same. A copy of such enumeration shall also be kept in the office of the district court. [1911, ch. 266, § 90; R. C. 1905, § 835; 1899, ch. 81; R. C. 1899, § 707; 1903, ch. 78; 1905, ch. 103.]

§ 1197. Clerk's annual report. The board shall also cause the district clerk to make out an annual report for the year beginning July first, and ending June thirtieth, containing such actual and statistical statements and items as shall be required by the superintendent of public instruction, and upon and in accordance with the blanks furnished therefor by the county superintendent. Such reports shall be carefully examined and certified to as correct by the board at its regular meeting in July, and transmitted to the county superintendent prior to the first day of August following. A copy of such report shall be filed in the district clerk's office. [1911, ch. 266, § 91; R. C. 1905, § 835; 1899, ch. 81; R. C. 1899, § 707; 1903, ch. 78; 1905, ch. 103.]

§ 1198. Records open to inspection. All reports, books, records, vouchers, contracts and papers relating to school business in the school district in the

office of the clerk shall at all times be open to the inspection of any director, who shall advise and aid in securing correct records, accounts and legal reports, and they shall likewise be open to the county superintendent, and any particular paper or record shall be exhibited at reasonable hours to any voter or taxpayer. [1911, ch. 266, § 92; R. C. 1905, § 836; 1890, ch. 62, § 88; R. C. 1899, § 708.]

§ 1199. Records and teaching in English. All reports and records of school officers and proceedings of all school meetings shall be in the English language, and if any money belonging to any district shall be expended in supporting a school in which the English language is not the medium of instruction exclusively, the county superintendent or any taxpayer of the school corporation may in a civil action in the name of the corporation recover for such corporation all such money from the officer expending it or ordering or voting for its expenditure. [1911, ch. 266, § 93; R. C. 1905, § 837; 1890, ch. 62, § 89; R. C. 1899, § 709.]

§ 1200. Exits required. All school houses having more than one school room shall have the doors in the exits opening outward, and it is hereby further provided that after the passage of this act [sections 1200-1203], school houses of more than one room thereafter erected shall be provided with an exit not less than four feet six inches in width. All doors to be kept unlocked from eight thirty o'clock a. m. to four thirty o'clock p. m. on school days. [1913, ch. 255, § 1.]

§ 1201. Fire escapes, how constructed. There is hereby required a stationary fire escape, consisting of iron stairways, attached to school houses having more than one story, with iron landings easily accessible from each school room above the first floor, guarded by an iron railing not less than two feet six inches in height. Such landings shall be connected by iron stairs not less than three feet wide and with steps not less than six inches tread, and protected by a well secured hand rail of iron on both sides and reaching to the ground. Provided, however, that the six-foot section immediately above the ground shall be hinged to the main escape so it may be swung out of the way when not in use; further provided that this section shall not affect school houses now constructed and provided with adequate fire escapes. The way of egress to such fire escape shall at all times be kept free and clear from all obstruction of any and every nature. [1913, ch. 255, § 2; 1911, ch. 266, § 94; 1909, ch. 124, § 1.]

Laws 1911, ch. 266, §§ 94, 95 and 96 deemed to be superseded by sections 1201, 1202, 1203, herein provided, respectively as follows:

"§ 94. Fire escapes required. One or more stationary fire escapes, consisting of stairways, shall be attached to the outside of each and every story above the first story, of all school houses in the state having more than one story and not provided with a front and rear exit, each at least four feet six inches in width.

"§ 95. Duty of school officers. It shall be the duty of all persons including trustees, boards of directors and boards of education having charge of such school houses, to comply with the provisions of the last section.

"§ 96. Penalty. Any and all such persons failing to comply with the provisions of sections 94 and 95 of this act shall be guilty of a misdemeanor."

The three sections above quoted were re-enactments of §§ 1, 2 and 3 of Laws 1909, ch. 124, the latter being expressly repealed in Laws 1911, ch. 266, § 310.

§ 1202. Duty of school officers. Trustees, boards of directors, boards of education, or any other person having charge of such school houses shall comply with the provisions of this act [sections 1200-1203] within six months after its passage and approval. [1913, ch. 255, § 3; 1911, ch. 266, § 95; 1909, ch. 124, § 2.]

§ 1203. Penalty. Any person or board violating any of the provisions of this act [sections 1200-1203] shall upon conviction thereof, be deemed guilty of a misdemeanor and shall be punished by a fine of not less than twenty-five dollars or more than one hundred dollars. [1913, ch. 255, § 4; 1911, ch. 266, § 96; 1909, ch. 124, § 3.]

§ 1204. Duties of district school boards as to tree planting. It is hereby made the duty of every district school board in the state of North Dakota to plant trees and shrubs upon the grounds of every school house in their district and to encourage school children to plant such trees and shrubs and to cultivate and protect the same. [1911, ch. 266, § 97; 1909, ch. 201, § 1.]

§ 1205. Fences. Where stock is permitted to run at large it is hereby made the duty of the district school board to cause to be erected about the grounds of every school house in each district a fence sufficient to protect the trees and shrubs upon the school house grounds from destruction by live stock, and such fence shall be provided with convenient gates or stiles; provided, further, that in the construction of such fence barbed wire shall not be used. [1911, ch. 266, § 98; 1909, ch. 201, § 2.]

§ 1206. Funds for tree planting and cultivation. The district school board is hereby empowered and it shall be its duty to expend not less than ten dollars annually for each school yard out of the funds of the school district for the purpose mentioned in the foregoing section. [1911, ch. 266, § 99; 1909, ch. 201, § 3.]

§ 1207. Stables in rural districts. Hitching posts. If in any rural school district, a petition signed by the persons charged with the support and having the custody and care of eight or more children of school age is presented to the school board asking for the building of a suitable stable upon the school site, the board shall provide such stable without unnecessary delay. It shall be the duty of the school board in rural districts to provide for substantial hitching posts for each school site in the district. [1911, ch. 266, § 100; R. C. 1905, § 1039; 1901, ch. 188.]

The foregoing is Laws 1911, ch. 266, § 100, which was identical with R. C. 1905, § 1039, except that the latter required the school board "to provide four substantial hitching posts," etc., instead of "to provide for," etc. Nevertheless, the enrolled bill for section 100, above mentioned, as enacted and on file with the secretary of state reads "for" and not "four." It is "four" in session laws for 1901, ch. 188.

ARTICLE 7.—SCHOOL FUNDS.

§ 1208. State tuition fund. How raised. The net proceeds arising from all fines and penalties for violation of state laws, from leasing the school lands and the interest and income from the state permanent school fund shall be collected and paid into the state treasury in the same manner as is provided by law for the collection and payment of state taxes, and shall constitute the state tuition fund, which shall be apportioned among the several counties of the state in proportion to the number of children of school age in each as shown by the last enumeration authorized by law. [1911, ch. 266, § 101; R. C. 1905, § 843; 1899, ch. 83; R. C. 1899, § 710.]

§ 1209. County treasurer to report state tuition fund quarterly. It shall be the duty of the county treasurer to receive from the proper officers the net proceeds of fines, penalties and forfeitures for violation of state laws, and all moneys arising from leasing of school lands within the county, and to forward a detailed statement of moneys so collected, specifying the amount received from each of the above sources, to the state auditor at the same time that he is required to make reports of other moneys to such auditor. [1911, ch. 266, § 102; R. C. 1905, § 844; 1899, ch. 83; R. C. 1899, § 711.]

§ 1210. Duty of state auditor. It shall be the duty of the state auditor on or before the third Monday in February, May, August and November in each year to certify to the superintendent of public instruction the amount of the state tuition fund and the superintendent of public instruction shall immediately apportion such funds among the several counties of the state in proportion to the number of children of school age residing in each as shown by the last enumeration provided for by law and certify to the state auditor, state treasurer and to the county treasurer and county superintendent of each county, the amount apportioned to the respective counties. Immediately

upon receipt of such apportionment from the state superintendent as herein provided, the state auditor shall draw a warrant upon the state treasurer for the full amount of the state tuition fund apportioned to the several counties and shall deliver the same to the state treasurer, taking his receipt therefor and shall notify the several county treasurers of the amount due their respective counties and that such warrant has been issued therefor, and the state treasurer shall pay on such warrant to the several county treasurers the amount due their respective counties. [1911, ch. 266, § 103; R. C. 1905, § 844; 1899, ch. 83; R. C. 1899, § 711.]

§ 1211. Funds kept separate. All moneys arising from interest on the permanent school fund and from leasing school lands shall be apportioned under a separate item and such money shall be taken account of as a separate item by all officers making or certifying such apportionment, or through whose hands any portion of such funds shall pass and it is further made the duty of the district treasurer to keep such funds separate from all other funds and if at the close of the school year any part of such funds which was apportioned prior to the third Monday of May of such year remains in the hands of the district treasurer, he shall transfer the same to the general fund of the district to which it was apportioned. [1911, ch. 266, § 104; R. C. 1905, § 644; 1899, ch. 83; R. C. 1899, § 711.]

§ 1212. Funds defined. How used. All moneys received by the school district from the apportionment made by the superintendent of public instruction shall constitute and be designated the state tuition fund. All moneys received from district taxes, from subscription, from sale of property, or from any other source whatever except from apportionment made by the superintendent of public instruction shall be designated the general fund. In addition to the state tuition fund and the general fund, a sinking fund may be established as provided by this article. The state tuition fund shall be used only in the payment of teachers' salary; provided, that if the amount of state tuition fund apportioned to any district in any one year is insufficient for the payment of teachers' salary in such district, any money on hand or available belonging to the general fund of such district may be applied to meet such deficiency; provided, further, that if the state tuition fund apportioned to any district in any one year is more than sufficient for the payment of teachers' wages in such district the portion of such fund in excess of the amount so required shall be transferred to and become a part of the general fund. [1911, ch. 266, § 105; R. C. 1905, § 845; 1890, ch. 62, § 92; 1891, ch. 57, § 1; R. C. 1899, § 712.]

§ 1213. Funds controlled and paid out by district treasurer. All funds shall be kept in the possession or under the control of and paid out by the district treasurer except as otherwise provided in this chapter, and he shall keep for each district one general account of the entire receipts and expenditures, and separate itemized accounts, as herein provided, for each class of receipts and expenditures. His books shall at all times show by entries under proper heads all receipts of fund and payments made therefrom, so as to enable any person readily to ascertain the balance in any fund. [1911, ch. 266, § 106; R. C. 1905, § 846; 1899, ch. 83; R. C. 1899, § 713.]

§ 1214. Not entitled to tuition fund, when. Enumeration. No school district shall be entitled to receive any portion of the state tuition fund that fails to make a report of the enumeration of the children of school age in the manner provided by law, nor until the enumeration has been taken and reported as required by law. The county superintendent is empowered to withhold the payment of county tuition fund from any district whose officers have failed to make the reports required by law; and, further, the county superintendent shall not authorize the payment of money apportioned to any district unless the bond and oath of the treasurer of such district has been duly approved and filed as provided by law. [1911, ch. 266, § 107; R. C. 1905, § 847; 1897, ch. 75; R. C. 1899, § 714; 1903, ch. 173.]

§ 1215. Enumeration in new districts. New districts organized after the annual enumeration has been taken shall proceed immediately to take the enumeration as provided by law, and after the receipt of such enumeration by the superintendent of public instruction through the county superintendent, the newly organized district shall receive its proportionate share of the funds to be apportioned. [1911, ch. 266, § 108; R. C. 1905, § 847; 1897, ch. 75; R. C. 1899, § 714; 1903, ch. 173.]

§ 1216. Apportionment of funds withheld, when. The county superintendent shall have the right to withhold the apportionment of the county tuition fund (two mill tax and school poll tax) from any school district other than the new districts herein provided for, which has not maintained school therein for a period of not less than six school months in each school of said district during the school year preceding such apportionment or has not otherwise provided school facilities for the pupils of that district; provided, further, that it shall be mandatory upon the county superintendent to withhold the apportionment of the county tuition funds from any district which has not maintained school for a period of at least five months in each school in said district or has not otherwise provided school facilities for the pupils of that district for the school year preceding such apportionment; and when such apportionment of county tuition fund shall be withheld by the county superintendent from any district, it shall revert to the funds from which it was originally apportioned. [1911, ch. 266, § 109; R. C. 1905, § 847; 1897, ch. 75; R. C. 1899, § 714; 1903, ch. 173.]

§ 1217. Apportionment of state tuition funds by county superintendent. Within thirty days and not less than twenty days after receiving the certificate of apportionment from the superintendent of public instruction and the certificate from the county auditor as provided for in section 1225, the county superintendent shall apportion separately to the several school districts, which are entitled to any portion of the state tuition and special funds within the county, in proportion to the number of children residing in each district over six and under twenty-one years of age as appears from the last enumeration authorized by law, upon which the superintendent of public instruction made the apportionment to the several counties, and he shall immediately notify each district treasurer of the amount of tuition fund in the county treasury due the district, and shall certify to the county treasurer and to the county auditor the amount due each school district. The county treasurer shall deliver to the several school treasurers, upon the order of the county auditor, the amounts apportioned to their respective districts, taking a receipt therefor. [1911, ch. 266, § 110; R. C. 1905, § 848; 1899, ch. 83; R. C. 1899, § 715; 1901, ch. 58; 1903, ch. 83.]

§ 1218. Treasurer's accounts. Annual settlement. The district treasurer shall open new accounts with each fund at the beginning of each school year, and the balance of each fund shall be brought down and become a part of the first entry in opening the account for the new year. On the second Tuesday in July, the school board shall make settlement with the district treasurer, and shall carefully examine his books, accounts and vouchers, and shall ascertain if the amount of all warrants, bonds and coupons paid and redeemed or paid in part, together with the cash in his hands or under his control, is equal to the amount of cash on hand at the beginning of the school year, together with all money received by him from all sources for school purposes during the year. The district treasurer shall deliver to the board at such annual meeting, all warrants, bonds and coupons paid and redeemed by him during the school year and held by him as vouchers, taking the receipt of the board therefor, and such vouchers shall forthwith be filed with the district clerk. He shall at that meeting make his annual report in triplicate, one copy to be preserved in the treasurer's office, one to be filed with the clerk of the school board and one to be transmitted to the county superintendent

of schools, and the board shall cause to be published an itemized statement of the receipts and expenditures of the preceding year in a newspaper of the county nearest said school district; provided, that if said board or treasurer shall have failed to publish said statement by the first of September following the presentation of the treasurer's annual report, then it shall be the duty of the county superintendent of schools to cause the publication of the same in a newspaper of the county, said publication to be paid for by the school district. The treasurer's reports shall show the following:

RECEIPTS.

The balance at the close of the year.
The amount received into the state tuition fund.
The amount received into the special fund.
The amount received into the county tuition fund.
The amount received into the sinking fund.

EXPENDITURES.

The amount paid for school houses, sites and furniture.
The amount paid for apparatus and fixtures.
The amount paid for teachers' wages.
The amount paid for services and expenses of school officers.
The amount paid for redemption of bonds.
The amount paid for interest on bonds.
The amount paid for incidental expenses.
The cash on hand at the close of the school year.

Such report shall include such other items as may be required by the district board, or the superintendent of public instruction, and shall be upon and in conformity with the blanks furnished him for that purpose. [1911, ch. 266, § 111; R. C. 1905, § 850; 1897, ch. 75; R. C. 1899, § 717; 1901, ch. 86.]

§ 1219. When county treasurer to pay funds to district treasurer. The treasurer of each district shall apply to the county auditor for an order, and the county treasurer shall pay over to him on such order all of the school money collected for such district and all school money apportioned to such district by the county superintendent and the county auditor shall issue such order; provided, such district treasurer has qualified and filed his oath and bond as provided by law. It shall be the duty of the county treasurer, when payment is made to any school treasurer or any funds herein provided for, immediately to notify the clerk of the school board of the payment of the same. [1911, ch. 266, § 112; R. C. 1905, § 851; 1897, ch. 75; R. C. 1899, § 718.]

§ 1220. County treasurer to keep accounts with the school corporation. Each county treasurer shall keep a regular account with each school corporation, in which he shall charge himself with all taxes collected by levy of the district school board and all sums apportioned to the district by the county superintendent or other authority and all sums received from the district, and he shall credit himself with all payments made to the treasurer of the district, distinguishing between the items paid by apportionment, those from county taxes and those from other sources. He shall also credit himself with all payments for redemption or endorsement of warrants in the collection of taxes and shall deliver to the district treasurer a duplicate tax receipt for the amount of each warrant so indorsed or redeemed, together with all warrants so redeemed at the time of making other regular payments to the district treasurer. To these credits, to balance the accounts, he shall add all items for legal fees, for collection and other duties. He shall annually on the first day of July file with the county superintendent of schools an itemized statement of all funds remitted by him during the preceding school year to each of the respective school district treasurers. On the same day he shall also send state-

ments to each of such treasurers itemizing the payments made by him during such time to such respective treasurers. Also, he shall, on the same day, send to each district clerk a copy of the statement which he sends to the treasurer of that district. [1913, ch. 269; 1911, ch. 266, § 113; R. C. 1905, § 852; 1899, ch. 83; R. C. 1899, § 719.]

§ 1221. School taxes, how and when collected. It shall be the duty of the county treasurer to collect the taxes for school purposes at the same time and in the same manner that the county and state taxes are collected, and full power is hereby given him to sell property for school taxes the same as is provided by law for the collection of other taxes; whenever an error occurs in the tax list of any school district, the school board or board of education in special or independent districts or districts organized under special laws may correct such errors and refund such taxes improperly collected. All penalties and interest collected on delinquent school taxes shall be applied to the proper fund to which such delinquent taxes belong. [1911, ch. 266, § 114; R. C. 1905, § 853; 1899, ch. 83; R. C. 1899, § 720.]

ARTICLE 8.—TAXES.

§ 1222. School board to levy tax. Each district school board shall have power and it shall be its duty to levy upon all property subject to taxation in the district, a tax for school purposes of all kinds authorized by law, not exceeding in the aggregate a rate of thirty mills on the dollar in any one year. Such tax shall be levied by resolution of the board prior to the twentieth day of July of each year, which resolution shall be entered in the records of the proceedings of the board. The clerk shall immediately thereafter notify the county auditor in writing of the amount of tax levied, and such notice shall be substantially the following form:

State of North Dakota, }
County of } ss:

..... School District
.....

To.....

County Auditor of County:

Sir:

You are hereby notified that the School Board of..... School District..... has levied a tax of.....dollars upon all real and personal property in said school district for school purposes. You will duly enter and extend such tax upon the county tax list for collection upon the taxable property of such school district for the current year.

Dated at.....this.....day of19..

.....
District Clerk.

[1911, ch. 266, § 115; R. C. 1905, § 854; 1890, ch. 62, § 101; 1891, ch. 56, § 21; R. C. 1899, § 721.]

§ 1223. Levy to pay judgment. The notice of a tax levy to pay any judgment against the district shall be in addition to the regular tax and shall be certified to the county auditor under the same general form, as near as may be; provided, that if the boundaries of such district shall embrace a portion of two counties then the clerk of such district shall certify to the county auditor of the county in which is located the original district to which such portions of the district embraced in the other county is attached, in addition to the tax levy above mentioned, a list and valuation of all property subject to taxation in such portion of such district embraced in the other county, as shown by the assessor making the assessment in such county, township or assessor's district, and the auditor shall enter such property upon the tax duplicate of his county and levy all school taxes upon the same, and the county treasurer of the

county shall collect the taxes levied thereon the same as other taxes are collected and pay the same over as provided by law. [1911, ch. 266, § 116; R. C. 1905, § 854; 1890, ch. 62, § 101; 1891, ch. 56, § 21; R. C. 1899, § 721.]

§ 1224. Tax, how levied. The county auditor of each county shall at the time of making the annual assessment and levy of taxes levy a tax of one dollar on each elector in the county for the support of public schools, and a further tax of two mills on the dollar on taxable property in the county, to be collected at the same time and in the same manner as other taxes are collected, which shall be apportioned by the county superintendent of schools among the school districts of the county. [1911, ch. 266, § 117; R. C. 1905, § 855; 1899, ch. 83; R. C. 1899, § 723.]

§ 1225. How apportioned. It shall be the duty of the county auditor on or before the third Monday in February, May, August and November in each year, to certify to the county superintendent of schools the amount of such county tuition fund, which the county superintendent of schools shall apportion among the several school districts in the same manner as provided for the apportionment of the state tuition fund. The county superintendent shall file with the county auditor and the county treasurer a certified statement showing the amount apportioned to each district. [1911, ch. 266, § 118; R. C. 1905, § 855; 1899, ch. 83; R. C. 1899, § 722.]

§ 1226. Apportionment of delinquent taxes. It shall also be the duty of the county auditor to certify at the time herein specified the amount of delinquent taxes collected for the special tuition fund prior to those levied for the year 1899, which amounts shall be apportioned by the county superintendent of schools as herein provided. [1911, ch. 266, § 119; R. C. 1905, § 119; 1899, ch. 83; R. C. 1899, § 722.]

§ 1227. Maximum levy for final judgment. Taxes to be uniform. When any final judgment shall be obtained against a school district the board thereof shall levy a tax upon the taxable property of such district not exceeding in amount twenty mills on the dollar in any one year, which shall be used in the payment thereof. The county auditor shall make out, charge and extend upon the tax list against each description of real property and against all personal property, and upon all taxable property of the district, all such taxes for school and judgment of which he has been notified, have been levied by the district in which the property is situated and taxable, in the same manner in which the county and state tax list is prepared, and deliver it to the county treasurer at the same time. All taxes for school purposes shall be uniform upon the property within each school district. [1911, ch. 266, § 120; R. C. 1905, § 856; 1890, ch. 62, § 103; R. C. 1899, § 723.]

§ 1228. Indebtedness of district. How adjusted when no legal school board exists. If any school district in the state has for one or more years past, either through failure to elect a school board or through a failure of the county superintendent to appoint a school board, been without a legal school board or if hereafter any school district through such failure to elect or appoint such school board shall be without such legal school board and such district shall have an authorized indebtedness either in bonds, interest due on bonds or otherwise, it shall be the duty of the county superintendent, the county treasurer and county auditor, acting as a board of adjusters, to assess upon the taxable property of such school corporation a tax not to exceed twenty mills on the dollar in any one year upon the assessed valuation thereof for the payment of the same. Which tax so levied shall be extended upon the tax lists by the county auditor and be collected and shall be applied upon and used for the payment of such indebtedness and shall be paid to the creditors of such district upon the warrant of the county auditor, countersigned by the county superintendent, and all warrants, bonds, interest coupons, receipted bills or accounts shall be filed in the office of the county auditor, and in case such school corporation has a bonded indebtedness, it shall be the duty of such

board of adjusters to levy a tax upon the property of such district sufficient to create a sinking fund for the redemption of such bonds upon the maturity of the same, such sinking fund to be levied and provided for in compliance with the requirements of such bonds. [1911, ch. 266, § 121; R. C. 1905, § 858; 1890, ch. 62, § 105; R. C. 1899, § 725.]

ARTICLE 9.—SPECIAL DISTRICTS.

§ 1229. Cities governed by the provisions of this article. All cities and incorporated towns and villages which have heretofore been organized under the general school laws, and which are provided with a board of education, shall be governed by the provisions of this article. Any city, or incorporated, or platted town or village, may be constituted a special school district in the manner hereinafter prescribed, and shall then be governed by the provisions of this article; provided, that any city heretofore organized for school purposes under a special act, may adopt the provisions of this article by a majority vote of the voters therein, in the same manner as is provided for the organization of a new corporation under the provisions of this article. [1911, ch. 266, § 122; R. C. 1905, § 937; 1897, ch. 75; R. C. 1899, § 785; 1903, ch. 175.]

City under a special charter, which organizes under general law, is thereafter governed by general school law. *State v. Power*, 5 S. D. 627, 59 N. W. 1090.

§ 1230. Special school districts. Whenever any platted or incorporated city, town or village shall constitute a portion of a school district, it may be organized into a special school district, alone or with contiguous territory, and the property and indebtedness of such organized school district divided as hereinafter provided. [1911, ch. 266, § 123; R. C. 1905, § 938; 1901, ch. 186, § 1.]

§ 1231. Superintendent shall call election on petition. When. In such cases a petition signed by a majority of the voters of such school district, including women who are legal voters, may be presented to the county superintendent of schools for the division of such school district and the organization of such city, town or village, together with such territory contiguous thereto as may be described in said petition, into a special school district, and setting forth in detail the boundaries of such proposed special district, the manner and terms of the division of the property, real and personal, and the indebtedness, bonded or otherwise, of such school district as desired by the petitioners, and thereupon such superintendent shall within five days call an election to be held in such proposed special district, incorporated city, town or village, and an election to be simultaneously held in that portion of such school district, situated outside of such proposed special school district, city, town or village. [1911, ch. 266, § 124; R. C. 1905, § 939; 1901, ch. 186, § 2.]

§ 1232. Notice given, election. How held. Such superintendent shall cause notice of each of such elections to be given by publishing notice thereof, stating the time and place of holding such elections, in a newspaper, published in such school district (if any), and if there is no newspaper published in such school district, then by posting three notices of the election to be held, in such proposed special school district, city, town or village, and in three public places in said district outside of such proposed special school district, city, town or village. Such notices shall be posted or published not less than fourteen days before such election. Such superintendent shall appoint judges and clerks of such elections and the same shall be held and conducted in the same manner, and the polls shall be opened at the same time as in other school district elections, and the result of such elections shall be certified and delivered to such superintendent within three days after the close of the polls. [1911, ch. 266, § 125; R. C. 1905, § 940; 1901, ch. 186, § 3.]

§ 1233. Ballots. How printed. There shall be printed or written on the ballots used at such election the following statement: "For division of (here state the name of the district to be divided) and the division of its property and debts as follows: (here state the boundaries of the proposed special school

district and the manner and terms of such division as set forth in the petition filed)." The voter shall write after such statement the word "yes" if in favor of such division, and the word "no" if against it. [1911, ch. 266, § 126; R. C. 1905, § 941; 1901, ch. 186, § 4.]

§ 1234. Superintendent shall notify president of school board. Such superintendent shall thereupon forthwith notify the president of the school board of such school district and the auditor or clerk of such city, town or village, of the result of such elections. [1911, ch. 266, § 127; R. C. 1905, § 942; 1901, ch. 186, § 4.]

§ 1235. Districts constituted. If such elections shall each be in favor of the division of such school district, such proposed special school district, city, town or village shall thereafter constitute a special school district; and such original school district situated outside of such special school district, city, town or village, shall constitute a common school district. [1911, ch. 266, § 128; R. C. 1905, § 943; 1901, ch. 186, § 6.]

§ 1236. Election for special district and common district. The county superintendent shall thereupon call an election for the election of officers of such special school district and common school district, of which election notice shall be given for at least fourteen days; such elections shall be held as in other cases, in common school districts and special school districts, and such special school district shall thereafter be subject to all provisions of law affecting other school districts. [1911, ch. 266, § 129; R. C. 1905, § 944; 1901, ch. 186, § 7.]

§ 1237. Division of property. Such school district and such special school district shall thereupon proceed to divide the property of such original school district according to such petition and shall be bound respectively to pay the indebtedness of such district as provided in such petition, and may make any contracts or conveyances necessary to carry into effect all the provisions of such petition. [1911, ch. 266, § 130; R. C. 1905, § 945; 1901, ch. 186, § 8.]

Effect of changing boundaries of school district on rights in real property. 26 L.R.A. (N.S.) 486.

§ 1238. Bonded indebtedness. Tax to be levied to pay. In case such original school district shall have outstanding any bonded debt for the payment of which no sufficient levy of taxes has been made, the board of education of such special school district and the school board of such school district shall, at the time of making the next annual tax levy, levy a tax sufficient to pay the interest and also the principal of so much of such bonded debt as shall be assumed by said special school district and such common school district respectively as the same mature, and shall designate the amount of such tax to be collected in each year thereafter, and shall certify such levy to the county auditor, who shall thereupon enter and extend upon the tax list in each year the amount of such tax to be collected in that year. [1911, ch. 266, § 131; R. C. 1905, § 946; 1901, ch. 186, § 9.]

§ 1239. Bonded debt. Special school district and common school district to pay. Such special school district and such common school district shall provide for and pay according to the terms of the bonds, such portion of bonded debt as is assumed by it. [1911, ch. 266, § 132; R. C. 1905, § 947; 1901, ch. 186, § 10.]

§ 1240. Adjacent territory. How attached for school purposes. When any special school district has been organized and provided with a board of education under any general law, or a special act, or under the provisions of this article, territory outside the limits thereof but adjacent thereto may be attached to such special school district by the board of education thereof, upon application in writing signed by a majority of the voters of such adjacent territory; provided, that no territory shall be annexed which is at a greater distance than three miles from the central school in such special district, except upon petition signed by two-thirds of the school voters resid-

ing in the territory which is at a greater distance than three miles from the central school in such special district; and upon such application being made, if such board shall deem it proper and to the best interests of the school of such corporation and of the territory to be attached, an order shall be issued by such board attaching such adjacent territory to such corporation for school purposes, and the same shall be entered upon the records of the board. Such territory shall from the date of such order be and compose a part of such corporation for school purposes only. Such adjacent territory shall be attached for voting purposes to such corporation, or, if the election is held in wards, to the ward or wards or election precinct or precincts to which it lies adjacent; and the voters thereof shall vote only for school officers and upon such school questions; provided, that nothing in this act shall prevent any such adjacent territory from being annexed because of such adjacent territory being in an adjoining county, and provided, that the county commissioners may detach any part of such adjacent territory which is at a greater distance than three miles from the central school in such special district and attach it to any adjacent common or special school district or districts upon petition to do so, signed by three-fourths of the legal voters of such adjacent territory; provided, further, that in all cases fourteen days' notice of a hearing before the board shall be given, by publication in the nearest newspaper and posted notices in conspicuous places, three in the special district, three in the territory sought to be annexed, and three in the district remaining from which the territory shall be taken. And such territory shall not become a part of the special district until five days after such hearing, upon order of the board as hereinbefore provided; and all assets and liabilities shall be equalized according to section 1327. [1911, ch. 266, § 133; R. C. 1905, § 949; 1897, ch. 75; R. C. 1899, § 786; 1905, ch. 99.]

Territory may be detached from independent school district in county and attached to another school district in adjoining county. Independent School Dist. No. 2 v. District No. 37, 20 S. D. 349, 106 N. W. 302.

Amendatory act is not void because subject is not expressed in title, if subject matter is germane to subject of original act and within title of that act. School Dist. v. King, 20 N. D. 614, 127 N. W. 515.

Territory cannot be segregated from school district except by petition as provided in this section. State ex rel. Nicholson v. Ferguson, 23 N. D. 153, 134 N. W. 872.

Question as to whether application for annexation of territory to school district was signed by majority of voters is conclusively determined by annexation. Greenfield School Dist. v. Hannaford Special School Dist., 20 N. D. 393, 127 N. W. 499.

Liability of territory annexed to school district to pay proportionate share of existing debts. 27 L.R.A.(N.S.) 1147.

§ 1241. Name of body corporate. Every such district shall be a body corporate for school purposes by the name of "The Board of Education of the City, town or village (as the case may be) of (here insert the corporate name of the city, town or village) of the State of North Dakota," and shall possess all the powers and duties usual to corporations for public purposes or conferred upon it by this article or which may hereafter be conferred upon it by law; and in such name it may sue and be sued, contract and be contracted with, and hold and convey such real and personal property as shall come into its possession by will or otherwise; and it shall procure and keep a corporate seal by which its official acts may be attested. [1911, ch. 266, § 134; R. C. 1905, § 950; 1890, ch. 62, § 171; R. C. 1899, § 787.]

Corporate existence of district not put in issue by denial on information and belief. Board of Ed. v. Prior, 11 S. D. 292, 77 N. W. 106.

§ 1242. Conveyance of school property. How executed. Any such city or incorporated town or village is authorized and required upon the request of the board of education, to convey to such board of education all property within the limits of any such corporation heretofore purchased by it for school purposes and now held and used for such purposes, the title to which is vested in any such civil corporation. All conveyances for such property shall be signed by the mayor or president of the board of trustees or com-

mission and attested by the clerk of such corporation, and shall have the seal of the corporation affixed thereto and be acknowledged by the mayor or president in the same manner as other conveyances of real estate. [1911, ch. 266, § 135; R. C. 1905, § 951; 1890, ch. 62, § 172; R. C. 1899, § 788.]

§ 1243. Special school districts. How organized. When a petition signed by one-third of the voters of a city, incorporated or platted town or village, or a school district in which is located a city or incorporated or platted town or village entitled to vote at such election, is presented to the council, commission or board of trustees of such city, incorporated or platted town or village or school district, asking that such city, incorporated or platted town or village or school district be organized as a special school district, such council, commission or board of trustees shall within ten days order an election for such purpose, notice of which shall be given, and the election conducted and the returns made in the manner provided by law for the annual school election; and the voters of such city, incorporated town or village or school district shall vote for or against organization as a special school district at such election. [1911, ch. 266, § 136; R. C. 1905, § 951; 1897, ch. 75; R. C. 1899, § 789.]

§ 1244. Election of first board of education. If a majority of the votes cast at such election is for organization as a special school district, another election shall be called in the same manner as is prescribed in the foregoing section, at which the voters of such city, incorporated town or village or school district shall elect five members of the board of education, two of whom shall serve until the first annual election, two until the second annual election, and one until the third annual election thereafter, and until their successors are elected and qualified, and their respective terms shall be determined by lot. [1911, ch. 266, § 137; R. C. 1905, § 953; 1897, ch. 75; R. C. 1899, § 790.]

§ 1245. Terms of office. Quorum. The board of education of each special district shall consist of five members who shall be elected by the legal voters thereof and who shall hold their office for the term of three years and until their successors are elected and qualified, except as provided for first elections under this article; and three members shall constitute a quorum for the transaction of business at any legal meeting. [1911, ch. 266, § 138; R. C. 1905, § 954; 1890, ch. 62, § 175; R. C. 1899, § 791.]

§ 1246. Compensation of members. Must not be interested in contracts. Each member of such board of education shall receive a compensation of one dollar and fifty cents for each meeting of such board actually attended by him; provided, that no compensation shall be allowed for more than one meeting in each calendar month. The members shall not be interested, directly or indirectly, in any contract for making any improvements or repairs, or for erecting any building or for furnishing any materials or supplies for their district. [1911, ch. 266, § 139; R. C. 1905, § 955; 1890, ch. 62, § 176; R. C. 1899, § 792.]

§ 1247. Meetings of board. The annual meeting of such board of education shall be held on the second Tuesday in July following the annual election, at which time the newly elected members shall assume the duties of their office. The board shall meet for the transaction of business as often as once in each calendar month thereafter and may adjourn for a shorter time. Special meetings may be called by the president or in his absence by any two members of the board or by giving a personal notice to each member of the board or by causing a written or printed notice to be left at his place of residence, at least forty-eight hours before the time of such meeting. [1911, ch. 266, § 140; R. C. 1905, § 956; 1890, ch. 62, § 177; R. C. 1899, § 793.]

§ 1248. Organization of board. At the annual meeting on the second Tuesday in July of each year such board of education shall organize by electing a president from among its members, who shall serve for one year; and they shall also appoint a clerk and a treasurer, not of their own number,

who shall hold their offices during the pleasure of the board and receive such compensation for their services as shall be fixed by the board. In the absence of the president at any meeting a president pro tempore may be elected by the board. [1913, ch. 256; 1911, ch. 266, § 141; R. C. 1905, § 957; 1890, ch. 62, § 178; R. C. 1899, § 794.]

§ 1249. Duties of president. The president shall preside at all meetings of the board, appoint all committees whose appointment is not otherwise provided for and sign all warrants ordered by the board to be drawn upon the treasurer for school moneys and perform other acts required by law. [1911, ch. 266, § 142; R. C. 1905, § 958; 1890, ch. 62, § 179; R. C. 1899, § 795.]

§ 1250. Duties of clerk. Records. The clerk shall keep a true record of all the proceedings of the board, take charge of its books and documents, countersign all warrants for school moneys drawn upon the treasurer by order of the board and affix the corporate seal thereto and perform such other duties as the board may require. The records, books, vouchers and papers of the board shall be open to examination by any taxpayer of the district. Such record or a transcript thereof certified by the clerk and attested by the seal of the board, shall be received in all courts as prima facie evidence of the facts therein set forth. [1911, ch. 266, § 143; R. C. 1905, § 959; 1890, ch. 62, § 180; R. C. 1899, § 796.]

§ 1251. Powers and duties of board. Each board of education shall have the power and it shall be its duty:

1. To establish a system of graded common schools which shall be free to all children of legal school age, residing within such special district, and shall be kept open not less than seven nor more than ten months in any year.

2. To establish and maintain such schools in its city, town or village as it shall deem requisite or expedient and to change or discontinue the same.

3. To establish and maintain a high school, whenever in its opinion the educational interests of the corporation demand the same, in which such courses of study shall be pursued as shall be prescribed or approved by the superintendent of public instruction, together with such additional courses as such board of education may thereafter deem advisable to establish.

4. To purchase, sell, exchange and hire school houses and rooms, lots or sites for school houses, and to fence and otherwise improve them as it deems proper.

5. Upon such lots and upon such sites as may be owned by such special district, to build, alter, enlarge, improve and repair school houses, outhouses and appurtenances as it may deem advisable.

6. To purchase, sell, exchange, improve and repair school apparatus, text books for the use of the pupils, furniture and appendages, and to provide fuel for the schools.

7. To have the custody of all school property of every kind and to see that the ordinances and by-laws of the city or village in relation thereto are observed.

8. To contract with, employ and pay all teachers in such schools and to dismiss and remove for cause any teacher whenever the interests of the school may require it; but any such teacher shall be required to hold a certificate to teach, issued by the county superintendent or the superintendent of public instruction, and if any such teacher holds only an elementary certificate the board may impose such further requirements as the best interests of the several grades may require. No person who is related to any member of the board, by blood or marriage, shall be employed as a teacher without the concurrence of the entire board.

9. To employ, should it deem expedient, a competent and discreet person as superintendent of schools for a period not to exceed three years, and to pay such person a reasonable salary; such superintendent may be required to act as principal or teacher in such school.

10. To defray the necessary and contingent expenses of the board, including the compensation of its clerk.

11. To adopt, alter and repeal, whenever it may deem expedient, rules and regulations for the reception, organization, grading, government and instruction of pupils, their suspension, expulsion or transfer from one school to another. But no pupil shall be suspended or expelled except for insubordination, habitual indolence or disorderly conduct; such suspension shall not be for a longer period than ten days, nor such expulsion beyond the end of the current term of school.

12. Each member shall visit, at least twice in each year, all the public schools in the city or village.

13. To make a report on July 1st, or as soon thereafter as practicable, of the progress, prosperity and condition, financial as well as educational, of all the schools under its charge, a copy of which, together with such further information as shall be required by the superintendent of public instruction, shall be forwarded to the county superintendent, the same as reports are made by other school districts; and such report or such portion thereof as the board of education shall consider advantageous to the public, shall be published in a newspaper in the city or village, and in cities of over eight hundred inhabitants it may be published in pamphlet form.

14. To admit children of persons not living in such special district, and to fix and collect the tuition therefor, if in its judgment the best interests of the school will permit.

15. To cause an enumeration to be made annually, of the children of school age within such special district, including those residing in any territory thereto attached for school purposes, as provided for other school districts, and return the same to the county superintendent. [1911, ch. 266, § 144; R. C. 1905, § 960; 1897, ch. 75; R. C. 1899, § 797.]

8. Power of trustees to hire teacher for period extending beyond their own term. 16 L.R.A. 257.

11. Forbidding student's affiliation with secret society. 7 L.R.A. (N.S.) 352.

Power of school authorities over pupils while outside of school grounds. 3 L.R.A. (N.S.) 496.

Right of school authorities to control pupils when going to and from school. 62 L.R.A. 160.

Right to exclude, suspend, or expel pupils for misconduct of themselves or parents. 41 L.R.A. 593.

§ 1252. School under supervision of whom. The schools of each special district shall be under the immediate supervision of the board of education or the school superintendent appointed by such board. [1911, ch. 266, § 145; R. C. 1905, § 962; 1890, ch. 62, § 183; R. C. 1899, § 799.]

As to schools in special districts not being under supervision of county superintendents. *Dickey County v. Denning*, 14 N. D. 77, 103 N. W. 422.

§ 1253. Treasurer, custodian of school moneys. All moneys from whatever source, which the board of education of any special district shall by law be authorized to receive, shall be paid over to the treasurer of the said board and he shall charge the same to the proper fund. [1911, ch. 266, § 146; R. C. 1905, § 961; 1890, ch. 62, § 182; R. C. 1899, § 798.]

§ 1254. Treasurer. The treasurer of any city, town or village comprising a special district shall be treasurer of the board of education thereof; provided, however, should the said special school district have within its boundaries and be comprised partly of territory without the limits of said city, town or village, then the said special school district shall elect, at its regular elections, a treasurer in the manner provided by law for the election of school district treasurer. [1911, ch. 266, § 147; R. C. 1905, § 966; 1890, ch. 62, § 187; R. C. 1899, § 803.]

§ 1255. Treasurer. Duties of. The treasurer of each board of education shall keep a true account of the receipts and expenditures of the various funds separately, and shall prepare and submit in writing a quarterly report

of the state of the finances of the district, and shall, when required, produce at any meeting of such board, or any committee appointed for the purpose of examining his accounts, all books and papers pertaining to his office. He shall safely keep in his possession or under his control all school moneys coming into his hands, and shall pay out such moneys only upon a warrant signed by the president, countersigned by the clerk and attested by the corporate seal of the board. [1911, ch. 266, § 148; R. C. 1905, § 967; 1890, ch. 62, § 188; R. C. 1899, § 804.]

§ 1256. Treasurer's bond. The treasurer of the board shall execute a bond to such board, with sufficient sureties to be approved by the board, in such sum as such board may from time to time require, as near as can be ascertained in double the amount of the moneys likely to come into his hands, conditioned for the faithful discharge of his duties as treasurer; which bond shall be in addition to his bond to the city, town or village. In case of the failure of the city, town or village treasurer to give such bond within ten days after being required so to do by such board of education, such treasurer's office shall become vacant and the council or board of trustees of such city, town or village shall appoint another person to his place, who shall give such additional bonds. [1911, ch. 266, § 149; R. C. 1905, § 968; 1890, ch. 62, § 189; R. C. 1899, § 805.]

§ 1257. Taxable property. The taxable property of the whole school corporation including the territory attached for school purposes shall be subject to taxation. All taxes collected for the benefit of the school shall be paid in money, and shall be placed in the hands of the treasurer, subject to the order of the board of education. [1911, ch. 266, § 150; R. C. 1905, § 963; 1890, ch. 62, § 184; R. C. 1899, § 800.]

§ 1258. Annual school tax. The board of education shall on or before the twentieth day of July of each year levy a tax for the support of the schools of the corporation, including any expenditures allowed by law, for the fiscal year next ensuing, not exceeding in any one year thirty mills on the dollar on all the real and personal property within the district which is taxable according to the laws of this state, the amount of which levy the clerk of the board shall certify to the county auditor, who is authorized and required to place the same on the tax roll of such county to be collected by the county treasurer as other taxes and paid over by him to the treasurer of the board of education of whom he shall take a receipt in duplicate, one of which he shall file in his office and the other he shall forthwith transmit to the clerk of the board of education. [1911, ch. 266, § 151; R. C. 1905, § 964; 1890, ch. 62, § 185; R. C. 1899, § 801.]

§ 1259. Expenditures. Contracts. No expenditure involving an amount greater than one hundred dollars shall be made except in accordance with the provisions of a written contract, and no contract involving an expenditure of more than five hundred dollars for the purpose of erecting any public buildings or making any improvements shall be made except upon sealed proposals and to the lowest responsible bidder, after public notice for fourteen days previous to receiving such bids. [1911, ch. 266, § 152; R. C. 1905, § 965; 1890, ch. 62, § 186; R. C. 1899, § 802.]

§ 1260. Board assumes control after equalization of debts and property. When any board of education shall be organized under the provisions of this article, it shall, after the equalization hereinafter provided for, assume control of the schools of the city, town or village, and shall be entitled to the possession of all property of the former district or districts or parts thereof lying within such city, town or village, for the use of schools. Such board shall also be entitled to its due proportion of all moneys on hand and taxes already levied but not collected, and shall be liable for a proper amount of the debts and liabilities of such former district, to be determined in the manner provided in this chapter for the equalization, determination and

division of debts, property and assets of school districts consolidated or divided. [1911, ch. 266, § 153; R. C. 1905, § 969; 1890, ch. 62, § 190; R. C. 1899, § 806.]

§ 1261. Special district may become part of common school district when. Any special district organized under the general school laws and provided with a board of education may become a part of the common school district in which it is located, whenever it is so decided by a majority vote of the school electors of the city, town or village and of such common school district voting at an election called for that purpose. An [election] for such purpose shall be ordered and proper notice thereof given by the board of education of the special district, and the school board of such common school district in the same manner as is required for the election of school officers in such district, when petitioned by one-third of the voters resident in such district; and when so united the determination and division of the debts, property and assets shall be made by arbitration as provided in this chapter for school districts consolidated or divided. Villages not incorporated but heretofore organized under the general school laws and provided with a board of education shall become a part of the school district in which they are located and the determination and division of the property, debts and assets shall be made by arbitration as aforesaid. [1911, ch. 266, § 154; R. C. 1905, § 970; 1890, ch. 62, § 191; R. C. 1899, § 807.]

§ 1262. Election of boards of education in special districts. On the first Tuesday in June, each year, an election shall be held in each special district at which such members of the board of education shall be elected at large as shall be necessary to fill all vacancies therein caused by expiration of terms of office or otherwise, and each member elected shall serve for a term of three years commencing on the second Tuesday in July following his election and until his successor is elected and qualified except when elected to serve an unexpired term. The polls shall be open at nine o'clock a. m. and kept open until four o'clock p. m. on the day of such election. [1911, ch. 266, § 155; R. C. 1905, § 971; 1890, ch. 62, § 192; 1891, ch. 56, § 34; R. C. 1899, § 808.]

§ 1263. Notice of election. Such election shall be called by the board of education of such special district, which shall cause notice thereof to be posted or published as required by law for the annual election of civil officers in the city, town or village comprising such special district; such notice shall be signed by the clerk, or, in his absence, by the president of the board of education of such district, and shall state the time and place of holding such election and what officers are to be elected and their terms. [1911, ch. 266, § 156; R. C. 1905, § 972; 1890, ch. 62, § 194; R. C. 1899, § 809.]

§ 1264. Notice of election. Form of. Such notice shall be in substantially the following form:

Notice is hereby given that on Tuesday, the day of June, A. D., an annual election will be held at (here insert polling place) for the purpose of electing the following members of the board of education (here insert terms for which they are to be elected), for the city, town or village (here insert name), and the polls will be open at nine o'clock a. m., and closed at four o'clock p. m. of that day.

By order of the Board of Education.

Signed, Clerk.

[1913, ch. 262; 1911, ch. 266, § 157; 1890, ch. 62, § 194; R. C. 1895, § 810.]

§ 1265. Candidates. Official ballot. Any person desiring to be a candidate at such election shall file his or her name with the clerk not less than five days before such election, stating what position he or she desires to be a candidate for. At least three days before such election the clerk shall prepare and have printed an official ballot containing all the names filed as here-

inbefore provided. Such ballot shall be headed "Official Ballot," shall contain the name of the district and the date of such election, shall be non-partisan, and state the number of persons to be voted for for each office, shall contain blank spaces below for writing in other names. Provided nothing herein shall prevent any person desiring to be a candidate at such election and who failed to file as hereinbefore provided, from providing stickers to be attached to the official ballot by the voter, such stickers to be not over one-half inch in width and have printed thereon one name only. [1913, ch. 262.]

§ 1266. Provisions applicable. The provisions of sections 640 [985], 641 [986], 644 [989], 648 [1006], 649 [1007] and 681 [1039] of the Revised Codes of 1905, and sections 9 [931], 10 [932], 11 [933], 12 [934], 13 [935], 14 [936], 15 [937], 16 [939], 17 [940], 18 [941], 19 [942], 20 [943], and 21 [944] of chapter 129 of the Session Laws of 1911, shall apply to elections held under the provisions of sections 1264, 1265. [1913, ch. 262.]

The figures in brackets are the numbers of the sections in this compilation.

§ 1267. Election precincts and officers of election. At least fourteen days prior to such election the board of education of each special district shall designate one polling place and appoint two persons to act as judges and two persons to act as clerks. Before opening the polls each of such judges and clerks shall take an oath that he will perform his duties as judge or clerk (as the case may be) according to law and to the best of his ability, which oath may be administered by any officer authorized to administer oaths or by either of said judges or clerks to the others. [1911, ch. 266, § 158; R. C. 1905, § 974; 1890, ch. 62, § 195; R. C. 1899, § 811.]

§ 1268. Canvass of returns. Such election shall be conducted, the votes canvassed in the manner provided by law for election of county officers, and returns shall be made showing the number of votes cast for each person for any office, which shall be signed by the judges and clerks of election, and the person receiving the highest number of votes for each office in the district shall be declared elected, and the returns shall be filed with the clerk of the board of education within two days thereafter. [1911, ch. 266, § 159; R. C. 1905, § 975; 1890, ch. 62, § 196; R. C. 1895, § 812.]

§ 1269. Certificates of election. The clerk of the board shall give to each person elected at such election a certificate stating that he was duly elected as a member of the board of education and the time he is to take the oath and enter upon the duties of his office. Such clerk shall also, within five days, certify to the county superintendent of schools the persons so elected and their terms. [1911, ch. 266, § 160; R. C. 1905, § 976; 1890, ch. 62, § 197; R. C. 1899, § 813.]

§ 1270. Oath of office. Before entering upon the duties of his office each person elected or appointed as a member of the board of education shall take the oath or affirmation prescribed in section 211 of the constitution, which oath shall be filed with the clerk of the board. [1911, ch. 266, § 161; R. C. 1905, § 978; 1890, ch. 62, § 199; R. C. 1895, § 815.]

§ 1271. Vacancies. How filled. The board of education of each city, town or village shall have power to appoint a person to fill any vacancy which may occur in the board; and such appointee shall hold his office until the next annual school election, at which time a person shall be elected to serve for the unexpired term; but if such vacancy shall occur within ten days before an annual election, such appointee shall hold office until the annual election in the following year. When any such appointment shall be made the clerk shall certify the same to the county superintendent. [1911, ch. 266, § 162; R. C. 1905, § 977; 1890, ch. 62, § 198; R. C. 1899, § 814.]

§ 1272. Bonds, how and when issued. Whenever the taxes authorized by law shall not be sufficient or shall be deemed by the board of education to be burdensome, bonds may be issued and negotiated for the purpose of raising

money to purchase a site or to erect suitable buildings thereon, or to fund any outstanding indebtedness, or for the purpose of taking up any outstanding bonds of the school corporation; provided, that the issuance of such bonds shall first be authorized by the voters of such special district as hereinafter prescribed. Such bonds shall be signed by the president and clerk and attested by the corporate seal of the board, shall bear the date of their issue, and be payable in not less than five nor more than twenty years from their date, at such place as shall be designated upon their face. [1911, ch. 266, § 163; R. C. 1905, § 979; 1897, ch. 75; R. C. 1899, § 816.]

Right of taxpayer, in absence of statute, to enjoin issuance or payment of school bonds. 36 L.R.A. (N.S.) 7.

§ 1273. Denomination of bonds. The denominations of the bonds which may be issued under the provisions of this article shall be fifty dollars or some multiple of fifty, and shall bear interest at not more than five per cent per annum, payable semi-annually on the first day of January and July in each year, shall show upon their face that they are issued for school purposes, and shall be sold at not less than par. Each bond shall have endorsed thereon the certificate of the clerk stating that such bond is issued pursuant to law and is within the debt limit prescribed by the constitution. [1911, ch. 266, § 164; R. C. 1905, § 979; 1897, ch. 75; R. C. 1899, § 816.]

§ 1274. Bonds. Election for issuing. Before issuing any such bonds the board of education shall call an election for the purpose of submitting to the voters of the district the question of issuing such bonds, notice of which shall be given in the manner prescribed by law for giving notice of the annual election for the several officers of the city, town or village comprising such special district, except that such notice shall be given fourteen days before such election. Such election shall be conducted and the returns made in the manner provided for the annual election of members of the board of education and may be held at the time of the annual school election or at any other time named in such notice. The notice of such election shall clearly state the amount of the bonds proposed to be issued, the time in which they shall be made payable, the purpose for which they are to be issued, and the time and place such election will be held. At such election the voters shall have written or printed on their ballots "for issuing bonds" or "against issuing bonds," and if a majority of the votes cast is for issuing bonds such bonds shall be issued and negotiated by such board of education, but if a majority thereof is against issuing bonds such bonds shall not be issued, nor shall the question be again submitted for one year thereafter except for a different amount and then only upon a written petition of a majority of the voters of the district. [1911, ch. 266, § 165; R. C. 1905, § 980; 1890, ch. 62, § 201; R. C. 1899, § 817.]

§ 1275. Bonds to specify what. Debt limit. The bonds, the issuance of which is provided for in the foregoing section, shall specify the rate of interest and the time when the principal and interest shall be paid; and no district shall issue bonds in pursuance of this article in a sum greater than five per cent of its assessed valuation, including other debts. [1911, ch. 266, § 166; R. C. 1905, § 981; 1890, ch. 62, § 202; R. C. 1899, § 818.]

Maintenance of school as necessity which will justify school district in exceeding debt limit. 27 L.R.A. (N.S.) 891.

§ 1276. Levy for interest and sinking fund. The board of education at the time of its annual tax levy for the support of schools shall also levy a sufficient amount to pay the interest as the same accrues on all bonds issued under the provisions of this article, and also to create a sinking fund for the redemption of such bonds, which it shall levy and collect in addition to the rate per cent authorized by the provisions aforesaid for school purposes, and such amount of funds when paid into the treasury shall be and remain a special fund for such purpose only, and shall not be apportioned in any other

way except as hereinafter provided. At or before the issuance of any bonds as herein provided the board shall by resolution provide for such annual levy to pay the interest and to create such sinking fund, and such resolution shall remain in force until all such bonds and the interest thereon shall have been paid. [1911, ch. 266, § 167; R. C. 1905, § 982; 1890, ch. 62, § 203; R. C. 1899, § 819.]

Board of education estopped to set up failure to provide sinking fund, where bonds recite that law has been complied with. *Wilson v. Board of Ed.*, 12 S. D. 535, 81 N. W. 952.

§ 1277. Investment of sinking funds. School districts. All moneys raised for the purpose of creating a sinking fund for the final redemption of all bonds issued under article 71 of chapter 9 of the Civil Code of the state shall be invested annually by the board of education of any special school district in this state as follows, viz.:

1. In the bonds of this state or of the United States.

2. A special school district board may designate one or more national or state banks in the county where such special school district is situated, as a depository for such sinking fund, and in such case the school board shall advertise for at least fourteen days in some newspaper printed within the limits of said special school district, if there be one, if not, in the county where said school district is situated, for sealed proposals for the deposit of the sinking fund of such school district, reserving the right to reject any and all bids, and satisfying itself of the responsibility of all banks proposing to act as depositories. Before any bank shall be designated as such depository, it shall present to the school board a sealed proposal stating in writing what rate of interest will be paid for the deposit of such sinking funds, and shall submit to the board for its approval a bond payable to the special school district conditioned for the safe keeping and repayment of any funds deposited in such bank, which bond shall be signed by not less than three freeholders of this state as sureties or some surety bond company qualified to do business in this state, and such bond to be in the sum required by the school board and in no case to be less than double the probable amount of the funds to be deposited in such bank. The approval of such bond shall be endorsed thereon by the board and deposited with the county auditor, and any bank whose bond shall have been so approved shall thereupon be designated by the school board as a depository for the sinking fund, and shall continue as such until such time as the board shall direct the withdrawal of such funds or until such funds are needed for the payment or the purchase of bonds as provided in this act. When the sinking fund of any special school district is deposited by the treasurer of the board of education of said school district in the name of the school district in such depository, such treasurer and his sureties shall be exempt from all liability thereon by reason of loss of any such funds from the failure, bankruptcy or any other act of any such bank, to the extent only of such funds in the hands of such bank or banks at the time of such failure or bankruptcy. Such depository shall furnish to the clerk of the board of education of such special school district prior to the fifth day of July of each year, a verified statement of the school district account with such depository for the year ending June thirtieth, which statement shall show a credit to such deposit account of all sums of interest accruing on the sinking fund deposited.

3. The board of education of any special school district may buy and cancel the bonds of such district and pay for the same with the moneys in the sinking fund created to pay such bonds.

4. In first mortgages on farm lands in this state only in the following manner, to-wit:

(a) That said first mortgages and all of them shall run for a period of time not to exceed ten years and that the funds so invested shall bear interest

at a rate not less than six per cent per annum and such interest when paid shall be covered into and become a part of the said sinking fund.

(b) First mortgage loans shall be made only upon cultivated lands within the state, and in no case on lands of which the appraised value is less than seven dollars and fifty cents per acre, and in sums not to exceed forty per cent of the appraised valuation of such lands. Such appraisement to be made by the school board of such special school district or by some competent person designated by them for the purpose. [1911, ch. 266, § 168; R. C. 1905, § 983; 1890, ch. 62, § 204; R. C. 1899, § 820; 1901, ch. 190.]

The reference at the beginning of this section to "article 71 of chapter 9 of the Civil Code" is erroneous. See explanation in note to section 1307.

§ 1278. Satisfaction and foreclosure of mortgages. All or any of said mortgages may be satisfied at any time after five years from the date when made, on payment of the full amount due thereon, by any instrument in writing executed in the corporate name of the special school district which shall be the payee in all notes taken for loans as herein provided and the mortgagee in all mortgages taken. Such instrument to be executed and acknowledged in the same manner as is or may be provided for by law for the execution and acknowledgment of transfers of real estate by corporations. Such mortgages may be foreclosed by advertisement or an action in the name of the special school district in any court of competent jurisdiction as is now or may be provided by law. [1911, ch. 266, § 169; R. C. 1905, § 984; 1890, ch. 62, § 204; R. C. 1899, § 820; 1901, ch. 190.]

§ 1279. Interest coupons. When the interest coupons of the bonds herein-before authorized shall become due they shall be promptly paid by the treasurer, upon presentation, out of any moneys in his hands collected for that purpose, and he shall indorse in red ink upon the face of such coupons the word "paid" and the date of payment and sign the initials of his name. [1911, ch. 266, § 170; R. C. 1905, § 985; 1890, ch. 62, § 205; R. C. 1899, § 821.]

§ 1280. Security for payment of bonds. The school fund and property of such school corporation and territory attached for such purposes is hereby pledged to the payment of the interest and principal of the bonds mentioned in this article as the same may become due. [1911, ch. 266, § 171; R. C. 1905, § 986; 1890, ch. 62, § 206; R. C. 1899, § 822.]

§ 1281. Bond register. The clerk of the board of education shall register in a book provided for that purpose the bonds issued under this article, and all warrants issued by the board, which register shall show the number, date and amount of such bonds and to whom payable. [1911, ch. 266, § 172; R. C. 1905, § 987; 1890, ch. 62, § 207; R. C. 1899, § 823.]

§ 1282. Refunding bonds. Issuance of. The board of education of any special or independent school district shall have power, whenever two-thirds of the members of such board shall deem it necessary for the best interests of such school district, to issue bonds for the purpose of refunding any outstanding bonds when the same become due. Such bonds shall be issued in denominations of fifty dollars or some multiple of fifty, and shall not exceed in amount the face value of the bonds they are issued to replace, and shall not bear a higher rate of interest than five per cent per annum, payable semi-annually on the first day of January and July of each year, nor run for a longer period than twenty years. [1911, ch. 266, § 173; R. C. 1905, § 988; 1907, ch. 75; R. C. 1899, § 824.]

§ 1283. Bonds may be exchanged. Such refunding bonds may be exchanged at par for an equal amount of outstanding bonds or may be sold at not less than par value and the proceeds applied solely to the payment of the bonds to be refunded, except that any premium that may be received on the sale of such bonds shall be kept as a separate fund and used for the payment of the interest on such bonds. [1911, ch. 266, § 174; R. C. 1905, § 989; 1891, ch. 59, § 2; R. C. 1899, § 825.]

§ 1284. Issue of bonds. How governed. In the issuance of such refunding bonds the board of education shall be governed by the provisions of sections 980-986. [1911, ch. 266, § 175; R. C. 1905, § 990; 1891, ch. 59, § 3; R. C. 1899, § 826.]

§ 1285. Surplus funds. How transferred. Any moneys remaining in the treasury of such school districts, appropriated or held for the purpose of paying such bonds so refunded, may, at the discretion of the board of education at any time within six months after such refunded bonds have been taken up and cancelled, be transferred to the building or contingent fund of such district. [1911, ch. 266, § 176; R. C. 1905, § 991; 1891, ch. 59, § 4; R. C. 1899, § 827.]

ARTICLE 10.—INDEPENDENT SCHOOL DISTRICTS.

§ 1286. Independent school districts. How organized. Any city heretofore organized for school purposes under a special law and provided with a board of education may become incorporated as an independent school district under the provisions of this article in the manner following: Whenever one-eighth of the legal voters of such city voting at the preceding municipal election shall petition the mayor and council thereof to submit the question as to whether such city shall establish an independent school district under this article to a vote of the electors in such city it shall be the duty of such mayor and council to submit such question accordingly and to appoint a time and place or places at which such vote may be taken and to designate the persons who shall act as judges at such election, but such question shall not be submitted oftener than once in two years. [1911, ch. 266, § 177; R. C. 1905, § 992; 1890, ch. 64, § 1; R. C. 1899, § 828.]

§ 1287. Notice of election. The mayor of such city shall cause at least fourteen days' notice of such election to be given by publishing a notice thereof in one or more newspapers within such city, but if no newspaper is published therein, then by posting at least five copies of such notice in each ward or voting precinct. [1911, ch. 266, § 178; R. C. 1905, § 993; 1890, ch. 64, § 2; R. C. 1899, § 829.]

§ 1288. Form of ballots. Returns. The ballots to be used at such election shall be in the following form: "For establishing an independent school district," or "against establishing an independent school district." The judges of such election shall make returns thereof to the city council whose duty it shall be to canvass such returns and cause the result of such canvass to be entered upon the records of such city. If a majority of the votes cast at such election shall be for establishing an independent school district, such independent school district shall henceforth be deemed to be organized under this article and the board of education then in office shall thereupon exercise the powers conferred upon the officers in this article until their successors are elected and qualified. [1911, ch. 266, § 179; R. C. 1905, § 994; 1890, ch. 64, § 3; R. C. 1899, § 830.]

§ 1289. Boundaries of independent districts. All that portion included within the corporate limits of any city, together with the additions that are now or may be hereafter attached to such city limits shall be constituted and established an independent school district to be designated as the "Independent School District of the City of" and a board of education is hereby established for the same. [1911, ch. 266, § 180; R. C. 1905, § 995; 1890, ch. 64, § 4; R. C. 1899, § 831.]

§ 1290. Members of the board. How elected. Quorum and term of office. Such board shall consist of one member from each ward in the city, and when the city is divided into an even number of wards then such city shall elect one member of such board at large, and when such city is divided into an odd number of wards such city shall elect two members of such board at large. Such members shall hold their office for the term of three years and

until their successors are elected and qualified. Provided that at the first election in independent districts hereafter organized members from even numbered wards shall be elected for a term of one year; and members from odd numbered wards for a term of two years; and members at large shall be elected for a term of three years. Provided further, that in such cities as have been heretofore organized as independent school districts that the term of office of members at large elected in 1912 shall be three years; that the term of office for members of said board from even numbered wards elected in 1912 be extended to two years from the date of their election; that their term of office of the members elected from odd numbered wards in 1911 shall remain two years, and that thereafter the term of office for all members shall be three years. A majority of said board shall constitute a quorum. [1913, ch. 257; 1911, ch. 266, § 181; R. C. 1905, § 996; 1897, ch. 75; R. C. 1899, § 832.]

§ 1291. Date of election. Canvass of votes. The election referred to in the foregoing shall be held on the third Monday in April of each year, at the usual polling place for municipal elections in each ward. The mayor shall have authority and is hereby empowered to appoint two judges and one clerk for such election, who shall open the polls at the hour of eleven o'clock in the forenoon and hold the same open until five o'clock in the afternoon of the same day. Such elections shall be conducted in all respects and the polls closed and votes canvassed in the same manner as municipal elections, and the judges shall have the same power and authority in all respects as the judges of election for municipal officers, and after the votes are canvassed the judges shall make their returns to the city clerk or auditor, as the case may be, within twenty-four hours after the polls are closed, and the city council shall canvass such returns and declare the result within three days thereafter, which result shall be entered upon the records of the city, and it shall be the duty of the city clerk or auditor to issue certificates of election to the persons declared elected. The judges and clerks of election shall receive the same compensation for their services as at municipal elections for mayor and aldermen. [1911, ch. 266, § 182; R. C. 1905, § 997; 1890, ch. 64, § 6; R. C. 1899, § 833.]

§ 1292. Vacancies, how filled. If any vacancy occurs in the board for any cause, the remaining members thereof shall fill such vacancy by appointment until the next annual election, and at such election a new member shall be elected to fill the unexpired term. [1911, ch. 266, § 183; R. C. 1905, § 998; 1890, ch. 64, § 7; R. C. 1899, § 834.]

§ 1293. Style and powers of board. The board so elected shall be a body corporate in relation to all the power and duties conferred upon it by this article and shall be styled "The Board of Education of the Independent School District of the City of.....(here insert the name of the city,)" and as such shall have the power to sue and be sued, contract and be contracted with, and shall possess all the powers usual and incident to such bodies corporate, and such as shall be herein given, and shall procure and keep a corporate seal. At each annual meeting of the board the members thereof shall elect one of their number president of the board, and when he is absent a president pro tempore shall be appointed, who shall preside during such absence. The members so elected shall each qualify by taking the prescribed oath of office within ten days after receiving their certificates of election, and shall assume the duties of their office at the annual meeting of the board held on the first Tuesday in May of each year. [1911, ch. 266, § 184; R. C. 1905, § 999; 1890, ch. 64, § 8; R. C. 1899, § 835.]

§ 1294. Responsibility of board. The members of the board shall receive no compensation, nor be interested directly or indirectly in any contract for building or making any improvements or repairs provided by this chapter. They shall have the care and custody of all public property in such district

pertaining to school purposes and the general management and control of all school matters. [1911, ch. 266, § 185; R. C. 1905, § 1000; 1890, ch. 64, § 9; R. C. 1899, § 836.]

§ 1295. Meetings of board. The regular meetings of the board shall be held on the first Tuesday of each month, and the board may hold special meetings upon notice. The regular meeting may be adjourned for any time shorter than one month. Special meetings may be called by the president or in case of his absence or inability to act, by any three members of the board as often as necessary by giving a personal notice in writing to each member of the board or by causing such notice to be left at his place of residence at least forty-eight hours before the hour of such special meeting. [1911, ch. 266, § 186; R. C. 1905, § 1001; 1890, ch. 64, § 10; R. C. 1899, § 837.]

§ 1296. Secretary, duties of. Such board shall appoint a secretary, who shall hold his office during the pleasure of the board and whose compensation shall be fixed by the board. The secretary shall keep a record of the proceedings of the board and perform such other duties as the board may prescribe. Such record, or a transcript thereof, certified by the secretary and attested by the seal of the board, shall be received in all courts as prima facie evidence of the facts therein set forth; and such records and all books, accounts, vouchers and papers of the board shall at all times be subject to inspection by the members of such board or any committee thereof, or by any taxpayer of the district. For the purpose of economy the board may, if deemed advisable, appoint one of its own members secretary. The annual report of the secretary shall contain such items as may be required by the superintendent of public instruction. [1911, ch. 266, § 187; R. C. 1905, § 1002; 1890, ch. 64, § 11; R. C. 1899, § 838.]

§ 1297. General powers of board. The board shall have power and it shall be its duty:

1. To organize and establish such schools in the district as it shall deem requisite and expedient, and to change and discontinue the same.
2. To purchase, sell, exchange and lease school houses and rooms, lots or sites for school houses, and to fence and improve the same.
3. To build, enlarge, alter, improve or repair school houses, outhouses and appurtenances as it may deem advisable upon lots and sites owned by the district.
4. To purchase, sell, exchange, improve and repair school apparatus, books for indigent pupils, furniture and appendages and provide fuel for schools.
5. To have the custody and safe keeping of the school houses, outhouses, books, furniture and appurtenances, and to see that the ordinances of the city council in relation thereto are observed.
6. To contract with and employ a superintendent and all teachers in such schools for a period not to exceed three years, and remove them at pleasure.
7. To pay the salaries of such teachers out of the money appropriated and provided by law for the support of common schools in such district, so far as the same shall be sufficient, and the residue thereof from the money authorized to be raised by this article.
8. To defray the necessary and contingent expenses of the board, including the compensation of the secretary.
9. To have in all respects the superintendence, supervision and management of the public schools of such district and from time to time to adopt, alter, modify and repeal, as they may deem expedient, rules and regulations for their organization, grading, government and instruction, for the reception of pupils and their transfer from one school to another, for the suspension and expulsion of pupils subject to the same restrictions as are contained in subdivision 11 of section 1251, and generally for their good order, prosperity and utility.
10. To prepare and report to the city council of the city such ordinances

and regulations as may be necessary and proper for the protection, safe keeping, care and preservation of school houses, lots and sites and appurtenances and all the property belonging to the district connected with or appertaining to the schools within the city limits, and to suggest proper penalties for the violation of such ordinances and regulations, and annually, on or before the first Monday in July, to determine and certify to the county auditor the rate of taxation in its opinion necessary and proper to be levied under the provisions of this article, for the year commencing on the first day of July thereafter, and also at any time to determine how many and what denomination of bonds shall be issued and sold to pay the extraordinary outlays required. [1911, ch. 266, § 188; R. C. 1905, § 1010; 1890, ch. 64, § 19; R. C. 1899, § 846.]

6. Power of trustees to hire teacher for period extending beyond their own term. 16 L.R.A. 257.

Power of board to appoint superintendents or teachers for terms extending beyond its own term. 29 L.R.A. (N.S.) 657.

§ 1298. Powers of board. The board shall have power and it shall be its duty to levy and raise from time to time, by tax, such sums as may be determined by the board to be necessary and proper for any of the following purposes:

1. To purchase, exchange, lease or improve sites for school houses.
2. To build, purchase, lease, enlarge, alter, improve and repair school houses and their outhouses and appurtenances.
3. To purchase, exchange, improve and repair school apparatus, books, furniture and appendages.

4. To procure fuel, to pay janitors and defray the contingent expenses of the board, including the expenses of the secretary.

5. To pay teachers' salaries after the apportionment of public moneys which may be by law appropriated and provided for that purpose. [1911, ch. 266, § 189; R. C. 1905, § 1003; 1890, ch. 64, § 12; R. C. 1899, § 839.]

§ 1299. Visiting schools. Each member of the board shall visit all the public schools in the district at least twice in each year of his official term, and the board shall provide that each of the schools shall be visited by a committee of three or more of their number at least once during such term. [1911, ch. 266, § 190; R. C. 1905, § 1011; 1890, ch. 64, § 20; R. C. 1899, § 847.]

§ 1300. Nonresident pupils. Such board of education shall have power to allow the children not resident in such district to attend the schools of such district under the control and care of such board, upon such terms as the board shall prescribe, fixing the tuition which shall be paid therefor. [1911, ch. 266, § 191; R. C. 1905, § 1012; 1890, ch. 64, § 21; R. C. 1899, § 848.]

§ 1301. Collection of tax. The tax to be levied and collected as aforesaid by virtue of this article shall be collected in the same manner as other county taxes, and for that purpose the board of education shall have power to levy and cause to be collected such taxes as are herein authorized, and shall cause the amount for each purpose to be certified by the secretary to the county auditor in time to be added to and put upon the annual tax list of the county. And it shall be the duty of the county auditor to calculate and extend upon the annual assessment roll and tax list the tax so levied by such board, and such tax shall be collected as other county taxes are collected. [1911, ch. 266, § 192; R. C. 1905, § 1004; 1890, ch. 64, § 13; R. C. 1899, § 840.]

§ 1302. Amount of tax limited. The amount raised for teachers' salaries and contingent expenses shall be only such as together with the public moneys coming to such district from the state and county fund and other sources shall be sufficient to maintain efficient and proper schools in such district. The taxes for the purchasing, leasing or improving of sites, and the building, purchasing, leasing, enlarging, altering or repairing of school houses shall not exceed in any year twenty mills on the dollar, of the assessed valuation of taxable property of the district, and the board of education is authorized and

directed, when necessary, to borrow in anticipation, the amount of the taxes to be raised, levied and collected as aforesaid. [1911, ch. 266, § 193; R. C. 1905, § 1005; 1890, ch. 64, § 14; R. C. 1899, § 841.]

§ 1303. Authority to issue bonds. The board of education of such district is authorized and empowered, and it is its duty whenever the board deems it necessary for the efficient organization and establishment of schools, including the purchase of school sites and the construction and furnishing of school houses, in such district, and when the taxes authorized by this article shall not be sufficient or shall be deemed by the board to be burdensome upon the tax payers of the district, from time to time to issue bonds of the district in the denomination of fifty dollars or some multiple of fifty, payable at a time not to exceed twenty-five years after date and bearing interest at a rate not to exceed five per cent per annum, payable semi-annually on the first day of January and July of each year; and to show upon their face that they are issued for the purpose of building or furnishing a school house or school houses, purchasing grounds on which to locate the same, or to fund any outstanding indebtedness, or for the purpose of taking up any outstanding bonds; and the said board of education is authorized to cause the same to be sold at not less than par value, and the money realized therefrom deposited with the city treasurer to the credit of such board of education; and when any bonds shall be so negotiated it shall be the duty of the board to provide by tax for the payment of the principal and interest of such bonds; provided, that at no time shall the aggregate amount of such bonds, including all other indebtedness, exceed fifty mills on the dollar of valuation of the taxable property of such district, to be determined by the last city assessment. [1911, ch. 266, § 194; R. C. 1905, § 1006; 1897, ch. 75; R. C. 1899, § 842.]

Laws 1909, ch. 205, provided that "Section eighteen of a bill for an act to create certain territory now within the school township of Brightwood, Richland county, D. T., as an independent school district, to be known as Brightwood Independent District Number One, Richland county, North Dakota, passed February 16, 1885, be and the same is hereby amended to read as follows: "—proceeding then to authorize the board of education of that district to issue bonds, the section being substantially in the same terms as the foregoing § 1303.

§ 1304. Moneys paid to city treasurer. All moneys raised pursuant to the provisions of this article and all moneys which shall by law be appropriated to or provided for such district, shall be paid over to the city treasurer of the city, and the county treasurer shall from time to time as he shall receive the county school funds, and at least once in each month, on the first Monday thereof, pay over to such treasurer the proportion thereof belonging to such district; and for that purpose the board shall have the power to cause all needful steps to be taken including census reports or other acts or things, to enable such board to receive the school money belonging to such district, as fully and completely as though such district formed one of the school districts of the county where the same may be situated. [1911, ch. 266, § 195; R. C. 1905, § 1007; 1890, ch. 64, § 16; R. C. 1899, § 843.]

§ 1305. Bond of treasurer. The city treasurer of such city shall give a bond to such board of education in such sum as the board shall from time to time require, with two or more sureties to be approved by the board, conditioned for the safe keeping of the school funds, which shall be in addition to his other bond; and such treasurer and the sureties upon such bond shall be accountable to the board for the moneys that come into his hands, and in case of failure of such treasurer to give such bond when required by the board, or within ten days thereafter, his office shall become vacant and the city council shall appoint another person in his place. [1911, ch. 266, § 196; R. C. 1905, § 1008; 1890, ch. 64, § 17; R. C. 1899, § 844.]

§ 1306. School funds, how kept and paid out. All moneys required to be raised by virtue of this article shall be paid in cash or in warrants hereinafter provided, drawn on the school fund only, and such moneys and all

moneys received by such district for the use of the common schools therein shall be deposited for safe keeping with such city auditor to the credit of the board of education, and shall by him be safely kept separate and apart from any other funds until drawn from the treasury as herein provided. Such treasurer shall pay out the moneys authorized by this article only upon warrants drawn by the president, countersigned by the secretary and attested by the seal of such board of education. [1911, ch. 266, § 197; R. C. 1905, § 1009; 1890, ch. 64, § 18; R. C. 1899, § 845.]

§ 1307. Investment of sinking funds. School districts. All moneys raised for the purpose of creating a sinking fund for the final redemption of all bonds issued under article 71 of chapter 9 of the Civil Code of the state shall be invested annually by the board of education of any independent school district in this state as follows, viz.:

1. In the bonds of this state or of the United States.

2. An independent school district board may designate one or more national or state banks in the county where such independent school district is situated, as a depository for such sinking fund, and in such case the school board shall advertise for at least fourteen days in some newspaper printed within the limits of said independent school district, if there be one, if not, in the county where said school district is situated, for sealed proposals for the deposit of the sinking fund of such school district, reserving the right to reject any and all bids and satisfying itself of the responsibility of all banks proposing to act as depositories. Before any bank shall be designated as such depository it shall present to the school board a sealed proposal stating in writing what rate of interest will be paid for the deposit of such sinking funds, and shall submit to the board for its approval a bond payable to the independent school district conditioned for the safe keeping and repayment of any funds deposited in such bank, which bond shall be signed by not less than three freeholders of this state as sureties or some surety bond company qualified to do business in this state, and such bond to be in the sum required by the school board and in no case to be less than double the probable amount of the funds to be deposited in such bank. The approval of such bond shall be indorsed thereon by the board and deposited with the county auditor, and any bank whose bond shall have been so approved shall thereupon be designated by the school board as a depository for the sinking fund, and shall continue as such until such time as the board shall direct the withdrawal of such funds or until such funds are needed for the payment or the purchase of bonds as provided in this act. When the sinking fund of any independent school district is deposited by the treasurer of the board of education of said school district in the name of the school district in such depository such treasurer and his sureties shall be exempt from all liability thereon by reason of loss of any such funds from the failure, bankruptcy or any other act of any such bank to the extent only of such funds in the hands of such bank or banks at the time of such failure or bankruptcy. Such depository shall furnish to the clerk of the board of education of such independent school district prior to the fifth day of July of each year, a verified statement of the school district account with such depository for the year ending July thirtieth, which statement shall show a credit to such deposit account of all sums of interest accruing on the sinking fund deposited.

3. The board of education of any independent school district may buy and cancel the bonds of such district and pay for the same with the moneys in the sinking fund created to pay such bonds. [1911, ch. 266, § 197½.]

The reference at the beginning of this section to "article 71 of chapter 9 of the Civil Code" is erroneous. Undoubtedly, article 17 of chapter 9 of the Political Code is intended. See R. C. 1905, § 913. The said article 17 of chapter 9 (R. C. 1905, §§ 910-919) was expressly repealed in Laws 1911, ch. 266, § 310, and the provisions enacted in the place of it constitute sections 1332, 1341 herein.

§ 1308. Expenditures not to exceed revenues. It shall be the duty of the board in all its expenditures and contracts to have reference to the amount of money which shall be subject to its order during the current year for the

particular expenditures in question and not to exceed that amount. [1911, ch. 266, § 198; R. C. 1905, § 1013; 1890, ch. 64, § 22; R. C. 1899, § 849.]

§ 1309. Title to property of district. The title of all property belonging to any such independent school district shall be vested in such district for the use of the schools, and the same while used and appropriated for school purposes shall not be levied upon or sold by virtue of any warrant or execution or other process, nor be subject to any judgment or mechanic's lien or taxation for any purpose whatever; and the district in its corporate capacity may take, hold and dispose of any real and personal property transferred to it by gift, grant, bequest or devise for the use of common schools for the district, whether the same is transferred in terms of such district by its proper name or to any person or body for the use of such schools. [1911, ch. 266, § 199; R. C. 1905, § 199; 1890, ch. 64, § 23; R. C. 1899, § 850.]

§ 1310. Real property. Title, how conveyed. Whenever any property is purchased by the board a conveyance thereof shall be taken in the name of such district; and whenever any sale of such property is made by the board, a resolution in favor of such sale shall first be adopted and spread upon the records of the board, and the conveyance of such property shall be executed in the name of such district by the president of the board attested by the secretary under the seal thereof, and acknowledged by such officers. Such president and secretary shall have authority to execute conveyances as aforesaid with or without covenants of warranty on behalf of the district. [1911, ch. 266, § 200; R. C. 1905, § 1015; 1890, ch. 64, § 24; R. C. 1899, § 851.]

§ 1311. Report of city treasurer. It shall be the duty of the city treasurer at least fifteen days before the annual election for members of such board and as often as called upon by the board, to prepare and report to such board a true and correct statement of the receipts and disbursements of moneys under and pursuant to the provisions of this article, during the preceding year, which statement shall set forth under appropriate head:

1. The money raised by the board under section 1298.
2. The school moneys received from the county treasurer.
3. The money received under section 1303.
4. All moneys received by the city treasurer, subject to the order of the board, specifying the sources from which it accrued.
5. The manner in which all money has been expended, specifying the amount under each head of expenditures and the board shall at least one week before such election, cause such statement to be published in all the newspapers of the city which will publish the same gratuitously. [1911, ch. 266, § 201; R. C. 1905, § 1016; 1890, ch. 64, § 25; R. C. 1899, § 852.]

§ 1312. New district to assume debts of old. School districts created under the provisions of this article shall assume all obligations and liabilities incurred by the districts out of which they are formed, if old districts are not divided, and a proportionate part if divided. [1911, ch. 266, § 202; R. C. 1905, § 1019; 1890, ch. 64, § 28; R. C. 1895, § 855.]

§ 1313. Forfeit for refusal to serve as member of board. It shall be the duty of the clerk of said school board immediately after the election of any person as a member thereof, personally or in writing, to notify him of his election, and if any person shall not within ten days after receiving such notice of election, take and subscribe the oath as herein provided and file the same with the city auditor, the board may consider it as a refusal to serve, and fill the vacancy thus occasioned, and the person so refusing shall forfeit and pay to the city treasurer for the benefit of the schools of such district a penalty of fifty dollars, which may be recovered in the name of such city by a civil action. [1911, ch. 266, § 203; R. C. 1905, § 1018; 1890, ch. 64, § 27; R. C. 1899, § 854.]

§ 1314. City council to pass certain ordinances. The city council shall have the power and it shall be its duty to pass such ordinances and regulations

as the board of education may recommend as necessary for the protection, preservation, safe keeping and care of the school houses, lots, sites, appurtenances, libraries, and all necessary property belonging to or connected with the schools of the city, and to provide proper penalties for the violation thereof, and all penalties shall be collected in the same manner that the penalties for violation of city ordinances are collected, and when collected shall be paid to the city treasurer and placed to the credit of the board of education, and shall be subject to its order as herein provided. [1911, ch. 266, § 204; R. C. 1905, § 1017; 1890, ch. 64, § 26; R. C. 1899, § 853.]

ARTICLE 11.—BOARD OF EDUCATION IN CERTAIN CITIES.

§ 1315. **Boards to be elected at large.** In each city not organized under the general law there shall be a board of education consisting of seven members having the qualifications of electors who shall be elected at large by the electors of such city qualified to vote at school elections; and, except as may be otherwise provided herein for the first election, two members of such board shall be elected annually and three triennially at a special election to be held on the Tuesday after the first Monday in June; provided, that the provisions of this article shall not apply to cities existing under a special act or which are now under the general school laws. [1911, ch. 266, § 205; R. C. 1905, § 1020; 1890, ch. 65, § 1; R. C. 1899, § 856.]

§ 1316. **Term of office.** The term of office of a member of the board of education, except as in this article otherwise provided, shall be three years and until his successor is elected and qualified. [1911, ch. 266, § 206; R. C. 1905, § 1021; 1890, ch. 65, § 2; R. C. 1899, § 857.]

§ 1317. **Elections, how conducted.** All elections under the provisions of this article shall be called, conducted and the votes canvassed and returned in the manner provided by law for general city elections. [1911, ch. 266, § 207; R. C. 1905, § 1022; 1890, ch. 65, § 4; R. C. 1899, § 858.]

§ 1318. **Relatives not eligible as teachers.** No son, wife or daughter of any member of the school board shall be eligible to a position as a teacher in schools of the district which such member represents except upon the consent of all the members of such board. [1911, ch. 266, § 208; R. C. 1905, § 1023; 1890, ch. 65, § 5; R. C. 1899, § 859.]

§ 1319. **Independent school organizations under special laws abolished.** Any independent school district organized for school purposes under a special law, which does not include or is not included in any city or incorporated town or village organized for municipal purposes, shall become a part of the school district in which it is located by the repeal of the special law organizing or governing such independent district. Any independent district organized for school purposes under a special law or under any other law than is contained in this chapter, which includes or is included in any city or incorporated town or village organized for municipal purposes, shall become a special district by the repeal of the special law organizing or governing such independent school district. Any school district or special district so constituted or constituted in part shall be governed by the provisions of this chapter; provided, that nothing herein shall prevent any such independent district from coming under the operation of this chapter in the manner therein provided. [1911, ch. 266, § 209; R. C. 1905, § 1024; 1891, ch. 63, § 1; R. C. 1899, § 860.]

§ 1320. **Old school officers hold over.** The board of education or other governing board of such independent district shall continue to exercise the powers and duties devolving upon it under the provisions of such special or other law governing such independent district, the same as though such law had not been repealed, until the second Tuesday in July following the repeal of such special or other law; provided, that all that portion of the general school laws which provides for an annual school election shall apply to such independent district

and shall be in full force and effect for the purpose of electing school officers at such annual election; and such officers shall be elected in and for the whole school district, including the independent district or portion of such independent district located therein, or in and for the special district, the same as though no law had ever existed providing for the organization of such independent district; provided, further, that in a special district formed and created as herein provided, a full board of education shall be elected as provided by law for first elections, but in school districts formed as herein provided by the addition of such independent district or portion thereof there shall be elected only such officers as are required to fill the regular vacancies in the school offices of such school district heretofore organized. [1911, ch. 266, § 210; R. C. 1905, § 1025; 1891, ch. 63, § 2; R. C. 1899, § 861.]

§ 1321. Debts and assets determined by arbitration. When the boundaries of such school district shall have been arranged as contemplated in this article, the determination and division of consolidation of all debts, property and assets of the several portions of such district or districts so consolidated shall be made by arbitration as provided by law. [1911, ch. 266, § 211; R. C. 1905, § 1026; 1891, ch. 63, § 3; R. C. 1899, § 862.]

ARTICLE 12.—VACANCIES.

§ 1322. Vacancy in office of superintendent of public instruction filled by appointment. Should a vacancy occur in the office of the superintendent of public instruction, the governor shall have power and it shall be his duty to fill such vacancy by appointment, which appointment shall be valid until the next general election and until his successor is elected and qualified. [1911, ch. 266, § 212; R. C. 1905, § 859; 1890, ch. 62, § 106; R. C. 1899, § 726.]

§ 1323. Vacancy in office of county superintendent. Should a vacancy occur in the office of county superintendent of schools, the board of county commissioners of such county shall have power and it shall be their duty to fill such vacancy by appointment, as provided by law, which appointment shall be valid until the next general election. The county auditor shall immediately notify the superintendent of public instruction of such appointment. [1911, ch. 266, § 213; R. C. 1905, § 860; 1897, ch. 75; R. C. 1899, § 727.]

§ 1324. Vacancy in office of director or treasurer. How filled. When any vacancy occurs in the office of director or treasurer of a school district by death, resignation, removal from the district, or otherwise, the fact of such vacancy shall be immediately certified to the county superintendent by the clerk of the district, and such superintendent shall immediately appoint in writing some competent person who shall qualify and serve until the next annual school election. The county superintendent shall at the same time notify the clerk of the school district and the county auditor of every such appointment. [1911, ch. 266, § 214; R. C. 1905, § 861; 1890, ch. 62, § 108; R. C. 1899, § 728.]

§ 1325. Vacancy in office of clerk, how filled. Should the office of clerk of a school district become vacant, the school board shall immediately fill such vacancy by appointment and the president of the board shall immediately notify the county superintendent and the county auditor of such appointment. [1911, ch. 266, § 215; R. C. 1905, § 862; 1890, ch. 62, § 109; R. C. 1899, § 729.]

§ 1326. Office, when deemed vacant. An office of a school district shall become vacant by resignation of the incumbent thereof, but such resignation shall not take effect until a successor has qualified according to law. Any office of a school district shall be deemed vacant if the person duly elected thereto shall neglect or refuse for the period of two weeks after the beginning of the term for which he was elected, to accept and qualify for such office and serve therein. Any school officer may be removed from office by a court of com-

petent jurisdiction as provided by law. [1911, ch. 266, § 216; R. C. 1905, § 863; 1890, ch. 62, § 110; 1891, ch. 56, § 22; R. C. 1899, § 730.]

Right of school officer to repudiate or withdraw resignation. 16 L.R.A.(N.S.) 1058.

ARTICLE 13.—EQUALIZATION OF INDEBTEDNESS.

§ 1327. Equalization of indebtedness by arbitration. After the boundaries of a school district have been established as provided for in this chapter, all school districts or parts of school districts that existed as school corporations, or as parts thereof, before the taking effect of this code, and that are now included in one school district, shall effect an equalization of property, funds on hand and debts; or whenever the boundaries of two or more districts are rearranged, all districts affected by such change shall effect an equalization of property, funds on hand and debts. To effect this, such school board of such corporation constituting a school district under the operation of this chapter, shall select one arbitrator, and the several arbitrators so selected, together with the county superintendent, shall constitute a board of arbitration to effect such equalization. If in any case the number of arbitrators, including the county superintendent, shall be an even number, the county treasurer shall be included and be a member of such board. The county superintendent shall fix the time and place of such meeting. [1911, ch. 266, § 217; R. C. 1905, § 864; 1897, ch. 75; R. C. 1899, § 731.]

Arbitrators to take into consideration the buildings owned by the original district. *State v. School Dist.*, 6 N. D. 488, 71 N. W. 772.

Legislature may make distribution of school property on division or consolidation of districts. *School Dist. v. King*, 20 N. D. 614, 127 N. W. 515.

§ 1328. Tax to equalize and pay previous debts. Such board shall take an account of the assets, funds on hand, the debts properly and justly belonging to or chargeable to each corporation, or part of a corporation affected by such change, and levy such a tax against each as will in its judgment justly and fairly equalize their several interests. [1911, ch. 266, § 218; R. C. 1905, § 865; 1897, ch. 75; R. C. 1899, § 732.]

As to when tax levy will be enjoined at suit of tax payer. *Torgrinson v. Norwich School Dist.* No. 31, 14 N. D. 10, 103 N. W. 414.

Liability of territory annexed to school district to pay proportionate share of existing debts. 27 L.R.A. (N.S.) 1147.

§ 1329. Maximum annual tax levy for such purposes. When the amounts to be levied upon the several corporations or parts of corporations mentioned in the preceding section, shall be fixed, a list thereof shall be made wherein the amount shall be set down opposite each corporation. The whole shall be stated substantially in the form herein required for certifying school taxes, and addressed to the county auditor, and shall be signed by a majority of such board of arbitration; such levy shall be deemed legal and valid upon the taxable property of each corporation; provided, however, that not more than fifteen mills thereof shall be extended against such taxable property in any one year, and such levy not exceeding fifteen mills on the dollar shall be extended as in this section provided from year to year, until the whole amount shall be so levied. The county auditor shall preserve such levies and shall extend the several rates from year to year, as above required by law for district taxes and the taxes shall be collected at the same time and in the same manner as other taxes are collected. [1911, ch. 266, § 219; R. C. 1905, § 866; 1890, ch. 62, § 113; R. C. 1899, § 733.]

§ 1330. Proceeds to be turned over to the respective districts. Opposite the several descriptions of property on the tax list shall be entered the school districts within which it lies, and all the proceeds of these equalizing taxes shall be collected and shall be paid over to the proper school district within which the property is situated. The proceeds of taxes upon parts of districts lying outside of the district as at present constituted with which they were equalized shall be paid to the treasurer of the school district within which the

property is situated; the same as hereinbefore provided for regular taxes. [1911, ch. 266, § 220; R. C. 1905, § 867; 1890, ch. 62, § 114; R. C. 1899, § 734.]

§ 1331. **Maximum tax levy for all school purposes.** The taxes levied for purposes of equalization shall be in addition to all other taxes for school purposes; provided, that all taxes for school purposes, including such taxes for equalization, shall not exceed thirty mills on the dollar in any one year. The provisions of this article shall apply to and govern all school districts and parts of school districts hereafter divided or consolidated with each other or with other districts in the divisions, uniting for apportionment of their debts and liabilities or property and assets. [1911, ch. 266, § 221; R. C. 1905, § 868; 1890, ch. 62, § 115; R. C. 1899, § 735.]

ARTICLE 14.—BONDS OF COMMON SCHOOL DISTRICTS.

§ 1332. **School bonds, how issued.** Whenever a duly constituted school district, under the provisions of this chapter, excepting special or independent school districts, in any organized county in the state at any regular or special meeting held for that purpose, shall determine by a majority vote of all the qualified voters of such school district present at such meeting and voting, to issue school district bonds for the purpose of building and furnishing a school house and purchasing grounds on which to locate the same, or to fund any outstanding indebtedness or for the purpose of taking up any outstanding bonds, the district school board may lawfully issue such bonds in accordance with the provisions of this article. [1911, ch. 266, § 222; R. C. 1905, § 910; 1897, ch. 75; R. C. 1899, § 775; 1901, ch. 40.]

Municipal corporations estopped by recitals in bonds issued and negotiated, when. *Coler v. School Twp.*, 3 N. D. 249, 55 N. W. 587; *Flagg v. School District*, 4 N. D. 30, 58 N. W. 499; *Wilson v. Board of Education*, 12 S. D. 535, 81 N. W. 952; *Coler v. Rhoda School Twp.*, 6 S. D. 640, 63 N. W. 158.

Recital on face of bonds that all preliminary requirements have been complied with estops corporation to raise question. *Coler v. Dwight School Twp.*, 3 N. D. 249, 55 N. W. 587, 28 L.R.A. 649; *Wilson v. Board of Education*, 12 S. D. 535, 81 N. W. 952; *City of Huron v. Sav. Bank*, 86 Fed. 272, 30 C. C. A. 38; *Nat. Life Ins. Co. v. Board of Ed.*, 62 Fed. 778, 10 C. C. A. 637; *Hughes County v. Livingston*, 104 Fed. 306, 43 C. C. A. 541; *Second Ward Sav. Bank v. Huron*, 80 Fed. 660; *Coler v. Rhoda School Twp.*, 6 S. D. 640, 63 N. W. 158; *Flagg v. School Dist.*, 4 N. D. 30, 58 N. W. 499, 25 L.R.A. 363.

Illegal bonds may be made valid by payment of interest. *Coler v. Rhoda School Twp.*, 6 S. D. 640, 63 N. W. 158.

§ 1333. **Notice of election to vote bonds.** Before the question of issuing bonds shall be submitted to a vote of the school district, notices shall be posted in at least three public and conspicuous places in such district, stating the time and place of such meeting, the amount of bonds proposed to be issued, rate of interest, purpose issued for, and the time in which they shall be made payable. Such notices shall be posted at least fourteen days before the meeting, and the voting shall be done by means of written or printed ballots, and all ballots shall be prepared before the opening of the polls and shall be in substantially the following form:

For issuing bonds in the sum of \$..... at per cent., to run years.

Yes ☐

No ☐

and if a majority of the votes cast shall be in favor of issuing bonds the school board, through its proper officers, shall forthwith issue bonds in accordance with such vote; but if a majority of all votes cast are against issuing bonds then no further action can be had and the question shall not be again submitted to a vote for one year thereafter, except for a different amount; provided, that the question of issuing bonds shall not be submitted to a vote of the district, and no meeting shall be called for that purpose until the district school board shall have been petitioned in writing by at least one-third of

the voters of the district. [1911, ch. 266, § 223; R. C. 1905, § 911; 1890, ch. 62, § 160; R. C. 1899, § 776.]

School board is bound to issue bonds for school house when voters of district so vote. *Schouweiler v. Allen*, 17 N. D. 510, 117 N. W. 866.

§ 1334. Bonds, denomination of. Interest. Limit of issue. The denominations of the bonds which may be issued under the provisions of this article shall be fifty dollars or some multiple of fifty, and shall bear interest at a rate not exceeding five per cent per annum, payable semi-annually on the first day of January and July in each year, in accordance with interest coupons which shall be attached to such bonds; provided, that the amount of bonds including all other indebtedness shall not exceed five per cent of the assessed valuation of the school district and may be made payable in not less than ten or more than twenty years from their date. [1911, ch. 266, § 224; R. C. 1905, § 912; 1897, ch. 75; R. C. 1899, § 777; 1901, ch. 40.]

Statute as to denomination and time of payment of bonds must be strictly complied with. *People's Bank v. School Dist.*, 3 N. D. 496, 57 N. W. 787, 28 L.R.A. 642.

Bonds in a denomination greater than allowed by law are void even in the hands of an innocent purchaser. *Livingston v. School Dist.*, 9 S. D. 345, 69 N. W. 15.

Holder of void bond may recover on quantum meruit for value of school house erected with proceeds, where retained and used by district. *Livingston v. School Dist.*, 11 S. D. 150, 76 N. W. 301.

Maintenance of school as necessity which will justify school district in exceeding debt limit. 27 L.R.A.(N.S.) 891.

Right of tax payer, in absence of statute, to enjoin issuance or payment of school bonds. 36 L.R.A.(N.S.) 7.

§ 1335. Bonds, record of to be kept. Whenever any bonds are issued under the provisions of this chapter they shall be lithographed or printed on bond paper and shall state upon their face the date of their issue, the amount of the bonds, to whom and for what purpose issued, also the time and place of payment, and the rate of interest to be paid. They shall have printed upon the margin the words "Authorized by Article 14 of chapter of the Session Laws of North Dakota of 1911." Immediately after the issuing of school bonds pursuant to this chapter the clerk of the school district so issuing its bonds shall file, with the county auditor of the county in which such district is situated, certified copies of all the proceedings had in such district relative to the issuing of such bonds and also a statement of the amount of the indebtedness of such school district; and before any of the bonds are disposed of they shall be presented to the county auditor of the county in which the school district issuing the same is situated. He shall carefully examine the records of the proceedings of such school district upon the question of issuing such bonds as the same are filed with him as hereinbefore directed, and shall satisfy himself by the evidence thus furnished, whether or not all the laws of the state relative to the issuing of such bonds have been complied with. If satisfied that they have been and that the bonds in question have been legally issued, he shall in a book kept for such purpose, preserve a register of each bond showing in separate columns the name of the school district issuing the bonds, the number of such bonds, the denomination thereof, the date of their issue, the date when they will mature, the names of the school officers executing the same and such other facts as may be pertinent and he shall then indorse on each of such bonds the following certificate:

State of North Dakota, }
County of..... } ss.:

I,, county auditor, do hereby certify that the within bond is issued pursuant to law and is within the debt limit prescribed by the constitution of the state of North Dakota, and in accordance with the vote of school district at a (regular or special) meeting held on the day of A. D., 19... to issue bonds to the amount of dollars, and is a legal and valid debt of such school district; that such bonds are fully registered in this office

and that such school district is legally organized and the signatures affixed to such bonds are the genuine signatures of the proper officers of such school district.

The blanks shall be filled according to the facts, and the certificate officially signed by the county auditor and attested by his official seal. Such bonds shall be signed by the president and clerk of the school board and shall be registered in a book to be kept by the clerk for that purpose, in which shall be entered the number, date and name of the person to whom issued and the date when the same will become due. [1911, ch. 266, § 225; R. C. 1905, § 913; 1890, ch. 62, § 162; R. C. 1895, § 778.]

§ 1336. Sinking fund and interest tax. In addition to the amount that may already be assessed under existing laws there shall be levied annually, upon the taxable property of the school district so issuing bonds at or before their issuance and collected as other taxes are collected, a sum sufficient to pay interest upon such bonded indebtedness, and in like manner a further annual tax to create a sinking fund that will at the maturity of such bonds be sufficient to pay the principal thereof, and said sinking fund shall be used for no other purpose, except that whenever there are sufficient funds on hand, belonging to such sinking fund, the school board may, in its discretion, purchase any of the outstanding bonds at their market value and pay for the same out of such sinking fund; provided, that the school district board may designate one or more national or state banks in its county for a depository for such sinking fund; and in such case the school board shall advertise for at least two weeks in some newspaper printed in the county for sealed proposals for the deposit of the sinking fund of such school district, reserving the right to reject any and all bids and satisfying itself of the responsibility of all banks proposing to act as depositories. Before any bank shall be designated as such depository, it shall present to the school board a sealed proposal stating in writing what rate of interest will be paid for the deposit of such sinking fund, and shall submit to the board for its approval, a bond payable to the school district conditioned for the safe keeping and repayment of any funds deposited in such bank, which bond shall be signed by not less than three freeholders of the county or by a surety company as surety, such bond to be in the sum required by the school board but in no case less than double the probable amount of funds to be deposited in such bank. The approval of such bond shall be indorsed thereon by the board and deposited with the county auditor, and any bank whose bond shall have been so approved shall thereupon be designated by the school board as a depository for the sinking fund, and shall continue as such, until such time as the board shall readvertise for bids as aforesaid, and new depositories are designated and qualified, or until such funds are needed for the payment or purchase of bonds as provided in this section. When the sinking fund of any school district is deposited by the district treasurer in the name of the school district in such depository, such treasurer and his sureties shall be exempt from all liability thereon by reason of loss of any such funds from the failure, bankruptcy or any other act of any such bank, to the extent only of such funds in the hands of such bank or banks at the time of failure or bankruptcy. Such depository shall furnish to the school district clerk prior to the fifth day of July of each year, a verified statement of the school district's account with such depository for the year ending June thirtieth, which statement shall show a credit to such deposit account of all sums of interest accruing on the sinking fund deposited. [1911, ch. 266, § 226; R. C. 1905, § 914; 1899, ch. 145; R. C. 1899, § 776.]

§ 1337. Bonds, how negotiated. When any bonds shall be issued under the provisions of this article, the county treasurer shall have authority to negotiate and sell such bonds for not less than par, and the said district treasurer shall apply the proceeds arising from the sale of such bonds only for the purpose of building and furnishing a school house and purchasing grounds on which

the said school house shall be located, or to fund any outstanding indebtedness, according to the express purpose for which such bonds were authorized by the voters, as provided in section 1332 of this chapter. [1911, ch. 266, § 227; R. C. 1905, § 915; 1897, ch. 75; R. C. 1899, § 780.]

Board and not treasurer has authority to issue, negotiate or sell bonds. *Prairie School Township v. Haselen*, 3 N. D. 328, 55 N. W. 938.

Provision for payment of exchange at place other than point of payment destroys negotiability. *Flagg v. School District*, 4 N. D. 30, 58 N. W. 499.

§ 1338. County auditor may levy tax to pay bonds. When. When any school board neglects or refuses to levy a tax in accordance with law to meet outstanding bonds or the interest thereon, the county auditor shall have power to levy such tax and when collected to apply the proceeds to the payment of such coupons and bonds. [1911, ch. 266, § 228; R. C. 1905, § 916; 1890, ch. 62, § 165; R. C. 1895, § 781.]

§ 1339. Cancelled bonds, record of. When the bonds of any school district shall have been paid by the school board they shall be cancelled by writing or printing in red ink the words "cancelled and paid" across each bond and coupon and the date of payment and amount paid shall be entered in the clerk's register against the proper number of the bonds and bonds so cancelled shall be filed in the office of the district clerk until all the outstanding bonds are paid, when they shall be destroyed in the presence of the full board. [1911, ch. 266, § 229; R. C. 1905, § 917; 1890, ch. 62, § 166; R. C. 1895, § 782.]

§ 1340. Proposals for building school houses. When any school house is built with funds provided for in the manner herein authorized, the school board shall advertise at least thirty days in some newspaper printed in the county or by posting notices for the same length of time in at least three of the most public and conspicuous places if no newspaper is published in the county for sealed proposals for building such school house in accordance with plans and specifications furnished by the school board, reserving the right to reject any and all bids, and if any of the proposals shall be reasonable and satisfactory such board shall award the contract to the lowest responsible bidder and shall require of such contractor a bond in double the amount of the contract, conditioned that he will properly account for all money and property of the school district that may come into his hands and that he will perform the conditions of his contract in a faithful manner and in accordance with its provisions; and in case all the proposals are rejected, such board shall advertise anew in the same manner as before until a reasonable bid shall be submitted. [1911, ch. 266, § 230; R. C. 1905, § 918; 1890, ch. 62, § 167; 1891, ch. 56, § 32; R. C. 1899, § 783.]

§ 1341. Provisions of this article. How applicable. The provisions of this article shall be applicable to and authorize the issuance of bonds by such school districts as have already built school houses and issued orders or warrants therefor, and any such school district may vote to bond the indebtedness incurred by reason of building and furnishing a school house and purchasing a site for the same and bonds may be issued in the same manner as hereinbefore provided for building and furnishing school houses. [1911, ch. 266, § 231; R. C. 1905, § 919; 1890, ch. 62, § 168; 1891, ch. 56, § 32; R. C. 1899, § 784.]

ARTICLE 15.—COMPULSORY EDUCATION AND MEDICAL INSPECTION.

§ 1342. School age. Who exempt from compulsory attendance. Every parent, guardian or other person, who resides in any school district or city, and who has control over any child of or between the ages of eight and fifteen, shall send such child to a public school in each year during the entire time the public schools of such district or city are in session; and every parent, guardian or other person having control of any deaf, blind or feeble-minded child or youth between the ages of seven and twenty-one years of age shall

be required to send such deaf child to the school for the deaf at the city of Devils Lake for the entire school year unless excused by the superintendent or principal of such school, such blind child to the school for the blind at Bathgate for the entire school year unless excused by the superintendent or principal of such school, and such feeble-minded child to the institution for the feeble-minded at Grafton; provided, that such parent, guardian or other person having control of any child shall be excused from such duty by the school board of the district or by the board of education of the city or village whenever it shall be shown to their satisfaction subject to appeal as provided by law that one of the following reasons therefor exists:

1. That such child is taught for the same length of time in a parochial or private school, approved by the county superintendent of schools subject to appeal to the superintendent of public instruction; that no school shall be approved by the county superintendent of schools or superintendent of public instruction unless the branches usually taught in the common schools are taught in such schools.

2. That such child is actually necessary to the support of the family.

3. That such child has already acquired the branches of learning taught in the public schools.

4. That such child is in such a physical or mental condition (as declared by a licensed physician, if required by the board) as to render such attendance inexpedient or impracticable.

5. If no school is taught the requisite length of time within two and one-half miles of the residence of such child by the nearest route such attendance shall not be enforced, except in cases of consolidated schools, where the school board has arranged for the transportation of pupils. In every school district where consolidated schools have not been established the school board shall arrange a system of zones for the transportation of children to and from school at the expense of the district. Children living within not less than one and one-quarter miles nor more than two and one-quarter miles from the school house by the nearest public route shall be in zone number one; children living within not less than two and one-quarter miles nor more than three and one-quarter miles from the school house by the nearest public route shall be in zone number two; and children living at a greater distance than three and one-quarter miles from the school house by the nearest public route shall be in zone number three. In providing compensation for transportation the school board shall provide a maximum compensation per family for the first zone, and compensation per family for transportation from zone number two shall be one-half greater per family than for zone number one, and compensation per family for zone number three shall be twice the compensation per family for zone number one. Provided, that when provision has been made for the transportation of pupils by the school board of any district agreeably to the provisions of this chapter, the pupils residing therein shall be amenable to the provisions of law requiring the attendance at school of such pupils. Provided, further, that the provisions for transportation shall not apply to deaf, blind and feeble-minded children in this state, and this section shall not be construed to apply to parents, guardians or other persons having control of any child or children between the ages of eight and fifteen, who desire to send such child or children for a total period of not exceeding six months, which may be taken in one or more years, to any parochial school for the purpose of preparing such child or children for certain religious duties. It shall be the duty of the clerk of the school board to include in his annual statement an item setting forth the amount spent for the transportation of pupils. [1913, ch. 267; 1911, ch. 266, § 232; R. C. 1905, § 894; 1890, ch. 62, § 140; 1891, ch. 56, § 28; R. C. 1899, § 759; 1903, ch. 84; 1905, ch. 100, § 7.]

What instruction constitutes compliance with compulsory education statute. 41
L.R.A.(N.S.) 95.

§ 1343. Schools equally free and accessible. The public schools provided for in this chapter shall be at all times equally free, open and accessible to all children over six and under twenty-one years of age residing in the district. [1911, ch. 266, § 233; R. C. 1905, § 894; 1890, ch. 62, § 140; 1891, ch. 56, § 28; R. C. 1899, § 759; 1903, ch. 84; 1905, ch. 100, § 7.]

§ 1344. Penalty. Any such parent, guardian or other person failing to comply with the requirements of the foregoing sections, shall upon conviction thereof be deemed guilty of a misdemeanor, and shall be fined in a sum not less than five nor more than twenty dollars for the first offense and not less than ten dollars nor more than fifty dollars for the second and every subsequent offense, with costs in each case. [1911, ch. 266, § 895; 1890, ch. 62, § 141; R. C. 1899, § 760.]

§ 1345. Prosecution for neglecting this duty. It shall be the duty of the superintendent or principal of schools in any city, town or village, or the teacher of any district school, or the county superintendent of schools for children that are deaf, blind or feeble-minded, to inquire into all cases of negligence of the duty prescribed in this article and to ascertain from the person neglecting to perform such duty the reason therefor, if any, and in common school districts notify the county superintendent of schools of such neglect; the said county superintendent, upon proper presentation of facts, shall lay the complaint before the state's attorney, whose duty it will be to proceed forthwith to secure the prosecution for any offense occurring under this article. In special or independent districts the superintendent or principal of schools shall lay the complaint before the state's attorney who shall proceed as above; provided, further, that the board of education or district school board in any city or school district of over five hundred inhabitants may employ a truant officer who shall perform the duties implied in this section. [1911, ch. 266, § 235; R. C. 1905, § 896; 1897, ch. 75; R. C. 1899, § 761; 1903, ch. 84; 1905, ch. 100, § 8.]

§ 1346. Medical inspection of schools. The board of any school corporation may employ one or more physicians as medical inspector of schools. It shall be the duty of the medical inspector to examine, at least once annually, all children enrolled in the public schools of the district, except those who present a certificate of health from a licensed physician, and to make out suitable records for each child, one copy of which shall be filed with the county or city superintendent of schools. Notice of physical defects of abnormal or diseased children shall be sent to the parents, with recommendations for the parent's guidance in conserving the child's health. The medical inspector shall co-operate with state, county and township boards of health in dealing with contagious and infectious diseases and to secure medical treatment for indigent children. It shall be the duty of the county and city superintendents of schools to co-operate with school boards in promoting medical inspection. He may arrange schools by groups, especially in the rural districts, for the purposes of inspection, and shall advise school boards with a view to securing the most efficient and economical administration of this law. The school board or board of education shall furnish all blanks and other needed supplies for this purpose. [1911, ch. 266, § 236.]

ARTICLE 16.—FINES, FORFEITURES AND PENALTIES.

§ 1347. Penalty for neglect of duty by school director, treasurer or clerk. Each person duly elected to any school district office, who, having entered upon the duties of his office, shall neglect or refuse to perform any duties required of him by the provisions of this chapter [sections 1105-1422], shall upon conviction be fined in the sum of ten dollars and his office shall be deemed vacant. [1911, ch. 266, § 237; R. C. 1905, § 900; 1890, ch. 62, § 146; R. C. 1899, § 765.]

§ 1348. Penalty for false election returns. Any judge or clerk of election, school district clerk or county auditor who willfully violates the provisions of this chapter in relation to elections or who willfully makes a false return shall upon conviction be deemed guilty of a felony. [1911, ch. 266, § 238; R. C. 1905, § 901; 1890, ch. 62, § 147; R. C. 1899, § 766.]

§ 1349. Speculation in office prohibited. No school officer shall personally engage in the purchase of any school bonds or warrants nor shall any such officer be personally interested in any contract requiring the expenditure of school funds except for the purchase of fuel and the procuring of insurance and such supplies as are in daily use, but not including furniture, or the expenditure of funds appropriated by the state, county, school corporation or otherwise, for any special purpose connected with his office. Any violation of this section shall be a misdemeanor. [1911, ch. 266, § 239; R. C. 1905, § 902; 1890, ch. 62, § 148; 1891, ch. 56, § 31; R. C. 1899, § 767.]

Officials and teachers prohibited from receiving commissions, see section 1529.

§ 1350. Penalty for unlawful drawings of school money. Any person who draws money from the county treasury, who is not at the time a duly qualified treasurer of the school corporation for which he draws the money and authorized to act as such, shall be guilty of a misdemeanor and shall upon conviction thereof be punished by a fine of not less than twenty-five dollars. [1911, ch. 266, § 239a; R. C. 1905, § 903; 1890, ch. 62, § 149; R. C. 1899, § 768.]

§ 1351. Use of school funds. When embezzlement. Each treasurer who shall loan any portion of the money in his hands belonging to any school district, whether for consideration or not, or who shall expend any portion thereof for his own or any other person's private use, is guilty of embezzlement, and no treasurer shall pay over or deliver the school money in his hands to any officer or person or to any committee to be expended by him or them; but all public funds shall be paid out only by the proper treasurer as hereinbefore provided. [1911, ch. 266, § 239b; R. C. 1905, § 904; 1890, ch. 62, § 150; R. C. 1899, § 769.]

§ 1352. Action to recover money when treasurer fails to pay over. If any person shall refuse or neglect to pay over any money in his hands as treasurer of a school district to his successor in office his successor must, without delay, bring action upon the official bond of such treasurer for the recovery of such money. [1911, ch. 266, § 239c; R. C. 1905, § 905; 1890, ch. 62, § 151; R. C. 1899, § 770.]

§ 1353. Penalty. When indorsement of unpaid warrants is not made. Any violation by a district treasurer of the provisions of this chapter requiring indorsement of warrants not paid for want of funds, and the payment thereof in the order of presentation and indorsement is a misdemeanor punishable by a fine not exceeding one hundred dollars. [1911, ch. 266, § 239d; R. C. 1905, § 906; 1890, ch. 62, § 152; R. C. 1899, § 771.]

§ 1354. Penalty for false reports. Each school officer who willfully signs or transmits a false report to the county superintendent or willfully signs, issues or publishes a false statement of facts purporting or appearing to be based upon the books, accounts or records, or of the affairs, resources and credit of the district shall upon conviction be punished by a fine not exceeding fifty dollars or by imprisonment in the county jail not exceeding fifteen days. [1911, ch. 266, § 240; R. C. 1905, § 907; 1890, ch. 62, § 153; R. C. 1899, § 772.]

§ 1355. Penalty for willful disturbance of school. Each person whether pupil or not, who willfully molests or disturbs a public school when in session or who willfully interferes with or interrupts the proper order of management of a public school by act of violence, boisterous conduct or threatening language, so as to prevent the teacher or any pupil from performing his duty, or who shall in the presence of the school children upbraid, insult or threaten the teacher, shall upon conviction thereof be punished by a fine not exceeding

twenty-five dollars or by imprisonment in the county jail for a period not exceeding ten days, or by both. [1911, ch. 266, § 241; R. C. 1905, § 908; 1890, ch. 62, § 155; R. C. 1899, § 773.]

§ 1356. Proposals for contracts. No contract except for teacher's salary, professional services, janitors' wages, or school text books involving the expenditure of school funds or money appropriated for any purpose relating to the educational system of this state, or any county, district or school corporation therein, when the amount exceeds one hundred dollars, shall be let until proposals are advertised for a period of ten days, and after such advertisement, only to the lowest responsible bidder. Any violations of this section shall be a misdemeanor. [1911, ch. 266, § 242; R. C. 1905, § 909; 1890, ch. 62, § 156; R. C. 1899, § 774; 1903, ch. 83, § 7.]

In absence of charter or statutory requirements municipal contracts need not be let under competitive bidding. *Price v. Fargo*, 24 N. D. 440, 139 N. W. 1054.

ARTICLE 17.—STATE BOARD OF EXAMINERS, EXAMINATIONS AND CERTIFICATES.

The first three sections of this article as it was enacted in Laws 1911, ch. 266, viz., §§ 243, 244 and 245 of that act, were repealed in Laws 1913, ch. 149, § 8. Laws 1913, ch. 149, § 5, which is section 1437 in this compilation, transfers to the state board of education all the duties, authority and powers provided for in sections 1357-1377 inclusive.

§ 1357. Annual report. The board shall, on or before the first day of November of each year, make a report to the governor covering the school year ending June thirtieth, preceding, setting forth in detail all its official transactions. [1911, ch. 266, § 246.]

See note under the head of this article, immediately preceding section 1357.

As to the time for making reports to the governor and as to the contents thereof, see sections 95, 97, 98 and 633.

§ 1358. Duties. The state board of examiners shall prepare or cause to be prepared all questions for examinations for all certificates to teach in this state, and shall prescribe the rules and regulations governing the same, shall examine, mark and file all answer papers for all certificates or cause the same to be done, and shall issue all certificates to teach in the public schools of this state. [1911, ch. 266, § 247.]

See note under the head of this article, immediately preceding section 1357.

§ 1359. Certificates. There shall be four regular grades of certificates issued by the board of examiners. These shall be issued only to persons of good moral character who fulfill all the requirements specified by law and by the rules and regulations of the board, viz.:

- (1) The second grade elementary certificate.
- (2) The first grade elementary certificate.
- (3) The second grade professional certificate.
- (4) The first grade professional certificate. [1911, ch. 266, § 248.]

See note under the head of this article, immediately preceding section 1357.

§ 1360. Second grade elementary certificate. The second grade elementary certificate shall be granted to those persons over eighteen years of age who are found proficient in the following subjects: reading, arithmetic, language and grammar, geography, United States history, physiology and hygiene (including physical culture), civil government, pedagogy, and any one of the following named subjects: music, drawing, agriculture, nature study, domestic science, manual training; provided, that the board of examiners may in their discretion specify which of the above subjects may be required. The proficiency of the applicants in spelling and writing will be determined from the papers submitted by the applicants. The second grade elementary certificate shall be valid for two years in any county in the state when recorded by the county superintendent of schools. It shall qualify the holder to teach in any grade in rural and graded schools up to and including the eighth grade, and may be renewable by the county superintendent of schools under rules prescribed by the board of examiners. [1911, ch. 266, § 249.]

See note under the head of this article, immediately preceding section 1357.

§ 1361. First grade elementary certificate. The first grade elementary certificates shall be granted to those persons over twenty years of age who have had at least eight months' experience in teaching and who, in addition to those subjects required for a second grade elementary certificate, are found proficient in elements of psychology and four of the following subjects of secondary grade: elementary algebra, plane geometry, physics, physical geography, botany, the elements of agriculture, nature study, manual training, domestic science and American literature. The first grade elementary certificate shall be valid for three years in any county in the state when recorded by the county superintendent of schools. It shall qualify the holder to teach in any grade in any school in the state up to and including the eighth grade and in the ninth grade of schools doing not over one year of high school work, and may be renewable by the county superintendent of schools under rules prescribed by the board of examiners. [1911, ch. 266, § 250.]

See note under the head of this article, immediately preceding section 1357.

§ 1362. Second grade professional certificate. The second grade professional certificate shall be granted to those persons who are at least twenty years of age and who have had at least nine months' experience in teaching and have the qualifications necessary for a first grade elementary certificate, and who in addition are found proficient in the following subjects of advanced grade: (1) psychology, (2) the history of education, (3) the principles of education, (4) school administration, (5) methods in elementary subjects, (6) rhetoric and composition, (7) American or English literature, (8) Ancient, English or American history, (9) some one natural science (which may include agriculture), (10) higher algebra, solid geometry, manual training or domestic science. The second grade professional certificate shall legally qualify the holder to teach in any of the common, graded or high schools of the state, except in the high school departments of schools doing four years of high school work. It shall be valid for a period of five years and shall be renewable in the discretion of the board for a period of years or for life. [1911, ch. 266, § 251.]

See note under the head of this article, immediately preceding section 1357.

§ 1363. First grade professional certificate. The first grade professional certificate shall be granted to those persons who have substantially the equivalent of a college education, and who have had at least eighteen months' experience in teaching. They shall have all the qualifications necessary for a second grade professional certificate, and in addition thereto, be found proficient in the following subjects: (1) foreign language, (2) a natural science other than the one presented for the second grade professional certificate, (3) ethics, logic or sociology, (4) political science, economics or domestic science, (5) any two subjects of college grade listed for the second grade professional certificate and not previously offered by the applicant. The first grade professional certificate shall qualify the holder to teach in all the common, graded and high schools of the state, and shall be valid for five years, or for life. [1911, ch. 266, § 252.]

See note under the head of this article, immediately preceding section 1357.

§ 1364. Special certificates. The board may grant special certificates authorizing the holders to teach in any of the common, graded or high schools, (1) drawing, (2) music, (3) kindergarten, or (4) primary subjects, to teachers holding at least a second grade elementary certificate. Special certificates to teach (1) agriculture, (2) commercial subjects, (3) domestic science, or (4) manual and industrial training in the common, graded or high schools of the state, may be issued to applicants who possess qualifications equivalent to those required for a second grade professional certificate. The applicant for a special certificate must satisfy the board by examination or otherwise of his proficiency in the subject which the holder is authorized to teach.

Special certificates shall be valid for such a term of years as the board shall prescribe. [1911, ch. 266, § 253.]

See note under the head of this article, immediately preceding section 1357.

§ 1365. Diplomas accredited. The diplomas granted on the completion of the four-year curriculum of Teachers College of the University of North Dakota, shall be accredited as a first grade professional certificate for two years, and after the holder has had nine months' successful experience in teaching, satisfactory evidence of which having been filed with the board, such diploma shall entitle the owner to a first grade professional certificate for life.

(2) The diploma from the advanced, or five-year curriculum of the state normal schools, or its equivalent, the two-year curriculum for high school graduates, shall be accredited as a second grade professional certificate for two years, and after the holder has had nine months' successful experience in teaching, satisfactory evidence of which having been filed with the board, such diploma shall entitle the holder to a second grade professional certificate valid for life.

(3) The diploma from the four-year curriculum of the state normal schools or its equivalent, the one-year curriculum for high school graduates shall be accredited as a professional certificate of the second grade for two years, and, after the holder has had nine months' successful experience in teaching, satisfactory evidence of which having been filed with the board, shall entitle the holder to a second grade professional certificate, valid for five years, which certificate shall be renewable in the discretion of the board.

(4) The certificate of completion issued by the state normal schools to those who complete the ten-and-one-half months' curriculum of the state normal schools shall entitle the holder to a second grade elementary certificate. [1911, ch. 266, § 254.]

§ 1366. Other diplomas accredited. Diplomas from institutions within or without the state shall be accredited, and professional certificates issued thereon upon the following basis: (a) the bachelor's diploma from a college of recognized standing shall be valid for a period of two years, after its presentation to the board, as a first grade professional certificate, provided, that the diploma implies at least two year courses, or sixteen semester hours, of professional preparation for teaching, or in lieu of such professional study, that the holder of the diploma has had three years' successful experience in teaching or in administering schools after receiving such diploma; and after the holder has had nine months of successful experience in teaching, after the presentation of such diploma, satisfactory evidence of such experience having been filed with the board, he shall be entitled to a first grade professional certificate which shall be valid for five years and which shall be renewed for life upon satisfactory evidence of successful experience of five years.

(b) The diploma or certificate from institutions whose curriculum is the equivalent of the four year or the five year curriculum of the state normal schools shall be valid for two years as a second grade professional certificate, provided, that the diploma or certificate implies at least two year courses, or sixteen semester hours, of professional preparation for teaching or, in lieu of such professional study, that the holder of the diploma has had three years of successful experience in teaching or in administering schools after receiving such diploma; and after the holder of such diploma has had nine months of successful experience in teaching after receiving such diploma, satisfactory evidence of such experience having been filed with the board, he shall be entitled to a second grade professional certificate valid for five years or for life respectively. [1911, ch. 266, § 255.]

See note under the head of this article, immediately preceding section 1357.

§ 1367. Permits. A college graduate without experience or the required professional preparation may, for reasons satisfactory to the board, be granted

a permit, or probationary certificate, valid until such time, not to exceed six months, as shall be set by the board for his examination on the professional subjects, when, if successful, he may be granted a certificate, valid for a term of years or for life. Permits to teach till the next regular examination may be granted by the county superintendent of schools to any person applying at any time other than the regular examination, who can show satisfactory reasons for not attending the previous examination and satisfactory evidence of qualification, subject to the rules and regulations of the board. [1911, ch. 266, § 256.]

See note under the head of this article, immediately preceding section 1357.

§ 1368. Accredited work. The board of examiners shall be authorized to accredit, under its rules and regulations, the specific marks or standings given in high schools, summer schools, normal schools and the other institutions of this state, when upon investigation it deems such standings good evidence of proficiency in the subjects specified. [1911, ch. 266, § 257.]

See note under the head of this article, immediately preceding section 1357.

§ 1369. High school diplomas. Diplomas from North Dakota high schools doing four years' work, granted to graduates who have had psychology, pedagogy, and two senior review subjects, together with eighteen days' attendance at a teachers' training school, shall be accredited as second grade elementary certificates; and if within two years from the date of the diploma the holder has had at least eight months' successful experience in teaching, he shall be entitled to a first grade elementary certificate. [1913, ch. 261; 1911, ch. 266, § 258.]

See note under the head of this article, immediately preceding section 1357.

§ 1370. Examination conducted by county superintendent. Under the direction of the state board of examiners, the county superintendent shall hold a public examination of all persons over eighteen years of age offering themselves as applicants for teachers' certificates, at the most suitable place or places in the county on the second Tuesday and Friday in February, May, August and November of each year, and when necessary such examination may be continued on the following day. He shall examine them by a series of written or printed questions, according to the rules prescribed by the state board of examiners. The county superintendent shall forward all answer papers submitted by applicants immediately after the close of the examination to the state board of examiners, for examination, marking, filing and recording. The state board of examiners by its president and secretary shall grant to each applicant a certificate of qualification, if from the percentage of correct answers required by the rules said applicant is found to possess the requisite knowledge and understanding to teach, in the common schools of the state, the various branches required by law; provided, that sufficient evidence is furnished that the candidate is a person of good moral character, has had successful experience, if any, and possesses an aptness to teach and govern. [1911, ch. 266, § 259.]

See note under the head of this article, immediately preceding section 1357.

§ 1371. Papers to be kept on file. Appeals. The written answers of applicants for elementary certificates, after being duly examined under the direction of the state board of examiners, shall be kept on file in the office of the secretary of the board of examiners for a period of six months after such examination, and any applicant thinking an injustice has been done him, may, by paying a fee of one dollar in the institute fund of the county and notifying both the county superintendent and the secretary of the board of examiners of the same, have his papers specially re-examined by the board, and, if such answer papers warrant it, the state board of examiners shall issue such applicant an elementary certificate of the proper grade. [1911, ch. 266, § 260.]

See note under the head of this article, immediately preceding section 1357.

§ 1372. Qualifications of teachers. No certificate or permit to teach shall be issued to any person under eighteen years of age, and no first grade elementary certificate to any person who is under twenty years of age, and who has not taught successfully eight months school. First and second grade elementary certificates may be renewed without examination, under such requirements as shall be imposed by the state board of examiners. The certificates issued by the state board of examiners shall be valid in any county in this state when recorded by the county superintendent of schools. [1911, ch. 266, § 261.]

See note under the head of this article, immediately preceding section 1357.

§ 1373. Teacher must hold certificate, to be recorded. No person shall be employed or permitted to teach in any of the public schools of the state, except those in cities organized for school purposes under special laws, or organized as independent districts under the general school laws, who is not the holder of a lawful certificate of qualification or a permit to teach, and no teacher's certificate, issued by the state board of examiners nor a teacher's diploma granted by any institution of learning in this state shall entitle a person to teach in such public schools of any county, unless such certificate or diploma shall have been recorded in the office of the county superintendent of the county in which the holder is engaged to teach, and it shall be the duty of the county superintendent to record such certificate or diploma. [1911, ch. 266, § 262.]

See note under the head of this article, immediately preceding section 1357.

Contract between school board and teacher is not void merely because, at date of contract, teacher did not have teacher's certificate. *Schafer v. Johns*, 23 N. D. 593, 43 L.R.A.(N.S.) 411, 137 N. W. 481.

Validity of contract by unlicensed teacher. 13 L.R.A.(N.S.) 614.

Effect of contract by teacher without license or certificate of qualification. 43 L.R.A.(N.S.) 412.

§ 1374. Certificates, when revocable. The state board of examiners is authorized and required to revoke and annul at any time a certificate granted in this state, for any cause which would have authorized or required it to refuse to grant the same, if known at the time it was granted, and for incompetency, immorality, intemperance, cruelty, crime against the laws of the state, breach of contract, refusal to perform his duty, or for the general neglect of the work of the school. The revocation of the certificate shall terminate the employment of such teacher in the school where he may be at the time employed. Such teacher must be paid up to the time of receiving notice of such revocation. The state board of examiners shall immediately cause notice to be sent to the clerk of the school district where such teacher is employed and notify the teacher through the clerk, of such revocation; and it shall also notify each county superintendent in the state, and shall enter its action in such case on its records. [1911, ch. 266, § 263.]

See note under the head of this article, immediately preceding section 1357.

Interference by courts with revocation of school teacher's license. 15 L.R.A.(N.S.) 1148.

§ 1375. Proceedings to revoke. Teacher allowed defense. In proceedings to revoke a certificate the board of examiners may act upon personal knowledge or upon competent evidence obtained from others. In the latter case action shall be taken only after a fair hearing, and the teacher must be notified of the charge and given an opportunity to make a defense at such time and place as may be stated in such notice. Upon their own knowledge the board may act immediately without notice, after an opportunity has been afforded such teacher for personal explanation. When any certificate is revoked the teacher shall return it to the secretary of the state board of examiners, but if such teacher refuses or neglects so to do the board may issue notice of such revocation by publication in some newspaper printed in the county where the accused was last employed. [1911, ch. 266, § 264.]

See note under the head of this article, immediately preceding section 1357.

§ 1376. Fees for certificates. The state board of examiners shall require a fee of five dollars from each applicant for a first grade professional certificate, and a fee of three dollars from each applicant for a second grade professional certificate or for a special certificate. The same fee shall be charged for a renewal of a professional or special certificate as is charged for its issuance. The county superintendent shall collect a fee of two dollars from each applicant for an elementary certificate, and a fee of one dollar for each renewal of an elementary certificate. A deposit of the fee required for any certificate sought must be made when a permit is issued, which deposit shall be forfeited in case the applicant fails to take the following examination. [1911, ch. 266, § 265.]

See note under the head of this article, immediately preceding section 1357.

§ 1377. Disposition of fees. One dollar of each fee collected by the county superintendent from the applicants for elementary certificates, and all fees received for the renewal of elementary certificates shall be paid into the county teachers' institute fund to be used in support of teachers' institutes or teachers' training schools for the county as provided by law, and one dollar of each fee from applicants for elementary certificates shall be forwarded to the state board of examiners who shall deposit all fees received by them in the state treasury as a fund from which to pay the clerical help, per diem and all other expenses incurred by the board in the discharge of their duties, and to aid in the establishment and maintenance of teachers' reading circles and in the professionalizing of teaching in such other ways as the board may deem advisable. [1911, ch. 266, § 266.]

See note under the head of this article, immediately preceding section 1357.

Fund created by \$1 payments is public fund and superintendent of public instruction is accountable for unexpended balance. *State v. Stockwell*, 23 N. D. 70, 134 N. W. 767.

ARTICLE 18.—DUTIES OF TEACHERS.

§ 1378. Duties and powers of city and village superintendents. The superintendents of schools in all districts employing such officer, shall, subject to the final authority of the board, supervise the administration of the course of study, visit schools, examine classes, and have general supervision of the professional work of the school, including the holding of teachers' meetings and the classification of teachers. The superintendent, from time to time, shall make reports to the board of education embodying recommendations relative to the employment of teachers and janitors, adoption of text books, changes in the course of study, enforcement of discipline, and general school matters; and shall also make such other reports and perform such other duties as the board of education may direct and delegate. [1911, ch. 266, § 266½.]

§ 1379. Give notice of opening and closing school. Each teacher on beginning a term of school shall give written notice to the county superintendent of the time and place of opening such school and the time when it will probably close, and prior to receiving salary for the first month each teacher must exhibit his certificate or permit to teach to the clerk of the district school board. If such school is to be suspended for one week or more in such term the teacher shall notify the county superintendent of such suspension. [1911, ch. 266, § 267; R. C. 1905, § 879; 1890, ch. 62, § 126; R. C. 1899, § 746.]

§ 1380. When teacher not entitled to compensation. No teacher shall be entitled to or receive any compensation for the time he teaches in any public school without a certificate or permit to teach, valid and in force for such time in the county where such school is taught, except that if a teacher's certificate shall expire by its own limitation within six weeks of the close of the term, such teacher may finish such term without re-examination or

renewal of such certificate. [1911, ch. 266, § 268; R. C. 1905, § 880; 1890, ch. 62, § 127; R. C. 1899, § 747.]

Effect of contract by teacher without license or certificate of qualification. 42 L.R.A. (N.S.) 412.

Right of teacher to salary during temporary interruption of school in term time. 50 L.R.A. 371.

Right of school teachers to pay during absence. 38 L.R.A. (N.S.) 513.

§ 1381. Teacher's register, what to contain. Each teacher shall keep a school register and at the close of each term make a report containing the number of visits of the county superintendent and such items and in such form as shall be required. Such report shall be made in duplicate, both copies of which shall be sent to the county superintendent who, if he finds such report to be correct, shall immediately return one copy to the district clerk to be filed with him. No teacher shall be paid the last month's salary in any term until such report shall have been approved by the county superintendent and one copy returned to the district clerk. [1911, ch. 266, § 269; R. C. 1905, § 881; 1897, ch. 75; R. C. 1899, § 748.]

§ 1382. School year and school week defined. Holidays. The school year shall begin on the first day of July and close on the thirteenth day of June of each year. A school week shall consist of five days and a school month of twenty days. No school shall be taught on a legal holiday or on Saturday, provided, however, that on February the twelfth (Lincoln's birthday), February twenty-second (Washington's birthday) and May the thirtieth (Memorial day) all schools in session shall assemble for a portion of the day and devote the same to patriotic exercises consistent with the day, unless such holiday shall fall upon Saturday or Sunday. A legal holiday in term time falling upon a day which otherwise would be a school day shall be counted and the teacher paid therefor, but no teacher shall be paid for Saturday or be permitted to teach on Saturday to make up for the loss of a day in the term. [1911, ch. 266, § 270; R. C. 1905, § 882; 1897, ch. 75; R. C. 1899, § 749.]

§ 1383. Branches to be taught in all schools. Each teacher in the common schools shall teach pupils as they are sufficiently advanced to pursue the same, the following branches: Orthography, reading, writing, arithmetic, language lessons, English grammar, geography, and lessons in nature study and elements of agriculture, United States History, civil government, physiology and hygiene, giving special and thorough instruction concerning the nature of alcoholic drinks and narcotics, and their effect upon the human system. There shall also be taught in every school in connection with physiology and hygiene simple lessons in the nature treatment and prevention of tuberculosis and other contagious and infectious diseases. All pupils in the above mentioned schools below the high school and above the third year of school work computing from the beginning of the lowest primary year, shall receive instructions in hygiene every year from text books adapted to grade in the hands of pupils for not less than four lessons per week for ten weeks of each school year. In all schools above mentioned, all pupils in the (three) lowest three primary school years, shall each be instructed orally in hygiene for not less than three lessons per week for ten weeks of each school year by teachers using text books adapted to grade for such instruction as a guide or standard. Each teacher in schools in special districts and in the cities organized for school purposes under special law shall conform to and be governed by the provisions of this section. [1911, ch. 266, § 271; R. C. 1905, § 883; 1890, ch. 62, § 130; 1895, ch. 56, § 1; R. C. 1899, § 750; 1905, ch. 106, § 2.]

Power of legislature to prescribe subjects to be taught in schools. 47 L.R.A. (N.S.) 200.

§ 1384. Teaching humane treatment of animals. There shall be given in the public schools of North Dakota, in addition to other branches of study now prescribed, instruction in the humane treatment of animals; such instruction shall be oral and shall consist of not less than two lessons of ten minutes each per week. [1911, ch. 266, § 272; R. C. 1905, § 884; 1905, ch. 108.]

§ 1385. Teachers' institute and teachers' training schools. Notice. Penalty for failure to attend. When a teachers' institute or teachers' training school is appointed to be held in or for any county it shall be the duty of the county superintendent to give written or printed notice thereof to each teacher in the public schools of the county, and as far as possible to call others not then engaged in teaching, who are holders of teachers' certificates, at least ten days before the opening of such institute or teachers' training school of the time and place of holding it. Each teacher receiving such notice, engaged in teaching a term of school which includes wholly or in part the time of holding such institute or teachers' training school, shall close school and attend the same and shall be paid by the school board of the district his regular salary as teacher for the time he attended such institute or teachers' training school, as certified by the county superintendent, but no teacher shall receive pay unless he has attended four days nor shall any teacher receive pay for more than five days. The county superintendent may revoke the certificate of any teacher in his county for inexcusable neglect or refusal, after due notice, to attend a teachers' institute or teachers' training school held for such county. The provisions of this section shall not apply to high school teachers, nor to teachers in cities organized for school purposes under a special law, nor to teachers in cities organized as independent districts under the provisions of this chapter. [1911, ch. 266, § 273; R. C. 1905, § 885; 1899, ch. 81; R. C. 1899, § 751.]

§ 1386. Pupil may be suspended for cause. A teacher may suspend from school for not more than five days any pupil for insubordination, habitual disobedience or disorderly conduct. In such case the teacher shall give immediate notice to the parent or guardian of such pupil, and also to some member of the district school board of such suspension and the reason therefor. [1911, ch. 266, § 274; 1890, ch. 62, § 132; R. C. 1899, § 752.]

Right of schoolmaster to inflict punishment. 31 Am. Dec. 491.

Right of teacher to inflict corporal punishment on pupil. 1 B. R. C. 718.

Homicide by excessive or improper chastisement of pupil. 60 L.R.A. 803.

Liability of school-teacher for personal injury to pupil. 65 L.R.A. 891.

§ 1387. Assignment of studies to pupils. It shall be the duty of the teacher to assign to each pupil such studies as he is qualified to pursue, and to place him in the proper class in any studies subject to the provisions of section 1383, provided, that in graded school under the charge of a principal or local superintendent, such principal or superintendent shall perform this duty. In case any parent or guardian in a common school district is dissatisfied with such assignment or classification, the matter shall be referred to and decided by the county superintendent. [1911, ch. 266, § 275; R. C. 1905, § 887; 1890, ch. 62, § 133; R. C. 1899, § 753.]

Authority, duties, liabilities and powers of teachers. 76 Am. Dec. 164; 102 Am. St. Rep. 537.

§ 1388. Bible not sectarian book. Reading optional with pupils. The Bible shall not be deemed a sectarian book. It shall not be excluded from any public school. It may at the option of the teacher be read in school without sectarian comment, not to exceed ten minutes daily. No pupil shall be required to read it or to be present in the school room during the reading thereof, contrary to the wishes of his parents or guardians or other person having him in charge. [1911, ch. 266, § 276; R. C. 1905, § 888; 1890, ch. 62, § 134; R. C. 1890, § 754.]

Religious exercises or instruction in public schools. 16 L.R.A. (N.S.) 960; 105 Am. St. Rep. 151.

§ 1389. Moral instruction. Moral instruction tending to impress upon the minds of pupils the importance of truthfulness, temperance, purity, public spirit, patriotism, international peace, respect for honest labor, obedience to parents and due deference for old age, shall be given by each teacher in the public schools. [1911, ch. 266, § 277; R. C. 1905, § 888; 1890, ch. 62, § 134; R. C. 1899, § 754.]

§ 1390. Physical education. Physical education, which shall aim to develop and discipline the body and promote health through systematic exercise, shall be included in the branches of study required by law to be taught in the common schools, and shall be introduced and taught as a regular branch to all pupils in all departments of the public schools of the state, and in all educational institutions supported wholly or in part by money from the state. It shall be the duty of all boards of education and boards of educational institutions receiving money from the state, to make provision for daily instruction in all the schools and institutions under their respective jurisdiction, and to adopt such method or methods as will adapt progressive physical exercise to the development, health and discipline of the pupils in the various grades and classes of schools and institutions receiving aid from the state. [1911, ch. 266, § 278; R. C. 1905, § 889; 1899, ch. 85; R. C. 1899, § 754a.]

ARTICLE 19.—INSTITUTES AND ASSOCIATIONS.

§ 1391. Teachers' county institute fund. All money received by the county superintendent from examination fees for the county institute fund, and all money paid into this fund from the county general revenue fund, shall be used by him to aid in the support of teachers' institutes or teachers' training schools, district teachers' meetings and annual school officers' meetings, to be held within or for the county and to pay necessary expenses incurred therein. The county superintendent shall present an itemized statement, duly verified, to the county auditor for the amount of all such necessary expenses and the auditor shall issue a warrant therefor as provided by law. The county superintendent shall, at the end of each year, submit a full and accurate statement of the receipts and expenditures of these funds, under oath, to the superintendent of public instruction. [1911, ch. 266, § 279; R. C. 1905, § 890; 1899, ch. 81; R. C. 1899, § 755.]

§ 1392. Appropriation for institute fund. Designation of conductors. There is hereby appropriated out of any funds in the state treasury, not otherwise appropriated, the sum of one hundred dollars each year to each organized county in the state which shall be designated as the state institute fund, and which shall be used exclusively in employing persons of learning, ability and experience as conductors, assistants and lecturers of teachers' institutes. The superintendent of public instruction after consultation with the county superintendent as to the special needs and wants of their respective counties, shall appoint the time, place and duration of these institutes and training schools, and shall designate the persons to act as conductors, assistants and lecturers of the same, as in his judgment the needs of the various counties demand. [1911, ch. 266, § 280; R. C. 1905, § 891; 1890, ch. 62, § 136; 1891, ch. 56, § 26; R. C. 1899, § 756.]

§ 1393. Institute fund, how paid out. It shall be the duty of the county superintendent of schools in all cases to consult with the state superintendent of public instruction in reference to the management of such institute or teachers' training school, and he shall carry out the suggestions of such state superintendent as to the modes of instruction. No salary shall be paid to any conductor or instructor not previously appointed or employed as herein provided. The money hereby appropriated from the state treasury for the support of teachers' institutes or teachers' training schools shall be paid to the persons to whom it is due by warrant of the state auditor upon the state treasurer, which shall be issued upon the presentation of an account in due form, verified by the person to whom due, and approved by the state superintendent of public instruction; provided, that all the state and county institute funds provided by law, of one or more counties may be applied to the support of a teachers' training school for such county or counties at the request of the county superintendent of such county or counties with the consent and under the direction of the state superintendent of public

instruction. [1911, ch. 266, § 281; R. C. 1905, § 892; 1899, ch. 81; R. C. 1899, § 757; 1905, ch. 100, § 6.]

§ 1394. Conductor and county superintendent must file statement of number of schools. Where a teachers' training school of not less than three weeks' duration is held within or for any county, the conductor of such training school and the county superintendent shall file a certified statement with the county auditor, specifying the time and place of such teachers' training school and the county superintendent shall certify to the total number of schools and separate departments in graded and high schools in said county in which school has been taught at least four months during the preceding school year. The county auditor shall file a copy of said statement with the county treasurer who shall thereupon transfer from the county general revenue fund to the county institute fund the sum of two dollars for each school or separate department in high and graded schools in the county, as per specified statement filed with the county auditor. [1911, ch. 266, § 282; R. C. 1905, § 292; 1899, ch. 81; R. C. 1899, § 757; 1905, ch. 100, § 6.]

An amendment to this section was vetoed in Laws 1913, ch. 317, p. 477.

§ 1395. Expenses of conductor, assistants and lecturer, how paid. The traveling and other necessary expenses of institute conductors, assistants and lecturers, in counties where a one week's institute is held, shall be paid from the institute fund of the county. Upon the filing of an itemized statement with the county auditor of the necessary expenses incurred in connection with his work as institute conductor, assistant or lecturer, as the case may be, duly verified, and approved by the county superintendent of schools, the county auditor shall draw a warrant on the county treasurer for the amount due which shall be paid from the institute fund of the county. [1911, ch. 266, § 283.]

§ 1396. Reading circle board. The state board of examiners shall be the state reading circle board and as such shall prescribe the course of reading for the teachers' reading circle of the counties of the state and shall make all rules and regulations for conducting the reading circle work and granting of credit therefor. [1911, ch. 266, § 284.]

Authority and powers of state board of examiners transferred to state board of education, see section 1427.

ARTICLE 20.—FREE TEXT BOOKS.

§ 1397. Power of board of education. The school board or board of education of each and every school district in the state of North Dakota is hereby authorized and empowered to select, adopt and contract for all books and supplies needful for the school or schools under its charge, and the said school board or board of education shall have power to purchase the text books and supplies selected or contracted for, and provide for the loan free of charge or sale at cost of such text books and supplies to the pupils in attendance at such school or schools; provided, that no adoption or contract shall be for a period to exceed three years; provided, further, that before any publisher or publishers shall enter or attempt to enter into any contract with any school board or board of education for the sale of text books, as hereinbefore provided, they shall file with the superintendent of public instruction of the state of North Dakota a list of their books and the lowest prices at or for which they will sell any or all of such books to any school board or board of education in the state of North Dakota, and they, the said publishers, shall deposit with the superintendent of public instruction a sample copy of each book so listed, which shall represent in style, binding, mechanical execution, general make-up and matter, the book or books they offer to sell to the school board or board of education at or for the prices listed and in no case shall prices be raised above said listed price as filed. It shall be the duty of the superintendent of public instruction to furnish a certified copy

of the list of books and prices filed in accordance with the provisions of this section to the district clerk of each school district in the state of North Dakota, through the office of the county superintendent. [1911, ch. 266, § 285; R. C. 1905, § 1899, ch. 82; R. C. 1899, § 863.]

Adoption of text books for public schools. 36 L.R.A. 277.

Who may complain of noncompliance with statute in adopting or changing text books in schools. 19 L.R.A.(N.S.) 1003.

§ 1398. Free text books provided. When. Whenever in the judgment of the board it is desirable or necessary to the welfare of the schools in the district or to provide for the children therein better school privileges, or whenever petitioned so to do by two-thirds of the voters of the district, the board shall provide free text books and supplies for all schools under its charge, in such manner as hereinbefore provided. All books purchased in accordance with the provisions of this article shall be paid for out of the school funds of the respective districts, and it shall be the duty of school boards and boards of education to see that sufficient funds are raised and set aside for the purpose of this article. The clerk of each district shall also keep a record of all books furnished the schools in the district. [1911, ch. 266, § 286; R. C. 1905, § 1028; 1899, ch. 82; R. C. 1899, § 864.]

Power of school authorities to purchase text books. 45 L.R.A.(N.S.) 972.

§ 1399. Text books in districts not having free text book system. In any district which does not have the free text book system, the person in charge of any child in school shall provide it with suitable text books, which shall be those adopted by the school board and necessary to its reasonably successful progress in class in all of the subjects of study for the grade to which it is assigned by its teacher. [1913, ch. 254.]

ARTICLE 21.—SPECIAL PROVISIONS.

§ 1400. United States flag to be displayed. The school board or board of education of any city, town or district, is authorized and required to purchase at the expense of the city, town or district, one or more flags of the United States, which shall be displayed in seasonable weather, upon the school houses or flagstaff upon the school grounds during the school hours of each day's session of school. [1911, ch. 266, § 287; R. C. 1905, § 1029; 1897, ch. 75; R. C. 1899, § 865.]

§ 1401. Superintendents, principals, teachers attending the North Dakota educational association. The board of education in special or independent districts, or the school district board in any common school district is hereby authorized to allow the superintendent, principal or teachers of the schools under its charge, to attend, without loss of salary, any meeting of the North Dakota or other educational association which may be held within this state while the schools of such district are in session. [1911, ch. 266, § 288.]

§ 1402. Free kindergartens may be established, cost, how paid, government. Duty of superintendent of public instruction. The school board of any school district in the state, upon a petition signed by a majority of the legal voters in the district, shall have the power to establish and maintain free kindergartens in connection with the public schools of said district, for the instruction of children between four and six years of age, residing in said district, and shall establish such course of training, study and discipline and such other rules and regulations governing such preparatory or kindergarten schools as said board may deem best; provided, that nothing in this act shall be construed to change the law relating to the taking of the census of the school population or of the apportionment of the state or county school funds among the several counties and districts in the state; provided, further, that the cost of establishing and maintaining such kindergartens may be paid from the school funds of said districts raised by direct taxation for such purpose, and the said kindergartens shall be a part of the public school system, and gov-

erned as far as practicable, in the same manner and by the same officers as are provided by law for the government of the other public schools of the state; provided, further, that no person shall be employed as a teacher in such kindergarten schools who has not passed a satisfactory examination in such subjects as the state examining board shall require. The state examining board shall adopt rules governing the examination of kindergarten teachers, and shall furnish county superintendents with examination questions and the examination shall be held in the manner provided by law for the examination of teachers in the public schools; provided, further, that any person who shall complete the course of training for kindergarten teachers at the state normal schools shall be entitled to teach in the kindergarten schools of this state without examinations. [1911, ch. 266, § 289; 1909, ch. 103.]

§ 1403. Health and decency. It shall be the duty of all boards of education and school boards in this state to provide suitable and convenient water closets or privies for each of the schools under their charge, at least two in number, which shall be entirely separate, each from the other, and having separate means of access; and it shall be the duty of the school officers aforesaid to keep the same in a clean, chaste and wholesome condition; and a failure to comply with the provisions of this article on the part of any board of education or school board, shall be sufficient grounds for removal from office and for withholding from any district any part of the county tuition fund.

See further as to sanitary regulation for school houses, section 415.

The foregoing section 1403 with the exception of the substitution of the words "county tuition fund" for the words "the public moneys of the state," is a re-enactment of the first part of section 1038 of the Revised Codes of 1905, in which compilation sections 1038 and 1039 constituted "Article 26.—Health and Decency in Public Schools." Section 1038 read as follows:

"Duty of boards of education. It shall be the duty of all boards of education and district school boards in this state to provide suitable and convenient water closets or privies for each of the schools under their charge, at least two in number, which shall be entirely separate each from the other, and having separate means of access; and it shall be the duty of the school officers aforesaid to keep the same in a clean, chaste and wholesome condition; and a failure to comply with the provisions of this article on the part of any board of education or district school board, shall be sufficient grounds for removal from office and for withholding from any district any part of the public moneys of the state. The expense incurred by the officers aforesaid in carrying out the requirements of this article shall be a charge upon the district, when such expense shall have been approved by the county superintendent of schools of the county within which the school district is located, and a tax may be levied therefor without a vote of the district."

The legislature probably intended in Laws 1911, ch. 266, expressly to repeal section 1038, just quoted, but there is a discrepancy between the title of that chapter and the express repealing section thereof (§ 310), which is more fully explained in note to section 1454. Section 1039, above mentioned, constitutes section 1207 herein.

ARTICLE 22.—CHILD LABOR.

§ 1404. Unlawful to employ children under fourteen years. No child under fourteen years of age shall be employed, permitted or suffered to work in or in connection with any mine, factory, workshop, mercantile establishment, store, business office, telegraph office, restaurant, hotel, apartment house or in the distribution or transmission of merchandise or messages. It shall be unlawful for any person, firm or corporation to employ any child under fourteen years of age in any business or service whatever, during the hours when the public schools of the district in which the child resides are in session. [1911, ch. 266, § 291; 1909, ch. 153, § 1; R. C. 1905, § 897; 1890, ch. 62, § 143; 1891, ch. 56, § 29; R. C. 1899, § 762.]

Constitutionality of child labor laws. 17 L.R.A. (N.S.) 602; 24 L.R.A. (N.S.) 1121.

Private action for violation of child labor laws. 9 L.R.A. (N.S.) 381.

Employment of child in violation of statute as negligence which will sustain an action by the child for personal injuries. 7 L.R.A. (N.S.) 335; 1 B. R. C. 629.

§ 1405. Employment of child under sixteen years. No child between fourteen and sixteen years of age shall be employed, permitted or suffered to

work in any mine, factory, workshop or mercantile establishment unless the person or corporation employing him procures and keeps on file, and accessible to the superintendent of schools of the city or village, if one is employed, otherwise, to the clerk of the school board or board of education, an employment certificate as hereinafter prescribed, and keeps two complete lists of all such children employed therein, one on file and one conspicuously posted near the principal entrance of the building in which such child is employed. On termination of the employment of a child so registered and whose certificate is so filed, such certificate shall be forthwith surrendered by the employer to the child or its parent, or guardian or custodian. The superintendent of schools or clerk of the school board or board of education, as the case may be, may make demand on an employer in whose factory a child apparently under the age of sixteen years is employed or permitted or suffered to work and whose employment certificate is not then filed as required by this act, that such employer shall either furnish him within ten days evidence satisfactory to him that such child is in fact over sixteen years of age, or shall cease to employ or permit or suffer such child to work in such factory. The superintendent of schools of the city or village or clerk of the school board or board of education may require from such employer the same evidence of age of such child as is required on the issuance of an employment certificate; and the employer furnishing such evidence shall not be required to furnish any further evidence of the age of the child. In case such employer shall fail to produce and deliver to the superintendent of schools of the city or village or the clerk of the school board or board of education, as the case may be, within ten days after such demand, such evidence of age herein required by him, and shall thereafter continue to employ such child or permit or suffer such child to work in such factory, proof of the giving of such notice and of such failure to produce and file such evidence shall be prima facie evidence in any prosecution brought for a violation of this act that such child is under sixteen years of age and is unlawfully employed. [1911, ch. 266, § 292; 1909, ch. 153, § 2.]

§ 1406. Who authorized to issue employment certificates. The superintendent of schools of the city or village, if one is employed, and if not, then the clerk of the school board or board of education, is hereby authorized to issue an employment certificate in writing, such certificate is to be issued upon the evidence prescribed in section four of this act [section 1407]; provided, that no employment certificate shall be issued for any child then in or about to enter his own employment or the employment of a firm or corporation of which he is a member, officer or employe. [1911, ch. 266, § 293; 1909, ch. 153, § 3.]

§ 1407. Employment certificate, on what issued. The person authorized to issue employment certificate shall not issue such certificate until he has received, examined, approved and filed the following papers duly executed:

1. The school record of such child properly filled out and signed as provided in this act.

2. A passport or duly attested transcript of the certificate of birth or baptism or other religious record, showing the date and place of birth of such child. A duly attested transcript of the birth certificate filed according to law with a registrar of vital statistics, or other officer charged with the duty of recording births, shall be conclusive evidence of the age of such child.

3. The affidavit of the parent or guardian or custodian of a child, which shall be required, however, only in case such last mentioned transcript of the certificate of birth be not produced and filed, showing the place and date of birth of such child, which affidavit must be taken before the officer issuing the employment certificate, who is hereby authorized and required to administer such oath, and who shall not demand or receive a fee therefor. Such employment certificate shall not be issued until such child has personally

appeared before and been examined by the officer issuing the certificate, and until such officer shall, after making such examination, sign and file in his office a statement that the child can read and legibly write simple sentences in the English language and that in his opinion the child is fourteen years of age or upwards, and has reached the normal development of a child of its age, and is in sound health and is physically able to perform the work which it intends to do. In doubtful cases such physical fitness shall be determined by a medical officer of the board or department of health. Every such employment certificate shall be signed, in the presence of the officer issuing the same, by the child in whose name it is issued. [1911, ch. 266, § 294; 1909, ch. 153, § 4.]

§ 1408. Contents of certificates. Such certificates shall state the date and place of birth of the child and describe the color of the hair and eyes, the height and weight and any distinguishing marks of such child, and that the papers required by the preceding section have been duly examined, approved and filed and that the child named in such certificate has appeared before the officer signing the certificate and been examined. [1911, ch. 266, § 295; 1909, ch. 153, § 5.]

§ 1409. School record, what to contain. The school record required by this act shall be signed by the principal or chief executive officer of the school which such child has attended and shall be furnished, on demand, to a child entitled thereto. It shall contain a statement certifying that the child has regularly attended the public schools or schools equivalent thereto or parochial schools for not less than one hundred and twenty days during the school year previous to his arriving at the age of fourteen years or during the year previous to applying for such school record and is able to read and write simple sentences in the English language and has received during such period instruction in reading, spelling, writing, English grammar and geography and is familiar with the fundamental operations of arithmetic up to and including fractions. Such school record shall also give the age and residence of the child as shown on the records of the school and the name of its parent, guardian or custodian. [1911, ch. 266, § 296; 1909, ch. 153, § 6.]

§ 1410. Hours of labor. No person under the age of sixteen years shall be employed or suffered or permitted to work at any gainful occupation more than forty-eight hours in any one week, nor more than eight hours in any one day; or before the hour of seven o'clock in the morning or after the hour of seven o'clock in the evening. Every employer shall post in a conspicuous place in every room where such minors are employed a printed notice stating the hours required of them each day of the week, the hours of commencing and stopping work and the hours when the time or times allowed for dinner or for other meals begin and end. The printed form of such notice shall be furnished by the superintendent of schools of the city or village, or the clerk of the school board or board of education, and the employment of any minor for longer times in any day so stated shall be deemed a violation of this section. [1911, ch. 266, § 297; 1909, ch. 153, § 7.]

§ 1411. Peace officers to inspect places of work. Peace officers may visit mines, factories, workshops and mercantile establishments in their several towns and cities and ascertain whether any minors are employed therein contrary to the provisions of this act [sections 1404-1414]; and it shall be their duty to report any cases of such illegal employment to the school board or board of education. Such officer may require that the employment certificates and lists provided for in this act [sections 1404-1414] of minors employed in such factories, mines, workshops or mercantile establishments shall be produced for their inspection. Complaints for offenses under this act [sections 1404-1414] may be made by such peace officer or by any other person cognizant of the facts. [1911, ch. 266, § 298; 1909, ch. 153, § 8.]

§ 1412. Employments. No child under the age of sixteen years shall be employed at sewing belts, or to assist in sewing belts, in any capacity what-

ever; nor shall any child adjust any belt to any machinery, they shall not oil or assist in oiling, wiping or cleaning machinery; they shall not operate or assist in operating circular or band saws, wood shapers, wood-joiners, planers, sand-paper or wood polishing machinery, emery or polishing wheels used for polishing metal, wood-turning or boring machinery, stamping machines in sheet metal and tinware manufacturing, stamping machines in washer and nut factories, operating corrugating rolls, such as are used in roofing factories, nor shall they be employed in operating any steam boiler, steam machinery or other steam generating apparatus, or as pin boys in any bowling alleys; they shall not operate or assist in operating dough brakes, or cracker machinery of any description; wire or iron straightening machinery; nor shall they operate or assist in operating rolling mill machinery, punches or shears, washing, grinding or mixing mill or calendar rolls in rubber manufacturing; nor shall they operate or assist in operating laundry machinery; nor shall children be employed in any capacity in preparing any composition in which dangerous or poisonous acids are used, and they shall not be employed in any capacity in the manufacture of paints, colors or white lead; nor shall they be employed in any capacity whatever in operating or assisting to operate any passenger or freight elevator; nor shall they be employed in any capacity whatever in the manufacture of goods for immoral purposes, or any other employment that may be considered dangerous to their lives or limbs, or where their health may be injured, or morals depraved; nor in any theater, concert hall or place of amusement wherein intoxicating liquors are sold; nor shall females under sixteen years of age be employed in any capacity where such employment compels them to remain standing constantly. [1911, ch. 266, § 299; 1909, ch. 153, § 9.]

§ 1413. Penalty for violation of this act. Each owner, superintendent, manager or overseer of any mine, factory, workshop or mercantile establishment, and any other person who shall employ any child contrary to the provisions of this act [sections 1404-1414] or who shall in any manner violate the provisions thereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense in a sum not less than twenty dollars nor more than fifty dollars and costs. Each person authorized to sign a certificate as prescribed in the preceding section who certifies to any material false statement therein shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than twenty dollars nor more than fifty dollars and costs. [1911, ch. 266, § 300; 1909, ch. 153, § 10.]

§ 1414. Prosecution, how brought. Prosecutions under this act [sections 1404-1414] shall be brought in the name of the state of North Dakota before any court of competent jurisdiction, and the fines collected shall be paid over to the county treasurer and by him credited to the school fund of the state. [1911, ch. 266, § 301; 1909, ch. 153, § 11.]

Private action for violation of child labor laws. 9 L.R.A.(N.S.) 381.

ARTICLE 23.—MAINTENANCE OF EDUCATIONAL INSTITUTIONS.

§ 1415. Free public schools. The state university and school of mines at Grand Forks, the agricultural college at Fargo, the state normal schools at Valley City and Mayville, the deaf and dumb school at Devils Lake, the normal and industrial school at Ellendale, the scientific school at Wahpeton, the school of forestry at Bottineau, and all other schools heretofore established by law and maintained by taxation constitute the system of "free public schools" of the state. [1911, ch. 266, § 302; R. C. 1905, § 783; 1901, ch. 98.]

§ 1416. Maintenance of institutions. For the purpose of providing for the maintenance of the state university and school of mines at Grand Forks, the agricultural college at Fargo, the state normal school at Valley City, the state normal school at Mayville, the school for the deaf and dumb at Devils Lake, the school of forestry at Bottineau, the North Dakota Academy of Science at Wahpeton and the normal and industrial school at Ellendale, as a part of the

public school system of this state, real and personal annual tax of one mill on each dollar of the assessed valuation of such property in each and every year hereafter. [1911, ch. 266, § 303; R. C. 1905, § 838; 1901, ch. 156, § 1.]

§ 1417. County auditor shall calculate amount of levy. The county auditor of each county shall, at the time of making the annual tax list in his county, calculate the amount of the levy hereinbefore provided for upon each and every item of property assessed in his county as it appears upon the last assessment roll, and extend the same upon such tax list in a column to be provided for that purpose and such tax shall thereupon be calculated and paid over to the state treasurer the same as other state taxes. [1911, ch. 266, § 304; R. C. 1905, § 839; 1901, ch. 156, § 2.]

§ 1418. Such taxes, how apportioned. Such taxes as levied shall be apportioned by the state treasurer to the several institutions herein mentioned as follows: Thirty-three one-hundredths of a mill to the state university and school of mines at Grand Forks; twenty one-hundredths of a mill to the agricultural college at Fargo; fifteen one-hundredths of a mill to the state normal school at Valley City; thirteen one-hundredths of a mill to the state normal school at Mayville; six one-hundredths of a mill to the school for the deaf at Devils Lake; two one-hundredths of a mill to the school of forestry at Bottineau; four one-hundredths of a mill to the North Dakota academy of science at Wahpeton; seven one-hundredths of a mill to the normal and industrial school at Ellendale; provided, that all moneys hereafter collected from any tax heretofore levied shall be apportioned as herein provided. [1911, ch. 266, § 305; R. C. 1905, § 840; 1901, ch. 156, § 3.]

§ 1419. Moneys, how apportioned. The moneys arising from the taxes hereinbefore levied are hereby apportioned for the maintenance of the state university and school of mines at Grand Forks, the agricultural college at Fargo, the state normal school at Valley City, the state normal school at Mayville, the school for the deaf and dumb at Devils Lake, the school of forestry at Bottineau, the North Dakota academy of science at Wahpeton, and the normal and industrial school at Ellendale, the same to be paid monthly to the board of trustees of the several institutions herein mentioned and in proportion as herein provided, upon vouchers of said board signed by their respective presidents, and to be expended by the several boards, in their discretion, in the establishment and maintenance of said institutions hereinbefore mentioned. [1911, ch. 266, § 306; R. C. 1905, § 841; 1901, ch. 156, § 4.]

§ 1420. Funds, when paid over. All moneys received as interest, all moneys received for rents, for penalties, for permits and all moneys received from any other source from the respective lands of the different educational institutions hereinafter mentioned (except moneys received as principal from the sale of lands belonging to the agricultural college, lands belonging to the state university and school of mines, lands belonging to the two normal schools, lands belonging to the normal and industrial school), shall be paid over to the respective treasurers of the educational institutions above mentioned, by the state auditor on the first day of January, April, July and October in each year. The funds herein referred to shall be subject to the order of the respective boards of trustees of each institution hereinbefore mentioned and shall be used for the maintenance of such institutions respectively. [1911, ch. 266, § 307; R. C. 1905, § 842; 1901, ch. 138.]

ARTICLE 24.—CERTAIN ACTS LEGALIZED.

§ 1421. Acts legalized. Where the officers of any incorporated city, village or school district of this state shall have incurred indebtedness and issued warrants or orders for the erection, purchase, repair or maintenance, within and for said city, village or school district for school or other buildings, or water works, gas or electric light plants, public wells, cisterns, fire apparatus or legitimate corporate purposes for said city, village or school district, or to pay for or to raise money for any such purpose, and said warrants or orders

are outstanding, or held in the general revenue or other funds of said city, village or school district, in any and all such cases where said warrants or orders are within the debt limit, the same are hereby legalized and are declared to be the valid indebtedness of such city, village or school district, and in every case where the city council or city commissioners, village board of trustees, school board or board of education thereof shall have heretofore or shall hereafter determine by resolution or ordinance, that it was or is for the best interests of the city, village or school district to issue its negotiable bonds in the name of the city, village or school district for the sole purpose of funding such indebtedness, and shall have been or shall be authorized to issue such bonds, by a majority vote of the qualified electors of such city, village or school district, voting thereon at any regular or special election legally called and held after public notice thereof as required by law, and if such bonds shall have been or shall be executed, sold and delivered for value, and the proceeds arising from such sale shall have been or shall be applied exclusively to the express purpose of funding such warrants or orders, then in every such case such bonds whether engraved, lithographed or printed on bond paper, shall when executed, sold and delivered as provided by law be deemed, and hereby are declared to be valid and subsisting indebtedness of the city, village or school district issuing the same. [1911, ch. 266, § 308.]

§ 1422. Pending actions not affected. Debt limit. This act [sections 1105-1422] shall not affect any actions now pending in which the validity of any such warrants, orders, bonds or indebtedness is called in question; providing, however, that the issue of such bonds shall not be construed to be an increase of the indebtedness of the municipality and the proceeds of sales of such bonds shall be applied exclusively towards the discharge of the indebtedness of such city, village or school district referred to in section 1421 of this act. [1911, ch. 266, § 309.]

B. SCHOOL LAWS NOT INCLUDED IN CODIFICATION.

ARTICLE 1.—STATE BOARD OF EDUCATION.

§ 1423. The board and membership. There is hereby created a state board of education, to be composed of the president of the university, president of the agricultural college, the state superintendent of public instruction, the state inspector of graded and rural schools, the state high school inspector, each ex-officio, and a state normal school president, to be designated by the governor of the state from the normal schools in the order of the establishment of the institutions which they represent, and an industrial school president, to be designated by the governor of the state from the industrial schools, in the order of the establishment of the institutions which they represent, a county superintendent of schools and a male citizen who is not connected with the educational system, each to be designated by the governor. [1913, ch. 149, § 1.]

§ 1424. Appointment and terms. The governor shall appoint by the advice and consent of the senate, during the thirteenth legislative assembly, a normal school president, an industrial school president, a county superintendent and a male citizen, as members of the state board of education, for a term from July first, 1913, to the first Tuesday in April, 1915, and thereafter during the session of the legislative assembly, for a term of two years from the first Tuesday in April of each odd numbered year. No normal school or industrial school shall be represented a second time on the state board of education by its president until each normal school and each industrial school has been represented on the state board of education by its president. [1913, ch. 149, § 2.]

§ 1425. Compensation. The members of the state board of education not receiving salaries from the state, county or state institutions, shall receive

three dollars for each day employed, and all members of the board shall receive the actual and necessary expenses incurred in attending meetings of the board and in the performance of all duties in connection therewith, which shall be paid out of the state treasury on the voucher of the board, as provided by law. [1913, ch. 149, § 3.]

§ 1426. Meetings. The board shall hold six regular meetings, one in each of the months of July, September, November, January, March and May of each year, and all such meetings shall be held at one of the state educational institutions, at the state capitol, or at such place as the board may determine. The board may hold, at its discretion, special meetings, of which due notice stating special purposes shall be given, and which may be held at any place within the state, but it shall not meet to exceed twelve times a year. The state superintendent of public instruction shall be the president of the board, and his deputy shall be secretary with such compensation as the board may determine. [1913, ch. 149, § 4.]

§ 1427. Powers and duties. The duties of the state board of examiners established for the purpose of granting certificates to persons desirous of teaching in the state of North Dakota, as provided for in chapter 266 of the Session Laws of 1911, sections 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265 and 266 [§§ 1357-1377 herein], are hereby made a part of the duties of the state board of education, and all authority and powers granted to the said board of examiners are hereby transferred and made a part of the duties of the state board of education. The state board of education is further authorized to establish such rules as may be found necessary to secure uniformity and best results among the schools receiving state aid, as rural, graded or consolidated schools, as provided in chapter 35 of the Session Laws of 1911 [sections 1439-1450 herein]. The duties of the state agricultural and training school board, as defined in chapter 265 of the general laws of 1911 [sections 1455-1470 herein], are hereby transferred to the state board of education, and made a part of its duties. The duties of the state high school board, as defined in chapter 267 of the Session Laws of 1911 [sections 1430, 1433, 1436 and 1437 herein], are also hereby transferred to the state board of education, and made a part of its duties. The rules and regulations for classification of state, rural, graded and consolidated schools, as provided for by law, shall be made by the state board of education. Provided, also, that the classification of those schools and apportioning of the funds, as provided by law, shall be under the control of the state board of education, and it shall perform such other functions as the legislature may from time to time confer upon it. [1913, ch. 149, § 5.]

§ 1428. Visitations and inspections. The state board of education, or their representatives or inspectors, may visit, examine into and inspect any educational institution under the supervision of the state, and may require as often as desired duly verified reports therefrom, giving such information in such form as the superintendent of public instruction or the board of education may prescribe. [1913, ch. 149, § 6.]

§ 1429. Appointments by superintendent of public instruction. The superintendent of public instruction, shall appoint the deputy superintendent of public instruction, state consolidated, graded and rural school inspectors or assistants, high school inspectors, clerks and others in the office of the superintendent of public instruction provided by law. [1913, ch. 149, § 7.]

ARTICLE 2.—HIGH SCHOOL AID.

This article (Laws 1913, ch. 268) supersedes Laws 1911, ch. 267, and the duties of the state high school board as defined in the latter chapter were transferred to the state board of education in Laws 1913, ch. 149, § 5, which constitutes section 1427 herein.

§ 1430. State board of education. Powers. The state board of education shall have general supervision over secondary education in the state, and shall

perform the duties and have and exercise the powers hereinafter mentioned. [1913, ch. 268, § 1; 1911, ch. 267, § 1; R. C. 1905, § 1031; 1895, ch. 53, § 1; R. C. 1899, § 867.]

§ 1431. Schools classified. Any public graded school in any city or incorporated village or township, organized into a district, under the township or district system, which shall give instruction according to the terms and provisions of this act, and shall admit pupils of either sex from any part of the state without charge for tuition in the secondary school or high school department, shall be entitled to be classified as a state high school, and to receive pecuniary aid as hereinafter specified; provided, however, that no such school shall be required to admit non-resident pupils unless they pass an examination in orthography, reading in English, penmanship, arithmetic, language and grammar, modern geography and the history of the United States; provided, however, that in case of state high schools having an agricultural department, pupils pursuing courses in said department shall be admitted into the seventh and eighth grades, and secondary school department without charge for tuition. [1913, ch. 268, § 2; R. C. 1905, § 1032; 1899, ch. 81; R. C. 1899, § 868.]

§ 1432. Requirements for classification. The said board shall require of the schools applying for such pecuniary aid compliance with the following conditions, to wit:

1. That there shall be adequate school buildings conforming to modern approved ideas respecting heating, lighting, ventilation and sanitation, and under no circumstances shall aid be given to or continued when the board of education fails to or refuses to comply with reasonable requirements of this character.

2. That there shall be regular and orderly courses of study in the eight grades of the elementary school, together with all subjects prescribed by the said board for the first two years of the secondary school curriculum.

3. That the said secondary school receiving pecuniary aid under this article shall at all times permit members of the state board of education, or any one appointed by said board, to visit and examine the classes pursuing said elementary and secondary school courses, and make recommendations concerning the conduct of such school. [1913, ch. 268, § 3; R. C. 1905, § 1033; 1899, ch. 81; R. C. 1899, § 869.]

§ 1433. High school inspector. How appointed. Salary and expenses. Schools to receive state aid. **Appropriation.** The state board of education shall appoint a high school inspector, upon the nomination of the superintendent of public instruction, who shall be a graduate of a college or a university of recognized standards, and shall have had five years of successful experience either as principal of a high school or superintendent of city schools in North Dakota. The board shall prescribe his duties. His term of office shall be two years, provided that the inspector appointed in 1911 shall hold office for two years from July first, 1911. The yearly salary of said inspector shall not exceed two thousand dollars, as may be fixed by the state board of education. Such salary shall be payable monthly on warrant of the state auditor from the general fund of the state. It shall be the duty of the secretary of the state board of education to notify the state auditor, prior to July first of each year, the amount of salary which has been fixed for the biennial period.

The state high school inspector shall receive his actual and necessary expenses incurred in the discharge of his official duties; such duties, under the direction of the state board of education, may take him outside of the state of North Dakota, and in such cases all his actual and necessary expenses shall be paid. These expenses, which shall not exceed twelve hundred

dollars (\$1,200) in any given year, shall be paid from the general fund of the state upon itemized vouchers properly approved.

The said state high school inspector, under the direction of the state board of education, shall carefully inspect the instruction, discipline and all conditions affecting the efficiency of the high schools of the state receiving aid under this article, and make a written report on the same; provided, that no money shall be paid in any cases until such report shall have been received, examined and the work of the school approved by the board. The said board shall receive applications from such schools for aid as hereinafter provided, which applications shall be received and acted upon in the order of their reception. The said board shall apportion to each of said schools, which shall have fully complied with the provisions of this article, and whose applications shall have been approved by the board, the following sums, to wit: Two thousand five hundred dollars for the school year 1913-14 to each of seven schools having an agricultural, manual training and domestic economy department; and after the school year of 1913-14, the sum of two thousand five hundred dollars each year to each ten schools having an agricultural, manual training and domestic economy department; eight hundred dollars each year to each school maintaining a four-year high school curriculum and doing four years of high school work; the sum of five hundred dollars each year to each school having a three-year high school curriculum and doing three years of high school work; and the sum of three hundred dollars each year to each school having a two-year high school curriculum and doing two years of high school work; provided, that the moneys so apportioned to any high school shall be used to increase the efficiency of the high school work; provided, also, that the state board of education may require that forty per cent of the money appropriated shall be used in any one year for libraries, laboratories and other apparatus and equipment; provided, further, that the total amount of apportionment, expenses and salary under this act, except salary and expenses of the inspector provided for above, shall not exceed seventy-seven thousand five hundred dollars in the school year 1913-14, and eighty-five thousand dollars in each succeeding year. The sum of seventy-seven thousand five hundred dollars for the year July first, 1913-14, and thereafter the sum of eighty-five thousand dollars, is hereby appropriated annually for the purpose of this act, to be paid out of any moneys in the state treasury not otherwise appropriated, which amount, or so much thereof as may be necessary, shall be paid upon the itemized vouchers of said board, duly certified and filed with the state auditor; provided, that in case the amount appropriated and available under this article for the payment of aid to such schools shall in any year be insufficient to apportion each of such schools as are entitled thereto the full amount intended to be apportioned to the high schools of the various classes, then, in such case, two thousand five hundred dollars shall be apportioned to each of the seven or ten schools having an agricultural, manual training and domestic economy department, and the remainder of such amount as is appropriated and available shall be apportioned pro rata among the schools entitled thereto; provided, further, that with the approval of the state board of education, the money appropriated by the state to the high schools designated to maintain departments of agriculture, manual training and domestic economy may be used for the extension of agricultural education and demonstration outside of the district in which the school is located, within the limits of efficiency. [1913, ch. 268, § 4; 1911, ch. 267, § 2; 1907, ch. 99; R. C. 1905, § 1034; 1899, ch. 81; R. C. 1899, § 870; 1903, ch. 8; 1905, ch. 24, § 1.]

As to the salary of the high school inspector and the manner in which it is to be paid, see sections 653e, 653b.

§ 1434. Schools to maintain departments of agriculture. How designated. Requirements. Any state high school having satisfactory rooms, equipment

and a tract of land of at least ten acres within one mile of the school house, having shown itself fitted by location and otherwise to do agricultural work; having trained instructors in agriculture, manual training and domestic economy; maintaining well organized short courses and agricultural, manual training and domestic science and art courses, and meeting such other requirements as the state board of education may define, shall upon application be designated by said board to maintain an agricultural department; provided, that the high schools now designated and those hereafter designated to maintain departments of agriculture, manual training and domestic economy shall continue to be so designated and aided so long as they comply with the rules and regulations of the state board of education and perform satisfactorily the work contemplated by this section. [1913, ch. 268, § 5; 1911, ch. 40, §§ 1-3.]

§ 1435. National and state aid. One school in county. In addition to the state aid of two thousand five hundred dollars herein provided for a state high school having an agricultural department as defined in section five of this act [section 1434] shall receive its proportionate share of all moneys appropriated by the national government for the teaching of elementary or secondary agriculture in the public or high schools of this state; provided, that said high schools having an agricultural department shall not receive more than two thousand five hundred dollars of aid from the state under this act; provided, further, that no more than one high school in any county shall be designated a state high school having an agricultural department and receiving two thousand five hundred dollars state aid. [1913, ch. 268, § 6; 1911, ch. 40, §§ 4, 5.]

§ 1436. Compensation of board members, clerical service, salary, expenses. The ex-officio members of the board shall serve without compensation, but the appointive members shall receive a per diem of three dollars while actually on duty as members of the board.

The necessary expenses of all members of the board while on duty as members, salary and expenses of the clerical help of the examiner and of the readers of the state board of education examination papers, and other necessary expenses of administration, shall be paid from the "state high school aid" fund, and in the manner provided by law for salaries and expenses of other state officers. [1913, ch. 268, § 7; 1907, ch. 99; R. C. 1905, § 1035; 1899, ch. 81; R. C. 1899, § 871; 1903, ch. 8; 1905, ch. 24, § 2.]

§ 1437. Annual meeting. Organization. Powers. Assistant examiners. The board shall hold a regular meeting in the months of July, September, November, January, March and May of each year.

The board shall have full discretionary power to consider and act upon applications of schools for state aid, and to prescribe conditions upon which said aid shall be granted; and it shall be its duty to accept and aid such schools only as will, in its opinion, if aided, efficiently perform the service contemplated by law. The period for which a school shall be classified shall be one year. The board shall have power to establish any necessary and suitable rules and regulations relating to qualifications of teachers and superintendents, to examinations, reports, acceptance and classification of schools, curricula, and other proceedings implied under this article. The examiner shall report the results of the state board of education examinations annually to the superintendent of public instruction, who shall publish the same in his biennial report. Readers of state board of education examination papers shall be appointed by the examiner of the state board of education, and shall be entitled to receive such compensation as the board may allow. [1913, ch. 268, § 8; 1907, ch. 99; R. C. 1905, § 1036; 1899, ch. 81; R. C. 1899, § 872; 1903, ch. 8.]

§ 1438. Annual report of inspector. Board shall keep record and make report. The said high school inspector shall make, on or before August first, an annual report to the state board of education concerning the previous

school year, showing the names and number of schools receiving state aid, the number of pupils enrolled, and other matters as directed by the board, and the said board shall cause the same to be published. Said board shall keep a record of all proceedings, and shall biennially make a report to the governor of the receipts and disbursements, matters of general importance regarding the schools aided, and shall add any recommendations that it deems useful and proper. This report shall be included and made a part of the printed report of the state superintendent of public instruction. [1913, ch. 268, § 9; R. C. 1905, § 1037; 1899, ch. 81; R. C. 1899, § 873.]

As to the time for making reports to the governor and as to the contents thereof, see sections 95, 97, 98, 633.

ARTICLE 3.—RURAL SCHOOLS.

The several sections in this article amend and superseded the sections bearing the same numbers in Laws 1911, ch. 35. See reference to the latter in section 1427.

§ 1439. Purpose. The purpose of this article shall be to aid, encourage, stimulate, and standardize the rural, consolidated and graded schools of this state, and thereby increase the efficiency of the entire educational system of this state. [1913, ch. 6, § 1; 1911, ch. 35, § 1.]

§ 1440. Graded, consolidated and rural schools may obtain state aid. Any public school in any common school district in the state, or any public school in any city, town or village, or any consolidated school in the state, not entitled to aid as a state high school, but fully complying with the conditions of this article relating to state graded schools, and any public school in any common school district in the state not located in any incorporated city, town or village, but fully complying with the conditions of this article relating to state rural schools, may receive aid as hereinafter provided for state consolidated schools, state graded schools and state rural schools. [1913, ch. 6, § 2; 1911, ch. 35, § 2.]

§ 1441. Conditions to be complied with by the state graded schools in order to obtain aid. State graded schools shall be of two classes, viz.: first and second class. First class: In order to be entitled to aid as a state graded school of the first class, such school shall for the school year next preceding that for which aid is granted have complied with the following conditions: First, it shall have maintained at least nine months' school. Second, it shall be well organized, having at least four departments under the supervision of proficient teachers. The principal shall be a graduate of a normal or other institution of higher learning or shall hold a professional certificate, and each department of such school shall be taught by a teacher having at least a first grade elementary certificate. Third, it shall have a suitable school building, properly lighted, heated and ventilated, sanitary and commodious outhouses, and other necessary accommodations, library and such other apparatus as is necessary to do efficient work. Fourth, such school shall have a regular and orderly course of study, and shall include the first two years of a high school course, as suggested by the state board of education, as well as courses in domestic science and either manual training or elementary agriculture, and shall comply with such rules as may be established by the state board of education.

Second Class: In order to be entitled to aid as a state graded school of the second class, such school shall have complied with the following conditions for the school year next preceding that for which aid is granted, viz.: First, it shall have maintained at least nine (9) months' school. Second, it shall be well organized, having at least two departments under the supervision of proficient teachers. The principal shall be a graduate of a normal school or other institution of higher learning or shall hold a professional certificate, and each department of such school shall be taught by a teacher having a first-grade elementary certificate or better. Third, it shall have a suitable school building, properly lighted, heated and ventilated; sanitary and commodious

outhouses and other necessary accommodations, a library, and such other apparatus as is necessary to do efficient work. Fourth, such school shall have a regular and orderly course of study as prescribed in the state course of study for common schools, courses in domestic science, and either manual training or agriculture, and shall comply with such rules as may be established by the state board of education. [1913, ch. 6, § 3; 1911, ch. 35, § 3.]

§ 1442. Conditions for obtaining aid as a state rural school. State rural schools shall be of two classes, viz.: first and second class.

First Class: In order to be entitled to aid as a state rural school of the first class, such school have have complied with the following conditions during the school year next preceding that for which aid is granted; First, such school shall have maintained at least nine (9) months' school.

Second: It shall be taught by a teacher of successful experience, holding a first-grade elementary certificate, or a certificate of higher grade.

Third: It shall have a suitable school building, properly lighted, heated and ventilated; sanitary and commodious outhouses and other necessary accommodations, a library and such other apparatus as is necessary to do efficient work.

Fourth: Such school shall have a regular and orderly course of study as prescribed in the state course of study for common schools, including elementary agriculture, and shall comply with such rules as may be established by the state board of education.

Second Class: In order to be entitled to aid as a state rural school of the second class, such school shall have complied with the following conditions for the school year next preceding that for which aid is granted, viz.:

First: Such school shall have maintained at least eight (8) months' school.

Second: It shall be taught by a teacher of successful experience, holding a second-grade elementary certificate or a certificate of higher grade.

Third: It shall have a suitable school building, properly lighted, heated and ventilated, sanitary and commodious outhouses, and other necessary accommodations, library and such other apparatus as is necessary to do efficient work.

Fourth: Such school shall have a regular and orderly course of study as is prescribed in the state course of study for common schools, including elementary agriculture, and shall comply with such rules as may be established by the state board of education. [1913, ch. 6, § 4; 1911, ch. 35, § 4.]

§ 1443. Application to be made to the county superintendent of schools. Applications from schools for the aid herein provided in the case of state graded consolidated and state rural schools, shall be made to the county superintendent of schools of the county in which such schools are located. The county superintendent shall forward to the state superintendent of public instruction such applications as are endorsed and recommended by him, together with a certificate of the superintendent of the county wherein the school making such application is situated, to the effect that such school has fully complied with the conditions mentioned in section 1441 of this article in the case of state graded or state consolidated schools, and with the conditions mentioned in section 1442 of this article, in the case of state rural schools, and in addition the rules established by the state board of education. The county superintendent shall also file with the inspector when requested to do so by that officer a certified list of such schools as have met the requirements for classification. [1913, ch. 6, § 5; 1911, ch. 35, § 5.]

§ 1444. Inspection of schools. State school inspector. Appointment. Qualifications. Salary and expenses. Duties and reports. Assistant inspector. Application for aid to state graded schools, state rural schools or state consolidated schools which have the endorsement and recommendation of the county superintendent wherein such schools are located shall be filed in the office of the state superintendent of public instruction; and before any appor-

tionment of any aid can be made under the provision of this article, such school shall be duly inspected and recommended for classification by an officer to be known as state inspector of rural and graded schools and consolidated schools. Such inspector shall be appointed by the state superintendent of public instruction for a period of two years; provided, that such appointment must be confirmed by the state board of education. This inspector shall have the same educational qualifications as required by law for the office of state superintendent of public instruction, and shall have been a county superintendent of schools. The inspector shall receive an annual salary of two thousand dollars; and in addition thereto his necessary and actual expenses incurred in the discharge of his official duties, not exceeding fifteen hundred dollars in any one year. The salary and traveling expenses shall be paid in the same manner as in the case of the state superintendent of public instruction. It shall be the special duty of the state inspector of consolidated, rural and graded schools to aid and promote consolidation of schools, and to further that end, he shall, when possible, attend teachers' meetings, institutes, training schools and school officers' and patrons' meetings, and discuss consolidation and kindred topics. He shall on or before the fifteenth day of September in each year, make and transmit to the governor and the state superintendent of public instruction, a report showing the conditions of the schools inspected, with such summaries and recommendations as he may think proper; and not more than fifteen hundred of such reports shall be printed each year. He shall also file in the office of the state superintendent at the close of each school month individual reports of the several schools inspected during that month. [1913, ch. 6, § 6; 1911, ch. 35, § 6.]

See appropriation for salary of inspector rural and graded schools in section 653e and in connection therewith, see section 653b. As to reports to the governor, see sections 95, 97, 98.

§ 1445. Amount of apportionment. Between the first and fifteenth of August in each year, the state board of education shall apportion to each of said state consolidated schools the sums named in section 1446, and to each of said state graded schools which have fully complied with the provisions of this article and such additional rules as may be established by the board, relating to state graded schools, the sum of two hundred dollars in each year to state graded schools of the first class, and to state graded schools of the second class the sum of one hundred fifty dollars; and they shall apportion to each of the state rural schools which have fully complied with the provisions of this article and such additional rules as may be established by the board relating to state rural schools, the sum of one hundred fifty dollars in each year to each state rural school of the first class; and to each state rural school of the second class, the sum of one hundred dollars in each year: provided, however, that in case the amount apportioned and available shall not be sufficient to pay the amounts specified above, then the amount available shall be apportioned pro rata among the schools entitled thereto, and any moneys apportioned under this article shall be used solely to increase the efficiency of such schools. Provided, also, that but one school of each class in any township or district shall receive aid under the provisions of this article until all of those schools applying for aid before August first of each year are considered and disposed of. These amounts shall be paid by the state treasurer on warrant of the state auditor when duly certified and filed with the state auditor by the superintendent of public instruction. [1913, ch. 6, § 7; 1911, ch. 35, § 7.]

§ 1446. Aid to consolidated schools. Any consolidated school meeting the requirements for a state graded school of the first class shall receive aid in the amount of six hundred dollars, and any consolidated school meeting the requirements for a state graded school of the second class shall receive aid in the amount of five hundred dollars. A consolidated school within the meaning of

this article shall be one organized in accordance with section 84, chapter 266, Session Laws of 1911 [am'd, § 1190 herein]; and in addition shall have at least two departments. [1913, ch. 6, § 8; 1911, ch. 35, § 8.]

§ 1447. Records, accounts and rules. The state superintendent of public instruction shall keep a record of all schools applying for and receiving aid as state graded schools, state consolidated schools or state rural schools, in each year, and a detailed account of all moneys apportioned for such purposes. The state board of education is also authorized to establish such additional rules as shall be found necessary to secure uniformity and the best results among the schools receiving state aid. [1913, ch. 6, § 9; 1911, ch. 35, § 9.]

§ 1448. Advancement of graded or consolidated schools, of the first class to high schools, and advancement of graded or consolidated schools of the second class to graded or consolidated schools of the first class. First Class: When any state graded school or state consolidated school of the first class in this state attains such a degree of proficiency as to satisfy the state inspector of rural and graded schools that it has the qualifications necessary to entitle it to be advanced to a state high school, such inspector may recommend the same to the state board of education for such advancement. If the state board is satisfied that such school has complied with all the requirements to entitle it to promotion, said board shall raise it to a state high school entitling it to aid as such.

Second Class: When any state graded school or state consolidated school of the second class in this state has attained such a degree of proficiency as to satisfy the inspector that it has the qualifications necessary to entitle it to be advanced to a state graded or consolidated school of the first class, such inspector may recommend the same to the state board of education for such advancement. If the state board is satisfied that such school fully complies with all the requirements necessary to entitle it to promotion, such board shall raise it to a state graded or consolidated school of the first class, entitling it to aid as such. [1913, ch. 6, § 10; 1911, ch. 35, § 10.]

§ 1449. Report of state superintendent of public instruction. The state superintendent of public instruction shall include in his biennial report a comprehensive statement of all receipts and disbursements; the name and number of schools in each class receiving aid; the number of pupils enrolled in each, and the cost of supervision of all schools receiving aid under this article for the years covered by such report, to which may be added an estimate of appropriation needed to meet the requirements of this article for the succeeding two years, and such other recommendations as he may deem useful and proper. [1913, ch. 6, § 11; 1911, ch. 35, § 11.]

§ 1450. Amount appropriated for each class. For the purpose of carrying out the provisions of this article, the following sums are hereby appropriated annually, to be paid out of any moneys in the state treasury not otherwise appropriated, viz., for aid to state graded schools the sum of ten thousand dollars (\$10,000.00) annually. For aid to state rural schools the sum of fifteen thousand dollars (\$15,000.00) annually, and for aid to state consolidated schools the sum of ten thousand dollars (\$10,000.00) annually. [For the inspector's and assistant's salary, as hereinbefore provided, the sum of two thousand dollars (\$2,000.00) annually.] For the actual and necessary traveling expenses of said inspector, the sum of fifteen hundred dollars (\$1,500.00) annually. [For the payment of postage, stationery and clerical assistance required by the inspector and the printing of the inspector's annual report, the sum of four hundred (\$400.00) dollars annually.] Provided, however, that in case the amount appropriated and available under this article for the payment of aid to such schools shall in any year be insufficient to apportion to each of such schools as are entitled thereto the full amount intended to be apportioned to the state graded schools, state rural schools and state consoli-

dated schools, then, in such case, such amounts as are appropriated and available shall be apportioned pro rata among the schools entitled thereto. Provided, the first annual appropriations herein provided for such shall become available July first, 1913. [1913, ch. 6, § 12; 1911, ch. 35, § 12.]

The items printed in brackets were vetoed, 1913, ch. 6, p. 7.

ARTICLE 4.—THOROUGH SYSTEM OF INSTRUCTION IN SCHOOLS.

§ 1451. Writing. Each pupil in the common schools as they shall become sufficiently advanced to pursue the same, shall be required to devote at least fifteen minutes' practice in writing each day during the school year. [1911, ch. 264, § 1.]

§ 1452. Course of study in high schools, selections by pupils. All pupils entering high school shall select one of the courses of study offered by said high school, and no pupil shall be permitted to change said course of study, except by permission of the superintendent of said school, or upon request of the parents or guardian of said pupil. [1911, ch. 264, § 2.]

§ 1453. Review by senior class, duty of superintendent. The superintendent shall, and it is hereby made his duty to cause to be reviewed by each senior class during the senior year, the full and complete course of study pursued by said class in the grammar grades. [1913, ch. 252; 1911, ch. 264, § 3.]

ARTICLE 5.—STATE EDUCATIONAL LIBRARY.

§ 1454. Appropriation for. There is hereby appropriated out of any funds in the state treasury the sum of three hundred dollars annually, to be paid by warrant of the state auditor on the state treasurer upon the presentation of an itemized bill in due form by the superintendent of public instruction, for the purchase of reference or pedagogical books for the state educational library in the office of such superintendent. [R. C. 1905, § 1030; 1891, ch. 32, § 1; R. C. 1899, § 866.]

This section is § 1030 of the Revised Codes of 1905. The title of Laws 1911, ch. 266 and the text of § 310 of that chapter (enumeration of repealed sections in R. C. 1905) are both identical with the enrolled bill on file in the office of the secretary of state. The title recites by numerical designation a multitude of sections in the Revised Codes of 1905 that are repealed by the chapter, and among them is § 1038, substantially re-enacted in § 290 of that chapter and constituting section 1403 in this compilation. But § 310 of chapter 266, above cited, while it manifestly purports to be the same specification of sections expressly repealed by it as found in the title, reads "1030" in the place where "1038" appears in the title, and § 1030 does not elsewhere appear in said section 310. In view of this discrepancy, it seems not to be absolutely certain whether it was § 1030 or § 1038 of the Revised Codes of 1905 that was expressly repealed. As above stated, the greater part of § 1038 of the Revised Codes of 1905 is re-enacted in section 1403 herein, and is quoted in the note to the latter section. On the other hand, § 1030 of the Revised Codes of 1905 appears to have no counterpart or substitute in Laws 1911, ch. 266, which constitutes sections 1105-1422 in this compilation.

ARTICLE 6.—COUNTY AGRICULTURAL AND TRAINING SCHOOL.

The duties of the state agricultural and training school board as defined in this article, which constituted Laws 1911, ch. 265, were transferred to the state board of education in Laws 1913, ch. 149, § 5, which is section 1427 herein.

§ 1455. General or special election to establish school. Appropriation by county commissioner. Whenever in the opinion of the citizens of any county in the state, it shall be deemed wise to establish a county school for the purpose of giving instruction in agricultural, domestic economy, manual training and for training of teachers for the rural schools and a petition containing the names of not less than three hundred freeholders is filed with the board of county commissioners, praying for the establishment of such a school such board of county commissioners shall at its next regular meeting consider such petition and in case such board of county commissioners decide in favor of establishing such school, such board of county commissioners

shall submit the question of establishing and maintaining such school to the electors of such county either at the next general election or they may order a special election for the purpose of determining whether such county shall establish such school. Such special election shall be held in the manner and upon the notice prescribed by law for other elections; but the published and posted notices of such election shall state its object and the amount of money to be appropriated for the establishing of such school. If the majority of all the votes cast at such general or special election upon the question of establishing such school are in favor of establishing such school, the board of county commissioners of such county is hereby authorized to appropriate money for the organization, equipment and maintenance of same and to levy and spread on the tax roll a sufficient sum to carry into effect the provisions of this article, but such sum shall not be less than ten thousand dollars, nor more than twenty thousand dollars, and not exceeding such sum as may be recommended by the board of trustees of the county agricultural and training school created by this article, which sum together with any gift or donation offered by any city or village desiring the location of such school shall be sufficient to purchase a building already constructed or to purchase material or labor to erect a new main building and such out-buildings as may be necessary; said sum may be all levied in one year, or the board of trustees of the county agricultural and training school created by this article may issue and sell certificates of indebtedness in an amount not to exceed said sum plus any additional amount required to pay the interest that may accrue on such certificates, which interest shall not exceed six per cent per annum and shall be paid annually. Such certificates shall be paid in five equal yearly payments and in case such certificates are issued and sold, it shall be the duty of the county board to levy and spread upon the tax roll a sufficient sum to pay the same as they become due together with accrued interest. [1911, ch. 265, § 1.]

See note immediately preceding this section.

See validating act, section 1471.

§ 1456. Joint maintenance by county and state. After the establishment of such a school, the maintenance thereof shall be borne jointly by such county and the state, as hereinafter provided. The board of county commissioners are hereby empowered and directed annually to levy and spread on the tax roll a sum sufficient to pay the county's share of the cost of maintenance; provided, that not to exceed one-half of the yearly cost of maintenance shall be paid by the state, but the state's share of such maintenance shall not exceed the sum of three thousand dollars in any one year; it being the intent of this act that a sum at least equal to the state's share shall be levied and paid by the county, but this shall not prevent the county from levying a greater sum of (for) maintenance, if deemed necessary; provided, further, that the board of county commissioners may from time to time levy and spread upon the tax roll sums of money for the erection and construction of additional buildings or other improvements, or for the purchase of equipment, but levies for improvements or equipment shall not exceed the sum of five thousand dollars in any one year, without first having been submitted to a vote of the electors of such county as provided in section 1455. [1913, ch. 250; 1911, ch. 265, § 2.]

§ 1457. Treasurer of board. Funds, how paid out. The county treasurer shall be and shall act as the treasurer of the board of trustees and all funds levied and collected for the purpose of establishing and maintaining such a school shall be placed in his hands, the same as all other funds and shall be paid out, on the order of the president of the board of trustees and countersigned by its secretary. [1911, ch. 265, § 3.]

See note immediately preceding section 1455.

§ 1458. Board of trustees. There is hereby created for any county desiring to establish such a school a board consisting of five members to be known as

"the board of trustees" of the county agricultural and training school, of which the county superintendent of schools shall be a member and of which he shall in all cases act as secretary; the other four shall be appointed by the board of county commissioners, two of whom shall serve for the balance of the school year ending June thirtieth, following their appointment and two shall serve until the end of the second school year or until their successors are appointed and have qualified. After the organization of such board of trustees the terms of appointment of the members of such board shall be for a term of two years, the terms of two members expiring at the end of each school year, but no member of the board of county commissioners shall be eligible to appointment on the board of trustees, during his term of office as a member of the board of county commissioners. Vacancies occurring in the board of trustees, excepting in the case of the county superintendent, shall also be filled by appointment by the board of county commissioners within sixty days after they occur. [1911, ch. 265, § 4.]

See note immediately preceding section 1455.

§ 1459. Oath and bond. Organization of board. Compensation. Tax. Each person appointed a member of the board of trustees shall within ten days after notice of such appointment, take an oath to discharge his duties faithfully, which oath together with a bond, in the sum of two thousand dollars, shall be filed in the office of the county auditor. Within fifteen days after their appointment the members shall meet and organize by electing one of their members president. The members shall receive no compensation except their actual expenses while going to and from and while attending the meetings of the board of trustees and in the necessary discharge of their official duties in establishing, equipping and maintaining the school. After having determined the amount of money required to establish, equip and maintain the school for one year, the secretary shall make a report of the estimated amount required, to the county auditor, in sufficient time to spread on the tax roll, but any such amount shall be subject to the approval of the board of county commissioners. Should the board of county commissioners deem it advisable to sell certificates of indebtedness in lieu of making a tax levy, it shall be done as required by section 1455. [1911, ch. 265, § 5.]

See note immediately preceding section 1455.

§ 1460. State agricultural and training school board created. Powers and duties. There is hereby created a state agricultural and training school board which shall consist of the president of the state agricultural college, the state superintendent of public instruction and three practical farmers who shall be appointed by the governor of this state, one of whom shall serve until the end of the first school year, one of whom shall serve until the end of the second school year, and one of whom shall serve until the end of the third school year after the organization of this board; it being the intent of this act after the organization of this board, that the term of each appointed member of this board shall be for three years and no two of whose term shall expire in the same year. The president of the agricultural college shall be president of this board and the superintendent of public instruction shall be its secretary. This board shall meet at such time and place as its president may direct and shall prescribe the course of study to be pursued in the county agricultural and training schools, which shall include, first instruction in the elements of agriculture including the study of soil, horticulture and plant life, animal life on the farm, a system of farm accounts, and manual training and domestic economy; second, instructions in the common branches and such other branches as are necessary for the training of teachers in the rural schools, in methods of school management and provisions for observation and practice in the art of teaching.

The state board of agricultural and training schools shall determine the qualifications to be required of the principal and other teachers in said

school, and the president and secretary of the said state board shall each have a vote in the election of, and fixing the salaries of the principals of said schools. The other teachers shall be elected by the board of trustees of each school established under this article. It is provided that the course of study in the department of agriculture shall be so framed as to co-relate with the courses of study in the state agricultural college so that students from the county schools shall be admitted without examination to the next higher class in the state agricultural college next following that which they have completed in the county school. The superintendent of public instruction and the president of the agricultural college shall visit and inspect each of said schools at least once each year, and make a report to the governor, relating to property management, instruction and efficiency of these schools, and make such recommendations as in their judgment will further the efficiency and usefulness of any or all of such schools. [1911, ch. 265, § 6.]

See note immediately preceding section 1455.

§ 1461. Site for school. Trustees to build. After the board of county commissioners have decided to establish a school it may receive offers of location, as well as money from each village or city desiring to have a school located within or near its boundaries; such offers and location shall be examined and considered by the board of county commissioners after which the board of county commissioners shall accept in the name of the county such site and money or other valuable property in aid of establishing a school as in their judgment may seem best, receiving to all lands bought or donated for a school site a deed in the name of the county. The board of trustees shall thereafter proceed to build such school as soon as all other requirements prescribed by the article theretofore necessary have been complied with. [1911, ch. 265, § 7.]

§ 1462. School free to whom. Admission of nonresidents. Any school organized under the provisions of this article shall be free to residents of the county contributing to its support, but whenever students desire admission to the school in sufficient numbers to warrant the organization of special classes for their instruction, such classes shall be organized and continue for such time as the trustees may direct. The board of trustees shall make rules prescribing the conditions under which students may enter who are not residents of such county. [1911, ch. 265, § 8.]

§ 1463. When school deemed to be established. State aid. When a county has determined as herein provided to establish, equip and maintain a county agricultural and training school, the trustees, shall through the secretary and president make application to the superintendent of public instruction for the establishment of such a school. The application shall be accompanied by a certified statement from the chairman of the board of county commissioners, and the county auditor, that the necessary tax levy will be made for the establishment and maintenance of such school. Such application shall be referred to the state board of agricultural and training schools, who shall determine as to its acceptance or rejection. If the application from any county for the establishment of such school is granted by them, and when subsequently all the provisions of this article are complied with by the county board and board of trustees, the county agricultural and training school shall be considered as established in and for such county, and shall upon its compliance with the other provisions of this article receive aid from the state as provided herein. [1911, ch. 265, § 9.]

See note immediately preceding section 1455.

§ 1464. Procedure to obtain state aid. On the first day of July in each year the secretary of each county agricultural and training school board of each county maintaining a school on the approved list shall report to the state superintendent, setting forth the facts relating to the cost of maintaining the school, the character of the work done, the number of teachers employed

and such other matters as may be required by the state board of agricultural and training schools. Upon the receipt of such report, if it shall appear that the school has been maintained in a satisfactory manner for a period of not less than nine months during the year closing on the thirtieth day of the preceding June, the superintendent of public instruction, as secretary of such board shall make a certificate to that effect and file it with the state auditor. Upon receiving such certificate the state auditor shall draw his warrant payable to the treasurer of the county maintaining such school a sum equal to one-half ($\frac{1}{2}$) the amount actually expended for maintaining such school during the year; provided, that the total amount so apportioned shall not exceed three thousand dollars in any one year. [1911, ch. 265, § 10.]

See note immediately preceding section 1455.

§ 1465. Training school certificates after completion of course. Any person who shall complete in a satisfactory manner the course of study prescribed for any county agricultural and training school and who shall be of good moral character shall receive a certificate signed by the principal of the school and by the members of the county training school board. Such certificate shall certify that the person named therein has satisfactorily completed the course of study prescribed for the county school and is of good moral character; it shall also contain a list of the standings secured by the person on the completion of such studies pursued in the school. Such certificates shall have the force and effect of a second grade certificate issued by the county superintendent of the county in which the school is located, for a term of two years from the date of its issue; provided that in case the holder thereof has never taught or cannot furnish satisfactory evidence of having successfully taught for at least one school year in the public schools of this state, said certificate shall be of full force and effect for one year only from its date of issue. When satisfactory evidence of successful teaching for at least one year upon said training school certificate shall be furnished to the county superintendent, said superintendent shall remove the limitation, whereupon the training school certificate shall have the full force and effect of a teacher's certificate of the second grade for two additional years. Any school superintendent or officer authorized to grant certificates to teachers in North Dakota is hereby authorized in his discretion to accept standings obtained by the completion of studies in any county and agricultural training school in lieu of actual examination by said superintendent or examiner at any time within three years from the date of the certificate of completion of the course by the person desiring to have such standings accepted. This provision shall apply to certificates of second grade. [1911, ch. 265, § 11.]

See note immediately preceding section 1455.

§ 1466. Establishment of schools by two or more adjoining counties. The county boards of two or more adjoining counties may unite in establishing and maintaining agricultural and training school for teachers for the purpose and on the general plan as provided for in section 1455, and may appropriate money for its maintenance, and when two or more counties unite in establishing such school the county superintendent of the county in which the school house is situated shall be ex-officio secretary of the board, and the board of trustees shall consist of two members appointed from each of the counties so uniting in establishing and maintaining such school and no member of any board of county commissioners shall be eligible. [1911, ch. 265, § 12.]

§ 1467. Tax for maintenance of such joint schools. Whenever two or more counties unite in maintaining and establishing such school the board of trustees provided for in such cases shall determine the amount of money necessary for the maintenance and equipment of the school for the next succeeding year and annually thereafter. They shall apportion the amount to be raised by the taxation among the counties in proportion to the assessed valuation of the real and personal property in each county as fixed by the state board of equalization and shall report to the county auditor of each

county on or before the first Monday in May in each year, the amount of apportionment so fixed, and such apportioned amount shall be levied by the board of county commissioners of each county for the ensuing year for the support of such school. [1911, ch. 265, § 13.]

§ 1468. **County treasurer ex-officio treasurer training school board.** The county treasurer of the county in which the school is located shall be ex-officio treasurer of the agricultural and training school board, and all moneys appropriated and expended under the provisions of this article shall be expended by the board of said county training school and shall be paid by the said county treasurer on orders drawn by the secretary and countersigned by the president. [1911, ch. 265, § 14.]

See note immediately preceding section 1455.

§ 1469. **State agricultural and training school fund created.** For the purpose of providing funds for the payment of such claims as the state hereby obligates itself to do and the warrants thereon drawn, there is hereby created a fund to be known as the state agricultural and training school fund. [1911, ch. 265, § 15.]

§ 1470. **Special tax for training school fund.** It shall be the duty of the state board of equalization at the time of the levy of the annual tax to estimate the amount required to pay the state's share of the cost of maintaining the county agricultural and training schools established under the provisions of this article, and to levy a special tax of not to exceed one-fifth (1-5) of one mill on the dollar upon the assessed valuation of all property in the state, which tax when collected shall be paid into the hands of the state treasurer who shall at once enter the same into the state agricultural and training school fund. Said fund shall be preserved inviolate for the payment of the state claims provided herein.

§ 1471. **Acts, proceedings and elections legalized.** That all acts and proceedings heretofore had by the board of county commissioners in any county, preliminary to submitting to the voters of such county at either a general or special election, the question whether such county shall establish a county agricultural and training school under the provisions of chapter 265, Session Laws of 1911 [§§ 1455-1470 herein], and all general or special elections held pursuant to such acts, proceedings, calls and notices shall be and are hereby legalized in each and every case, and hereby declared valid acts, proceedings, calls, notices and elections. And this shall be true notwithstanding the omission of any matter or thing by law required as a prerequisite to the submission of such question at a general or special election and the holding of such election, and notwithstanding defects or omissions in the proceedings had preliminary to or in the calling of, and the giving of the required notice of the submission of such question, for the establishment of such county agricultural and training school at such general or special election; and notwithstanding the omission of any matter or thing by law required to be stated in such notice; and notwithstanding any defect in the form of or the omission from the ballot used at such general or special election, any matter or thing required by law therein to be stated. [1913, ch. 150.]

As to the general or special election mentioned in this section, see section 1455.

ARTICLE 7.—SCHOOL FUNDS.

§ 1472. **School funds required to be deposited.** All funds of each and every city or school district of this state shall be deposited by the treasurer of the city, county or school district, as soon as received by him, in the name of the city or school district of which he is an officer, in such bank or banks as shall have been designated as city or school district depositories in accordance with this article, as hereinafter provided. [R. C. 1905, § 920; 1905, ch. 105, § 1.]

§ 1473. Depositories to be designated. The city council or school board of each and every city or school district of this state, at its first regular meeting after this article shall take effect and at its first regular meeting in July of each odd numbered year thereafter, shall designate one or more national or state banks in its city or district or county as city or school district depositories, in which all the funds of such city or school district shall be deposited. [R. C. 1905, § 921; 1905, ch. 105, § 2.]

§ 1474. City auditor or school clerk to advertise for proposals. The city auditor or school clerk of each city or school district shall advertise in one or more newspapers of the city, county or village, for at least two weeks immediately prior to such meeting for sealed proposals for the deposit of funds of such city or school district, which advertisements shall state the date up to which such proposals will be received, which date shall be the day of the meeting of the city council or school board, at which such proposals are to be opened. Such proposals shall state in writing, what rate of interest will be paid on average daily balances during the month, interest to be paid monthly on condition that such funds, with accrued interest, shall be held subject to draft at all times on demand. Such proposals shall be inclosed in sealed envelopes, addressed to the city auditor or school clerk and marked "proposals for deposit of city or school funds," and shall be by the city auditor or school clerk filed in his office. [R. C. 1905, § 922; 1905, ch. 105, § 3.]

§ 1475. How proposals acted on. Bonds required. Such proposals shall be presented to the city council or school board at such meetings, and then, but not until then, shall be opened by the city auditor or school clerk in the presence of the council or school board, and the council or school board shall thereupon proceed to accept the proposal of the bank or banks offering the highest rate of interest, not inconsistent therewith, subject to the filing of a satisfactory bond as hereinafter provided, the amount of which bond shall then and there be fixed by the city council or school board. Before any bank shall be designated as such depository, it shall submit to the city council or school board for its approval a bond payable to the city or school district, conditioned for the safekeeping and repayment of any and all funds deposited in such banks, which bonds shall be signed by not less than five freeholders of the county or state as sureties; such bond to be in the sum required by the city council or school board, but in no case less than double the probable amount of funds to be deposited in such bank. If at any time the amount of funds on deposit in any of such depositories shall exceed one-half of the amount named in such bond, it shall be the duty of the city council or school board at its next regular meeting thereafter to require from such depository an additional bond in a sum not less than twice the amount of such excess. Such bond shall be approved by the city council or school board and the approval thereof indorsed thereon by the mayor or president of the school board, and by him deposited with the city auditor or school district clerk; and any bank whose bond shall have been so approved shall thereupon be designated by the city council or school board as a city or school district depository and shall continue as such until such time as the city council or school board shall advertise for bids as aforesaid. If the city council or school board fails or refuses to approve such bond, the same may be presented to the judge of the district court, upon three days' notice to the city auditor or school district clerk, who shall proceed to hear and determine the sufficiency of such bond, and may approve such bond and the said bank shall be declared a city or school district depository as aforesaid. The sureties on such bond shall be required to justify as required by law in arrest and bail proceedings; provided, however, that in lieu of such personal bond, the city council or school board may require such banks or bank to file a surety company bond for a sum equal to the amount of funds such bank may receive according

to the provisions of this article. If at any time the amount of funds on deposit in such depositaries shall exceed the amount named in such surety company's bond, it shall be the duty of the city council or school board at its next regular meeting thereafter to require from such depositaries an additional surety bond in the sum of not less than the amount of such excess. Such surety company's bond shall be approved as provided by law. [R. C. 1905, § 923; 1905, ch. 105, § 4.]

§ 1476. In case bids are equal, how decided. When two or more banks in the same city or village, proposing to be city or school district depositaries, offer the same rate of interest, it shall be the duty of the city council or school board to select, impartially, as many of such banks as depositaries as offer ample security for such deposits. In estimating the value of the security, offered by any proposed depositary, the capital, surplus and general credit of the bank shall be taken into consideration, as well as the bonds proposed to be given. [R. C. 1905, § 924; 1905, ch. 105, § 5.]

§ 1477. Two or more banks may be designated. In case two or more banks be designated as depositaries, the city or school district treasurer shall, as far as practicable, keep in each of the several depositaries equal balances at all times; provided, that in cities or villages where two or more banks are designated as depositaries, the amount deposited in any bank shall not exceed the capital of such bank; provided, further, that in cities or villages where the city or school board deposits exceed the capital of the banks in said city or village, then the city council or school board shall deposit the funds of the city or school district in the banks of the city or village upon their giving a bond according to law. [R. C. 1905, § 925; 1905, ch. 105, § 6.]

§ 1478. When time deposits may be made. Whenever there shall be accumulated in the sinking fund or any other revenue, city or school district fund, established by law, in any of the cities or school districts of this state, an amount of money exceeding two hundred dollars, and for which there is no immediate use, the city council or school board of such city or school district is authorized and empowered to direct a time deposit of such funds for a period of one year or six months, as they may deem expedient, either in one or more of the city or school district depositaries created by law, or such state or national bank as the city council or school board may designate. [1907, ch. 103; R. C. 1905, § 926; 1905, ch. 105, § 7.]

§ 1479. How depositaries for time deposits selected. The depositaries for such time deposits of the city or school district funds may be designated at any regular meeting of the city council or school board of such city or school district upon the advertisement and proposals as provided by law for designating the depositaries of the general city or school district funds, and the bank or banks designated as the depositary or depositaries of such time deposits of such city or school district funds shall be required to furnish a bond in the same amount, manner and form as prescribed by law for the several city and school district depositaries. [R. C. 1905, § 927; 1905, ch. 105, § 8.]

§ 1480. Maximum rate of interest on call deposits. To further secure the safety of the city or school district funds deposited under the provisions of this article the city council or school board shall satisfy itself of the responsibility of the several banks proposing to act as depositaries, and any bank offering more than four per cent per annum on deposits, subject to check, shall not be designated as a depositary under the provisions of this article; provided, this act [section] shall not apply to school districts in incorporated cities or villages. [1907, ch. 103; R. C. 1905, § 928; 1905, ch. 105, § 9.]

§ 1481. In whose name deposited. All funds of the city or school district shall be deposited in the name of the city or school district by the city

treasurer or treasurer of the school district, as soon as received by him, in such bank or banks as shall have been designated as city or school district depositories. [R. C. 1905, § 929; 1905, ch. 105, § 10.]

§ 1482. **Penalty for violation.** If any city or school district treasurer shall deposit any of the funds of his city or school district or loan the same in any manner except according to the provisions of this article, he shall be liable to a penalty of five hundred dollars for each deposit or loan so made. [R. C. 1905, § 930; 1905, ch. 105, § 11.]

§ 1483. **Banks to furnish monthly statements.** Each depository shall furnish to the city auditor or clerk of the school district on the first day of each month an itemized statement of the account of the city or school district with such depository, duly verified by the affidavit of the cashier of such bank, which statement shall be filed and carefully preserved in the office of the city auditor or school clerk. All sums of interest accruing on the funds deposited as aforesaid shall be credited to such deposit account on the first day of each month for the preceding month, and a statement of such interest shall be rendered by such depository to the city auditor or school clerk on the first day of each month and the auditor or clerk shall charge the treasurer with the amount thereof and credit the sum to the general funds of the city or school district. [R. C. 1905, § 931; 1905, ch. 105, § 12.]

§ 1484. **How checks shall be signed.** All checks drawn upon the city or school district depositories shall be signed by the city or school district treasurer in the name of the city or school district by himself as treasurer. [R. C. 1905, § 932; 1905, ch. 105, § 13.]

§ 1485. **When bids not required.** It is the duty of the officers mentioned in this article to comply with the provisions hereof; provided, that in cities or villages where only one bank is located, the city council or school board shall designate such bank or other bank within this state as depository without advertising for bids, if such bank agrees to pay interest at the rate of at least two per cent per annum and furnishes a bond as hereinbefore provided for the safe keeping and repayment of any funds deposited in such bank. In cities or villages or counties where there is no bank or where no bank offers to comply with the requirements of this article, the city council or school board must designate some bank or banks outside of such city or village and within this state as such depositories, but such bank or banks must furnish a bond in the same manner as other depositories. [R. C. 1905, § 933; 1905, ch. 105, § 14.]

§ 1486. **Treasurer not liable for funds deposited, by reason of bank failure.** When the funds of any city or school district are deposited by the city or school district treasurer as provided herein, such treasurer and his sureties shall be exempt from all liability thereon by reason of the loss of any funds from the failure, bankruptcy or any other act of such bank to the extent only of such funds in the hands of such bank or banks at the time of such failure or bankruptcy. [R. C. 1905, § 934; 1905, ch. 105, § 15.]

§ 1487. **Exceptions to law.** It shall not be incumbent upon the city council or school board to designate depositories as herein provided for until the amount in such city or school treasury equals or exceeds the sum of five hundred dollars. [1907, ch. 103; R. C. 1905, § 935; 1905, ch. 105, § 16.]

§ 1488. **Violation constitutes misdemeanor.** Any officer violating any of the provisions of this article shall be deemed guilty of a misdemeanor. [R. C. 1905, § 936; 1905, ch. 105, § 17.]

ARTICLE 8.—CONSTRUCTION OF SCHOOL BUILDINGS AND INSPECTION, VENTILATION AND SANITATION THEREOF.

§ 1489. **Buildings inspected.** Plans and specifications to be submitted to superintendent of public instruction. No building which is designed to be

used, in whole or in part, as a public school building, shall be erected until a copy of the plans thereof has been submitted to the state superintendent of public instruction, who for the purpose of carrying out the provisions of this article is hereby designated as inspector of said public school building plans and specifications, by the person causing its erection or by the architect thereof; such plans shall include the method of ventilation provided for, and a copy of the specifications therefor. [1911, ch. 269, § 1.]

§ 1490. Construction of school houses. Such plans and specifications shall show in detail the ventilation, heating and lighting of such building. The state superintendent of public instruction shall not approve any plans for the erection of any school building or addition thereto unless the same shall provide at least twelve square feet of floor space and two hundred cubic feet of air space for each pupil to be accommodated in each study or recitation room therein.

(1) Light shall be admitted from the left or from the left and rear of class rooms and the total light area must, unless strengthened by the use of reflecting lenses, be equal to at least twenty per cent of the floor space.

(2) All ceilings shall be at least twelve feet in height.

(3) No such plans shall be approved by him unless provision is made therein for assuring at least thirty cubic feet of pure air every minute per pupil and warmed to maintain an average temperature of seventy degrees F. during the coldest winter weather, and the facilities for exhausting the foul or vitiated air therein shall be positive and independent of atmospheric changes. No tax voted by a district meeting or other competent authority in any such city, village or school district, exceeding the sum of two thousand dollars (\$2,000.00) shall be levied by the trustees until the state superintendent of public instruction shall certify that the plans and specifications for the same comply with the provisions of this act. All school houses for which plans and detailed specifications shall be filed and approved, as required by this act, shall have all halls, doors, stairways, seats, passageways and aisles and all lighting and heating appliances and apparatus arranged to facilitate egress in case of fire or accident and to afford the requisite and proper accommodations for public protection in such cases. All exit doors shall open outwardly, and shall if double doors be used, fasten with movable bolts operated simultaneously by one handle from the inner face of the door. No staircase shall be constructed with wider steps in lieu of a platform, but shall be constructed with straight runs, changes in direction being made by platform. No doors shall open immediately upon a flight of stairs, but a landing at least the width of the door shall be provided between such stairs and such doorway.

(4) Every public school building shall be kept clean and free from effluvia arising from any drain, privy or nuisance, and shall be provided with sufficient number of water closets, earth closets or privies, and shall be ventilated in such a manner that the air shall not become so impure as to be injurious to health. [1911, ch. 269, § 2.]

§ 1491. Toilet rooms. How constructed. No toilet rooms shall be constructed in any public school building unless same has outside ventilation and windows permitting free access of air and light. The provisions of this article shall be enforced by the state superintendent of public instruction or some person designated by him for that purpose. [1911, ch. 269, § 3.]

§ 1492. Method of inspection and adjustment of grievances. If it appears to the state superintendent of public instruction or his deputy appointed for that particular purpose, that further or different sanitary or ventilating provisions, which can be provided without unreasonable expense, are required in any public school building, he may issue a written order to the proper person or authority, directing such sanitary or ventilating provisions to be provided. A school committee, public officer or person who has charge of any

such public school building, who neglects for four weeks to comply with the order of said state superintendent of public instruction or his deputy, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars.

(1) Whoever is aggrieved by the order of the state superintendent of public instruction or his deputy issued as above provided, and relating to a public school building, may within thirty days after the service thereof, apply in writing to the board of health of the city, town, incorporated village or school district to set aside or amend the order; and thereupon the board, after notice to all parties interested, shall give a hearing upon such order, and may alter, annul or affirm it. [1911, ch. 269, § 4.]

§ 1493. Ventilating flues and method of constructing same. No wooden flue or air duct for heating or ventilating purposes shall be placed in any building which is subject to the provisions of this article, and no pipe for conveying hot air or steam in such building shall be placed or remain within one inch of any wood-work, unless protected by suitable guards or casings of incombustible material. [1911, ch. 269, § 5.]

§ 1494. Approval of plans. By whom and penalty for violation. To secure the approval of plans showing the method or systems of heating and ventilation as provided for in section 1490 the foregoing requirements must be guaranteed in the specifications accompanying the plans. Hereafter erections or constructions of public school buildings by architect or other person who draws plans or specifications or superintends the erection of a public school building, in violation of the provisions of this article, shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars. [1911, ch. 269, § 6.]

ARTICLE 9.—TEACHERS' INSURANCE AND RETIREMENT FUND.

§ 1495. Creation of fund and membership of board. There is created a teachers' insurance and retirement fund, which shall be managed by a board of trustees to be known as the board of trustees of the teachers' insurance and retirement fund. Such board shall consist of five members. The state treasurer and the state superintendent of public instruction shall be ex-officio members of said board; three members, one of whom shall be a woman, shall be appointed by the governor from among the members of the teachers' retirement fund as provided for in this article. One such appointive member may be a retired member of the fund. The term of office of the appointive members of said board of trustees shall be three years, except as provided herein, and shall begin on the first day of July, next succeeding their appointment; provided that the terms of office of the first members appointed shall be one for a period of one year, and one for a period of two years and one for a period of three years. [1913, ch. 251, § 1.]

§ 1496. Annual meeting of members. At the time and place of the meeting of the North Dakota state education association, those teachers who have qualified as members of the teachers' insurance and retirement fund according to sections 1505, 1506 and 1507 of this article, shall meet for the purpose of hearing the report of the board created by section 1495 of this article, and of transacting such other business as may properly come before them. [1913, ch. 251, § 2.]

§ 1497. Vacancies. In case any vacancy occurs among the members of the board, said vacancy shall be filled immediately by the governor, and the appointee shall serve the balance of the term for which the original member was appointed. [1913, ch. 251, § 3.]

§ 1498. Organization of the board. Said board of trustees shall organize by the election of a president. The state treasurer shall be ex-officio treasurer of said board, and shall receive and make payments from and account for said funds in the same manner as for other state funds. Said board may employ

a secretary to be chosen for such a term as shall be determined by said board. Said secretary shall perform such duties in connection with the teachers' insurance and retirement fund as may be prescribed by the board. [1913, ch. 251, § 4.]

§ 1499. **Meetings and regulations.** Said board shall meet annually within three months after July first of each year, at the office of the superintendent of public instruction, at a time to be fixed by the board, and at any other time on the call of the president or of any two members thereof. Said board shall adopt rules for the government of its meetings and for membership in the fund, payments thereto and therefrom, and for other matters which will be calculated to aid teachers in securing the benefit of the fund. [1913, ch. 251, § 5.]

§ 1500. **Compensation and secretary.** Members of said board shall receive no compensation except their necessary traveling expenses incurred in attending the meetings, to be paid from the teachers' insurance and retirement fund upon the certificate of the president and secretary; but if the board shall elect one of its members secretary, such member may receive compensation for services rendered as secretary. The secretary of said board shall receive a salary to be fixed by the board, at an amount not to exceed twelve hundred dollars per annum. The compensation of the secretary and any other necessary expenses incurred by said board in carrying out the provisions of this article shall be paid from the fund. [1913, ch. 251, § 6.]

§ 1501. **Investment of funds.** Said board shall have charge of the fund and shall invest the same under the same conditions as the trust funds of the state may be invested. [1913, ch. 251, § 7.]

§ 1502. **Annual report.** On or before the first day of October of each year, said board shall report for the fiscal year ending the thirtieth of June preceding. A copy of said report shall be transmitted to the annual meeting of the members of the teachers' insurance and retirement fund and to the state superintendent of public instruction. Said superintendent shall include a copy of said report in his biennial report to the governor. [1913, ch. 251, § 8.]

As to reports to the governor, see sections 95, 97, 98, 633.

§ 1503. **Retention of assessments.** Each school district board, each board of education, or other managing body of each city, and of each school district, and of each village, and of each town operating its schools under the township system of school government, shall retain on every pay day from the salary of each teacher in their respective schools, the amounts herein provided. Each teacher shall be furnished a statement by such board, showing the amount so deducted from his or her salary. [1913, ch. 251, § 9.]

§ 1504. **Amount of assessments.** Every teacher who has joined the fund shall be assessed upon his or her salary as teacher for a period of twenty-five years as follows: one per centum per annum, but not more than twenty dollars per year, for each of the first ten years of service as a teacher; and two per centum per annum, but not more than forty dollars per year for each successive year of service as teacher, until said teacher shall have had a total of twenty-five years of teaching service, when said assessments shall cease. The total amount paid into said fund by each teacher shall be based upon said twenty-five years of service as teacher with assessments as provided in this section; provided that such total amount shall not be less than the full amount of the annuity to which such teacher shall be entitled for the first year. [1913, ch. 251, § 10.]

§ 1505. **All new teachers assessed after January first, 1914.** In becoming a teacher in said public schools after January first, 1914, he or she shall be conclusively deemed to join the fund and to undertake and agree to pay such assessments, and to have such assessments deducted from his or her salary as herein provided. [1913, ch. 251, § 11.]

§ 1506. **Assessments optional for teachers now teaching in the state.** Any person employed as teacher in said public schools when this article takes

effect, may, at any time before January first, 1914, elect to join the fund and to come within the provisions of this article, by notifying in writing the board of trustees of the teachers' insurance and retirement fund; but no person employed as teacher in said public schools, when this article takes effect, shall be compelled to join the fund, or to come within the provisions of this article or to pay the assessments or to have the same deducted from his or her salary without his or her consent. [1913, ch. 251, § 12.]

§ 1507. Notification by teacher. At the time of giving said notice to the board of trustees, as herein provided, such teacher shall notify the local school board or any other managing body, in writing, of his or her election to come within the provisions of this article; and shall authorize said school board, as a part of said notice, to deduct from each payment of salary due him or her a sum equal to said per centum of such payment as provided in section 1504. [1913, ch. 251, § 13.]

§ 1508. Transmission of money to county treasurer. Each such school district board, each board of education, or other managing body, shall each year between the twentieth and the thirtieth days of June, forward to the treasurer of the county in which the school house of said teacher is located, a statement verified by the secretary or clerk thereof, of the moneys so retained, in accordance with the provisions of this article, together with said moneys so retained. Said statement shall also include the following: Name and monthly salary of each of said teachers; number of months of school taught by each teacher in said public schools of the district, village or city over which said school board or other managing body has jurisdiction during the school year for which the statement is made; the number of months constituting a school year in such district, village or city; the total salary of each teacher; the total amount withheld from the salary of each teacher, in accordance with the provisions of this article; the total amount withheld from the salaries of all of said teachers for the school year next preceding; and the total number of years such teacher has taught in the public schools of the state. [1913, ch. 251, § 14.]

§ 1509. Statements to be sent to county superintendent and county auditor. Said school board shall at the same time send a copy of said statement to the superintendent of the county in which said school house is located, and also a duplicate copy of the same to the auditor of said county. [1913, ch. 251, § 15.]

§ 1510. Statement to be sent in all cases. If no teacher in such city, village, town or school district comes under the provisions of this article, the school board or other managing body of such city, village, town or school district shall state this fact under the oath of the secretary or the clerk thereof, to the treasurer of said county; and shall at the same time forward copies of said statement to the superintendent of said county and to the auditor of said county. [1913, ch. 251, § 16.]

§ 1511. Reports to be made to the board. Each county superintendent shall each year, between the thirtieth day of June and the tenth day of July, report under oath to the board of trustees of the teachers' insurance and retirement fund. Said report shall contain an itemized account of the statements received by him from the school boards and a statement of the total amount withheld from the salaries of all of said teachers in said report. [1913, ch. 251, § 17.]

§ 1512. Reports to be preserved. The board of trustees of the teachers' insurance and retirement fund, each county superintendent, each county auditor, each county treasurer, each school district board, each town board of education, or other managing body, shall keep complete records of the data contained in said reports and of the statements hereinbefore mentioned. [1913, ch. 251, § 18.]

§ 1513. Transmission of funds to state treasurer. Between the fifteenth day of July and the first day of August of each year, the county treasurer shall transmit to the state treasurer all moneys which he has received from the school boards in accordance with the provisions of this article; and shall certify under oath to the board of trustees of the teachers' insurance and retirement fund the amount so received and transmitted to the state treasurer, as herein provided. The state treasurer shall credit all moneys received under the provisions of this article to the fund designated as the teachers' insurance and retirement fund. [1913, ch. 251, § 19.]

§ 1514. Penalty for failure to report and transmit funds. No city, village, town or school district shall share in the apportionment of the state tuition fund for any year, unless it has made the report as herein provided and paid over to the state treasurer for the teachers' insurance and retirement fund such per centum as provided in section 1504 of the total sum paid in wages to such teachers as come under the provisions of this article, and also the portion of the county tuition fund described in section 1515. [1913, ch. 251, § 20.]

§ 1515. Fund to be set aside from county tuition fund and transmitted to state treasurer. Each county treasurer shall annually set aside from the county tuition fund a sum equal to ten cents for each child of school age in his county and shall transmit this sum to the state treasurer at the same time that he transmits the funds received from the school boards in accordance with section 1513, and shall certify under oath to the board of trustees of the teachers' insurance and retirement fund the amount so transmitted to the state treasurer. The state treasurer shall credit all moneys received in accordance with this section to the fund designated as the teachers' insurance and retirement fund. [1913, ch. 251, § 21.]

§ 1516. Name of fund. The moneys received by the state treasurer under the provisions of sections 1513 and 1515 of this article, together with donations or legacies received therefor, or moneys received from any legal source of increment, shall constitute a fund to be known as the "teachers' insurance and retirement fund." [1913, ch. 251, § 22.]

§ 1517. Payment of back assessments. Any teacher coming from schools not included under the provisions of this article shall pay assessments for said years of service in such schools, as provided in section 1504, based upon his or her first annual salary in said public schools of the state, together with the regular assessments as provided in section 1504, before receiving any retirement annuity. [1913, ch. 251, § 23.]

§ 1518. Retirement of teachers who are eligible to annuity. Any teacher who may be teaching in said public schools and who has complied with the provisions of these sections may retire and receive the annuity provided for in the following cases:

1. After a period or periods, aggregating twenty-five years of service as teacher, of which eighteen years, including the last five, must have been spent in public schools of this state, provided that payments by said teacher to the fund shall have amounted to a sum as provided in section 1504. If said payments shall not have amounted to said sum, the teacher shall pay into the fund the deficiency before receiving said annuity.

2. After fifteen years of service as teacher in the public schools of this state, when said teacher suffers from a permanent mental or physical disability, to be determined by said board after an examination by two physicians appointed by said board, provided that payments by said teacher to the fund shall have amounted to a sum as provided in section 1504. If said payments shall not have amounted to said sum, the teacher shall pay into the fund the deficiency before receiving the annuity. The examination fees of such physician shall be paid by said applicant. [1913, ch. 251, § 24.]

§ 1519. Legal school year defined. In computing the terms of service under section 1518, a year shall be a legal school year at the time and place where said service was rendered, except that where the service was rendered in schools not included within the provisions of this article, a time less than a legal school year in this state shall not be included as a year, but only as such proportion of a year as the number of teaching weeks in each such year bears to the number of weeks required at the time to constitute a legal school year in this state. [1913, ch. 251, § 25.]

§ 1520. Applications to the board. Any person who has complied with the provisions of this article and desires to retire from active service in said public schools, shall apply in writing to the board of trustees of the teachers' insurance and retirement fund. [1913, ch. 251, § 26.]

§ 1521. Amount of annuity. Each teacher retiring from the service of said public schools under the provisions of section 1518, shall annually and for life be entitled to receive as annuity a sum equal to one-fiftieth of his or her average annual salary for the last five years of service, multiplied by the whole number of years of service as teacher; provided, however, that his said annuity shall not exceed seven hundred and fifty dollars in any one year, or be less than three hundred and fifty dollars in any one year, subject, however, to all the provisions of this article. [1913, ch. 251, § 27.]

§ 1522. Trustees may ratably diminish annuities. The board of trustees may ratably reduce the annuities provided in this article, whenever in the judgment of the board, the condition of the fund shall require such reduction. [1913, ch. 251, § 28.]

§ 1523. Withdrawals from membership in the fund. Any teacher who shall cease to teach in said public schools before receiving any benefit or annuity from the fund, shall, if application be made in writing to the board of trustees within six months after the date of his or her resignation, be entitled to the return of one-half of the amount, without interest, which shall have been paid into the fund by such teacher. If such teacher should again thereafter teach in said public schools, he or she shall, within one year from the date of his or her return to the service on said public schools, refund to said fund the amount so returned to such teacher, together with simple interest on said amount (but not to exceed four per centum per annum) for the time such amount was withdrawn from the fund. [1913, ch. 251, § 29.]

§ 1524. Annuities to be paid quarterly. The state treasurer shall pay said annuities quarterly in September, December, March and June of each year, upon the warrants of the state auditor issued upon certificates of the president and secretary of said board. No payments shall be made prior to September, 1915. [1913, ch. 251, § 30.]

§ 1525. Annuities paid from interest and principal. Payments from the fund shall be made from the income thereof and in addition thereto, when necessary, from the principal of moneys received under sections 1513 and 1515. [1913, ch. 251, § 31.]

§ 1526. Annuities to cease upon resumption of teaching. Any person retiring under these sections may again enter upon the work of teaching in said public schools; during said term of teaching the annuity paid to such person shall cease. Said annuity shall again be paid to said person upon his or her further retirement. [1913, ch. 251, § 32.]

§ 1527. Annuities not subject to legal process. The annuities so created shall not be subject to attachment, garnishment, execution, or other seizure on (or) process, nor shall they be subject to sale, assignment, pledge, mortgage, or other alienation. [1913, ch. 251, § 33.]

§ 1528. The term "teacher" defined for the act. The term "teacher," as used in this article, shall include all persons employed in teaching by any city board of education, or school board or other managing body of any city, town, village, or rural school district in this state, and all superintendents and assist-

ant superintendents of said schools, including county superintendents and their assistants, all supervisors of instruction, all principals and assistant principals, and special teachers of said schools. [1913, ch. 251, § 34.]

ARTICLE 10.—SCHOOL OFFICIALS AND TEACHERS PROHIBITED FROM RECEIVING COMMISSION.

§ 1529. **Misdemeanor to receive commission, fee or reward.** Every county superintendent of schools, deputy thereof, school district directors, clerk, treasurer, principal of a school or teacher therein who shall receive any commissions, fee or reward for or on account of any school books, furniture or other supplies purchased during the incumbency of such official, principal or teacher for the use of the school district or school under the supervision of such official, principal or teacher, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars and not exceeding five hundred dollars and may be removed from his office. [1911, ch. 263.]

Speculation in office prohibited, section 1349.

CHAPTER 13.

STATE LIBRARY COMMISSION.

§ 1530. **Commission created.** There is hereby created a state public library commission consisting of five members. [1909, ch. 156, § 1; 1907, ch. 243, § 1.]

§ 1531. **Commission, of whom composed.** The state superintendent of public instruction, the secretary of the state historical society and the president of the state library association are hereby constituted members, *ex-officio*, of the said state library commission; and the governor of the state shall appoint, as soon as practicable after the passage and approval of this act, two suitable persons within the state as members of the said state library commission, which appointments shall be confirmed by the senate. The commission shall elect its own officers from among its own members and shall also have the power to select a competent person to have control of the work and who shall be known as the secretary of the library commission and director of library extension. [1909, ch. 156, § 2; 1907, ch. 243, § 2.]

§ 1532. **Term of office of appointed members.** The members appointed by the governor shall hold office as follows: One for four years, from April first, 1909, and one for six years from April first, 1909, and until their successors are appointed and qualified. Appointments made thereafter shall be for the full term of six years each; provided, that in case of appointment to fill a vacancy caused by resignation, death or removal, the appointment shall be made for the unexpired term of the member whose death, resignation or removal caused the vacancy. [1909, ch. 156, § 3; 1907, ch. 243, § 3.]

§ 1533. **Expenses of members allowed.** No member of said state library commission shall ever receive any salary or per diem or compensation of any kind for services as members of such commission. Members of the said state library commission shall be allowed and paid necessary traveling expenses in attending meetings of the commission or in visiting or establishing libraries, and other incidental and necessary expenses connected with the work of the commission. [1909, ch. 156, § 4; 1907, ch. 243, § 4.]

See appropriation for state library commission in section 653g, and in connection therewith, see section 653b.

§ 1534. **Duties.** The state library commission on and after its creation and organization shall take over and add to the educational reference library and

the system of traveling libraries, and shall continue the same, and as its funds permit, shall increase the number and usefulness of the libraries. Any city, town, village, school district or community within the state of North Dakota may borrow books under the rules and regulations of the state library commission. The commission shall catalogue and otherwise prepare said books for circulation and shall make rules and regulations according to which the business of the commission shall be done; and also such rules and regulations as shall insure the care, preservation and safe return of all books loaned. The state library commission shall have the power and it shall be its duty to establish a legislative reference bureau for the information and assistance of the members of the legislative assembly in the work of legislation. The legislation of other states and information upon legal and economic questions shall be classified and catalogued in such a way as to render the same easy of access to members, thereby enabling them better to prepare for their work. It shall be the duty of the legislative librarian to assist in every way possible the members of the legislative assembly in obtaining information and in the preparation of bills. [1909, ch. 156, § 5; 1907, ch. 243, § 5.]

§ 1535. Commission gives advice and aid. The librarian or trustees of any free public library or the trustees of any village, town or community, entitled to borrow books from said traveling libraries may, without charge, ask and receive advice and instruction from said library commission upon any matter pertaining to the organization, maintenance or administration of the libraries, and said commission shall, as far as possible, promote and assist by counsel and encouragement, the formation of libraries where none exist, and the commission may also send its members to aid in organizing new libraries or improving those already established. [1909, ch. 156, § 6; 1907, ch. 243, § 6.]

§ 1536. Statistics kept. Publish report. The state library commission shall keep statistics of the free public libraries of North Dakota and a record of the work done and books loaned by said commission, and shall make a full report to each general session of the legislature of all expenditures by the commission, and of such statistics and records as shall show the work done by the commission, the use made of the traveling libraries, and of all other matters which they deem expedient for the information of the legislature, and the printing of which, and all other printing coming within the purview of the library commission, shall be paid for out of the general printing fund of the state. [1909, ch. 156, § 7; 1907, ch. 243, § 7.]

As to reports to the legislature, see sections 95, 97, 98, 633.

§ 1537. Offices provided. There shall be provided in the capitol building adequate office room, to be furnished in the same manner as other offices therein are furnished, for the state library commission with such suitable quarters as may be necessary for the proper shelving of the educational reference library, the books of the traveling libraries and the legislative reference collection. [1909, ch. 156, § 8; 1907, ch. 243, § 8.]

§ 1538. Appropriation. There is hereby appropriated for the use and purposes of the state library commission any unexpended balances in the funds appropriated for the educational reference library and traveling libraries, and also an annual appropriation of seven thousand eight hundred dollars out of any moneys in the state treasury not otherwise appropriated. [1909, ch. 156, § 9; 1907, ch. 243, § 9.]

CHAPTER 14.

EDUCATIONAL AND CHARITABLE INSTITUTIONS.

ARTICLE 1. UNIVERSITY OF NORTH DAKOTA, §§ 1539-1577.

2. NORMAL SCHOOLS, §§ 1578-1595.
3. NORTH DAKOTA ACADEMY OF SCIENCE, §§ 1596-1603.
4. AGRICULTURAL COLLEGE, §§ 1604-1618.
5. EXPERIMENT STATIONS, §§ 1619-1649.
6. PUBLIC HEALTH LABORATORY, §§ 1650-1656.
7. SERUM INSTITUTE, §§ 1657-1661.
8. AGRICULTURAL AND GEOLOGICAL SURVEY, §§ 1662-1673.
9. SCHOOL OF FORESTRY, §§ 1674-1679.
10. NURSERIES, STATE FORESTER, §§ 1679A-1679D.
11. SCHOOL FOR THE DEAF AND DUMB, §§ 1680-1698.
12. BLIND ASYLUM, §§ 1699-1706.
13. CARE OF BLIND CHILDREN, §§ 1707, 1708.
14. INSTITUTION FOR FEEBLE MINDED, §§ 1709-1722.
15. FLORENCE CRITTENDEN HOME, §§ 1723-1724.
16. INDUSTRIAL HOME, §§ 1725-1737.
17. LEASING PORTIONS OF CAMPUSES OF EDUCATIONAL INSTITUTIONS, § 1738.
18. APPROPRIATION REQUESTS TO BE PRINTED, §§ 1739-1742.
19. EDUCATIONAL TAX, §§ 1743-1746.
20. STATE HOSPITAL FOR THE INSANE, §§ 1747-1774.
21. SOLDIERS' HOME, §§ 1775-1796.

ARTICLE 1.—UNIVERSITY OF NORTH DAKOTA.

§ 1539. University, where located. The university of North Dakota as now established and located at the city of Grand Forks shall continue to be the university of the state. [R. C. 1905, § 1040; 1883, Sp., ch. 40, § 1; R. C. 1895, § 875.]

§ 1540. Board of trustees to govern. The government of such university shall be vested in a board of trustees, consisting of five members, of which the Hon. William Budge, for and during his good pleasure, as an honorary member, with all rights and powers of a member of said board, shall be one of said board; the remaining members thereof to be appointed by the governor, by and with the advice and consent of the senate, and shall hold their offices for the term of four years commencing on the first Tuesday in April next succeeding their appointment. [R. C. 1905, § 1041; 1883, Sp., ch. 40, § 2; 1887, ch. 168, § 1; R. C. 1899, § 876; 1903, ch. 189.]

§ 1541. Governor to nominate. Vacancies, how filled. The governor shall nominate and, by and with the advice and consent of the senate, appoint during each regular session of the legislative assembly trustees of such university in the place of those whose terms shall thereafter first expire, and such trustees shall hold their office until their successors are appointed and qualified; provided, that the governor shall fill any vacancy in such board by appointment to extend only until the first Tuesday in April succeeding the next regular session of the legislative assembly; and provided, further, that the governor shall during such next regular session nominate and, by and with the advice and consent of the senate, appoint some person to fill such vacancy for the remainder of the term unexpired. Not more than two members of the board shall be appointed from the same county. [R. C. 1905, § 1042; R. C. 1895, § 877.]

Governor can appoint to fill vacancies only where other mode is not provided. *State ex rel. Standish v. Boucher*, 3 N. D. 389, 56 N. W. 142.

The power to appoint carries power of removal by trustees. *State ex rel. Moore v. Archibald*, 5 N. D. 359, 66 N. W. 234.

Governor has power to fill vacancy for unexpired term. *State v. Bacon*, 14 S. D. 284, 85 N. W. 225.

Legislature has power to regulate terms of office of members of public boards. *State v. Bacon*, 14 S. D. 394, 85 N. W. 605.

§ 1542. Powers and duties of board. The board of trustees shall possess all the powers necessary to accomplish the objects and perform the duties prescribed by law, and shall have the custody of the books, records, buildings and all other property of such university. The board shall elect a president and a secretary who shall perform such duties as may be prescribed by the by-laws of the board. The secretary shall keep a correct record of all transactions of the board, and of the committees thereof, and in addition to performing the duties of secretary, he shall be the superintendent of the buildings and grounds of the university and discharge such other duties as may from time to time be prescribed by the board of trustees. [R. C. 1905, § 1043; 1883, Sp., ch. 40, § 3; 1887, ch. 168, § 1; R. C. 1895, § 878.]

§ 1543. Meetings of the board. The time for the election of the president and secretary of such board and the duration of their respective terms of office, the time for holding the regular annual meeting, and such other meetings as may be required, and the manner of giving notice of the same shall be determined by the board. Four members shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time. [R. C. 1905, § 1044; 1883, Sp., ch. 40, § 4; 1887, ch. 168, § 2; R. C. 1899, § 879.]

§ 1544. Number of meetings limited. Such board shall not hold more than twelve sessions in any year and such sessions shall not exceed twenty-four days in the aggregate; but the governor may in his discretion authorize additional sessions. [R. C. 1905, § 1045; 1889, ch. 93, § 3; R. C. 1895, § 880.]

§ 1545. Government of university. Powers of trustees. The board of trustees shall adopt rules for the government of the university in all its branches; elect a president and the requisite number of professors, instructors, officers and employes, fix the salaries and the term of office of each, and determine the moral and educational qualifications of applicants for admission to the various courses of instruction; but no instruction, either sectarian in religion or partisan in politics, shall ever be allowed in any department of the university, and no sectarian or partisan test shall ever be allowed or exercised in the appointment of trustees, or in the election of professors, teachers or other officers of the university, or in the admission of students thereto or for any purpose whatever. Such board shall have power to remove the president or any professor, instructor or officer of the university, when in its judgment the interests of the university require it. The board may prescribe rules and regulations for the management of the library, cabinets, museum, laboratories and all other property of the university and of its several departments and for the care and preservation thereof, with suitable penalties and forfeitures by way of damages for their violation, which may be sued for and collected in the name of the board before any court having jurisdiction. [R. C. 1905, § 1046; 1883, Sp., ch. 40, § 5; R. C. 1899, § 881.]

§ 1546. Board may expend income. The board is authorized to expend such portion of the income of the university fund as it may deem expedient for the erection of suitable buildings and the purchase of apparatus, a library, cabinets and additions thereto; and, if deemed expedient, it may unite with the university as a branch thereof any college in the state, upon application of its board of trustees; and such college so received shall become a branch of the university and be subject to visitation by the trustees. [R. C. 1905, § 1047; 1883, Sp., ch. 40, § 6; R. C. 1899, § 882.]

§ 1547. Board to make report, when. At the close of each fiscal year the trustees through their president shall make a report in detail to the governor, exhibiting the progress, condition and wants of each of the colleges embraced in the university, the course of study in each, the number of professors and students, the amount of receipts and disbursements, together with

the nature, cost and results of all important investigations and experiments and such other information as they may deem important, one copy of which shall be transmitted free by the governor to each college endowed under the provisions of the act of congress entitled "An act donating land to the several states and territories which provide colleges for the benefit of agriculture and mechanic arts," approved July 2, 1862, and also one copy to the secretary of the interior. [R. C. 1905, § 1048; 1883, Sp., ch. 40, § 7; R. C. 1899, § 883.]

As to the time for making reports to the governor, and as to the contents thereof, see sections 95, 97, 98, 633.

§ 1548. Powers of the president and faculty. The president of the university shall be president of the several faculties and the executive head of the instructional force in all its departments; as such he shall have authority, subject to the power of the board of trustees, to give general directions respecting the instruction and scientific investigation of the several colleges, and so long as the interests of the institution require it he shall be charged with the duties of one of the professorships. The immediate government of the several colleges shall be intrusted to their respective faculties, but the trustees shall have the power to regulate the course of instruction and prescribe the books or works to be used in the several courses, and also to confer such degrees and grant such diplomas as are usual in universities, or as they shall deem appropriate, and to confer upon the faculty, by by-laws, the power to suspend or expel students for misconduct or other causes prescribed in such by-laws. [R. C. 1905, § 1049; 1883, Sp., ch. 40, § 8; R. C. 1899, § 884.]

§ 1549. Object and departments of the university. The object of the university shall be to provide the means of acquiring a thorough knowledge of the various branches of learning connected with scientific, industrial and professional pursuits, in the instruction and training of persons in the theory and art of teaching, and also instruction in the fundamental laws of this state and of the United States in regard to the rights and duties of citizens, and to this end it shall consist of the following branches or departments:

1. The college or department of arts.
2. The college or department of letters.
3. The teachers' college.
4. The school of mines, the object of which shall be to furnish facilities for the education of such persons as may desire to receive instructions in chemistry, metallurgy, mineralogy, geology, mining, milling and engineering.
5. The military department or school, the object of which shall be to instruct and train students in the manual of arms and such military maneuvers and tactics as are taught in military colleges.
6. Such professional or other colleges or departments as now are or may from time to time be added thereto, or connected therewith, and the board of trustees is hereby authorized to establish such professional and other colleges or departments as in its judgment may be deemed necessary and proper, but no money shall be expended by the board in establishing and organizing any of the additional colleges or departments provided for in this section, until an appropriation therefor shall have first been made. [1907, ch. 100; R. C. 1905, § 1050; 1883, Sp., ch. 40, § 9; 1887, ch. 168, § 3; 1890, ch. 180, § 1; R. C. 1899, § 885.]

§ 1550. Courses of instruction. The college or department of arts shall embrace courses of instruction in mathematical, physical and natural sciences, with their application to industrial arts such as agriculture, mechanics, engineering, mining and metallurgy, manufactures, architecture and commerce; and such branches included in the college of letters as shall be necessary properly to fit the pupils in the scientific and practical courses for their chosen pursuits and in military tactics. In the teachers' college the proper instruction and learning in the theory and art of teaching and all the various branches and subjects needful to qualify for teaching in the common and high schools;

provided, that all instruction in the teachers' college shall be above the grade of secondary schools, and as soon as the income of the university will allow, in such order as the wants of the public shall seem to require, the courses of science and their application to the practical arts shall be expanded into distinct colleges of the university, each with its own faculty and appropriate title. The college of letters shall be co-existent with the college of arts and shall embrace a liberal course of instruction in languages, literature and philosophy, together with such courses or parts of courses in the college of arts as the trustees shall prescribe. [1907, ch. 100; R. C. 1905, § 1051; 1883, Sp., ch. 40, § 10; R. C. 1899, § 886.]

§ 1551. Scandinavian language taught. It shall be the duty of the trustees to cause to be taught at said institution the Scandinavian language, and for that purpose shall employ as one of the teachers of such institution a professor learned in that language. [R. C. 1905, § 1052; 1891, ch. 60, § 1; R. C. 1899, § 887.]

§ 1552. Pupils, who may become. The university shall be open to students of both sexes under such regulations and restrictions as the board of trustees may deem proper, and all able bodied male students of the university may receive instruction and discipline in military tactics, the requisite arms for which shall be furnished by the state. [R. C. 1905, § 1053; 1883, Sp., ch. 40, § 11; R. C. 1899, § 888.]

§ 1553. Graduates entitled to certificates to teach. After any person has graduated at the university, and after such graduation has successfully taught a public school in this state for sixteen months, the superintendent of public instruction shall have authority and it shall be his duty to countersign the diploma of such teacher if upon examination he is satisfied that such person has a good moral character and is possessed of sufficient learning and ability to teach. Any person holding a diploma granted by the board of trustees of such university, certifying that the person holding the same has graduated from such university, shall, after his diploma has been countersigned by the superintendent of public instruction as aforesaid, be deemed qualified to teach any of the public schools in the state, and such diploma shall be a certificate of such qualification until annulled by the superintendent of public instruction. [R. C. 1905, § 1054; 1883, Sp., ch. 40, § 11; R. C. 1895, § 889.]

Mandamus to compel issuance of diploma. 3 L.R.A. (N.S.) 1115.

§ 1554. Tuition fees. No student who shall have been a resident of the state for one year next preceding his admission shall be required to pay any fees for tuition in the university, except in the law department and for extra studies. The trustees may prescribe rates of tuition for any pupil in the law department, or who is not a resident as aforesaid, and for teaching extra studies. [R. C. 1905, § 1055; 1883, Sp., ch. 40, § 12; R. C. 1899, § 890.]

§ 1555. Compensation of trustees. The trustees shall be entitled to receive the sum of three dollars per day for each day employed in attendance upon sessions of the board and all traveling expenses necessarily incurred thereby. Upon the presentation of the proper vouchers containing an itemized statement of the number of days' attendance and money actually expended as above specified, duly verified by the oath of the trustee and certified by the president and secretary of the board, the state auditor shall audit such claim and draw his warrant upon the state treasurer for the amount allowed. [R. C. 1905, § 1056; 1889, ch. 93, § 4; R. C. 1895, § 891.]

See for appropriation and regulation for payment of the same, section 653g.

§ 1556. Trustees to make rules and by-laws. The board of trustees shall make rules, regulations and by-laws for the government and management of the university and of each department thereof. It shall also prescribe rules, regulations and by-laws for the admission of students; but each applicant for admission must undergo an examination to be prescribed by the board, and shall be rejected if it shall appear that he is not of good moral

character. The board shall also require each applicant for admission in the normal department, other than such as shall, prior to admission, sign and file with such board a declaration of intention to follow the business of teaching in the common schools of this state for at least one year, to pay such fees for tuition as the board may deem proper and reasonable. [R. C. 1905, § 1057; 1883, Sp., ch. 40, § 17; R. C. 1899, § 892.]

§ 1557. Salaries. The board of trustees shall from time to time fix the salary of the president, professors and teachers of such university, and shall certify the same to the state auditor. Such board shall also from time to time certify to the state auditor the amount due such persons for salary, and the state auditor shall draw his warrants upon the state treasurer for the amounts so certified. [R. C. 1905, § 1058; 1883, Sp., ch. 42, § 2; R. C. 1899, § 893.]

§ 1558. Secretary of state to furnish laws. The secretary of state shall deliver to the university fifty copies of each volume of the general and special laws of the state, and the reports of the decisions of the supreme court, hereafter published, for use in the way of exchanges and otherwise in the establishment and maintenance of a law library for the law department of such university. [R. C. 1905, § 1059; 1890, ch. 179, § 1; R. C. 1899, § 894.]

§ 1559. Supreme court reports, how obtained. He shall procure for the purpose aforesaid from the publishers of the supreme court reports fifty copies of each volume thereof hereafter published, in addition to the number authorized for other purposes, to be paid for at the same price and in the same manner as such reports are delivered to the secretary for other purposes. [R. C. 1905, § 1060; 1890, ch. 179, § 2; R. C. 1899, § 895.]

§ 1560. Loan of muskets authorized. The adjutant-general or whoever may be in charge of state arms shall, under the direction of the governor, loan to the board of trustees of such university one hundred muskets and accoutrements or as many as can be spared, not exceeding that number, the same to be used for drill purposes, by the students of such university. [R. C. 1905, § 1061; 1890, ch. 181, § 1; R. C. 1899, § 896.]

§ 1561. Muskets, when returned. In case such arms and accoutrements are needed by the state at any time, the governor or adjutant-general under his instructions may call in the same and the trustees of such university shall immediately turn the same over to such officer in good condition. [R. C. 1905, § 1062; 1890, ch. 181, § 2; R. C. 1899, § 897.]

§ 1562. Geological survey. Duty of trustees. It shall be the duty of the board of trustees of the university to cause to be begun as soon as may be practicable, and to carry on a thorough geological and natural history survey of the state. [R. C. 1905, § 1063; 1895, ch. 66, § 1; R. C. 1899, § 898.]

§ 1563. Extent of the survey. The geological survey shall be carried on with a view to a complete account of the mineral kingdom, as represented in the state, including the number, order, dip and magnitude of the several geological strata, their richness in ores, coals, clays, peats, salines and mineral waters, marls, cements, building stones and other useful materials, the value of said substances for economical purposes, and their accessibility; also an accurate chemical analysis of the various rocks, soils, ores, clays, peats, marls and other mineral substances of which a complete and exact record shall be made. [R. C. 1905, § 1064; 1895, ch. 66, § 2; R. C. 1899, § 899.]

§ 1564. Meteorological statistics tabulated. The board of trustees shall also cause to be collected and tabulated such meteorological statistics as may be needed to account for the varieties of climate in the various parts of the state; also to cause to be ascertained by barometrical observations or other appropriate means, the relative elevations and depressions of the different parts of the state; and also on or before the completion of such surveys to cause to be compiled from such actual surveys and measurements as may be necessary an accurate map of the state; which map when approved by the

governor shall be the official map of the state. [R. C. 1905, § 1065; 1895, ch. 66, § 3; R. C. 1899, § 900.]

§ 1565. Specimens collected. It shall be the duty of said board to cause proper specimens, skillfully prepared, secured and labeled, of all rocks, soils, ores, coals, fossils, cements, building stones, plants, woods, skins and skeletons of animals, birds, insects and fishes, and other mineral, vegetable and animal substances and organisms discovered or examined in the course of said surveys, to be preserved for public inspection free of cost, in the university of North Dakota, in rooms convenient of access and properly warmed, lighted, ventilated and furnished, and in charge of a proper scientific curator; and they shall also, whenever the same may be practicable, cause duplicates in reasonable numbers and quantities of the above named specimens, to be collected and preserved for the purpose of exchange with other state universities and scientific institutions, of which latter the Smithsonian institution at Washington shall have the preference. [R. C. 1905, § 1066; 1895, ch. 66, § 4; R. C. 1899, § 901.]

§ 1566. Map of the state. The board shall cause a geological map of the state to be made as soon as may be practicable, upon which by colors and other appropriate means and devices the various geological formations shall be represented. [R. C. 1905, § 1067; 1895, ch. 66, § 5; R. C. 1899, § 902.]

§ 1567. Annual report of trustees. It shall be the duty of the board, through its president, to make on or before the second Tuesday in December of each year, a report showing the progress of said surveys, accompanied by such maps, drawings and specifications as may be necessary and proper to exemplify the same to the governor, who shall lay the same before the legislative assembly, and the board upon the completion of any separate portion of any of the said surveys shall cause to be prepared a memoir or final report which shall embody in a convenient manner all useful and important information accumulated in the course of the investigation of the particular department or portion; which report or memoir shall likewise be communicated through the governor to the legislative assembly. [R. C. 1905, § 1068; 1895, ch. 66, § 6; R. C. 1899, § 903.]

§ 1568. Establishment of biological station. There is hereby created and established a biological station to be located on or near the shore of Devils Lake, in Ramsey county, North Dakota, and to be under the control and regulation of the board of trustees of the state university, and the biological staff at the state university shall have direction of the work of said station. [1909, ch. 47, § 1.]

§ 1569. Duties of director. Site. It shall be the duty of the staff of said station, as directors thereof, to study the animals and plants in Devils Lake and in any other portions of North Dakota with reference to the problem of restocking and cultivating fish in Devils Lake and in any other waters of the state, especially those of an alkaline character; to study and make collection of any animals and plants in North Dakota that have commercial or scientific value, and to cause to be issued from time to time, bulletins and reports, which shall be printed at state expense, setting forth results of the studies at the station or of those carried on in work associated with the station, the substance of which bulletins and reports, embodying all useful and important information resulting from the work carried on at the station or in the work associated with the station each year, shall be incorporated by said directors in an annual report to the governor who shall lay the same before the legislative assembly; provided, that this biological station shall not be established nor its work undertaken unless a suitable tract of land therefor be donated free of charge by warranty deed. [1909, ch. 47, § 2.]

§ 1570. Appropriation for building. For the purpose of erecting a suitable building for a biological station, at Devils Lake, North Dakota, there is hereby

appropriated for the said station the sum of five thousand dollars out of monies in the state treasury not otherwise appropriated. [1909, ch. 48, § 1.]

§ 1571. **Appropriation for maintenance.** For the purpose of providing proper equipment and for the maintenance of said biological station and its associated work there is hereby appropriated the sum of three thousand dollars annually out of monies in the state treasury not otherwise appropriated. [1909, ch. 48, § 2.]

§ 1572. **State geologist.** The professor of geology in the university shall be ex officio state geologist. [R. C. 1905, § 1069; 1895, ch. 66, § 7; R. C. 1899, § 904.]

§ 1573. **Tests, what of. Bulletins published.** In order to aid in the development of our mineral resources and manufacturing industries and to keep good faith with the United States government in accepting the land grant and to further the purpose of the grant, the board of trustees of the state university and school of mines are directed to provide suitable means for experimentation and practical testing of the mineral and other allied resources in order to demonstrate their fitness for mining and manufacturing industries. It shall be the duty of the dean of the school of mines to make or to cause to be made by suitable persons, as rapidly as may be, exhaustive and practical tests of all mineral and allied resources to show the exact value and uses of all these materials, as well as the best and most economical methods of extracting and manufacturing. The products thus derived shall be properly labeled and kept for public inspection in the museum of said school of mines, excepting at such times as these products may be needed as displays for the purpose of securing the development of industries. Investigations and practical tests shall be made to obtain a cheap and efficient method of lignite coal briquetting and to show by actual tests the best methods of burning lignite; to determine the possibility of utilizing lignite as a gas producing material and also for power and lighting; to determine the value of sandstones and other stones for building material; to test clays for tableware, earthenware, stoneware, sewer pipe, etc.; to take up other resources for practical testing as opportunity is afforded. In order that the greatest possible good may come from the practical testing and other provisions of this law, and in order to promote the development of the mining and allied manufacturing industries, bulletins shall be published from time to time by the school of mines announcing the progress and results of all tests and investigations and giving as much aid as possible relative to the best methods of mining, handling, treating and manufacturing the various mineral products of the state. A biennial report shall be issued. [1907, ch. 236.]

See also sections 1645-1649. As to biennial reports, see section 633.

§ 1574. **Appropriation.** There is hereby appropriated out of any funds in the state treasury, not otherwise appropriated, the sum of one thousand dollars annually, to meet the necessary expenses connected with the geological survey of the state, as provided for in sections 1562 and 1563. [R. C. 1905, § 1070; 1899, ch. 94; R. C. 1899, § 904a; 1903, ch. 14.]

A further appropriation was vetoed. Laws 1913, ch. 303, p. 465.

§ 1575. **Annual appropriation for maintenance.** For the year one thousand eight hundred and ninety-nine and for each year thereafter, there is hereby appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of two-fifths of a mill upon the dollar of the assessed valuation of the property assessment of the state of North Dakota, as fixed by the state board of equalization for the preceding year, the same to be paid monthly to the board of trustees of the university of North Dakota upon the voucher of said board, signed by its president. [R. C. 1905, § 1071; 1899, ch. 94; R. C. 1899, § 904b.]

§ 1576. **Appropriation for Cochrane library.** For the purchase of the law library of the late John M. Cochrane, of Grand Forks, North Dakota, for

the use and benefit of the college of law of the university of North Dakota, there is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of ten thousand dollars. [R. C. 1905, § 1072; 1905, ch. 19, § 1.]

§ 1577. Duty of dean of college of law. The dean of the college of law of the university of North Dakota is hereby authorized to inventory and receive the said law library, properly classify the same, have the same suitably labeled and branded as being the property of the state of North Dakota, provide suitable shelving for the said books, insure the same in the name of the state of North Dakota, and in any proper manner direct the management of the said law library. The said law library shall be a reference library only and be for the use of students attending the college of law of the university of North Dakota and others who may desire to consult the same during proper hours to be prescribed by the dean of said college of law. The dean of said college is authorized and required to make suitable rules for the use of said law library, one of which rules shall be to the effect that no books shall be removed for use from the library room in which said books are contained. If at any time the college of law of the said university of North Dakota shall be discontinued the said books, and all of them, shall be immediately transferred to the capitol at the seat of government and be merged with and become a part of the state law library. The dean of said college of law, immediately on the receipt of said law library, shall make out duplicate invoices and inventories of said law library and transmit one to the secretary of state, to be by him preserved. On the first day of July thereafter in each year the said dean shall transmit a new invoice and new inventory showing all books on hand, including the additions to said law library, if any, which additions shall, from time to time, as fast as received, be branded and marked as provided for the original purchase herein. Any law books now the property of the said university, or which shall be hereafter received, shall be likewise branded and a full inventory returned to the secretary of state, it being the intention of this section that on the receipt of the said Cochrane library all books on the subject of the law, owned by the university of North Dakota and used in its college of law, shall be merged with the said Cochrane library so as to form one full and complete law library. The dean of said college of law is authorized to exchange, before branding, any duplicate books he may have, for other works of a legal nature suitable for use in said college of law. [R. C. 1905, § 1073; 1905, ch. 19, § 2.]

ARTICLE 2.—NORMAL SCHOOLS.

§ 1578. Schools designated. The normal schools established and located at Valley City in the county of Barnes and Mayville in the county of Traill, the normal school authorized and located at Minot in the county of Ward, and any other normal schools as they may hereafter be established and located, shall be the normal schools of the state. [1911, ch. 61, § 1; R. C. 1905, § 1074; 1891, ch. 89, § 1; R. C. 1895, § 905.]

§ 1579. Purpose of schools. The purpose of the state normal school shall be to prepare teachers in the science of education and the art of teaching for the public schools of the state. Said schools shall in all things be free from political and sectarian control. [1911, ch. 61, § 2; 1907, ch. 100; R. C. 1905, § 1082; 1891, ch. 89, § 13; R. C. 1899, § 913.]

§ 1580. Interest and income. All proceeds accumulating in the interest and income fund arising from the sale or rental of the lands granted or hereafter to be granted by the state for any of the several normal schools are hereby pledged for the establishment and maintenance of such schools. [1911, ch. 61, § 3; R. C. 1905, § 1075; 1891, ch. 89, § 2; R. C. 1899, § 906.]

§ 1581. Separate funds. All moneys arising from interest and income, appropriation and taxation, or in any other manner, and belonging to any of the several schools, shall be deposited with the state treasurer and kept by him in separate funds to be known by the names of the different schools to which they belong and to be used exclusively for the benefit of such schools. [1911, ch. 61, § 4; R. C. 1905, § 1081; 1891, ch. 89, § 11; R. C. 1899, § 912.]

§ 1582. Government and control. The government and control of the state normal schools shall be vested in a board of trustees to be known as the state board of normal school trustees. [1911, ch. 61, § 5; R. C. 1905, § 1076; 1891, ch. 89, § 3; R. C. 1899, § 907.]

§ 1583. Constitution of board. The normal board of control shall consist of one member for each school, who shall reside within the vicinity of such school, of three members from the state at large, and of the superintendent of public instruction, ex-officio, provided, that no two members shall be from the same county. [1913, ch. 54, § 1; 1911, ch. 61, § 6; R. C. 1905, § 1077; 1891, ch. 89, § 4; R. C. 1899, § 908.]

§ 1584. Appointment and term. The governor shall by and with the advice and consent of the senate appoint during the twelfth legislative assembly the members for the three schools now in existence or authorized and the three members at large, all of whom, as well as the superintendent of public instruction, shall hold office on the board of trustees from the first Tuesday in April of the year nineteen hundred and eleven; provided that two of the members for the three schools now in existence or authorized and one of the members at large shall be appointed for a term of two years, that one of the members for the three schools now in existence or authorized and two of the members at large shall be appointed for a term of four years, that as additional schools may be established their first resident members shall be appointed for terms of either two or four years as may be necessary to keep the board as evenly divided as possible at the regular times of appointment between new and holdover members, and that all other appointments, except those to fill out unexpired terms which the governor shall also make, shall be for the regular term of four years. [1911, ch. 61, § 7; R. C. 1905, § 1078; 1891, ch. 89, § 6; R. C. 1899, § 909.]

§ 1585. Commission, quorum, president and secretary. The governor shall cause to be issued to each of the appointive members of the board, a commission under the great seal of the state. A majority of the entire membership of the board shall constitute a quorum for the transaction of business. The board shall elect a president from among the members at large. It shall also elect a secretary, who may or may not be a member of the board, and who shall receive such compensation as the board may determine, not to exceed two thousand dollars per annum. [1913, ch. 54, § 2; 1911, ch. 61, § 8; R. C. 1905, § 1078; 1891, ch. 89, § 6; R. C. 1899, § 909.]

§ 1586. Meetings and compensation. The board shall hold an annual meeting in June and shall hold other regular meetings monthly, excepting in the discretion of the board for July, August and September, and all such meetings, including the annual meeting, shall be held at one of the normal schools or at the capitol of the state. The board may hold at its discretion special meetings, of which due notice stating the special purpose shall be given, and which may be held at any place within the state, but it shall not meet to exceed fifteen times a year. The members, except the superintendent of public instruction who shall receive only his actual and necessary expenses, shall receive three dollars for each day employed and the actual and necessary expenses incurred in attending the meetings of the board and in the performance of all duties connected therewith, which per diem and expenses shall be paid out of the state treasury upon the

voucher of the board as provided by law. [1911, ch. 61, § 9; R. C. 1905, § 1080; 1891, ch. 89, § 9; R. C. 1899, § 911; 1901, ch. 35.]

§ 1587. Moneys, grounds, buildings and expenses. The board shall direct the disposition of all moneys arising from interest and income, appropriation and taxation, or in any other manner, and belonging to the different schools. It shall have supervision and control of the grounds, buildings and equipment of the different schools, including all care and construction, and all expenses incurred therewith and under the direction of the board shall be audited and allowed by the board. [1911, ch. 61, § 10; R. C. 1905, § 1083; 1891, ch. 89, § 14; R. C. 1899, § 914.]

§ 1588. Faculties and employees. The board shall elect the members of the faculties and engage the employes of the different schools, fix their salaries, prescribe their duties and for sufficient cause remove any of them at any time. [1911, ch. 61, § 11; 1907, ch. 240, § 3; R. C. 1905, § 1084; 1891, ch. 89, § 15; R. C. 1899, § 915.]

§ 1589. Rules, inspection and courses of study. The board shall make the necessary rules and regulations for its government and control of the normal schools and it shall, as a whole, or by committee, visit and inspect each school at least twice a year. It shall determine the yearly calendar and courses of study for the different schools, which courses of study shall be uniform for each of the several schools and embrace the academic and professional branches usually taught in state normal schools; provided that none of such courses of study shall extend more than two years beyond the course of study prescribed in a high school of the first class. [1911, ch. 61, § 12; 1907, ch. 240, § 4; R. C. 1905, § 1085; 1891, ch. 89, § 16; R. C. 1899, § 916.]

§ 1590. Faculties and rules. The faculty of each school shall consist of the president and the teachers. It shall make all needful rules and regulations for the immediate educational administration of the school, especially as relating to program, classification, attendance, discipline, instruction, morals, decorum, health, records and other things pertaining to the welfare of the students. [1911, ch. 61, § 13; 1907, ch. 240, § 5; R. C. 1905, § 1086; 1891, ch. 89, § 17; R. C. 1899, § 917.]

§ 1591. President, duties, expenses. The president of each school shall be the chief executive of the school and shall see that all rules and regulations made by the board and the faculty are enforced. All teachers and employes of the school shall be under his supervision. He shall at such times as the board may designate recommend, after careful investigation as to their qualifications, suitable persons for the various positions in the school. He may be the accounting officer and the purchasing agent for the school under such regulations as the board may make. He shall attend the meetings of the board of trustees, and at such meetings he shall have voice without vote. For attendance at such meetings he shall receive only actual and necessary expense, which shall be paid as herein provided for members of the board. [1911, ch. 61, § 14; 1907, ch. 240, § 6; R. C. 1905, § 1087; 1891, ch. 89, § 18; R. C. 1895, § 918.]

§ 1592. President and annual report. The president of each school shall make to the board at its annual June meeting a complete report showing the condition of the school at the time and throughout the previous year, and containing recommendations of such things as the welfare of the school demands. The report shall contain a complete financial statement and information concerning the various things pertaining to the welfare of students and as herein described. [1911, ch. 61, § 15; R. C. 1905, § 1088; 1891, ch. 89, § 19; R. C. 1895, § 919.]

§ 1593. Board and biennial report. The board shall make to the governor on or before the fifteenth day of October next preceding each biennial session of the legislature, a complete report based upon the annual reports

of the presidents of the different schools for the two years previous. [1911, ch. 61, § 16; R. C. 1905, § 1089; 1891, ch. 89, § 20; R. C. 1895, § 920.]

As to time of making reports to the governor, and the contents thereof, see sections 95, 97, 98, 633.

§ 1594. Diplomas. The board of trustees and the faculty of each school shall issue diplomas of appropriate grade to all persons completing any of the courses of study in the school, known to possess good moral character, and having met all other requirements made by the board and the faculty, which diplomas shall set forth the above mentioned facts and be designated state normal school diplomas. [1911, ch. 61, § 17; 1907, ch. 240, § 7; R. C. 1905, § 1090.]

Mandamus to compel issuance of diploma. 3 L.R.A.(N.S.) 1115.

§ 1595. Diplomas as licenses. All diplomas issued as herein described shall have value as teachers' licenses according to the provisions of the certification laws of the state. [1911, ch. 61, § 18; R. C. 1905, § 1091; 1891, ch. 89, § 22; R. C. 1899, § 922.]

ARTICLE 3.—NORTH DAKOTA ACADEMY OF SCIENCE.

§ 1596. Object of academy of science. The North Dakota academy of science heretofore established at Wahpeton is hereby continued as such. The object of such academy shall be to furnish instruction in the pure and applied sciences, mathematics, languages, political science, and history as is usually given in schools of technology below the junior year, the chief object being the training of skilled workmen in the most practical phases of applied science. A general science course may also be offered, consisting of three years' work above the high school course. Upon completion of either of the above courses the board of trustees may grant appropriate certificates of the work accomplished. [1907, ch. 100; R. C. 1905, § 1092; 1890, ch. 158, § 1; R. C. 1905, § 923; 1903, ch. 50.]

§ 1597. How governed. Such school shall be under the direction and management of a board of trustees and shall be erected, governed and maintained as hereinafter provided. [R. C. 1905, § 1093; 1890, ch. 158, § 2; R. C. 1899, § 924; 1903, ch. 50.]

§ 1598. Board, how constituted. Such board of trustees shall consist of five members, who shall be appointed by the governor, by and with the consent of the senate, and shall hold their office for a term of four years; provided, that immediately upon the taking effect of this article the governor shall appoint three members of this board who shall hold office for four years and two members who shall hold office for two years, each member of said board to hold office until his successor is appointed and qualified; and the governor may fill vacancies by appointment as in other cases. The members of such board shall meet at Wahpeton annually on the first Tuesday in April and shall from among their number elect a president and secretary, and said board may provide for such other meetings at such times and places as may be deemed expedient; provided, that the governor may designate the time for holding the first meeting of said board. [R. C. 1905, § 1094; 1890, ch. 158, § 3; R. C. 1895, § 925; 1903, ch. 50.]

§ 1599. Powers of board. Such board shall have power to buy or procure the necessary ground and to erect and equip the necessary buildings for said school, to appoint a principal and assistants to take charge of such school and such other teachers and officers as may be required, and fix the salaries of each and prescribe their several duties. It shall also have power to remove, either principal, assistant or teacher and appoint others in their stead. The board shall prescribe the various books to be used in such school and shall make all the regulations and by-laws necessary for good government and maintenance of the same and shall have power to procure all

necessary apparatus, instruments and appurtenances for instruction in said school. [R. C. 1905, § 1095; 1890, ch. 158, § 4; R. C. 1899, § 926; 1903, ch. 50.]

§ 1600. **Rules and regulations.** The board shall prescribe such rules and regulations for the admission of pupils to said school as it shall deem necessary and proper and may in its discretion require applicants for admission into such school to pay such fees or tuition as the board may deem reasonable. [R. C. 1905, § 1096; 1890, ch. 158, § 5; R. C. 1899, § 927; 1903, ch. 50.]

§ 1601. **Compensation.** All necessary expenses incurred by members of the board of trustees and the sum of three dollars per diem for the time actually and necessarily employed in the discharge of the duties of their office shall be paid on the proper voucher out of the general funds of the state. The principal, assistants, teachers and other officers and employes in such school shall be paid out of the fund of the North Dakota academy of science. [R. C. 1905, § 1097; 1890, ch. 158, § 12; R. C. 1899, § 929; 1903, ch. 50.]

§ 1602. **Duties of state treasurer.** The state treasurer shall be the custodian of all funds belonging to such school, from whatever source received, and the same shall be deposited with him and by him kept in a separate fund which shall be known as the North Dakota academy of science fund, and shall be used exclusively for the benefit of such academy; provided, however, that any sum or sums received by such board of trustees for tuition or fees for scholarships in such school, may be kept and disbursed by the secretary of such board upon the order of the president thereof for current expenses of such school. [R. C. 1905, § 1098; 1890, ch. 158, § 15; R. C. 1899, § 932; 1903, ch. 50.]

§ 1603. **Majority shall constitute quorum.** A majority of the members of the board of trustees shall constitute a quorum, but a less number may adjourn from time to time. All proceedings of the board shall be recorded in a book to be kept for that purpose, which shall be open to inspection to any person on request; and the secretary shall keep a strict account of all moneys received by him in such manner as may be prescribed by the board, and such accounts shall at all times be open to inspection by said board or any member thereof. [R. C. 1905, § 1099; 1890, ch. 158, § 16; R. C. 1899, § 933; 1903, ch. 50.]

ARTICLE 4.—AGRICULTURAL COLLEGE.

§ 1604. **Location of.** The agricultural college shall continue as now established and located at Fargo in the county of Cass. [R. C. 1905, § 1100; 1890, ch. 160, § 1; R. C. 1899, § 934.]

§ 1605. **Management of.** The government and management of such college is vested in a board of trustees to be known as the board of trustees of the agricultural college. [R. C. 1905, § 1101; 1890, ch. 160, § 2; R. C. 1895, § 935.]

§ 1606. **Board of trustees, how appointed. Vacancies.** The board of trustees shall consist of seven members, to be appointed as follows: During each biennial session of the legislative assembly there shall be nominated by the governor and, by and with the advice and consent of the senate, appointed for the term of four years, trustees to fill vacancies occurring by the expiration of the term of office of those previously appointed. The governor shall have power to fill all vacancies in such board which occur when the legislative assembly is not in session, and the members of such board shall hold their office until their successors are appointed and qualified as provided in this article. Persons appointed to fill vacancies shall hold office only until the first Tuesday in April succeeding the next session of the legislative assembly. [R. C. 1905, § 1102; 1890, ch. 160, § 3; 1891, ch. 5, § 1; R. C. 1895, § 936.]

§ 1607. Commission. Oath. Organization. The governor shall cause to be issued to each trustee so appointed a commission under the great seal of the state. At the first meeting of such board the members thereof shall take and subscribe the oath of office required of other civil officers and shall then proceed to elect a president, secretary and treasurer, but the treasurer shall not be a member of the board. A majority of the members of the board shall constitute a quorum for the transaction of business. The board shall require a bond of its treasurer in such an amount and with such sureties as it may deem proper. [R. C. 1905, § 1103; 1890, ch. 160, § 4; R. C. 1899, § 937.]

§ 1608. Meetings, where held. Compensation of trustees. The board shall hold its meetings at the city of Fargo at such time as it may designate, but there shall not be to exceed six regular meetings each year; provided, that the president of the board shall have power to call special meetings whenever in his judgment it becomes necessary. The members of the board shall receive as compensation for their services the sum of three dollars per day for each day employed and five cents per mile for each mile actually and necessarily traveled in attending the meetings of the board, which sum shall be paid out of the state treasury upon vouchers of the board duly certified by the president and secretary thereof. [R. C. 1905, § 1104; 1890, ch. 160, § 5; 1891, ch. 5, § 2; R. C. 1899, § 938.]

See appropriation for this section with regulation for payment of the same, section 653g.

§ 1609. Duties of board. Such board shall direct the disposition of all moneys appropriated by the legislative assembly or by the congress of the United States, or that may be derived from the sale of lands donated by congress to the state for such college, or that may be donated to or come from any source to the state for said college, or experiment station for North Dakota, subject to all restrictions imposed upon such funds either by the constitution or laws of the state or by the terms of such grants from congress, and shall have supervision and charge of the construction of all buildings authorized by law for such college and station. The board shall have power to employ a president and necessary teachers, instructors and assistants to conduct such school and carry on the experiment station connected therewith and to appoint one of its members superintendent of construction of all buildings, who shall receive three dollars per day for each day actually and necessarily engaged in the discharge of his duties, not to exceed fifty days in any one year, which sum shall be paid out of the state treasury upon the vouchers of said board. [R. C. 1905, § 1105; 1890, ch. 160, § 6; R. C. 1899, § 939.]

§ 1610. Course of instruction. The object of such college shall be to afford practical instruction in agriculture and the natural sciences connected therewith, and in the sciences which bear directly upon all industrial arts and pursuits. The course of instruction shall embrace the English language and literature, military tactics, civil engineering, agricultural chemistry, animal and vegetable anatomy and physiology, the veterinary art, entomology, geology and such other natural sciences as may be prescribed, political, rural and household economy, horticulture, moral philosophy, history, bookkeeping and especially the application of science and the mechanic arts to practical agriculture. A full course of study in the institution shall embrace not less than four years, and the college year shall consist of not less than nine calendar months, which may be divided into terms by the board of trustees as in its judgment will best secure the objects for which the college was founded. [R. C. 1905, § 1106; 1890, ch. 160, § 8; R. C. 1899, § 940.]

§ 1611. Board of trustees to fix salaries. The board of trustees shall fix the salaries of the president, teachers, instructors and other employes and prescribe their respective duties. The board shall also fix the rate of wages

to be allowed the students for labor on the farm and experiment station or in the shops or kitchen of the college. The board may remove the president or subordinate officers and supply all vacancies. [R. C. 1905, § 1107; 1890, ch. 160, § 9; R. C. 1899, § 941.]

§ 1612. Faculty to adopt rules and regulations. The faculty shall consist of the president, teachers and instructors and shall pass all needful rules and regulations for the government and discipline of the college, regulating the routine of labor, study, meals and the duties and exercises, and all such rules and regulations as are necessary for the preservation of morals, decorum and health. [R. C. 1905, § 1108; 1890, ch. 160, § 10; R. C. 1899, § 942.]

§ 1613. Duties of president. The president shall be the chief executive officer of the college and it shall be his duty to see that all rules and regulations are executed, and the subordinate officers and employes not members of the faculty shall be under his direction and supervision. [R. C. 1905, § 1109; 1890, ch. 160, § 11; R. C. 1899, § 943.]

§ 1614. Faculty to make annual report to board. The faculty shall make an annual report to the board of trustees on or before the first Monday in November of each year, showing the condition of the school, experiment station and farm and the results of farm experiments and containing such recommendations as the welfare of the institution demands. [R. C. 1905, § 1110; 1890, ch. 160, § 12; R. C. 1899, § 944.]

As to contents of report, see also section 633.

§ 1615. Annual report to governor. The board of trustees shall on or before the fifteenth day of November in each year make a report to the governor setting forth in detail the operations of the experiment station, including a statement of the receipts and expenditures, a copy of which report shall be sent by the governor to the commissioner of agriculture and to the secretary of the treasury of the United States, and the board shall also make a report to the governor on or before the fifteenth day of November next preceding each biennial session of the legislative assembly, containing a financial statement showing the condition of all funds appropriated for the use of such college and experiment station, also the moneys expended and the purposes for which the same were expended, in detail, also the condition of the institution and the results of the experiments carried on there. [R. C. 1905, § 1111; 1890, ch. 160, § 13; R. C. 1899, § 945.]

See as to time of making report to the governor and as to contents of reports, sections 95, 97, 98, 633.

§ 1616. Degrees may be conferred. The board and the faculty shall have power to confer degrees upon all persons who shall have completed the course of study prescribed by them, and who shall have passed a satisfactory examination in the branches contained in such course, and who possess a good moral character. [R. C. 1905, § 1112; 1891, ch. 160, § 14; R. C. 1899, § 946.]

§ 1617. Acceptance of land grant. The grants of land accruing to this state by virtue of an act of congress donating public lands for the use and support of agricultural colleges approved February twenty-second, 1889, is hereby accepted with all the conditions and provisions in said act contained, and said lands are hereby set apart for the use and support of the colleges herein provided for. [R. C. 1905, § 1113; 1890, ch. 160, § 18; R. C. 1899, § 949.]

§ 1618. Bond of treasurer. The treasurer of such college shall give a bond in the sum of fifty thousand dollars with at least four sureties to be approved by the board of trustees of such college, conditioned for the faithful accounting of all moneys received by him as such treasurer. [R. C. 1905, § 1114; 1891, ch. 7, § 5; R. C. 1895, § 950.]

ARTICLE 5.—EXPERIMENT STATIONS.

§ 1619. Experiment station. The agricultural experiment station heretofore established in connection with the agricultural college is continued and the same shall be under the direction of the board of trustees of such college, for the purpose of conducting experiments in agriculture according to the provisions of section 1 of the act of congress approved March second, 1887, entitled "An act to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an act approved July second, 1862, and of the acts supplementary thereto." [R. C. 1905, § 1115; 1890, ch. 160, § 16; R. C. 1895, § 947.]

§ 1620. Legislative assent to grant by congress. The assent of the legislative assembly is hereby given in pursuance of the requirements of section 9 of said act of congress, approved March second, 1887, to the grant of money therein made and to the establishing of an experiment station in accordance with section 1 of said last mentioned act, and assent is hereby given to carry out the provisions of said act. [R. C. 1905, § 1116; 1890, ch. 160, § 17; R. C. 1899, § 948.]

§ 1621. Appropriation. There is hereby appropriated annually out of any money in the state treasury, not otherwise appropriated, the sum of five thousand dollars for state support and maintenance of the agricultural experiment station at Fargo, and it shall be the duty of the board of trustees of the North Dakota agricultural college to set apart annually this sum for the expenses of maintaining the sub-experiment station at Edgeley, for erecting suitable buildings thereon, and for making such investigations and experiments as may be deemed necessary for the solution of agricultural, horticultural and other problems peculiar to districts of the state where the soil and climatic conditions differ from those of that portion of the state known as the Red River Valley. [R. C. 1905, § 1117; 1903, ch. 10.]

§ 1622. Annual appropriation for enforcing pure food and drug laws. There is hereby appropriated annually out of any money in the state treasury, not otherwise appropriated, the sum of ten thousand dollars to the North Dakota government agricultural experiment station at Fargo, the same to be used for the further and better enforcement of the food law, the drug laws, formaldehyde and paris green laws, the paint laws, and such other enacted food or drug laws as the said station may be charged with the enforcement of by acts of the legislative assembly, and also for the dissemination of information through bulletins and reports, which the said station is hereby authorized to publish from time to time setting forth the results of such analyses and investigations as are of interest to the people of the state and which are made under authority of the several acts hereinbefore named. The sum herein named shall be paid in equal semi-annual installments to the treasurer of the board of trustees of said station, upon the order of the state auditor, who is hereby directed to draw his order for the same; provided, that of the amount herein appropriated there shall be paid to Prof. E. F. Ladd, state pure food commissioner, in addition to any sum or sums he may from time to time receive as salary from the agricultural college, so long as he shall continue to fill said position, the sum of five hundred dollars annually, to be paid him quarterly. [1907, ch. 198.]

§ 1623. Appropriation for various purposes. There is hereby annually appropriated out of any money in the state treasury, not otherwise appropriated, the sum of twelve thousand dollars, to be paid quarterly to the treasurer of the North Dakota Agricultural College in April, July, October and January of each year upon the order of the state auditor, who is hereby directed to draw order for the same for the use of the government experiment station at Fargo for the purpose of continuing the twelve demonstration farms now located at Sanborn, Bismarck, New Salem, Beach, Carrington, Flaxton, Page,

Bathgate, Larimore, Lakota, Granville and Ross respectively, and for the establishment of not less than six nor more than twelve additional demonstration farms, to be located by the director of the government experiment station in counties that are not already provided with a demonstration farm; provided that each demonstration farm hereafter located shall not be more than three miles from a railway depot where at least one passenger train stops each way each day, and on land that shall have been leased to the state of North Dakota for a period of not less than ten years; provided, further, that should any of the twelve demonstration farms heretofore leased and operated refuse, after their present lease shall have expired, to enter into a ten year lease as provided for in this section, then the said government experiment station, through its director, shall be authorized to effect a lease with some other farmer, but within the same county if possible; provided, further, that two thousand dollars of the amount hereby annually appropriated shall be set aside for the sole purpose of installing and conducting demonstration farms at or near the village of McLeod, North Dakota, for making additional experiments with cereals, root crops and tree culture and for making experiments in the manufacture of denatured alcohol from by-products of the farm; for publishing the annual report of the demonstration farms and of the experiment station, and for printing additional popular, press and scientific bulletins; for complying with the provisions of the pure paint law, paris green law, and formaldehyde law now on the statute books, and for making analyses of fertilizers and stock foods and for other experimental purposes. [1909, ch. 28; 1907, ch. 123.]

Further appropriation was vetoed in Laws 1911, ch. 318, p. 568.

The foregoing section 1623 evidently supersedes Laws 1907, ch. 123.

§ 1624. Further appropriation for various purposes. There is hereby appropriated annually out of any moneys in the state treasury not otherwise appropriated the sum of twelve thousand (\$12,000) dollars to the North Dakota government agricultural experiment station at Fargo for the enforcement of the feeding stuffs, fertilizers, beverage and sanitary inspection laws, and such other enacted inspection laws as the food commissioner of this state may be authorized to enforce by the acts of the legislative assembly, and for the making of such investigations as are necessary for the gaining of information under the provisions of such laws, and also for the dissemination of information through bulletins and reports which said station is hereby authorized to publish from time to time, setting forth such information as may be of interest to the people of the state and which is gained under the authority of the several acts hereinbefore named, or which experiments are instituted for the purpose of gaining information upon which to base conclusions for better enforcing the provisions of such laws. The sum herein named shall be paid in equal semi-annual installments to the treasurer of the board of trustees of said station upon order of the state auditor, who is hereby directed to draw his order for the same. [1911, ch. 24.]

See sections 2918, 2920.

§ 1625. Wheat experiments. Agricultural college makes tests. It shall be the duty of the North Dakota government agricultural experiment station at Fargo to conduct experiments and determine the comparative milling values of the different grades and kinds of cereals and baking tests of the flours made therefrom. Such tests, as far as possible, shall be made from the products grown on soils in North Dakota which have been analyzed and tested and reported on by the geological survey branch of said government agricultural experiment station. A record shall be kept and published of the different kinds and grades of cereals received and by whom graded, the name of the person from whom received, with address, the nature of the soil, previous cropping and number of years which the land has been cropped. No cereals

shall be tested if the same cannot be identified and reported on as hereinbefore mentioned. The result of the chemical analysis of each sample shall be kept, which shall show the total weight of the sample, total weight of flour, total weight of feed, total weight recovered and per cent of flour; also data as to the moisture and proteids in the different grades of cereals, and analysis of the flour or other product made from the different kinds and grades of cereals and the yield and quality of bread or other product made from the same. In addition to such information it shall be the duty of the said North Dakota government agricultural experiment station to obtain, tabulate and publish such other and further information in relation to the comparative values of the different kinds and grades of cereals and products made therefrom as shall be of value to the residents of this state. [1909, ch. 116, § 1.]

§ 1626. Appropriation for testing cereals and flours. For the purpose of carrying out the provisions of this act [sections 1625, 1626], there is hereby appropriated the sum of five thousand dollars, or so much thereof as is necessary, out of any money in the state treasury not otherwise appropriated, to the North Dakota government agricultural experiment station at Fargo, the said money to be used in the further equipping of the experimental flour mill, adding room for storing and testing cereals, for the purchase of samples, for the expense of collecting samples, and the gathering of information regarding the property of cereals and for employing competent investigators. [1909, ch. 116, § 2.]

§ 1626a. Appropriation for building. There is hereby appropriated the sum of six thousand dollars, or so much thereof as may be necessary, out of any moneys in the state treasury not otherwise appropriated, for the purpose of erecting a building at the agricultural college grounds in which to conduct experiments to determine the comparative milling values of the different grades of wheat and to install therein the necessary machinery and fixtures. [1907, ch. 16, § 1.]

§ 1626b. Appropriation for maintenance of plant. There is hereby annually appropriated the sum of five hundred dollars, or so much thereof as may be necessary, out of any moneys in the state treasury not otherwise appropriated, for the purpose of maintaining the plant and conducting the experiments provided for in section 1626a. [1907, ch. 16, § 2.]

§ 1627. Experiment station created and established at Dickinson. Members of board. There is hereby created and established an agricultural and grass experiment station to be located at or near Dickinson in Stark county, in connection with the North Dakota agricultural college at Fargo and under the direction of the board of directors of said college, and one additional member to be appointed by the governor by and with the advice and consent of the senate, whose term of office shall be for four years from and after the date of his appointment and until his successor shall be appointed and qualified, and who shall receive for his services the sum of three dollars per day for each day employed under the direction of said board, or in attending its meetings, and five cents for each mile actually and necessarily traveled in connection therewith; provided, however, that said member's authority on said board shall be limited to the consideration of matters affecting the sub-station provided for in this article. [R. C. 1905, § 1119; 1905, ch. 21, § 1.]

§ 1628. Experiments with grasses, forage and agricultural products. Experiments undertaken, when. It shall be the duty of said board, as constituted herein, at said station, to make experiments with native and other grasses and forage products as well as other agricultural products of the soil, with a view of improving and enlarging the supply of forage of said district and extending and increasing the agricultural products thereof; provided, that such experiments shall not be undertaken nor said station established unless a suitable area of land not less than one hundred sixty acres within two miles

of the city of Dickinson shall be donated free of charge, by warranty deed to the state of North Dakota. There is hereby appropriated out of the funds of the state treasury not otherwise appropriated the sum of ten thousand dollars for the purpose of establishing said station and conducting said experiments, as provided herein and for no other purpose. [R. C. 1905, § 1120; 1905, ch. 21, §§ 2, 3.]

§ 1629. Experiment station created and established at Williston. Members of board. There is hereby created and established an irrigation and dry farming experiment station, to be located at or near Williston, in Williams county, in connection with the North Dakota agricultural college at Fargo, and under the direction of a board composed of the board of directors of said college, and one additional member to be appointed by the governor, by and with the consent of the senate, whose term of office shall be for four years from and after the date of his appointment and until his successor shall have been appointed and shall qualify, and who shall receive for his services the sum of three dollars per day for each day employed under the direction of said board, or in attending its meetings, and five cents for each mile actually and necessarily traveled in connection therewith; provided, however, that said member's authority on said board shall be limited to the consideration of matters affecting the experiment station provided for in this act. [1907, ch. 122, § 1.]

§ 1630. Duty of board to make experiments with grasses, forage and other agricultural products. Station not to be established or experiments undertaken unless suitable land is donated. It shall be the duty of said board, as constituted herein, to make experiments at said station, through both irrigation and dry farming methods, with native and other forage plants, fruit trees, grains and grasses and other agricultural products with a view of improving and enlarging the supply of forage plants, fruit trees, grains, grasses and other agricultural products of said district; provided, that such station shall not be established nor such experiments undertaken unless a suitable tract of land containing not less than one hundred and sixty acres within two miles of the city of Williston shall be donated free of charge, by warranty deed to the state of North Dakota. [1907, ch. 122, § 2.]

§ 1631. Appropriation. There is hereby appropriated out of the funds of the state treasury not otherwise appropriated the sum of four thousand dollars for the purpose of establishing said station, and three thousand dollars per annum hereafter for conducting said experiments, as provided in this act and for no other purpose. [1907, ch. 122, § 3.]

§ 1632. Further appropriation for Williston experiment station. The sum of five hundred dollars is hereby appropriated for each of the years 1909, 1910, 1911, 1912, 1913, 1914, 1915, 1916, 1917 and 1918, out of any money in the state treasury not otherwise appropriated, for the Williston experiment station, at Williston, Williams county, for the payment of the charges for water for irrigation, including construction, operation and maintenance charges. [1909, ch. 23.]

§ 1633. Establishment of experiment station. Management. There is hereby created and established an agricultural and grass experiment station, to be located at or near Hannah or Langdon, in Cavalier county, in connection with the North Dakota agricultural college at Fargo, and under the direction of the board of directors of said college, and one additional member to be appointed by the governor, by and with the advice and consent of the senate, whose term of office shall be for four years from and after the date of his appointment and until his successor shall be appointed and qualified, and who shall receive for his services the sum of three dollars per day for each day employed under the direction of said board, or in attending its meetings, and ten cents for each mile actually and necessarily traveled in connection therewith. [1907, ch. 120, § 1.]

§ 1634. Experiments to be made. It shall be the duty of said board as constituted herein at said station to make experiments with native and other grasses and forage products as well as other agricultural products of the soil, with a view of improving and enlarging the supply of forage of said district and extending and increasing the agricultural products thereof; provided, that such experiments shall not be undertaken nor said station established unless a suitable area of land not less than one hundred sixty acres within two miles of the village of Hannah or the city of Langdon shall be donated free of charge, by warranty deed to the state of North Dakota. [1907, ch. 120, § 2.]

§ 1634a. Appropriation. There is hereby appropriated out of the funds of the state treasury not otherwise appropriated the sum of ten thousand dollars for the purpose of establishing said station and conducting said experiments, as provided in this act [sections 1633-1634a], and for no other purpose. [1907, ch. 120, § 3.]

§ 1635. Sub-experiment stations. How governed. Each of the sub-experiment stations located at Dickinson, Williston and Langdon, and such other agricultural sub-experiment stations as may hereafter be established by law, shall be operated in connection with the North Dakota government experiment station at Fargo and under the exclusive management and control of the board of trustees of the agricultural college, as provided for in sections 1101 and 1102 of the Revised Codes of 1905 [sections 1605, 1606 herein], and as provided for in the several acts establishing said sub-stations, except as herein amended. [1909, ch. 117, § 1.]

§ 1636. Duty of superintendents. It shall be the duty of the superintendent of each of said sub-experiment stations to make an annual report to the board of trustees on or before the first day of January of each year. Said report shall set forth in detail the investigations and experiments made during the year, together with recommendations for the welfare of the sub-experiment station; said report shall be printed in such numbers as the board may direct and the expense thereof shall be charged to the sub-station making such report; provided, however, the director of the government experiment station may require of the superintendent of each of said sub-experiment stations a summarized statement setting forth the condition of the sub-experiment station in his charge and an outline of the work accomplished during the preceding biennial period, for said director's biennial report. [1909, ch. 117, § 2.]

§ 1637. Report biennially. The superintendents of all sub-experiment stations shall make a biennial report to the president of the agricultural college before the last Monday of October next preceding each biennial session of the legislative assembly. Such report shall show the financial condition of the sub-stations, how all moneys have been expended, and the results of the experiments carried on. This report shall be kept separate and included by the board of trustees of the agricultural college with their biennial report to the governor. [1907, ch. 121.]

§ 1638. Appropriation. There is hereby annually appropriated out of any moneys in the state treasury not otherwise appropriated the sum of fifteen thousand dollars to be paid quarterly to the treasurer of the North Dakota agricultural college on the first days of April, July, October and January of each year, upon the order of the state auditor, who is hereby directed to draw his order for the same for the use of the government experiment station at Fargo and it shall be the duty of the board of trustees of the North Dakota agricultural college to set apart annually this sum for the support and maintenance of the sub-experiment stations located at Dickinson, Williston and Langdon; said fifteen thousand dollars to be divided as follows: Five thousand dollars annually for the support and maintenance of the Dickinson sub-experiment station; five thousand dollars annually for the support and maintenance of the Williston sub-experiment station; and five thousand dollars annually

for the support and maintenance of the Langdon sub-experiment station. [1909, ch. 117, § 3.]

§ 1639. Experiment station near Harvey created. There is hereby created and established a state agricultural experiment station to be located at or near the city of Harvey, in Wells county, in connection with the North Dakota agricultural college at Fargo, and under the direction of the board of directors of said college. [1909, ch. 111, § 1.]

§ 1640. Experiments to be made. It shall be the duty of said board of directors at said station to make experiments with native and other grasses and forage product, as well as other agricultural products of the soil, with a view of improving and enlarging the supply of forage of the surrounding district and extending and increasing the agricultural products thereof; provided, that said experiments shall not be undertaken, nor said station established, unless a suitable area of land, not less than one hundred and sixty acres within two miles of the city of Harvey shall be donated free of charge by warranty deed to the state of North Dakota. [1909, ch. 111, § 2.]

§ 1641. Experiment station near Mandan created. There is hereby created and established an agricultural, grass and tree experiment station, to be located on the grounds of the state reform school, and to be operated in connection with the North Dakota agricultural college at Fargo, and under the direction of the board of directors of said college. [1909, ch. 112, § 1.]

§ 1642. Experiments to be made. It shall be the duty of said board, as constituted herein, at said station, to make experiments with native grasses, forage products, other grasses, agricultural products of the soil, trees, etc., both under irrigation and the so-called dry farming with a view to improving and enlarging the supply of forage of said district and extending and increasing the agricultural products thereof; provided, that all necessary labor in connection with said experiment station, except the services of an expert, shall be performed by the boys of said reform school under the supervision of the officers of said school and all surplus products of said experiment station shall apply on the maintenance of said reform school. [1909, ch. 112, § 2.]

§ 1643. Experiment station near Hettinger created. There is hereby created and established a state agricultural experiment station to be located at or near the village of Hettinger, in Adams county, in connection with the North Dakota agricultural college at Fargo, and under the direction of the board of directors of said college. [1909, ch. 115, § 1.]

§ 1644. Object of. Donation required. It shall be the duty of said board of directors at said station to make experiments with native and other grasses and forage product, as well as other agricultural products of the soil, with a view of improving and enlarging the supply of forage of the surrounding district, and extending and increasing the agricultural products thereof; provided, that said experiments shall not be undertaken, nor said station established, unless a suitable area of land, not less than one hundred sixty acres within two miles of said village of Hettinger, shall be donated free of charge by warranty deed to the state of North Dakota. There is hereby appropriated out of the funds of the state treasury not otherwise appropriated, the sum of ten thousand dollars for the purpose of establishing said station and conducting said experiments. [1909, ch. 115, §§ 2, 3.]

§ 1645. Mining experiment sub-station created. In order to promote the development of the mining interests, particularly with reference to the best methods of mining and utilizing lignite coal and clays, and to give the most practical service to that portion of the state in which these resources exist, there is hereby created and established a mining experiment station, to be located at such a place as may seem best suited for the purpose herein mentioned and in accordance with the provisions of this act [sections 1645-1648]. Said mining experiment station shall be a sub-station in connection with the

state school of mines at the state university and under the direction of the board of trustees of said institution. [1909, ch. 168, § 1.]

§ 1646. Purposes of station. Bulletins issued. The purpose of this mining experiment station shall be to aid in developing the mineral resources of the state, particularly the coal and clays. Actual mining and treatment of coal, clays and other mineral resources shall be conducted at this sub-station and a variety of experiments shall be carried on to determine the most scientific and best methods of mining, timbering and ventilating and preparing lignite coal and other products for the market. Special attention shall be paid to the study of prevention of losses and accidents in mining, to securing the most intelligent conservation, use and development of the mining resources of the state, to make more safe the work of mining and to render mining property more productive, in short to carry on such practical mining experiments as will promote the general welfare of the mining industry. At this station the students of the school of mines shall be instructed during some portion of the year as to the best methods of mining and handling lignite coal, clays, etc. The best and most scientific methods of mining shall be investigated, and so far as possible, actually carried on at this station, and whenever practicable, an opportunity shall be afforded for mine owners and workers to secure information and instruction in the most improved methods of developing and operating coal and other mines, applicable to this state. Bulletins shall be issued from time to time, giving detailed information of the experiments conducted, the results achieved, and advise as to the best methods of mining and utilizing the coal and other mineral resources of the state. [1909, ch. 168, § 2.]

§ 1647. Under whose control. The work of this station shall be under the general direction of the board of trustees of the state university and school of mines, and under the immediate charge of the dean of the school of mines. All receipts and expenditures shall be under the direction of the board of trustees. Coal and products of this station which are not needed for the work of the station may be turned over to the university or any other state institution at the cost of production, but the production of coal or any other material shall be only incidental to the experimental work of the station. [1909, ch. 168, § 3.]

§ 1648. Location. This experimental sub-station shall be located on a tract of at least eighty acres of land at or near Hebron, Morton county, and underlaid by a workable vein of lignite coal, the location to be as accessible as possible and consistent with the necessary operations of such station, due consideration being given to nearness and accessibility of deposits of clays and other mineral resources of the state. In case such suitable location can be secured on lands owned by any of the state institutions or the common schools of the state, one hundred and sixty acres of such lands shall be transferred to the school of mines by the board of university and school lands and an equal amount of land now owned by the school of mines and of equal appraised value shall be transferred by such board of university and school lands to replace the land hereby transferred to such school of mines. If suitable land cannot be thus secured, a tract of at least eighty acres may be purchased, if necessary, by the board of trustees of the state university and school of mines. [1909, ch. 168, § 4.]

§ 1649. Appropriation. In order to properly provide for the work being done in the experimentation and testing of the state's mineral and allied industrial resources at the mining experimental station at the school of mines and the mining sub-station at Hebron, Morton county, and in accordance with the laws establishing the same (chapter 236, Laws of 1907 [section 1573 herein], entitled, an act to foster the development of mineral and allied industries by providing experimentation, encouragement, publicity and practical tests under the direction of the school of mines; and chapter 168, Laws

of 1909 [sections 1645-1648], entitled, an act creating and establishing a mining experiment sub-station under the direction of the state school of mines at the University of North Dakota and providing for its management), and to provide the necessary equipment and permanent improvements for carrying forward the work, there is hereby appropriated for the biennial period of 1911 and 1912, out of any money in the state treasury not otherwise appropriated, the sum of twenty-five thousand dollars to be paid quarterly of each year to the treasurer of the university for the school of mines experimental station and sub-station, in April, July, October and January of each year, upon the order of the state auditor, who is hereby directed to draw orders for the proper amounts at the times specified.

At least one-half of this amount shall be expended upon the sub-station at Hebron, Morton county.

Provided, however, that no more than one-fourth of the money hereby appropriated shall be expended upon or at the sub-station at Hebron in Morton county, North Dakota, until the process or formula used in the manufacturing of briquettes at said sub-station at Hebron is patented in the name of the inventor and duly assigned to the governor of North Dakota as trustee for the benefit of the people of the state; and provided, further, that all discoveries of utility in experimentation and testing of state minerals or allied industrial resources at the mining experimental station, the school of mines, and the mining sub-station at Hebron in Morton county, North Dakota, shall be patented in the name of the inventor and duly assigned to the governor of North Dakota as trustee for the benefit of the people of the state. And it is hereby made the duty of the dean of said school of mines and the said sub-station at Hebron and the professors connected therewith, and any person or persons in the employ of said school of mines or experimental stations, to report such discoveries and to make proper application for patent therefor, and to duly assign the patent, when obtained, to the governor of North Dakota as said trustee. Any costs and expenses incurred in securing patents shall be paid out of the appropriation herein provided for. The provisions hereof do not apply to discoveries that are not patentable. [1911, ch. 18.]

It will be observed that the latter part of the foregoing appropriation provision is legislation of a permanent character.

ARTICLE 6.—PUBLIC HEALTH LABORATORY.

§ 1650. Laboratory established. There is hereby established a public health laboratory. Such laboratory shall be established at the state university and school of mines. It shall be under the control and regulation of the trustees of the university and the professor of bacteriology and pathology at the state university shall be the director of said laboratory. [1907, ch. 238, § 1.]

§ 1651. Director makes examinations. It shall be the duty of the director of said laboratory to make bacteriological examinations of bodily secretions and excretions, waters and foods, and make preparations and examinations of pathological tissues submitted by the state superintendent of public health, or by any county [superintendent] of public health, or by any regularly licensed physician of North Dakota. These analyses and preparations shall be made and the results furnished as expeditiously and promptly as the nature of the work and the equipment of the laboratory permits. [1907, ch. 238, § 2.]

§ 1652. Statistics collected. The board of trustees shall cause to be collected and tabulated such sanitary statistics, and shall cause to be ascertained by research work such methods as will lead to the improvement of the sanitation of the various parts of the state. [1907, ch. 238, § 3.]

§ 1653. Specimens preserved. It shall be the duty of the said board to cause proper specimens of bacteriological and pathological material discovered or examined in the work of said laboratory to be skillfully prepared, secured,

labeled and preserved for public inspection free of cost in the university of North Dakota in rooms convenient of access and properly furnished and in charge of a proper scientific curator. [1907, ch. 238, § 4.]

§ 1654. Director issues bulletins. The director of said laboratory shall cause to be issued from time to time, bulletins and reports setting forth the results of the sanitary and pathological work done in such laboratory. The substance of these bulletins and reports, embodying all useful and important information resulting from the work carried on in such laboratory each year, shall be incorporated in an annual report to the governor, who shall lay the same before the legislative assembly. [1907, ch. 238, § 5.]

As to reports to the governor, see sections 95, 97, 98.

§ 1655. Who director. The professor of bacteriology and pathology in the medical college of the state university shall be the director of the public health laboratory and shall be ex-officio the state bacteriologist. [1907, ch. 238, § 6.]

§ 1656. Appropriation. For the purpose of meeting the necessary expenses in the conduct of the public health laboratory in the medical department of the state university and school of mines at Grand Forks, and of its branches now established at Bismarck and at Minot, there is hereby annually, and commencing January first, 1911, appropriated out of the state treasury from any moneys not otherwise appropriated, the sum of ten thousand dollars, or so much thereof as may be necessary, subject to the control and regulations of the board of trustees of the state university and school of mines. [1911, ch. 15; 1907, ch. 26, § 1.]

ARTICLE 7.—SERUM INSTITUTE.

§ 1657. Institute established. There is hereby established a serum institute. Said institute shall be established at the state agricultural college and experiment station and shall be under the control and regulation of the trustees of the state agricultural college and experiment station and the professor of veterinary science of the agricultural college shall be the director of the said serum institute. [1909, ch. 60, § 1.]

§ 1658. Duty of director. It shall be the duty of the director of said institute to manufacture or cause to be manufactured vaccines, sera and other agents for the prevention, eradication, cure and control of tuberculosis, glanders, hog-cholera, black-leg and other infectious or contagious diseases. [1909, ch. 60, § 2.]

§ 1659. Serum to be distributed. It shall be furthermore the duty of the director of said institute to distribute or cause to be distributed to citizens, residents of the state of North Dakota, free of charge, said vaccines, sera and other agents upon application, showing evidence that the issue of said vaccines, sera and other agents is warranted by existing conditions, and upon such conditions as may be prescribed by the live stock sanitary board. [1909, ch. 60, § 3.]

§ 1660. Serum must not be sold. It shall be unlawful for any one receiving said vaccines, sera and other agents issued by the state serum institute, to sell or offer for sale said vaccines, sera and other agents and a failure to observe these provisions shall be deemed a misdemeanor and on conviction shall be punished by a fine of not less than twenty-five dollars and not exceeding one hundred dollars. [1909, ch. 60, § 4.]

§ 1661. Appropriation. There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of three thousand dollars per annum to be paid quarterly to the treasurer of the state agricultural college and experiment station, on the first days of April, July, October and January of each year, upon the order of the state auditor, who is hereby directed to draw his order for the same for the use of the serum institute as

herein provided for the purpose of paying the expenses incurred by said serum institute, subject to the control and regulation of the board of trustees of the state agricultural college. [1909, ch. 60, § 5.]

ARTICLE 8.—AGRICULTURAL AND GEOLOGICAL SURVEY.

§ 1662. **Agricultural college board co-operate.** The board of trustees of the agricultural college of the state of North Dakota is hereby authorized to co-operate with the directors of the United States federal surveys and to accept the co-operation of the United States with this state in executing a topographic, economic and agricultural survey and map of North Dakota, which is hereby authorized to be made; and the said board of trustees shall have the power to arrange with said directors, or other authorized representatives of the United States government surveys, concerning the details of said work, the methods of its execution, and the order in part of time in which these surveys and maps of the different parts of the state shall be completed; provided, that the said directors of the United States government survey, thus co-operating with the state of North Dakota, shall agree to expend on the part of the United States upon said work a sum equal to that appropriated by the state of North Dakota for that purpose. [R. C. 1905, § 1121; 1901, ch. 8, § 1.]

§ 1663. **Maps uniform with U. S. maps.** In arranging the details heretofore referred to, it is expected that the topographic maps resulting from this survey shall be similar in general design to the Fargo and Casselton sheets already made by the United States geological survey, that they shall show the location of all roads, railroads, streams, lakes and rivers, and shall contain certain lines showing the elevation and depression for every twenty feet of vertical interval of the surface of the county; and that the resulting maps shall recognize the co-operation of the state of North Dakota. [R. C. 1905, § 1122; 1901, ch. 8, § 2.]

§ 1664. **Make an economic survey.** Following the completion of the topographic maps, or as rapidly as deemed expedient, an economic survey shall be made, including a complete account of all economic resources of agricultural importance, including the character and value of soil for agricultural purposes, the nature and extent of water supplies, both surface and artesian, together with the analysis of soils, waters, etc., including also the collecting and tabulating of meteorological data necessary in explaining climatic variations, and such other investigations as naturally belong to an economic survey. [R. C. 1905, § 1123; 1901, ch. 8, § 3.]

§ 1665. **State director to collect samples.** It shall be the duty of the state director of this survey to collect or cause to be collected samples of all rocks, soils, coals, clays, minerals, fossils, plants, woods, skins and skeletons of native animals, and such other products of economic or scientific interest discovered during this survey, which, properly secured and labeled, shall be placed on exhibition in the museum of the North Dakota agricultural college. [R. C. 1905, § 1124; 1901, ch. 8, § 4.]

§ 1666. **Arrange to publish maps.** The state director of this survey shall arrange with the directors of the government surveys for the publication of economic maps resulting from this survey, which shall be similar in design to, and uniform with the publication now made by these surveys, accompanied by written description of the formations and economic resources, which shall constitute a report, embodying and setting forth all useful information developed during these investigations. [R. C. 1905, § 1125; 1901, ch. 8, § 5.]

§ 1667. **Publish reports.** There shall be published from time to time, as bulletins of the North Dakota experiment station, preliminary reports of this survey, as the work progresses, showing the results of the survey and investigations conducted, together with preliminary maps, showing the areas covered.

and these preliminary reports shall be sent gratis to all citizens of North Dakota making application. [R. C. 1905, § 1126; 1901, ch. 8, § 6.]

§ 1668. Biennial report to governor. It shall be the duty of the said board of trustees, through the state director of this survey, to make on or before the second Tuesday of December of each year, immediately preceding the regular sessions of the legislative assembly of North Dakota, a biennial report to the governor, showing the progress of the survey, accompanied by copies of the maps completed and results accomplished, together with a report of all moneys received and expended and the governor shall lay this report before the legislative assembly. [R. C. 1905, § 1127; 1901, ch. 8, § 7.]

As to reports to the governor, see sections 95, 97, 98, 633.

§ 1669. State director. The professor of geology of the North Dakota agricultural college shall act, under the direction of the board of trustees of said institution, as state director of this survey. [R. C. 1905, § 1128; 1901, ch. 8, § 8.]

§ 1670. Appropriation. There is hereby appropriated out of the money of the state treasury, not otherwise appropriated, the sum of one thousand dollars annually, which shall be paid by the state treasurer upon a draft from the secretary of the board of trustees, having in control this survey. [R. C. 1905, § 1129; 1901, ch. 8, § 9; 1903, ch. 13.]

An amendment to this section was vetoed. Laws 1913, ch. 294, p. 459.

§ 1671. Name. This survey shall be known as the Agricultural College survey of North Dakota. [R. C. 1905, § 1130; 1901, ch. 8, § 10.]

§ 1672. Not conflicting. This act is not to be construed as conflicting in any manner with or repealing the geological survey of North Dakota already established at the state university. [R. C. 1905, § 1131; 1901, ch. 8, § 11.]

§ 1673. Belong to the state. Any lands belonging to the state, or lands known as school lands and public institution lands, in which is discovered any valuable deposit of coal or minerals of any kind, clay, gravel or stone shall be and remain the property of the state until provision for the sale or leasing thereof is especially provided for by law. [R. C. 1905, § 1132; 1901, ch. 8, § 12.]

ARTICLE 9.—SCHOOL OF FORESTRY.

§ 1674. Object of school of forestry. A state school of forestry, to be known as the North Dakota school of forestry, is located at Bottineau, in the county of Bottineau, state of North Dakota, by virtue of the vote taken thereon according to law. The object of the school of forestry shall be to furnish the instruction and training contemplated in an agricultural high school, emphasizing those subjects that have a direct bearing on forestry and horticulture. [1907, ch. 100; R. C. 1905, § 1231; 1897, ch. 129; R. C. 1899, § 1020g.]

§ 1675. Management. The said school shall be under the direction of a board of directors, and shall be governed and supported as hereinafter provided. The board of directors shall consist of three members, to be appointed by the governor with the consent and advice of the senate, two of whom shall be appointed for the term of two years and one for a term of four years. Thereafter and at each biennial session of the legislative assembly, and on or before the third Monday in February during each session there shall be nominated by the governor, and by and with the advice and consent of the senate, appointed for the term of four years, commencing on the first Tuesday in April following such appointment, directors to fill vacancies occurring by the expiration of the term of office of those previously appointed. The governor shall have power to fill all vacancies in said board which may occur when the legislative assembly is not in session, and the members of said board shall hold office until their successors are appointed and qualified as provided by this article; provided, further, that in all cases where the governor has made an appointment to fill a vacancy when the legislative assembly is not in session the term of office of the director or directors so

appointed shall expire on the first Tuesday in April following the next session of the legislative assembly. [R. C. 1905, § 1232; 1897, ch. 129; R. C. 1899, § 1020h.]

§ 1676. Commission. Oath. Organization. The governor shall cause to be issued to each of said directors a commission, which shall be under the seal of the state. At the first meeting of said board the members thereof shall take and subscribe the oath of office required of all civil officers of that state, and shall then proceed to elect a president, secretary and treasurer, but the treasurer shall not be a member of said board of directors. A majority of said board shall be a quorum for the transaction of business. The board shall require a bond of its treasurer, and fix the amount thereof. [R. C. 1905, § 1233; 1897, ch. 129; R. C. 1899, § 1020i.]

§ 1677. Meetings. Compensation. The board of directors shall hold its meetings at Bottineau and fix the time of holding the same; provided, there shall not exceed three regular meetings in each year. The members shall receive as compensation for their services three dollars per day for each day employed, and all traveling expenses necessarily incurred therein, which sum shall be paid out of the state treasury upon vouchers of said board duly certified by the president and secretary thereof, which sum is hereby appropriated therefor. The president of said board shall have power to call special meetings whenever in his judgment it becomes necessary. [R. C. 1905, § 1234; 1897, ch. 129; R. C. 1899, § 1020j.]

See appropriation and regulation for payment of the same in section 653g.

§ 1678. Accounts, how audited. The board shall audit all accounts against the funds appropriated by the legislative assembly of the state of North Dakota, or held by the state for the use of the school of forestry, and the state auditor shall issue his warrants upon the state treasurer for the amount of all accounts which shall have been so audited and allowed by the board of directors and attested by the president and secretary of the same. [R. C. 1905, § 1235; 1897, ch. 129; R. C. 1899, § 1020k.]

§ 1679. Report. The board of directors shall make a report to the governor on or before the first Monday in December next preceding each biennial session of the legislative assembly, to be published in the biennial report of the superintendent of public instruction; in addition to the other publication as provided by law. [R. C. 1905, § 1236; 1897, ch. 129; R. C. 1899, § 1020l.]

As to reports to the governor, see sections 95, 97, 98, 633.

ARTICLE 10.—NURSERIES, STATE FORESTER.

§ 1679a. State forester. For the promotion of forestry in this state there is hereby created the office of state forester. This office shall be filled by the president of the school of forestry. He shall have general supervision of the raising and distribution of seeds and forest tree seedlings as herein-after provided; shall promote practical forestry; compile and disseminate information relative thereto, and publish the results of such work by issuing and distributing bulletins, lecturing before farmers' institutes, associations and other organizations interested in forestry, and in such other ways as will most practically reach the public. [1913, ch. 170, § 1.]

§ 1679b. State nursery. There shall be established in connection with the state school of forestry and under the direction of the state forester a forest tree nursery for the propagation of seeds and forest tree seedlings which shall be best adapted to the climatic conditions of this state. For such purpose the board of trustees of the school of forestry shall set apart a tract of not less than ten acres of the lands belonging to such school. [1913, ch. 170, § 2.]

§ 1679c. Distribution. Seeds and seedlings from such nursery shall be distributed to citizens and land owners of this state upon the payment of the actual cost of transportation from the nursery to the place where the same are to be planted. As a condition precedent to such distribution the citizen

or land owner making application therefor must agree to plant the seeds and seedlings distributed under the direction of the state forester and in conformity with his instructions. [1913, ch. 170, § 3.]

§ 1679d. Directions for planting. Assistants. The state forester is hereby required to furnish to each applicant for seeds or forest tree seedlings, suitable directions for planting the same, and when requested so to do, shall furnish skilled assistants to supervise such work and in the event that assistance is furnished, the applicant therefor shall pay the expense thereof. [Approved March eleventh, 1913.]

ARTICLE 11.—SCHOOL FOR THE DEAF AND DUMB.

In Laws 1913, ch. 55 [section 243 herein] amending Laws of 1911, ch. 62, § 8, full power to manage, control and govern the school for the deaf and dumb, subject only to the provisions of said act of 1911, is given to the board of control. The board of trustees for that institution is abolished and the powers of the board are vested in the board of control in section 244.

§ 1680. Location. The school for the deaf and dumb as located by the constitution at Devils Lake shall continue to be the institution for the support and education of the deaf and dumb children of the state. [R. C. 1905, § 1133; 1890, ch. 161, § 1; 1893, ch. 123, § 1; R. C. 1895, § 951.]

§ 1681. Board of trustees, how appointed. Such institution shall be under the supervision of a board of trustees consisting of five members, who shall be appointed by the governor by and with the advice and consent of the senate. At each biennial session of the legislative assembly the governor shall nominate and, by and with the advice and consent of the senate, appoint for the term of four years, trustees to fill vacancies occurring by the expiration of the term of office of those previously appointed, and the governor shall have power to fill all vacancies in the board which occur when the legislative assembly is not in session, and the members of such board shall hold their office for the term of four years commencing on the first Tuesday in April succeeding their appointment, and until their successors are appointed and qualified, except members appointed to fill vacancies during the recess of the legislative assembly, which members shall hold only until the first Tuesday in April succeeding the next regular session of the legislative assembly. [R. C. 1905, § 1134; 1890, ch. 161, § 2; 1891, ch. 133, § 2; 1893, ch. 122, § 1; R. C. 1895, § 952.]

See note immediately preceding section 1680.

§ 1682. Organization. Meetings. Such trustees shall meet in the city of Devils Lake. They shall choose from among their number a president and secretary, who shall hold office for two years, and until their successors are appointed and qualified. Three members of the board shall constitute a quorum for the transaction of business. Such board shall meet annually in the month of April and as often thereafter as may be deemed necessary for the proper transaction of business, upon the call of the president or secretary. [R. C. 1905, § 1135; 1890, ch. 161, § 3; R. C. 1895, § 953.]

See note immediately preceding section 1680.

§ 1683. Oath. Duties of officers of board. Each member of the board shall before entering upon his duties take and subscribe the oath required of other civil officers, which oath shall be filed in the office of the secretary of state. The president shall preside at all meetings of the board when present and in his absence a president pro tempore may be named to perform the duties of president. The secretary shall keep a correct record of the proceedings of the board and have charge, in trust for the institution, of all papers and records of the same. [R. C. 1905, § 1136; 1890, ch. 161, § 4; R. C. 1895, § 954.]

See note immediately preceding section 1680.

§ 1684. Board to direct disposition of moneys. The board shall direct the disposition of all moneys appropriated by the legislative assembly or received

from any other source for the benefit of such institution. [R. C. 1905, § 1137; 1890, ch. 161, § 5; R. C. 1899, § 955.]

See note immediately preceding section 1680.

§ 1685. Duties of board. Such board shall have general supervision of the institution, adopt rules for the government thereof, employ and fix the salaries of all employes, provide necessaries for the institution and perform other duties, not devolving upon the principal, necessary to render it efficient and to carry out the provisions of this article. [R. C. 1905, § 1138; 1890, ch. 161, § 6; 1893, ch. 123, § 2; R. C. 1895, § 956.]

See note immediately preceding section 1680.

§ 1686. Indebtedness limited. The board shall not create any indebtedness against such institution exceeding the amount appropriated by the legislative assembly for the use thereof. [R. C. 1905, § 1139; 1890, ch. 161, § 7; R. C. 1899, § 957.]

See note immediately preceding section 1680.

§ 1687. Compensation of members of board. The members of the board shall receive as compensation for their services three dollars per day for each day employed, and five cents per mile for each mile actually and necessarily traveled in attending meetings of the board, to be paid out of the state treasury upon vouchers of the board duly certified by the president and secretary thereof. [R. C. 1905, § 1140; 1890, ch. 161, § 8; 1893, ch. 123, § 3; R. C. 1899, § 958.]

See note immediately preceding section 1680.

§ 1688. Fee for nonresident children. Deaf and dumb children, not residents of this state, of suitable age and capacity, shall be entitled to an education in such school on payment to the state treasurer of the sum of one hundred and eighty dollars per annum, in advance, but such children shall not be received to the exclusion of children of this state. [R. C. 1905, § 1141; 1890, ch. 161, § 9; R. C. 1899, § 959.]

§ 1689. Residents entitled to education free. Each deaf and dumb person, who is a resident of this state, of suitable age and capacity, shall be entitled to receive an education in such institution at the expense of the state. [R. C. 1905, § 1142; 1890, ch. 161, § 10; R. C. 1899, § 960.]

§ 1690. Accounts for clothing, how collected. When the pupils of such institution are not otherwise provided or supplied with suitable clothing, they shall be furnished therewith by the principal who shall make out an account thereof in each case against the parent or the guardian, if the pupil is a minor, and against the pupil if he has no parent or guardian or if he has attained the age of majority; which account shall be certified to be correct by the principal, and when so certified such account shall be presumed correct in all courts. The principal shall thereupon transmit such account by mail to the county treasurer of the county from which the pupil so supplied shall have come; and such treasurer shall proceed at once to collect the amount by suit in the name of his county, if necessary, and pay the same into the state treasury. The principal shall at the same time remit a duplicate of such account to the state auditor, who shall credit the same to the account of the school and charge it to the proper county; provided, that if it shall appear by the affidavit of three disinterested citizens of the county, not of kin to the pupil, that such pupil or his parents would be unreasonably oppressed by such suit, then such treasurer shall not commence such action, but shall credit the same to the state on his books and report the amount of such account to the board of county commissioners of his county, which board shall levy a sufficient tax to pay the same to the state and cause the same to be paid into the state treasury. [R. C. 1905, § 1143; 1890, ch. 161, § 12; R. C. 1899, § 962.]

§ 1691. Transportation of indigent persons, how paid. The board of county commissioners shall order to be paid the expenses of transportation to and from such institution of any indigent deaf and dumb children entitled to admission thereto, and they shall, at the time of levying other taxes, levy a

tax sufficient to reimburse the county therefor. In order to avoid long delay in transporting indigent children to and from the institution, the principal may, upon correspondence with the auditor of such county, pay such transportation and forward to such county auditor an itemized statement of the expenses. The board of county commissioners shall order the county treasurer to draw his warrants for such amount in favor of the principal of the institution, who shall account for such money as provided by law. [R. C. 1905, § 1144; 1890, ch. 161, § 13; 1893, ch. 123, § 4; R. C. 1895, § 963.]

§ 1692. Faculty. Duties of principal. The officers of the institution shall be a principal and a matron. The principal shall be a capable person, skilled in the sign language and all the methods in use in educating the deaf, and shall have knowledge of the wants and requirements of the deaf in their proper training and instruction. The principal and matron must reside at the institution. The principal shall receive a salary of not less than fifteen hundred dollars per annum. The principal shall annually make to the board of trustees a written report stating in full the true condition of the educational, the domestic and the industrial departments of the institution and his action and proceedings therein, which report shall be embraced in the report of the trustees to the governor. He shall keep and have charge of all necessary records and registers of each department and have the supervision of teachers, pupils and servants and perform such other duties as the board may require. He may recommend and with the approval of the board employ all assistants needed therein. He shall have special charge of the male pupils, out of school hours, and shall furnish them with employment about the premises or in some trade to which they are adapted when such trades have been organized and established at the institution by the trustees and provision for their maintenance made by the legislative assembly. The proceeds and products arising from the labor and employment of the pupils shall inure to the use and benefit of the institution. [R. C. 1905, § 1145; 1890, ch. 161, § 14; 1893, ch. 123, § 5; R. C. 1895, § 964.]

See note immediately preceding section 1680.

§ 1693. Duty of matron. The matron of the school shall have control of the internal arrangement and management of the institution and of the female pupils, out of school hours. She shall instruct the female pupils in the domestic arts or in some trade to which they are adapted, under the direction of the principal. [R. C. 1905, § 1146; 1890, ch. 161, § 15; R. C. 1895, § 965.]

§ 1694. Board to make biennial reports. The board of trustees shall on or before the fifteenth day of November preceding each regular session of the legislative assembly make a full and complete report to the governor, showing:

1. A statement of the financial condition of the institution from the date of the last report, giving in detail the amount of moneys received from all sources and the amount expended.
2. The value of real estate and buildings at the date of the last report and the cost of improvements made, if any, since such report.
3. The number of pupils in attendance, their names, ages, residences, and cause of deafness; also the number that have entered the institution, and the number of those who have left since the last report.
4. The number and cause of deaths, if any, which have occurred in the institution since the last report.
5. The improvement, health and discipline of the pupils.
6. The names of the officers, teachers and servants employed.
7. All other needful information touching such matters as may be deemed of interest.
8. Such recommendations as may be deemed needful. [R. C. 1905, § 1147; 1890, ch. 161, § 16; R. C. 1899, § 966.]

See note immediately preceding section 1680. And as to reports to the governor, see sections 95, 97, 98, 633.

§ 1695. Disposition of money received. All money that shall arise from the interest received on all moneys derived from the sale of lands hereinbefore or that may hereafter be appropriated for said school for the deaf and dumb, including all money that may be received from the renting of said land and all moneys that may be hereafter appropriated for said school for the deaf and dumb, by the state of North Dakota, including all money raised in any other manner or donated to said school, shall be deposited with the state treasurer, to be kept by him in a separate fund, which shall be known as the school for the deaf and dumb fund, and be used exclusively for the benefit of said school for the deaf and dumb as may be herein or hereafter provided. [R. C. 1905, § 1148; 1897, ch. 72, § 2; R. C. 1899, § 966b.]

§ 1696. Books open to inspection. Every duty and contract to be performed by said trustees must receive the approval of the majority of the board in regular session duly called, in order to make binding and valid. All proceedings of said board shall be recorded in a book kept for that purpose, and open to the inspection of any body on request. [R. C. 1905, § 1149; 1897, ch. 72, § 3; R. C. 1899, § 966c.]

See note immediately preceding section 1680.

§ 1697. Itemized vouchers. All money that may come into the treasury of the state of North Dakota, and credited to the school for the deaf and dumb, shall be paid out to the persons entitled thereto, and the state auditor is hereby directed to draw his warrant on the funds in the hands of the state treasurer belonging to said school for the deaf and dumb upon the written order of the said board of trustees, which order shall be accompanied by itemized vouchers for the full amount of such order; provided, no such order shall be issued until there is cash in the treasury with which to pay the same. [R. C. 1905, § 1150; 1897, ch. 72, § 4; R. C. 1899, § 966d.]

See note immediately preceding section 1680.

§ 1698. No compensation. The trustees shall receive no compensation for performing the duties herein prescribed. [R. C. 1905, § 1151; 1897, ch. 72, § 5; R. C. 1899, § 966e.]

See note immediately preceding section 1680.

ARTICLE 12.—BLIND ASYLUM.

Section 243 vests full power to manage, control and govern the North Dakota blind asylum in the board of control, subject only to the provisions of sections 236-283a. The board of trustees for that institution is abolished and the powers of the board are vested in the board of control in section 244. The office of treasurer of the institution is abolished in section 271.

§ 1699. Location and government. There is hereby established and located at Bathgate in Pembina county, a blind asylum, which shall be known by the name of the North Dakota blind asylum. The government and management of said asylum is hereby vested in a board of trustees consisting of five members, which shall be styled the board of trustees of the North Dakota blind asylum. [R. C. 1905, § 1152; 1895, ch. 24, § 1; R. C. 1899, § 967.]

See note immediately preceding section 1699.

§ 1700. Trustees, how appointed. Length of term. The members of the board shall be nominated by the governor, and, by and with the advice and consent of the senate, shall be appointed on or before the third Monday of February of each biennial session of the legislative assembly, for a period of four years from said date; provided, however, that the first board of trustees shall be appointed by the governor at once upon the taking effect of this article; provided, further, that the terms of the first board shall be, three members for the period of four years, and two members for the period of two years, the length of the term of the respective trustees to be designated by the governor in making the appointments. Such appointments shall be made by and with the advice and consent of the senate, when the legislative assembly is in session; otherwise, the trustees appointed shall qualify and hold

office until their successors are appointed and qualified. The governor shall have power to fill all vacancies which may occur in said board when the legislative assembly is not in session, and the members of said board shall hold their office until their successors are appointed and qualified as provided herein. [R. C. 1905, § 1153; 1895, ch. 24, § 2; R. C. 1899, § 968.]

See note immediately preceding section 1699.

§ 1701. Organization of board. Quorum. The governor shall cause to be issued to each of said trustees a commission, which shall be under the great seal of the state. At the first meeting of said board the members thereof shall take and subscribe the oath of office required of all civil officers and shall then proceed to elect a president, secretary and treasurer, but the treasurer need not be a member of the board. A majority of the trustees shall constitute a quorum for the transaction of business. The board shall require a bond of its treasurer and fix the amount thereof. [R. C. 1905, § 1154; 1895, ch. 24, § 3; R. C. 1899, § 969.]

See note immediately preceding section 1699.

§ 1702. Meetings of board. Compensation. The board shall hold its meetings at Bathgate and fix the time of holding the same; provided, there shall not be to exceed twelve regular meetings in each year. The members of the board shall receive as compensation for their services three dollars per day for each day employed, not to exceed twenty-four days in any one year, and five cents per mile for each mile actually and necessarily traveled in attending the meetings of the board, which sum shall be paid out of the state treasury on the vouchers of said board; provided, that until such time as the legislative assembly shall make an appropriation for the construction and maintenance of such asylum, or until there shall be derived from the interest on the proceeds of sales or of rents derived from the thirty thousand acres appropriated for this asylum, sufficient funds to construct and maintain such asylum, the sum of five thousand dollars, the trustees appointed under this article shall receive no compensation whatever, nor shall they issue their warrant upon the state treasury for any purpose whatever. [R. C. 1905, § 1155; 1895, ch. 24, §§ 4, 5; R. C. 1899, § 970.]

See note immediately preceding section 1699.

§ 1703. Proceeds from land grant. The thirty thousand acres of land donated by congress for the purpose of such blind asylum and appropriated by the constitution of this state therefor, and all moneys received from the interest and income derived from the sales of such lands or rents derived from the leasing of such lands, are hereby appropriated for the construction and maintenance of said asylum. [R. C. 1905, § 1156; 1895, ch. 24, § 6; R. C. 1899, § 971.]

§ 1704. By-laws and rules of regulation. The board shall direct the disposition of all moneys appropriated by the legislative assembly or the interest on all moneys that may be derived from the sale, or the rent derived from the leasing of land donated by congress to this state and by the constitution of the state appropriated for such asylum, and shall have supervision and charge of the construction of all buildings provided for or authorized by law for said asylum. Said board shall have power to enact by-laws and rules for the regulation of all its concerns not inconsistent with the laws of this state, to see that its affairs are conducted in accordance with the requirements of law; to provide employment and instruction for the inmates; to appoint a superintendent, a steward, a matron, a teacher or teachers, and such other officers as in its judgment the wants of the institution may require and prescribe their duties; to exercise a general supervision over the institution, its officers and inmates, fix the salaries to be paid to the officers and to order their removal upon good cause. [R. C. 1905, § 1157; 1895, ch. 24, § 7; R. C. 1899, § 972.]

See note immediately preceding section 1699.

§ 1705. Reports, when made. The board shall make a report to the governor on or before the last Monday in December next preceding each biennial session of the legislative assembly, containing a financial statement showing the condition of all funds appropriated for the asylum; also the money expended and the purpose for which the same was expended in detail; also showing the condition of the institution generally. [R. C. 1905, § 1158; 1895, ch. 24, § 8; R. C. 1899, § 973.]

See note immediately preceding section 1699. As to reports to the governor, see sections 95, 97, 98, 633.

§ 1706. Instruction of blind children. Until otherwise provided the governor is hereby authorized to contract with the state of South Dakota, or with the state of Minnesota, for the care and instruction of blind children of school age, and shall authorize the state auditor to issue warrants upon the state treasury for that purpose. [R. C. 1905, § 1159; 1899, ch. 86; R. C. 1899, § 973a.]

ARTICLE 13.—CARE OF BLIND CHILDREN.

§ 1707. Board of control to make provision. Until there shall have been established by law in this state an institution for the care, maintenance and instruction of blind children under school age the board of control of state institutions shall have power to provide for such care, maintenance and instruction of such children residing in this state in a suitable institution inside or without the state, in any case where by reason of lack of means or other cause the parent or parents of such children may be unable to properly care for, maintain and instruct them until they reach school age.

§ 1708. Board of control may contract with suitable institution. For the purpose of providing such care, maintenance and instruction, the said board of control shall have power to contract with any suitable institution for the care, maintenance and instruction of such children and to provide for their transportation to and from the same.

ARTICLE 14.—INSTITUTION FOR FEEBLE MINDED.

Section 243 transfers to the board of control full power to manage, control and govern the school for the feeble-minded, subject only to the provisions of sections 236-283a. The board of trustees for that institution is abolished and the powers of the board are vested in the board of control in section 244. The office of treasurer of the institution is abolished in section 271.

§ 1709. Location. There shall be located and permanently maintained at or near the city of Grafton, in the county of Walsh, an institution for the feeble minded, upon the grounds conveyed by the United States of America to the state of North Dakota for that purpose, to be known and designated as "the institution for feeble minded." [R. C. 1905, § 1116; 1903, ch. 108, § 1.]

§ 1710. Board of trustees. Said institution shall be controlled by a board of five trustees who shall be appointed by the governor, by and with the advice and consent of the senate, for the term of four years each, and until their successors are appointed and qualified; provided, however, that of the first board of trustees appointed under this article three shall be appointed for the term of four years and the other two for the term of two years. All vacancies occurring in said board shall be filled by appointment in like manner as aforesaid, to fill the unexpired term. [R. C. 1905, § 1161; 1903, ch. 108, § 2.]

See note immediately preceding section 1709.

§ 1771. Term of office. Such board of trustees shall annually elect from among their number a president and secretary, who shall hold office for two years and until their successors are chosen and qualified. Three of said trustees shall constitute a quorum, and shall meet annually in the month of April and as often thereafter as may be deemed necessary for the proper

transaction of business, upon the call of the president or secretary. [R. C. 1905, § 1162; 1903, ch. 108, § 3.]

See note immediately preceding section 1709.

§ 1712. Duties. Said trustees shall have the general management and superintendency of said institution; shall prescribe all rules and regulations for the government thereof, and the admission of pupils thereto, and generally perform all acts necessary to render the said institution efficient for the purposes for which the same is established, to wit: For the relief and instruction of the feeble minded and for the care and custody of the epileptic and idiotic of the state, and they may introduce and establish such trades and manual industries as in their judgment will best train their pupils for future self-support. [R. C. 1905, § 1163; 1903, ch. 108, § 4.]

See note immediately preceding section 1709.

§ 1713. Appointment of superintendent. Such board shall appoint a superintendent of said institution who shall be a physician skilled in caring for, and in instructing the class of unfortunates to be provided for by this article. Such superintendent shall name all the subordinate officers, and such nominations shall be confirmed or rejected by the board. [R. C. 1905, § 1164; 1903, ch. 108, § 5.]

See note immediately preceding section 1709.

§ 1714. Who may receive benefits of school. All feeble minded persons residents of this state, who, in the opinion of the superintendent, are of suitable age and capacity to receive instruction in the institution for feeble minded, and whose defects prevent them from receiving proper training in the public schools of the state, and all idiotic and epileptic persons residents of this state, may be admitted to and receive the benefits of the institution, subject to payment of the sums hereinafter provided, and to such rules and regulations as may be made by the board of control; provided, however, that any inmate of such institution shall not be removed therefrom, except upon a written request of the parent, parents, guardian or custodian of such inmate, which said request must receive the approval of the superintendent before such inmate can be removed. But any feeble minded person who is offensive to the public peace or to good morals, and who is a proper subject for classification and discipline in the institution, may be committed, on pursuing the same course of legal commitment as govern admissions to the state hospital for the insane. Such commitment shall comply with such rules and regulations as may be made by the board of control, and shall be accompanied by the certificate of indigence, as provided in chapter 165 of the Laws of 1911 [constituting, as amended, sections 1717 and 1718 herein]. [1913, ch. 166; 1909, ch. 213; 1907, ch. 237; R. C. 1905, § 1165; 1903, ch. 108, § 6.]

See note immediately preceding section 1709.

§ 1715. Inmate may be deported, when. Whenever it shall be found by the board of trustees of the institution for feeble minded that the parent or guardian of any inmate, if legally chargeable with the support of such inmate, shall have removed from the state and become a resident of another state or county, such board shall have authority to send such inmate, at the expense of the state, to the place where such inmate belongs in every case where the place of residence of his parent or guardian can be ascertained. The superintendent of such institution shall cause such inmate to be conveyed to the place of his parent's or guardian's residence, and shall be entitled to be reimbursed in the amount of the actual expense thereof out of the state treasury upon the presentation of his bill therefor, audited and certified to by the board of trustees. There is hereby appropriated out of any moneys in the state treasurer's hands, not otherwise appropriated, a sum sufficient to carry out the provisions of this section. [1909, ch. 212.]

See note immediately preceding section 1709.

§ 1716. Duties of officers. The president shall preside at all meetings of the board, when present, and in his absence a president pro tempore may be

chosen to perform the duties of president. He shall sign all contracts on behalf of the board and all orders upon the treasurer. The secretary shall countersign all contracts and orders upon the treasurer and shall keep a correct report of the proceedings of the board, and shall have charge in trust for the institution of all papers and records of the same. Such board shall appoint a treasurer who may or may not be one of their number, as they deem best, as provided in section 1808. [R. C. 1905, § 1166; 1903, ch. 108, § 7.]

See note immediately preceding section 1709.

§ 1717. Payments required. The person legally responsible for the support of any person heretofore or hereafter admitted to such institution shall pay to the support of said institution the sum of fifteen dollars (\$15.00) per month during all the time such person is an inmate of said institution, but if the person so liable be unable to pay such sum, for which inability the certificate of the county judge of the county from which said person is admitted shall be prima facie evidence, it is hereby made a charge upon the county, and upon the presentation of a certificate by the superintendent of said institution, certified to by the chairman of the board of control, to the auditor of said county, that such indigent person is a regular and proper inmate of such institution, said auditor shall immediately transmit to the superintendent of said institution his warrant as such auditor payable out of the county treasury for said sum of fifteen dollars, and a county auditor's warrant for a like amount each month thereafter so long as such person remains an inmate of said institution. [1913, ch. 167, § 1; 1911, ch. 165; 1907, ch. 237; R. C. 1905, § 1167; 1903, ch. 108, § 8; 1905, ch. 120.]

See note immediately preceding section 1709.

Appropriation of \$11,500 for maintenance of feeble minded institute should be supplemental to extent of payments under chapter 237, Laws 1907. *State ex rel. McCue v. Lewis*, 18 N. D. 125, 119 N. W. 1037.

§ 1718. Proceedings to charge county. Any inmate of said institution shall become a charge on the county from which such inmate came when the superintendent of the institution certifies to the county judge of such county under oath that he is no longer able to collect the monthly payment herein provided for from the legally responsible parent or guardian of such feeble minded inmate, and that he has exhausted all means at his disposal to compel payment. The county judge shall then issue a certificate of indigence, and upon the presentation thereof, certified to in the same manner as is provided for in section 1717 of this act, the county auditor shall immediately transmit to the superintendent of said institution his warrant as such auditor, and the sum of fifteen dollars (\$15) each month shall be paid to said superintendent as provided for in section 1717. [1913, ch. 167, § 2.]

§ 1719. Payments, how applied. The superintendent quarterly, during the months of January, April, July and October shall cover into the state treasury all sums so paid, the same to be credited to the maintenance fund of said institution. [1911, ch. 164; 1907, ch. 237; R. C. 1905, § 1168; 1903, ch. 108, § 9.]

See note immediately preceding section 1709.

§ 1720. Duties of trustees. The board of trustees shall take and hold in trust for said institution all lands or property hereafter granted, given, devised or conveyed to the institution for feeble minded, to be applied and used at Grafton aforesaid, and any moneys now or hereafter appropriated or intrusted to said institution may be drawn at any time from the state treasury upon the order of the board of trustees, on the presentation of proper vouchers to the state auditor. [R. C. 1905, § 1169; 1903, ch. 108, § 10.]

See note immediately preceding section 1709.

§ 1721. Officers to report, when. On or before the first day of November, in each even numbered year, or oftener if required, the superintendent, secretary and treasurer shall render to the board of trustees full and complete reports, accompanied by such recommendations as may seem to them wise and proper, and biennially, and on or before the first day of December, pre-

ceding the regular sessions of the legislature, said board of trustees shall furnish the governor a printed report of said institution for the two years ending on the preceding June thirtieth. Said report shall contain such matters as are of interest to the institution, with reports of the superintendent, such as is common from like institutions; with a detailed statement of the disbursements. The state authorities shall print and deliver to the proper officers for the use of the legislature and state officers, five copies for each, and shall deliver to the officers of such institution the number estimated by them to be necessary for the use thereof, not to exceed five for each member enrolled therein. [R. C. 1905, § 1170; 1903, ch. 108, § 11.]

See note immediately preceding section 1709.

As to reports to the governor and the contents thereof, see sections 95, 97, 98, 633.

§ 1722. Compensation. Each member of the board shall receive as full compensation for his services as such trustee, three dollars per day for each day necessarily and actually employed in his duties as such trustee, together with five cents per mile for every actual and necessary mile traveled in going to and returning from the place of meeting of said board; provided, however, that the secretary and treasurer shall each receive for his services annually a sum not to exceed fifty dollars, as may be allowed by the board. [R. C. 1905, § 1171; 1903, ch. 108, § 12; 1905, ch. 120.]

See note immediately preceding section 1709.

ARTICLE 15.—FLORENCE CRITTENDEN HOME.

§ 1723. Declared a charitable institution. The Florence Crittenden home, located at Fargo, is hereby declared to be one of the charitable institutions of the state of North Dakota and as such entitled to receive aid from the general fund of the state for the support of the poor therein. [1909, ch. 35, § 1.]

See section 243.

§ 1724. Appropriation. There is hereby annually appropriated the sum of three thousand dollars to such Florence Crittenden home, located at Fargo, for the purpose of assisting in its support and maintenance. [1909, ch. 35, § 2.]

ARTICLE 16.—INDUSTRIAL SCHOOL.

§ 1725. Name and objects. That the institution known as the industrial school and school for manual training, located at Ellendale, Dickey county, North Dakota, be henceforth designated the state normal and industrial school, the object of such school being to provide instruction in a comprehensive way in wood and iron work and the various other branches of manual training, cooking, sewing, modeling, art work, and the various other branches of domestic economy as a co-ordinate branch of education, together with mathematics, drawing and the other necessary school studies, and to prepare teachers in the science of education and the art of teaching in the public schools, with special reference to manual training. [1907, ch. 241; R. C. 1905, § 1172; 1897, ch. 89, §§ 1, 2; R. C. 1899, § 974.]

§ 1726. Endowment. All proceeds accumulating in the interest and income fund arising from the sale or leasing of all lands granted or hereafter to be granted by the state of North Dakota or by the constitution of the state of North Dakota for the said industrial school, are hereby pledged for the establishment and maintenance of said industrial school. [R. C. 1905, § 1173; 1897, ch. 89, § 3; R. C. 1899, § 975.]

§ 1727. Management. The management and government of such school shall be vested in a board of trustees, consisting of five members, two of whom shall be residents of Dickey county, to be known as the board of trustees of the industrial school, and to be appointed as provided in this section. The members of the board shall be nominated by the governor and by and with the

consent of the senate, shall be appointed on or before the third Monday in February of each biennial session of the legislative assembly, for a period of four years from said date; provided, however, that the first board of trustees shall be appointed by the governor at once upon the taking effect of this article; and provided, further, that the term of the first board shall be, three members for a period of four years and two members for a period of two years, the length of the term of the respective trustees to be designated by the governor in making the appointments. Such appointments shall be made by and with the consent of the senate, when the legislative assembly is in session, otherwise the trustees appointed shall qualify and hold office until their successors are appointed and qualified. The governor shall have power to fill all vacancies which may occur in said board when the legislative assembly is not in session, and the members of said board shall hold their office until their successors are appointed and qualified as provided herein. [R. C. 1905, § 1174; 1897, ch. 89, §§ 4, 5; R. C. 1899, § 976.]

§ 1728. Meetings of board. Compensation. The board shall hold its meetings at the city of Ellendale, in Dickey county, and fix the time for holding the same. They shall not hold to exceed six regular meetings each year; provided, that the president of the board shall have power to call special meetings, whenever in his judgment it becomes necessary. At their first meeting they shall proceed to elect a president and a secretary, but the secretary need not be a member of the board of trustees, and at said meeting they shall adopt a seal for said state industrial school. A majority of the board shall be a quorum. Each trustee and the secretary shall receive three dollars per day for each day necessarily employed in attendance upon sessions of the board, and five cents per mile for each mile necessarily traveled, to be paid on presentation of proper vouchers containing an itemized statement of the number of days in attendance and miles actually traveled as above provided, duly verified by his oath and approved by the president and secretary of the board, and the state auditor shall audit such claims and draw his warrants upon the state treasurer for the amounts so allowed. [R. C. 1905, § 1175; 1897, ch. 89, §§ 6, 7; R. C. 1899, § 977.]

§ 1729. Oath. Bond. Plans and specifications. Before entering upon the duties of his office each member of said board of trustees shall take and subscribe an oath as follows: "I do solemnly swear that I will support the constitution of the United States and the constitution of the state of North Dakota, and will faithfully discharge the duties of board of trustees of the state industrial school according to the best of my ability; that I have not received and will not knowingly and intentionally, directly or indirectly, receive any money or other consideration from any source whatever for any vote or influence I may give or withhold or for any other official act I may perform as such trustee, except as herein provided." He shall also execute a bond in the penal sum of three thousand dollars, for the use and benefit of the state of North Dakota, with two or more good and sufficient sureties to be approved by the governor, and be filed with the secretary of state, conditioned upon the faithful performance of his duties and the honest and faithful disbursements of and accounting for all moneys which may come into his hands under the provisions of this article. The members of said board having taken the foregoing oath and executed the bond as aforesaid are hereby empowered and required to cause to be prepared suitable plans and specifications by a competent architect. Such plans shall contemplate the erection of a building or buildings which will accommodate not less than one hundred nor more than five hundred students, and shall be accompanied by specifications and by a detailed estimate of the amount required and description of all material and labor required for the erection and full completion of the building or buildings; and no plan shall be adopted that contemplates the expenditure of more money for its completion than the amount reasonably

necessary to carry out the object of said institution. [R. C. 1905, § 1176; 1897, ch. 89, § 8; R. C. 1899, § 978.]

§ 1730. Superintendent of construction. Proposals for building. The said board of trustees shall employ the architect whose plans and specifications are accepted to act as superintendent of construction, who shall receive for such plans and specifications and for superintending construction such pay as the board by agreement may determine, which pay shall not exceed an amount equal to five per cent of the estimated cost of said building. Whenever the said plans and specifications shall have been approved and adopted by a majority of the board of trustees they shall cause to be inserted in at least two of the daily newspapers published in the state of North Dakota, and having a general circulation therein an advertisement for sealed bids for the construction of the buildings herein authorized, and they shall furnish a printed copy of this article, and a copy of the plans and specifications to any person or persons applying therefor; provided, said trustees may advertise as aforesaid whenever there shall be a sufficient amount of money to the credit of said industrial school with which to construct all or any part thereof deemed expedient by said trustees to erect or construct; provided, further, that said building or buildings shall be erected on the piece or parcel of land at or near the city of Ellendale, in Dickey county, donated by the citizens of said city, and now held in fee simple by the state of North Dakota. No trustees or officers of said industrial school shall be in any way interested in any contract for the erection of said building or buildings or furnishing any material for said buildings, and if any such officer be so interested he shall be deemed guilty of a misdemeanor and on conviction be fined in any sum not exceeding five thousand dollars. [R. C. 1905, § 1177; 1897, ch. 89, §§ 9, 10, 11; R. C. 1899, § 979.]

§ 1731. Treasurer to keep funds. Accounts, how audited. All moneys that may accrue from the interest and income derived from the renting and sale of lands hereinbefore appropriated and all moneys that may hereafter be appropriated by the legislative assembly of North Dakota, including all moneys raised in any other manner for said school, shall be deposited with the state treasurer, to be by him kept in a separate fund, which shall be known as the state industrial school fund; and such funds shall be used exclusively for the benefit of said school, as may be herein or hereafter provided. The board of trustees of the state industrial school shall audit all accounts against the funds appropriated by the legislative assembly of the state of North Dakota, or held by the state for the use of the state industrial school, and the state auditor shall issue his warrant upon the state treasurer for the amount of all accounts which have been so audited and allowed by the board of trustees and attested by the president and secretary of said board. The board of trustees of the state industrial school shall direct the disposition of all moneys appropriated, or that may hereafter be appropriated by the legislative assembly of the state of North Dakota, or may hereafter accumulate in any manner in the state industrial school fund. The board shall have the power to receive all donations, gifts and bequests that may be offered or tendered to or for the benefit of such school, and dispose of the same. All moneys coming into the hands of such board shall be immediately covered into the state treasury to the credit of the state industrial school fund. [R. C. 1905, § 1178; 1897, ch. 89, §§ 13, 14, 15, 16; R. C. 1899, § 981.]

§ 1732. Faculty. The board of trustees shall have power to employ a president and necessary teachers, instructors and assistants to conduct such school, and to prescribe their respective duties and to fix the salaries of such employes. They shall have power to remove the president, instructors and assistants and to fill all vacancies. The faculty shall consist of the president, teachers and instructors, and it shall pass all needful rules and regulations for the government and discipline of the school and all such rules and

regulations as are necessary for the preservation of morals, decorum and health. [R. C. 1905, § 1179; 1897, ch. 89, §§ 17, 18; R. C. 1899, § 982.]

§ 1733. **Military instruction required.** The state normal-industrial school is authorized and required to give theoretical and practical instruction in military science under such rules and regulations as the faculty of said institution may prescribe. [1909, ch. 167, § 1.]

§ 1734. **Inspection by adjutant-general.** Such company or companies as may be organized and drilled at said institution shall be subject to regular inspection by the adjutant-general of the state of North Dakota, or by an officer detailed for that purpose. [1909, ch. 167, § 2.]

§ 1735. **Muskets to be loaned.** The adjutant-general is hereby authorized to loan to said state normal-industrial school fifty muskets and accoutrements, or such part thereof as may be available, for efficiently organizing and drilling said company or companies, the adjutant-general to prescribe the terms upon which such loan may be made. [1909, ch. 167, § 3.]

§ 1736. **Appropriation.** There is hereby appropriated out of the state treasury for said state normal-industrial school from any moneys not otherwise appropriated, the sum of one hundred fifty dollars annually for the purchase of such stores as may be necessary for target practice. [1909, ch. 167, § 4.]

§ 1737. **Reports.** The faculty shall make an annual report to the board of trustees on or before the first Monday of November of each year, showing the condition of the school and containing such recommendations as the welfare of the institution shall demand. The board of trustees shall make a report to the governor on or before the fifteenth day of November next preceding each biennial session of the legislative assembly, containing the several reports of the faculty herein provided for, and showing the condition of the funds appropriated for the school, the money expended and the purpose for which the same was expended in detail, and showing the number of students in attendance, the work accomplished by them, and the condition of the school in general. [R. C. 1905, § 1180; 1897, ch. 89, §§ 19, 20; R. C. 1899, § 983.]

As to reports to the governor, see sections 95, 97, 98. As to reports in general, see section 633.

ARTICLE 17.—LEASING PORTIONS OF CAMPUSES OF EDUCATIONAL INSTITUTIONS.

§ 1738. **Power to lease granted.** The board of trustees or directors of the state university and school of mines, the state agricultural college, the state industrial school, the North Dakota academy of science, the state school of forestry and the various state normal schools and such other state institutions of learning of the state of North Dakota as may hereafter be established, shall have power to grant leases of land of portions of the campuses of said institutions to student and graduate student organizations for the purpose of erecting and maintaining thereon student club-houses or dormitories; provided, that said organizations shall first have incorporated under the laws of the state of North Dakota and shall have submitted to the board of trustees or directors plans and specifications of the building proposed to be erected thereon; and, provided, further, that in relation to the conduct and behavior of said organizations and their members in and about said premises and the use to be made of such buildings and premises said organizations and their members shall, in each instance, be subject to the management and control of the board of trustees or directors, and the faculty of the institution upon whose lands said lease is granted. Such premises and improvements thereon shall at all times remain under the absolute and exclusive control of the state, and the state or the board of trustees or directors of the institution upon whose lands such lease shall be granted may at any time revoke the same, and any such lease as may have been granted by any such board to any

such organization for such purpose prior to the passage of this act is hereby legalized and must be considered as binding on the parties thereto, in so far as the same shall be in accordance with the provisions of this section and the constitution of this state. [1909, ch. 107.]

ARTICLE 18.—APPROPRIATION REQUESTS TO BE PRINTED.

§ 1739. **Required of boards.** The boards of trustees of the state university at Grand Forks, the agricultural college at Fargo, the state normal schools, the normal and industrial school at Ellendale, the science school at Wahpeton, and the school of forestry at Bottineau, shall prepare and submit to the state board of education on or before November fifteenth preceding each biennial session of the legislature, in duplicate form, a carefully itemized statement of the needs of the institutions under the direction of the above boards for the biennial period. [1913, ch. 64, § 1.]

See sections 708-710.

§ 1740. **Contents of statements.** (a) The statements shall show estimated receipts from all sources, and the estimated expenditure for maintenance, not including expenditures for buildings and other permanencies for the biennial period.

(b) The statements shall also show the appropriations necessary for buildings, other permanencies, such maintenance as is needed over and above estimated income, and the specific amounts asked for in the form of appropriations for such purposes.

(c) It is further provided that the legislature shall make no appropriations for purposes not presented in the general requests of the institutions at the time required in section 1739. [1913, ch. 64, § 2.]

§ 1741. **Publication.** Upon receipt of these statements from the boards enumerated in section 1739 the governor shall immediately have the same printed in one pamphlet and distributed to members and members-elect of the legislature not later than December fifteenth. [1913, ch. 64, § 3.]

§ 1742. **Legislation.** All persons, institutions and educational interests shall so far as possible submit to the state board of education on or before November fifteenth preceding the assembling of the legislative assembly any desired legislation affecting education or amendments to the existing school laws, which, together with any comments on the same that the board of education may care to make, shall be published, and copies thereof presented to the members of the legislature as hereinbefore provided in section 1741. [1913, ch. 64, § 4.]

ARTICLE 19.—EDUCATIONAL TAX.

§ 1743. **Maintenance of state educational institutions.** For the purpose of providing for the maintenance of the state university and school of mines at Grand Forks, the agricultural college at Fargo, the state normal school at Valley City, the state normal school at Mayville, the state normal school at Minot, the school for the deaf at Devils Lake, the school of forestry at Bottineau, the North Dakota academy of science at Wahpeton, and the normal industrial school at Ellendale, as a part of the public school system of this state, there is hereby levied upon all taxable property in the state, real and personal, an annual tax of one and one-eighth mills of each dollar of the assessed valuation of such property in each and every year thereafter. [1913, ch. 148, § 1; 1907, ch. 107, § 1; R. C. 1905, § 838; 1901, ch. 156, § 1.]

R. C. 1905, §§ 838, 839, 840 and 841 were expressly repealed in Laws 1911, ch. 266, § 310, but are here amended and re-enacted in sections 1743, 1744, 1745 and 1746, respectively.

§ 1744. **County auditor shall calculate amount of levy.** The county auditor of each county shall at the time of making the annual tax list in his county calculate the amount of the levy hereinbefore provided for upon each and every item of property assessed in his county as it appears upon the last

assessment roll, and extend the same upon such tax list in a column to be provided for that purpose, and such tax shall thereupon be calculated and paid over to the state treasurer the same as other state taxes. [1913, ch. 148, § 2; 1907, ch. 107, § 2; R. C. 1905, § 839; 1901, ch. 156, § 2.]

§ 1745. **Taxes, how apportioned.** Such taxes so levied shall be apportioned by the state treasurer to the several institutions herein mentioned as follows: Thirty-three one-hundredths of a mill to the state university and school of mines at Grand Forks; twenty one-hundredths of a mill to the agricultural college at Fargo; fifteen one-hundredths of a mill to the state normal school at Valley City; twelve one-hundredths of a mill to the state normal school at Mayville; thirteen and one-half one-hundredths of a mill to the state normal school at Minot; six one-hundredths of a mill to the school for the deaf at Devils Lake; two one-hundredths of a mill to the school of forestry at Bottineau; four one-hundredths of a mill to the North Dakota academy of science at Wahpeton; seven one-hundredths of a mill to the industrial school at Ellendale; provided, that all moneys hereafter collected shall be apportioned as herein provided. [1913, ch. 148, § 3; 1907, ch. 107, § 3; R. C. 1905, § 840; 1901, ch. 156, § 3.]

§ 1746. **Moneys, how appropriated.** The moneys collected from the tax hereinbefore levied are hereby appropriated for the maintenance of the state university and school of mines at Grand Forks, the agricultural college at Fargo, the state normal school at Valley City, the state normal school at Mayville, the state normal school at Minot, the school for deaf and dumb at Devils Lake, the academy of science at Wahpeton, the school of forestry at Bottineau, and the normal industrial school at Ellendale. The moneys herein appropriated shall be used only for the payment of expense of maintenance of the several institutions specified. [1913, ch. 148, § 4; 1907, ch. 107, § 4; R. C. 1905, § 841; 1901, ch. 156, § 4.]

ARTICLE 20.—STATE HOSPITAL FOR THE INSANE.

See section 1755 and note thereto

§ 1747. **Location of.** The state hospital for the insane as now established and located at Jamestown, in the county of Stutsman, shall continue to be the hospital for the insane of this state, and shall be known by the name of "State Hospital for the Insane." [R. C. 1905, § 1181; 1885, ch. 68, § 1; R. C. 1895, § 984.]

§ 1748. **Board of trustees, appointment of. Vacancies.** Such hospital shall be governed by a board of trustees consisting of five members to be appointed by the governor as hereinafter provided, and the term of office of such trustees shall be four years, except as hereinafter provided, and shall commence on the first Tuesday of April next succeeding their appointment. The governor at each regular session of the legislative assembly shall nominate and, by and with the advice and consent of the senate, appoint the trustees of such hospital in the place of those whose term shall thereafter first expire, and such trustees shall hold their offices until their successors are appointed and qualified. The governor shall fill all vacancies in the board by appointment to extend to the first Tuesday of April succeeding the next regular session of the legislative assembly and at such session the governor shall nominate and, by and with the advice and consent of the senate, appoint some person to fill the vacancy for the remainder of the term. Not more than two members of the board shall be appointed from the same county. [R. C. 1905, § 1182; 1885, ch. 68, § 2; 1889, ch. 93, § 1; R. C. 1899, § 985.]

See section 1755 and note thereto.

§ 1749. **Sessions of board. Compensation of trustees.** The sessions of the board shall be held at the hospital and shall not in any one year exceed twenty-four days in the aggregate, but the governor may, when deemed necessary, authorize additional sessions. Each trustee shall receive three

dollars per day for each day necessarily employed in attendance upon sessions of the board and all necessary traveling expenses incurred therein, to be paid on the presentation of proper vouchers containing an itemized statement of the number of days' attendance and the money actually expended as above provided, duly verified by his oath and approved by the president or secretary of the board; and the state auditor shall audit such claims and draw his warrant upon the state treasurer for the amounts so allowed. [R. C. 1905, § 1183; 1889, ch. 93, §§ 3, 4; R. C. 1895, § 986.]

See section 1755 and note thereto.

§ 1750. Bond and oath of trustees. Each trustee shall, before entering upon the duties of his office, execute a bond to the state in the sum of five thousand dollars with two or more sureties to be approved as provided in section 662, conditioned for the faithful and impartial performance of his duties as such trustee; and he shall take and subscribe an oath to be indorsed upon his bond, which oath shall be the same as that required of other civil officers. [R. C. 1905, § 1184; 1889, ch. 93, § 1; R. C. 1899, § 987.]

See section 1755 and note thereto.

§ 1751. Object of hospital. The object of such hospital shall be to receive and care for all insane persons residing within the state who may be committed to its care in accordance with the provisions of this article, and to furnish all needed medical treatment, seclusion, rest, restraint, attendance, amusement, occupation and support which may tend to restore their health and recover them from insanity or to alleviate their sufferings. The board of trustees shall have power to discharge patients and to refuse additional applications for admission to such hospital when in its judgment the interests of the patients demand such discharge or refusal; and in the admission and retention of patients, curables and recent cases shall have preference over cases of long standing and violent, dangerous or otherwise troublesome cases shall have preference over those of an opposite description. [R. C. 1905, § 1185; 1885, ch. 68, § 3; R. C. 1895, § 988.]

See section 1755 and note thereto.

§ 1752. Trustees may take land. The board of trustees may take in the name of the state and hold in trust for the hospital any lands conveyed or devised, and any money or personal property given or bequeathed to be applied for any purpose connected with such institution; but it shall not have power to bind the state by any contract beyond the amount of the appropriation which may at the time have been made for the purpose expressed in the contract, nor to sell or convey any part of the real estate belonging to such hospital without the consent of the legislative assembly, except that it may release any mortgage or convey any real estate which may be held by it as security for any money or upon any trust, the terms of which authorize such conveyance. No trustee or officer of the hospital shall be either directly or indirectly interested in any contract for the purchase of building material, supplies or other articles for the use of the institution. The board shall provide and keep a seal upon which shall be inscribed the name of the hospital with such other words and devices as they may deem appropriate. [R. C. 1905, § 1186; 1885, ch. 68, § 4; R. C. 1899, § 989.]

See section 1755 and note thereto.

§ 1753. Officers of board. The board of trustees shall elect a president and secretary from its own number, whose term of office shall be one year, and until their successors are elected and qualified. The board shall keep a record of its proceedings at all meetings in a book to be kept for that purpose; and at its annual meeting next preceding the biennial session of the legislative assembly it shall make a report to the governor of the condition and wants of the hospital, which shall be accompanied with a full and accurate report of the superintendent, showing the annual cost per capita of the inmates, and the per cent of discharges and recoveries, together with a detailed account

of all moneys received and paid out; five hundred copies of which report shall be printed. [R. C. 1905, § 1187; 1885, ch. 68, § 6; R. C. 1895, § 990.]

See section 1755 and note thereto.

As to reports to the governor, see sections 95, 97, 98, 633.

§ 1754. Meetings of the board. The annual meeting of the board shall be held on the first Wednesday of September. Special meetings for the appointment or removal of officers, or for the transaction of general business may be held upon the written request of the president or of any three members of the board. Three members of the board shall constitute a quorum for the transaction of business. [R. C. 1905, § 1188; 1885, ch. 68, § 7; R. C. 1895, § 991.]

See section 1755 and note thereto.

§ 1755. Powers and duties of board. Salaries. The board of control shall have general control and management of the hospital, and shall make all by-laws, rules and regulations necessary for the government of the same, not inconsistent with the laws of the state. It shall appoint a superintendent who must be a physician of acknowledged skill and ability and a graduate of a reputable medical college. The superintendent shall appoint one or more assistant physicians who shall possess like skill and ability, and be a graduate of a reputable medical college; the board of control shall appoint a steward, also a matron, all of whom shall be styled the resident officers of the hospital, and who shall reside therein, and be governed by the laws and by-laws of the institution. The annual salaries of the resident officers shall be as follows: Superintendent, not to exceed four thousand dollars; matron, not to exceed nine hundred dollars; steward, not to exceed two thousand dollars; assistant superintendent, not to exceed two thousand dollars; assistant physician, not to exceed one thousand six hundred dollars; which said salaries shall be fixed by the board of control. [1913, ch. 58; R. C. 1905, § 1189; 1885, ch. 68, § 8; 1891, ch. 132, § 1; R. C. 1895, § 992; 1905, ch. 119.]

Section 243 transfers to the board of control full power to manage, control and govern the state hospital for the insane, subject only to the limitations therein mentioned. Section 244 abolishes the board of trustees of that institution and vests the powers possessed by the board of trustees in said board of control. Section 258 makes it the duty of the board of control to appoint the superintendent, and section 269 provides for appointments and discharges by him.

Section 1755 amends and re-enacts R. C. 1905, § 1189. Amendment of the latter section was vetoed in Laws 1911, ch. 334, because it would conflict with the board of control bill passed at the same session.

§ 1756. Monthly visits by one trustee. One or more of the trustees shall visit the hospital monthly, and the president of the board, with the superintendent, shall make monthly examinations of the accounts of the steward and certify their approval on the same page with his monthly balance. [R. C. 1905, § 1190; 1885, ch. 68, § 9; R. C. 1899, § 993.]

See section 1755 and note thereto.

§ 1757. Superintendent. Bond and oath of. The superintendent of the hospital shall, before entering upon the duties of his office, give a bond to the state in the penal sum of twenty-five hundred dollars, conditioned for the faithful and impartial discharge of the duties of his office according to law, and the by-laws of such hospital, to be approved by the board, and take and subscribe an oath faithfully and diligently to discharge the duties required of him by law and the by-laws of the board of trustees. He shall be the chief executive officer of the hospital and shall have the entire control of the medical, moral and dietetic treatment of the patients; he shall employ all employes and assistants necessarily connected with the institution below the grade designated as officers in section 1755, and he may discharge any such employe at will and suspend any resident officer of the hospital, except the steward, being responsible to the board for the proper exercise of that power. [R. C. 1905, § 1191; 1885, ch. 68, § 10; R. C. 1895, § 994.]

See section 1755 and note thereto.

§ 1758. Duties of steward. The steward shall keep the accounts, pay those employed in and about the hospital, and have personal superintendence of

the farm, garden and grounds, and perform such other duties as may be assigned him by the by-laws, under the direction of the board of trustees; he shall purchase all supplies for the hospital wherever the best grade of articles in suitable quantities can be purchased at the lowest price, and, so far as practicable, in large rather than in small quantities; and shall, if in his judgment it can be done to advantage, advertise for proposals for staple articles and make contracts for the furnishing of the same in bulk or in quantity as may be needed for use. [R. C. 1905, § 1192; 1885, ch. 68, § 11; R. C. 1899, § 995.]

See section 1755 and note thereto.

§ 1759. New buildings. Whenever any additional building is erected or extensions, alterations or repairs are to be made in connection with such hospital, the board of trustees shall have authority to procure all necessary plans, drawings and specifications for such buildings, alterations or repairs; to advertise for proposals for the erection and completion thereof and to accept such bid as may seem to it most advantageous, the contractor in each case to give adequate security for the faithful performance of his contract; to appoint and fix the compensation of a building superintendent who shall superintend the work and perform such other duties in that respect as the board may require, and to discharge him; also to examine and certify to the correctness of his estimates and accounts for work under the contract, and of the superintendent and the employees. [R. C. 1905, § 1193; 1885, ch. 68, § 13; R. C. 1899, § 996.]

See section 1755 and note thereto.

§ 1760. Appropriations not to be diverted. No portion of any special appropriation for the erection of any building or for the doing of any work or for any purpose other than ordinary expenses shall be drawn from the state treasury in advance of the work done or the materials furnished, and only upon proper estimates thereof approved by the trustees, and no portion of any appropriation for any purpose shall be drawn from the treasury before it shall be required for the purpose for which it is made, and no appropriation which is or may be made for one purpose shall be drawn or used for any other purpose, and if at any time hereafter the sum appropriated by the legislative assembly for any specific purpose shall be found insufficient to complete and accomplish the purpose for which such appropriation is made, then no part of the sums so appropriated shall be expended or drawn from the treasury, nor shall any liability on the part of the state be created on account of such appropriation. [R. C. 1905, § 1194; 1885, ch. 68, § 14; R. C. 1899, § 997.]

§ 1761. Admission of nonresidents. The residents of other states or territories may be admitted to the state hospital for the insane upon payment of the first cost of such board and treatment; provided, that no resident of another state or territory shall be received or retained to the exclusion of any resident of this state. If the superintendent shall receive any money or goods for the purpose of furnishing extra attention and comfort to any patient he shall account for the same in an itemized statement to the board of trustees. [1907, ch. 137, § 2; R. C. 1905, § 1195; 1897, ch. 91; R. C. 1899, § 998; 1903, ch. 105, § 1.]

See section 1755 and note thereto.

§ 1762. Cost of treatment. How determined. The board of trustees of the state hospital for the insane shall from time to time fix the amount to be paid for the board, care and treatment of the patients, which shall not exceed the sum of fifteen dollars per month for residents of the state; provided, however, that all nonresidents shall pay the actual cost of care and treatment, and the amounts so fixed shall be the sum the state hospital for the insane shall be entitled to demand for keeping any patient, and the certificate to that effect, subscribed and sworn to by the superintendent, shall be evidence of the amount due as fixed. [1911, ch. 155; 1907, ch. 137, § 3.]

See section 1755 and note thereto.

§ 1763. Care of patients to be impartial. Exceptions. All patients in the hospital shall be regarded as standing on an equal footing; and the several patients, according to their different conditions of mind and body and their respective needs, shall be provided for and treated with equal care; provided, that if the relatives or immediate friends of any patient shall desire it and pay the expenses thereof, such patient may have special care and may be provided with a special attendant, as may be agreed upon with the superintendent. In such cases the charges for such special care and attendance shall be paid quarterly in advance. The relatives or friends of any patient in the hospital shall have the privilege of paying any portion or all of the expenses of any such patient therein, and the superintendent shall cause the account of such patient to be credited with any sums so paid. [R. C. 1905, § 1197; 1879, ch. 23, § 23; R. C. 1899, § 999.]

See section 1755 and note thereto.

§ 1764. Preference given in receiving patients. If at any time it becomes necessary, for want of room or other cause, to discriminate in the general reception of patients into the hospital, a selection shall be made as follows:

1. Cases of less than one year's duration.
2. Chronic cases of more than one year's duration, presenting the most favorable prospects for recovery, shall be next preferred.
3. Those for whom application has been longest on file, other things being equal, shall be next preferred.
4. When cases are equally meritorious in all other respects, the indigent are to be preferred. [R. C. 1905, § 1198; 1879, ch. 23, § 32; R. C. 1899, § 1000.]

§ 1765. Proceedings when patient escapes from hospital. If any patient shall escape from the hospital the superintendent shall cause immediate search to be made for such patient and if such patient cannot be found he shall cause notice of such escape to be forthwith given to the commissioners of insanity of the county where the patient belongs and if such patient is found in such county the commissioners shall cause him to be returned and shall issue their warrant therefor as in other cases, unless the patient shall be discharged. [R. C. 1905, § 1199; 1879, ch. 23, § 36; R. C. 1895, § 1001.]

§ 1766. Discharge of patients when cured. Any patient who is cured shall be immediately discharged by the superintendent. Upon such discharge the superintendent shall furnish the patient, unless otherwise supplied, with suitable clothing and a sum of money not exceeding twenty dollars, which shall be charged with the other expenses of such patient in the hospital. The relatives of any patient not susceptible of cure and not dangerous to be at large, shall have the right to take charge of and remove such patient on consent of the board of trustees, and during the interim between the meetings of the board the consent of two of the trustees shall be sufficient. [R. C. 1905, § 1200; 1879, ch. 23, § 37; R. C. 1899, § 1002.]

See section 1755 and note thereto.

§ 1767. Discharge of patients before cure. On application of the relatives or immediate friends of any patient in the hospital who is not cured and who cannot be safely allowed to go at liberty, the commissioners of insanity of the county where such patient belongs, on making provision for the care of such patient within the county as in other cases, may authorize his discharge therefrom; provided, that no patient who is under charge or conviction of homicide shall be discharged without order of the board of trustees. [R. C. 1905, § 1201; 1879, ch. 23, § 38; R. C. 1899, § 1003.]

See section 1755 and note thereto.

§ 1768. Discharge of patient without application. When any patient is discharged from the hospital by the authorities thereof, without application therefor, notice of the order of discharge shall at once be sent to the commissioners of insanity of the county where he belongs and the commissioners

shall forthwith cause him to be removed and shall at once provide for his care in the county, as in other cases, unless such patient is discharged as cured. And if the commissioners of insanity of such county fail or neglect to take and remove such patient so discharged within thirty days from the date of the order discharging him, and of the notice of the order so sent, such county shall be liable for and pay to the state the sum of two dollars per day for the care and keeping of such patient at the hospital during the time commencing at the expiration of thirty days after the date of such order and notice. It shall be the duty of the superintendent of the hospital to report all such delinquencies and the time of any patient so kept beyond such period of thirty days, giving the name thereof, the county where such patient belongs, the amount due from such county for such charge, to the governor, for the year ending on the thirtieth day of June each year. It shall be the duty of the state board of equalization to include and charge such amount so reported to each county so named, and the same shall be included and made a part of the tax levied against such county, in addition to the amount so levied by such board for state purposes. [R. C. 1905, § 1202; 1879, ch. 23, § 39; 1887, ch. 66, § 1; R. C. 1895, § 1004.]

See section 1755 and note thereto.

§ 1769. Attorney-general to bring suit, when. Upon the report of the superintendent provided for in the preceding section, it shall be the duty of the attorney-general to bring an action against the county so indebted, for the amount due the state, and any judgment obtained in such action may be enforced as other judgments against counties are enforced. [R. C. 1905, § 1203; 1887, ch. 66, § 2; R. C. 1899, § 1005.]

§ 1770. Superintendent not responsible for reception of patient, when. The warrant of the commissioners of insanity authorizing the admission of any person to the hospital as a patient, accompanied by a physician's certificate as provided by law, shall operate to shield the superintendent and other officers of the hospital against all liability to prosecution of any kind on account of the reception and detention of such persons in the hospital; provided, such detention shall be otherwise in accordance with the laws and by-laws regulating its management. [R. C. 1905, § 1204; 1879, ch. 23, § 43; R. C. 1899, § 1006.]

§ 1771. Hospital seal to be affixed. The superintendent shall affix the seal of the hospital to each notice, order of discharge, report or other paper required to be given or issued by him. [R. C. 1905, § 1205; 1879, ch. 23, § 44; R. C. 1899, § 1007.]

§ 1772. Board to furnish blanks to commissioners of insanity. The board of trustees of the hospital shall provide the commissioners of insanity of each organized county with such blanks as may be necessary to enable them to comply with the provisions of this article, and also with a copy of the by-laws of the hospital, when printed. [R. C. 1905, § 1206; 1879, ch. 23, § 46; R. C. 1899, § 1008.]

See section 1755 and note thereto.

§ 1773. Additional buildings. To provide for the erection of necessary additional buildings for the hospital for the insane at Jamestown and other needed and necessary improvements and the proper equipment of such buildings, the board of trustees of the state hospital for the insane may issue bonds for such sum or sums of money as can actually be used in the construction of such necessary additional buildings, not exceeding the sum of fifty thousand dollars; said bonds shall be in denominations of one thousand dollars each, shall bear interest at a rate not exceeding six per cent per annum, and shall be payable in twenty years from the date of issue, from the interest and income fund accumulating from the sale, rental or lease of lands donated to the said hospital for the insane by article 19, section 215, division 8, of the constitution of the state of North Dakota, or from the rental or lease of such lands. The

interest on such bonds shall be paid annually on the first day of January of each year, and shall be payable from the interest and income accumulating from the sale, rental or lease of lands apportioned to the institution; provided, if at any time there shall not be sufficient money to pay such interest there is hereby appropriated out of the state treasury, out of funds not otherwise appropriated, a sum sufficient to meet such interest; provided, further, that a sufficient amount of funds accumulating in the interest and income fund for sale or rental of land or lands appropriated to the hospital for the insane shall be used and applied solely for the payment of interest on such bonds and for the creation of a sinking fund with which to pay such bonds on maturity. The state board of equalization, at the time the other taxes are levied, shall levy a sufficient tax annually to pay the interest on such bonds as the same shall become due, which tax shall be collected in the same manner that other state taxes are collected. [R. C. 1905, § 1207; 1899, ch. 99, § 1; R. C. 1899, § 1008a.]

See section 1755 and note thereto.

§ 1774. **Moneys, where deposited.** All moneys that may arise or be derived from the sale, rental or lease of lands appropriated to the hospital for the insane shall be deposited with the state treasurer, to be used exclusively for the benefit of the hospital for the insane. [R. C. 1905, § 1208; 1899, ch. 99, § 2; R. C. 1899, § 1008b.]

ARTICLE 21.—SOLDIERS' HOME.

§ 1775. **Location of.** The soldiers' home as located and established at the city of Lisbon, in the county of Ransom, shall continue as such at said place. [R. C. 1905, § 1209; 1890, ch. 165, § 1; R. C. 1895, § 1009.]

§ 1776. **Object of.** The object of the soldiers' home shall be to provide a home and subsistence for all honorably discharged soldiers, sailors and marines who have served in the army or navy of the United States, and who are disabled by disease, wounds, old age or otherwise, and their wives and widows. [R. C. 1905, § 1210; 1890, ch. 165, § 2; 1893, ch. 121, § 1; R. C. 1899, § 1010.]

§ 1777. **Who may be admitted.** No applicant shall be admitted to such home who has not been a resident of this state at least one year next preceding his application for admission therein, unless he served in a Dakota regiment or was accredited to the territory of Dakota. [R. C. 1905, § 1211; 1890, ch. 165, § 2; 1893, ch. 121, § 1; R. C. 1899, § 1011.]

§ 1778. **Granted lands and funds pledged.** All lands which have been or may be hereafter granted by the United States or by this state for a soldiers' home are hereby set apart for the support of such home, and all proceeds from the sales of such lands are hereby pledged as a perpetual fund for the use and benefit of such home. [R. C. 1905, § 1212; 1890, ch. 165, § 3; R. C. 1899, § 1012.]

§ 1779. **Board of trustees.** The general supervision and government of the home shall be vested in a board of five trustees, to be styled "the board of trustees of the soldiers' home," each member of which shall have served in the army or navy of the United States, or members of the national guard of North Dakota, and four of whom shall be appointed by the governor, by and with the advice and consent of the senate, two of whom shall be from the county wherein the institution is located. The members of the board shall hold their office for the term of three, four and five years, respectively. The time for which each member shall hold his office shall be designated in his certificate of appointment. The commander or chief officer of the organization known as the Grand Army of the Republic shall be ex-officio a member of said board, with the same powers, duties and privileges as the other members thereof. The compensation of the trustees shall be three dollars per day each, for not exceeding twenty-four days in any one year and their necessary

expenses while performing the duties of their office. [1911, ch. 278; R. C. 1905, § 1213; 1897, ch. 132; R. C. 1899, § 1013.]

§ 1780. Oath and bond of trustees. Before entering upon the duties of his office each member of the board shall take and subscribe the oath required of other civil officers and execute a bond to the state in the sum of three thousand dollars with two or more sureties, to be approved by the governor, conditioned for the faithful performance of his duties and the honest and faithful disbursement of and accounting for all moneys which may come into his hands under the provisions of this article, which bond and oath shall be filed in the office of the secretary of state. [R. C. 1905, § 1214; 1890, ch. 165, § 6; R. C. 1899, § 1014.]

§ 1781. Annual meeting. It shall be the duty of the board to meet annually on the first Tuesday in June, and at such meeting to elect a chairman of the board. The commandant shall act as secretary of said board. The board shall have four regular meetings in each year and may adopt a seal and make rules and regulations not inconsistent with the constitution of the United States, or of this state, for the management and government of such homes, including such rules as it shall deem necessary for the preservation of order, enforcing discipline and preserving the health of its inmates. The board shall annually make full and detailed report of the disbursements of the home and its condition financially and otherwise to the governor, and to each regular session of the legislative assembly. [R. C. 1905, § 1215; 1897, ch. 132; R. C. 1899, § 1015; 1901, ch. 37.]

As to reports to the governor, see sections 95, 97, 98, 633.

§ 1782. Commandant and subordinate officers. Qualifications. Such board shall have the power and it shall be its duty to appoint a commandant for said home who shall serve during the pleasure of the board and who shall be one who was honorably discharged from the military or naval service of the United States, who served in the war of the Rebellion, whose salary shall not exceed twelve hundred dollars per annum, and who shall nominate, subject to the approval of the board, all necessary subordinate officers who shall all be persons either honorably discharged from the service of the United States or widows of honorably discharged soldiers. Such subordinate officers may be removed by the commandant for inefficiency or misconduct, but in case of removal he must make a detailed statement of the cause thereof to the trustees and the board shall have the power to reinstate such persons. The compensation of the subordinate officers shall be fixed by the board. [R. C. 1905, § 1216; 1890, ch. 165, § 11; R. C. 1895, § 1016.]

§ 1783. Funds. How kept. Premiums for insurance. How paid. All moneys that may arise from the interest received on all moneys derived from the sale of lands appropriated for such home, including all moneys received from the rental of such lands, and all moneys hereafter appropriated for such home by this state, and all moneys received from other sources, shall be deposited with the state treasurer, to be by him transmitted at least once in every sixty days to the institution treasurer, if he shall have qualified as provided by law; and such money, when received by such institution treasurer, shall be used exclusively for the benefit of such home as provided by law. Provided, that the cost for insurance on the buildings, furniture and equipment of said soldiers' home shall be paid from the funds of said institution, known as "the soldiers' home fund." [1913, ch. 272; R. C. 1905, § 1217; 1890, ch. 165, § 13; 1893, ch. 121, § 3; R. C. 1899, § 1017.]

§ 1784. Majority of board to approve contracts, etc. Every contract to be performed by the board must receive the approval of a majority of the trustees in regular session, in order to be valid. All proceedings of the board shall be recorded in a book to be kept for that purpose and open to the inspection of any person on request. [R. C. 1905, § 1218; 1890, ch. 165, § 14; R. C. 1899, § 1018.]

§ 1785. Governor to accept grant. The governor is empowered and directed to accept for the state the conditions imposed by an act of congress, entitled "An act to provide aid to state or territorial homes for the support of disabled soldiers and sailors in the United States, approved Aug. twenty-seventh, 1888." He is further directed to send to the president of the board of managers of the national home for disabled volunteer soldiers a copy of all laws bearing upon the establishment, regulation and maintenance of the soldiers' home at Lisbon, with all printed regulations, relating to the management of the home now in force, together with a copy of this and the next section. [R. C. 1905, § 1219; 1895, ch. 104, § 1; R. C. 1899, § 1019.]

§ 1786. Auditor to receipt for money. The state auditor is empowered to receive and receipt for any and all money which may become due to the state by reason of said act and to turn the same into the state treasury for the use and benefit of the state soldiers' home, to be disbursed and accounted for in the same manner as other moneys appropriated out of the treasury for such home. [R. C. 1905, § 1220; 1895, ch. 104, § 2; R. C. 1899, § 1020.]

§ 1787. Moneys received other than from sale of land to be paid to institution treasurer, when. All moneys received as interest, rents, penalties, permits or from any other source than from the principal of sale of soldiers' home lands, shall be paid over to the institution treasurer of said soldiers' home, upon the warrant of the state auditor on the first day of January, April, July and October in each year. The money herein referred to shall be subject to the order of the board of trustees of the soldiers' home, and shall be used for the support and maintenance of said institution. [R. C. 1905, § 1221; 1905, ch. 164.]

§ 1788. Disposition of estates of inmates of soldiers' home when valued at \$100 or less. Whenever any inmate of the soldiers' home shall die, leaving property of the value of one hundred dollars or less, it shall be the duty of the commandant of the home to immediately take charge of the same, and if no valid claim of any heir or legatee is made therefor, and no application for letters of administration be made within one year, he shall convert it into cash and without probate or other proceedings, cover the same into the state treasury where it shall be credited to the institution, and he shall make a report of his action to the board of trustees, which report shall be audited and spread upon the records of the board. [R. C. 1905, § 1222; 1905, ch. 163, § 1.]

§ 1789. When in excess of \$100, commandant to apply for letters of administration. Whenever any inmate of the said soldiers' home shall die leaving property in excess of one hundred dollars in value, and not disposed of by will, the commandant of the institution shall be entitled to letters of administration upon his estate, and it shall be his duty to make application to the proper court for the same, to qualify as such administrator and to distribute and dispose of such estate as otherwise by law provided; except that when no valid claim shall be made to said estate, by heirs or next of kin, for a period of one year after the granting of such letters of administration, the residue of such estate shall revert to the state for the benefit of the said soldiers' home. [R. C. 1905, § 1223; 1905, ch. 163, § 2.]

§ 1790. No bond required nor compensation allowed for services. The commandant of the home, upon becoming administrator of any such estate, shall not be required to give any bond as otherwise required by law, nor shall he be entitled to charge or receive any compensation for his services as such, nor shall the county court of the county in which proceedings are had make or allow any charge or fee in connection therewith, other than the actual disbursements of the administrator. [R. C. 1905, § 1224; 1905, ch. 163, § 3.]

§ 1791. Issuance of bonds. Rate of interest. Denomination. The governor, state auditor and state treasurer are hereby authorized and empowered to prepare for issuance negotiable bonds of the state of North Dakota to the amount of twenty thousand dollars, for the purposes hereinafter stated.

Such bonds shall be in denominations of five hundred dollars each, payable to purchaser or bearer, and payable in thirty years from date of issuance, from the interest and income fund accumulating from the sale, rental or lease of lands or from the rental or lease of said lands donated to the said soldiers' home by section 216 of the constitution of the state of North Dakota, which bonds shall bear interest at a rate not to exceed six per cent per annum, interest payable semi-annually on the first day of January and July in each year, with coupons attached for each interest payment, said coupons to be payable anywhere in the United States. Said bonds shall be issued under the great seal of the state, by the governor and treasurer, and shall be attested by the secretary of state and shall be negotiated by the treasurer. [R. C. 1905, § 1225; 1899, ch. 148; R. C. 1899, § 1020a.]

§ 1792. **Publication of notice of sale of bonds.** The state treasurer shall receive sealed proposals for the purchase of said bonds and shall give public notice for four successive weeks in two or more newspapers of general circulation, one of which shall be published in the city of New York, giving date of such sale, and said bonds shall be sold to the highest bidder, for cash, at not less than their par value. [R. C. 1905, § 1226; 1897, ch. 131, § 2; R. C. 1899, § 1020b.]

§ 1793. **Tax to pay interest.** The state board of equalization at the time other taxes are levied, shall levy a sufficient tax annually to pay interest on said bonds, as the same shall become due, until such time as there shall be funds in the treasury to pay said coupons from the sale or lease of lands granted by the constitution for a soldiers' home, and it shall be the duty of the state treasurer from time to time to reimburse the state for all moneys so advanced, as soon as there shall be funds in the treasury derived from the sale or lease of said lands. [R. C. 1905, § 1227; 1897, ch. 131, § 3; R. C. 1899, § 1020c.]

§ 1794. **Treasurer to pay coupons and bonds when due.** When the interest coupons become due, and whenever the said bonds mature, it shall be the duty of the state treasurer to pay the same on presentation out of any funds in the treasury applicable thereto, and to cancel the same when paid. [R. C. 1905, § 1228; 1897, ch. 131, § 4; R. C. 1899, § 1020d.]

§ 1795. **Proceeds of bonds.** Said bonds shall bear date of July first, 1897, and proceeds of sale thereof shall be deposited with the state treasurer, and by him transmitted to the treasurer of the board of commissioners of the soldiers' home, as provided by law, to be paid out only as hereinafter provided. Whenever from any cause there shall not be sufficient funds to pay the interest as accumulated on said bonds, it shall be the duty of the treasurer to pay the interest out of any other unappropriated funds belonging to the state, and there is hereby appropriated out of the state general fund a sum sufficient to pay said interest on said bonds as it may become due before the funds and tax herein provided for can be made available, and it shall be the duty of the state treasurer to pay such interest promised at the time it falls due. [R. C. 1905, § 1229; 1897, ch. 131, § 5; R. C. 1899, § 1020e.]

§ 1796. **Appropriation.** The sum of twenty thousand dollars so realized and received into the state treasury by the sale of bonds as hereinbefore provided, or so much thereof as may be necessary, is hereby appropriated for the purpose of paying outstanding indebtedness of said soldiers' home, which is evidenced by eleven certificates, aggregating nine thousand five hundred forty-seven dollars, and interest thereon at six per cent, such certificates bearing date as heretofore specified; provided, that if there shall remain in the hands of the institution treasurer any sum or sums after paying the above specified indebtedness, and the expense incidental to the issuance of the above bonds the same shall be used for permanent improvement or repairs of said soldiers' home as the board of commissioners may direct. [R. C. 1905, § 1230; 1897, ch. 131, § 6; R. C. 1899, § 1020f.]

CHAPTER 15.

NORTH WING OF CAPITOL, AND STATE TROLLEY LINE.

ARTICLE 1. NORTH WING OF CAPITOL, §§ 1797-1803.

2. STATE TROLLEY LINE, §§ 1804-1806.

ARTICLE 1.—NORTH WING OF CAPITOL.

§ 1797. **Bonds authorized.** The governor, state auditor and state treasurer are hereby authorized and empowered to prepare for issue negotiable bonds for the state of North Dakota, to the amount of one hundred thousand dollars, for the purpose hereinafter stated. Such bonds shall be in denomination of one thousand dollars each, payable to purchaser or bearer, and payable in twenty years from date of issue, or the said bonds, or any of them, may be paid off at periods of five years from the date of issue, and shall bear interest at a rate not to exceed four per cent per annum, interest payable semi-annually on the first day of January and July of each year, with coupons attached for each interest payment, said coupons to be payable anywhere in the United States; said bonds shall be executed under the great seal of the state by the governor and treasurer, and shall be attested by the secretary of state, and shall be negotiated by the treasurer. [R. C. 1905, § 1259; 1903, ch. 27, § 1.]

§ 1798. **Treasurer to receive proposals.** The state treasurer shall receive sealed proposals for the purchase of said bonds, and he shall give public notice for four successive weeks in two or more newspapers in general circulation, one of which shall be published in the city of New York, giving date of such sale, and said bonds shall be sold to the highest bidder for cash at not less than their par value. [R. C. 1905, § 1260; 1903, ch. 27, § 2.]

Accrued interest as part of par value within prohibition against sale of bonds at less than par. 35 L.R.A. (N.S.) 789.

Validity of agreement to pay interest on interest coupons. 33 L.R.A. (N.S.) 296.

§ 1799. **Treasurer to pay interest coupons.** When the interest coupons become due, and whenever the said bonds mature, it shall be the duty of the state treasurer to pay the same on presentation out of any funds in the treasury applicable thereto, and to cancel the same when paid. [R. C. 1905, § 1261; 1903, ch. 27, § 3.]

§ 1800. **Date. Interest.** Said bonds shall bear date July first, 1903, and the proceeds of the sale thereof shall be placed to the credit of the "Capitol Building Fund," to be paid out only as hereinafter provided. Whenever, from any cause, there shall not be sufficient funds available to pay the interest accrued on said bonds, it shall be the duty of the treasurer to pay the interest out of any other unappropriated funds belonging to the state, and it shall be the duty of the state treasurer to pay such interest promptly at the time it falls due. [R. C. 1905, § 1262; 1903, ch. 27, § 4.]

§ 1801. **Appropriation.** The sum of one hundred thousand dollars so realized and received into the state treasury from the sale of the bonds, as hereinbefore provided, or so much thereof as may be necessary, is hereby appropriated for the purpose of erecting, constructing and completing the north wing of the capitol building at Bismarck, and for the extension of the grounds and improvement of the buildings of the executive mansion, and such funds shall be paid out by the state treasurer only upon warrants drawn by the state auditor upon such fund, and no such warrants shall be issued by the state auditor except upon itemized and verified vouchers, duly approved by the board of capitol commissioners. [R. C. 1905, § 1263; 1903, ch. 27, § 5.]

§ 1802. **Duty of board of capitol commissioners.** As soon as the money arising from the sale of said bonds shall be paid into the treasury, the board of capitol commissioners shall proceed to erect, construct and complete the

said north wing to said capitol building according to the original plans and specifications, as near as may be, and they are hereby authorized to employ an architect, if deemed necessary. The said board shall contract for and purchase necessary material, and shall employ a sufficient number of skilled workmen, and shall, so far as the same can reasonably and profitably be done, utilize the labor of the convicts in the state penitentiary, not otherwise employed according to law, and it is hereby made the duty of the warden of said penitentiary, whenever requested by the said board, to place any or all available convicts of proper character and condition that he may have in his charge, with proper guards and attendants therefor, at the disposal of said board, to be used in performing the labor required in erecting said structure, or in the manufacture of material to be used therein. [R. C. 1905, § 1264; 1903, ch. 27, § 6.]

§ 1803. What laws continued. Sections 7, 9, 10, 11, 12, 13, 14 and 15 of chapter 29 of the laws of 1893, are hereby continued in force, and made applicable to the provisions of this article. [R. C. 1905, § 1265; 1903, ch. 27, § 7.]

ARTICLE 2.—STATE TROLLEY LINE.

§ 1804. Board authorized to construct. The board of trustees of public property is hereby authorized to construct, keep in repair and operate a single track electric trolley line of railway from the capitol building to the Northern Pacific depot or a point conveniently near said depot in the city of Bismarck; and said board is authorized and empowered to secure the necessary right of way for such railway over the most convenient and feasible route; provided, that said board shall, so far as the same can reasonably and profitably be done, utilize the labor of the convicts of the state penitentiary, and it is hereby made the duty of the warden of the said penitentiary, whenever requested by the said board, to place any available convicts of the proper character and condition, that he may have in his charge, with proper guards and attendants therefor, at the disposal of the said board, to be used in performing the labor required in installing an electric light and power plant and constructing said electric railway. [R. C. 1905, § 1266; 1903, ch. 29, § 1.]

Right to compel prisoner to labor. 27 L.R.A. 593.

§ 1805. Light and power plant. Said board is further authorized to install at the capitol building an electric light and power plant with sufficient capacity to run said railway and to furnish power and light for use at the capitol building. [R. C. 1905, § 1267; 1903, ch. 29, § 2.]

§ 1806. Appropriation. For the purpose of carrying out the provisions of this article, the sum of twenty thousand dollars, or as much thereof as may be necessary, is hereby appropriated out of the capitol building fund, not otherwise appropriated. [R. C. 1905, § 1268; 1903, ch. 29, § 3.]

CHAPTER 16.

UNIFORM SYSTEM OF ACCOUNTING.

Compulsory uniform system of accounting, see sections 711, 712, 244.

§ 1807. State institutions to designate an accounting officer. The managing board of each of the state institutions shall designate an accounting officer. They shall also designate either the accounting officer or some other officer of the institution to act as a purchasing agent, whose duty it shall be to purchase all goods and supplies needed for the institution under such rules and regulations as the managing board shall prescribe. [1907, ch. 232, § 1; R. C. 1905, § 1269; 1890, ch. 182, § 2; R. C. 1895, § 309.]

§ 1807a. Duties of accounting officer. The accounting officer of each institution shall keep or supervise the financial accounts of the institution and shall perform such other duties as shall be prescribed by law or the managing board

of the institution. He shall receive all miscellaneous collections to the credit of the institution from the sales of public property, board of inmates, labor of inmates, or from any other source, and he shall in all cases issue a receipt therefor. He shall, on the last business day of each month, draw an order on the institution treasurer in favor of the state treasurer for the amount of all miscellaneous receipts collected during the month. He shall forward therewith a statement showing from what source received and to what account or accounts such collections shall be credited. [1907, ch. 232, § 2; R. C. 1905, § 1269; 1890, ch. 182, § 2; R. C. 1895, § 309.]

As to the institution treasurer mentioned in this section, see note to section 1808.

§ 1807b. Describing books to be used, forms of such books, forms of vouchers, receipts, checks. Receipt to take place of duplicate voucher to state auditor. Forms of expense lists. 1. Voucher. The voucher shall give the date, the name of the party to whom payment is due, the address of the person or company making the bill, and on the bottom of such voucher form shall be blank places to be used to show the approval of such voucher by the board of trustees and the approval as to the receipt of the goods or performance of services by the superintendent or accounting officer of the institution. Such voucher shall have on the back thereof a blank line for the number of the voucher and blank lines to show out of what fund and for what account such voucher was rendered, and it shall have the form of oath required for vouchers against the state. All vouchers must be verified by this oath and in cases where invoices are from merchants for goods, contract work, etc., such original bill may be attached to the voucher before described. All vouchers or bills shall be fully itemized, prices and quantity furnished, discounts and such other information as may be necessary to make the bill clear shall be given. Vouchers shall be presented monthly to the accounting officer of the institution.

2. Check with receipt attached. The check shall be of the ordinary form and shall have the classification of accounts as carried on the books of the institution printed at the left end and shall have attached a receipt the size of the check and perforated so as to be easily detached. The check and receipt shall be numbered the same number and when a check is written, entry shall be made in the classification in the margin to show from what account and fund it is to be paid. The same information shall be placed on the check receipt and both presented to the person who is receiving payment. The receipt shall be for the same amount as the check and it shall be required that such receipt is signed before said check is cashed by the treasurer. The receipt shall not be detached by any other person than the accounting officer of the institution and the check shall be nonpayable until such receipt is signed. The signature to appear on the check shall be that of the accounting officer of the institution and such check shall be countersigned by any official of the institution that the board of trustees may see fit to designate. It is further provided that in case payment is to be made of the claim of some person or company whose place of business is located so that it would be desirable to send a bank draft in payment, then, and in that case, the check may be presented to the bank and the cashier of the bank issuing draft may sign the receipt and such receipt shall be considered good evidence of receipt of payment when the number of the draft and amount are noted on the receipt by the cashier of the bank signing same, and the state auditor shall accept such receipt as though it were signed by the party to whom the check was issued. It is further provided that the last mentioned check shall appear on the records as written to the person or company presenting the claim. The checks shall be numbered consecutively and all numbers shall be accounted for. In case a check is spoiled the same shall be marked "canceled" and filed in its numerical order in the files of the accounting officer of the institution. The check shall be drawn on the treasurer of the institution and shall show who or what bank is treasurer to such institution.

3. **Expense list.** The expense list shall be filed monthly and shall be made to cover the calendar month. Each voucher making up the month's expense list shall be listed separately on the expense list and such voucher or invoice shall be numbered in the left hand margin and there shall be shown the name of the person or company to whom payment is due and the address of such person or company. Following shall be given the full itemized invoice as presented for payment. The itemized invoice shall show the date or dates on which goods were purchased or services performed and the number of such invoice shall be the number of the check which is used in payment of such invoice or claim. After each invoice shall be shown against what fund and account such invoice is a charge. It is hereby further provided that any institution may continue the use of a pay roll; but that such pay roll shall be itemized in the expense list the same as though each person had filed a separate voucher and each person's account on said pay roll shall be given the number of the check the same as other vouchers or claims. Any institution may make up its pay roll on the last day of the month and when such pay roll is certified to by the accounting officer and the superintendent of the institution and forwarded to the state auditor the state auditor shall be authorized to make payment of the pay roll that the employes and officials of the institution may receive their money regularly on the first of the month. The pay roll thus made at the end of the month need not be approved by the board of trustees before payment, but they shall approve such pay roll when they approve the expense list for the month's business. The total amount of the pay roll shall be deducted from the total amount of the expense list when the state auditor makes payment of the said expense list.

4. **General ledger.** The accounts and funds in total shall be kept in the general ledger and there shall be shown the total credit to each account or each fund, the total payments against each account or fund for the month and the balance in each account or fund at the end of the month. In the first column shall be listed the names of the accounts and the funds, then classified under the month shall be columns to show the total credits, the payments and the balance; provided, that where an account is carried for interest and income fund, one mill tax fund and appropriation accounts, three separate columns shall be carried for each month's classification for the three accounts mentioned.

5. **Payment register.** The payment register shall show: first, the date on which the check was issued, the number of check, the name of the person or company to whom check was issued, a small column in which to check off the payment when checks are returned from the institution treasurer, and following a classification of accounts such as are necessary to cover the institution business. The check shall be numbered the same as the voucher which it is in payment of and the amount shall be carried into the proper classification column in the payment register. At the end of the month each column shall be totaled and the amount carried to the payment column of the general ledger opposite the proper fund or account to which the total payment should be charged.

6. **Collection receipt.** The accounting officer shall issue a receipt to every person paying money to the credit of the institution and shall deliver the original to the person making such payment. The duplicate shall be preferably a carbon copy and shall be numbered consecutively as the original. The duplicate shall be filed in the office of the accounting officer of the institution and all numbers shall be accounted for. The receipt shall give the date of collection, from whom received, from what source received, and to what fund or funds credit shall be given. The accounting officer shall issue "dummy" receipts account of appropriations made by the legislature and shall enter such receipt on the books as though they were collections in the ordinary manner, but shall not consider such credits as cash. In case of payment of mill tax or interest and income fund the accounting officer shall issue therefor receipts, the

original shall be forwarded to the state auditor after having been entered upon the collection register. This provision is made to provide a record to show from what sources all credits are taken. It is further provided that in cases where the collections account of miscellaneous items shall be in amounts of less than one dollar the accounting officer shall have the privilege of entering such miscellaneous collections in a small book kept for that purpose showing the date and the name of the person from whom received, also the amount and a credit to what fund and he shall at the end of the month write a receipt to cover the total of such miscellaneous payments.

7. Collection register. A collection register shall be used and shall be in the following form: First shall be shown the date of the issuance of such receipt; second, the number of receipt; third, to whom issued; fourth, the total amount of receipt, and following, a classification of the accounts and funds of the institution. The receipts shall be entered in numerical order and all receipts shall be accounted for. At the end of the month the several columns in this book shall be totaled and the totals carried into the credit column of the general ledger opposite and to the credit of the fund or account to which it shall be a credit. [1907, ch. 232, § 3.]

As to the institution treasurer, see note to section 1808.

§ 1807c. **Exceptions.** It is further provided that any institution now using a government form of accounting shall not be required to use the system herein provided if the said system shall necessitate the using of two sets of books in order to comply with the government system of accounting. But such parts of this system shall be used as can be used without interfering with the system provided by the government. [1907, ch. 232, § 4.]

§ 1807d. **State auditor makes forms.** It is hereby made the duty of the state auditor to make up the forms for the several institutions and to aid in the installment of the new system in the institutions of this state as soon as can conveniently be done. He shall have the right to recommend and make such changes in the system herein described as he believes will be of benefit both to the state and to the institution. [1907, ch. 232, § 5.]

But see as to the subject matter of this section sections 711, 712.

§ 1808. **Institution treasurer. Duties of.** The managing board of each state institution shall also appoint an institution treasurer, which treasurer shall be either some trustworthy person residing in the city or village at which the institution is located or some solvent national or state bank in such city or village. Such treasurer shall give a bond in such sum as the managing board may require, to be approved by the board and to be subject to the approval of the governor. It shall be the duty of such treasurer to hold and safely keep all public funds belonging to the institution which may come into his hands from any source and to pay out the same only on written orders signed by the accounting officer of the institution and countersigned by a member of the managing board, who shall have been authorized by a vote of the board to sign such orders. [R. C. 1905, § 1270; 1890, ch. 182, § 3; R. C. 1899, § 310.]

Section 271 abolishes the office of treasurer in each of the institutions named in section 243.

§ 1809. **Care and custody of funds belonging to inmates.** It shall be the duty of each superintendent of any state institution, when the care and custody of any funds belonging to inmates thereof is by law devolved upon him, to keep accurate accounts of such funds in books provided for that purpose, and to pay out such funds under such rules and regulations as may be prescribed by law or by the board of management, taking proper vouchers therefor in all cases; and every such superintendent shall give a bond in such sum as may be required by law, or may be prescribed by the board of managers of such institution, to be subject to the approval of the state examiner, conditioned for the faithful performance of his duties and a due accounting for

the funds intrusted to his care. [R. C. 1905, § 1271; 1890, ch. 182, § 4; R. C. 1895, § 311.]

§ 1810. Funds belonging to institutions to be paid to superintendent. Each officer and employe of the several institutions shall pay over to the superintendent of the institution without delay any funds which may come into his hands belonging to any inmates of the institution and of which the superintendent is the legal custodian, and pay over to the accounting officer of the institution without delay any funds which may come into his hands belonging to the institution. [R. C. 1905, § 1272; 1890, ch. 182, § 5a; R. C. 1899, § 312.]

§ 1811. Duty of accounting officer. The accounting officer of each institution at the close of each month or oftener shall pay over to the institution treasurer all institution funds which may have come into his hands from sales of public property, board of inmates, labor of inmates or from other sources and at the close of the fiscal quarter to draw an order on the institution treasurer in favor of the state treasurer for the amount of all such miscellaneous receipts, and at the same time to forward to the state auditor a statement of the amount of the same and the sources from which they have arisen. [R. C. 1905, § 1273; 1890, ch. 182, § 5b; R. C. 1899, § 313.]

As to the institution treasurer, however, see note to section 1808.

§ 1812. Duty of state auditor and treasurer. It shall be the duty of the state auditor upon receiving such statement to place in the hands of the state treasurer a draft for the amount upon the institution treasurer, specifying the fund to which the same is to be credited, and upon payment of such draft to place the amount so received to the credit of such institution, adding to it any appropriation that may have been previously made by the legislative assembly for the institution, distributing it to the several appropriations from which it may have arisen, or to the current expense appropriation according to his discretion; provided, that the miscellaneous receipts of the penitentiary and the state reform school shall be paid over to the state treasurer monthly instead of quarterly in like manner as herein provided. [R. C. 1905, § 1274; 1890, ch. 182, § 5c; R. C. 1899, § 314.]

As to the institution treasurer, see note to section 1808.

§ 1813. Duplicate monthly pay rolls. Bills for supplies, etc. The accounting officer of each institution shall prepare a duplicate monthly pay roll or pay rolls, showing the services rendered by each officer and employe of the institution, which pay roll shall contain the receipt of such officers and employes for the orders issued to them in payment for their services. Services rendered or labor performed by persons other than officers or employes shall be accounted for and proper vouchers made. The accounting officer shall require all persons selling goods or supplies to the institution to furnish with such goods, when delivered, bills or invoices in duplicate, and he may require persons, who furnish goods at intervals during the month, to furnish also a detailed statement in duplicate at the close of the month. Such bills and invoices shall, whenever practicable, be made upon the bill heads or blanks used by such persons in their business. [R. C. 1905, § 1275; 1890, ch. 182, § 6; R. C. 1895, § 315.]

§ 1814. Manner of filing bills, etc. Duplicates sent to state auditor. Each of the original and duplicate bills mentioned in the last section shall be inclosed in an envelope or jacket on one side of which shall be a classification of the items contained in the bill, and on the other side a receipt in the following form: "Received on the.....day of.....from the..... (here insert the name of the accounting officer) of the (here insert the name of the institution) an order on the treasurer of the.....for the sum of dollars, in payment of the within account." Any pay rolls and vouchers for services rendered or labor performed shall be inclosed in similar envelopes or jackets. One of the duplicate pay rolls or bills with the accompanying receipts shall be retained by the accounting officer in the

files of the institution and the other shall be sent to the state auditor within thirty days after the issuance of an order on the institution treasurer for the payment of the same. [R. C. 1905, § 1276; 1890, ch. 182, § 7; R. C. 1899, § 316.]

As to the institution treasurer, see note to section 1808.

§ 1815. Duty of storekeeper. It shall be the duty of the storekeeper of each institution, or some person to be designated by the superintendent, to check off all goods and supplies, when received, by the invoices; to certify thereon the quantity and condition of the same, and to notify the superintendent or the accounting officer forthwith, in case such goods or supplies do not appear to be of the kind or the quantity purchased or bargained for. In case goods are received without an invoice it shall be the duty of such storekeeper or designated person to make a memorandum bill of such goods and certify thereon as herein required. [R. C. 1905, § 1277; 1890, ch. 182, § 8; R. C. 1899, § 317.]

§ 1816. Expense lists to be prepared monthly by accounting officer. The accounting officer at the close of each month shall make, or cause to be made, an expense list for expenses incurred during the month under appropriations for current expenses, and a separate expense list for expenses incurred under appropriations for other purposes, showing the name of each person rendering service or furnishing supplies, the nature of the service rendered and at what rate, the quantity, kind, price and cost of supplies furnished, and the amount to which each person is entitled by law; provided, that the state auditor may in his discretion allow items of the same class amounting to less than one dollar each, except food items, to be consolidated on the expense list as "sundries." Such expense list shall be audited by the managing board or a committee of the same, and shall be certified by the accounting officer of each institution and a member of the managing board to be designated by the board, and shall be forwarded to the state auditor by the accounting officer, not later than the eleventh day of the succeeding month. [R. C. 1905, § 1278; 1890, ch. 182, § 9; R. C. 1899, § 318.]

§ 1817. State auditor to draw warrants on receipt of expense lists. On receipt of such certified expense list the state auditor shall examine, adjust and approve, suspend or reject the same, and on or before the sixteenth day of each month draw his warrants on the state treasurer for the amounts due thereon to each institution, and no money shall be paid out of the state treasury for the use of such institution except on expense lists duly certified; provided, that the state auditor may in his discretion draw his warrants for an amount not exceeding twenty per cent in addition to the amount of the expense list, to be used for the immediate payment of such accounts as he may authorize to be so paid; such payment to be properly accounted for on the next monthly expense list. [R. C. 1905, § 1279; 1890, ch. 182, § 10; R. C. 1899, § 319.]

§ 1818. When auditor to cancel unexpended appropriations. The state auditor shall at the close of each biennial period cancel all unexpended appropriations or balances of appropriations, which shall have remained undrawn for the period of two years after the expiration of the biennial period during which they became available under the law; provided, that the governor, secretary of state and attorney-general may continue such appropriation or balances in force temporarily upon recommendation of the state auditor. [R. C. 1905, § 1280; 1890, ch. 182, § 11; R. C. 1899, § 320.]

§ 1819. Appropriation of miscellaneous receipts. There is hereby appropriated for the use of the several institutions all the funds in the state treasury derived from miscellaneous receipts under sections 1810 and 1811. [R. C. 1905, § 1281; 1890, ch. 182, § 12; R. C. 1899, § 321.]

CHAPTER 17.

GENERAL PROVISIONS RELATING TO PUBLIC INSTITUTIONS.

ARTICLE 1. FLAGS TO BE DISPLAYED, § 1820.

2. EXPENDITURES AND TRANSFER OF FUNDS, §§ 1821-1826.

3. INVENTORY OF STATE PROPERTY, § 1827.

4. LIGNITE COAL TO BE USED, § 1828.

ARTICLE 1.— FLAGS TO BE DISPLAYED.

§ 1820. **Flags displayed on public institutions.** The flag of the United States shall be displayed upon all state institutions between the hours of nine o'clock a. m. and four o'clock p. m. of each day. It is the duty of the officials in charge of the various state institutions to make the necessary arrangements for carrying out the provisions of this article and the expenses necessarily incurred in so doing shall be audited and paid by the state auditor in the same manner as bills for incidental expenses are audited and paid. [R. C. 1905, § 1282; 1890, ch. 69, §§ 1, 2; R. C. 1899, §§ 1021, 1022.]

ARTICLE 2.— EXPENDITURES AND TRANSFER OF FUNDS.

§ 1821. **Excessive expenditures out of appropriations prohibited. Emergency commission.** It shall be unlawful for any board of trustees, commissioners, directors, person or persons having the control or management of public institutions of the state, or having in any manner whatsoever the responsibility of disbursing or expending any money appropriated by the state, either directly or indirectly, or in any manner whatsoever to expend or to agree or contract to expend for the use or benefit of any institution or purpose any amount in excess of the sum appropriated for such institution or purpose, nor shall any amount appropriated for any specific purpose or fund be used for or transferred to any other purpose or fund, provided that when in belief of any such board of trustees, commissioners, directors or official, any emergency exists, and the interests of the state are jeopardized by reason of the exhaustion of the amount appropriated, or by cause for which there is no provision of law, the matter, with all relative facts, shall be referred to a commission consisting of the governor, secretary of state and state auditor, who may authorize the transfer of money from one fund to another fund of the same institution or purpose. [1913, ch. 159, § 1; R. C. 1905, § 1283; 1895, ch. 23, § 1; R. C. 1899, § 1023.]

This section clearly supersedes Laws 1907, ch. 234, § 1. The latter chapter expressly repealed R. C. 1905, § 1283 (and § 1284), which, however, is here amended and re-enacted.

§ 1822. **Penalty.** Any persons violating the provisions of section 1821 shall be deemed guilty of a misdemeanor. [1913, ch. 159, § 2; R. C. 1905, § 1284; 1895, ch. 23, § 2; R. C. 1899, § 1024.]

§ 1823. **Monthly report required.** It shall be the duty of the chairman of the board of trustees, commissioners, directors, regents, or person or persons mentioned in section one of this act [superseded by section 1821 herein] to make an itemized report to the governor, under oath, on or before the fifteenth day of each month, showing the amount of money expended and for what purpose and showing what contracts have been made involving the expenditure of money in the future. The time covered by such report shall be the calendar month next preceding the date of said report. Any person or officer mentioned in this act who shall fail to comply with the provisions of this act shall be deemed guilty of a felony. [1907, ch. 234, § 2.]

"This act" to which the foregoing section refers was Laws 1907, ch. 234. "Section one of this act," which was clearly superseded by Laws 1913, ch. 159, § 1, the latter constituting section 1821 herein, read as follows:

"It shall be unlawful for any board of trustees, commissioners, directors, regents, person or persons having the control or management of public institutions of the state, or having in any manner whatsoever the responsibility of disbursing or expending any money appropriated by the state, either directly or indirectly, or in any manner whatsoever to expend, or agree to contract to expend, for the use or benefit of any institution or purpose, any amount in excess of the sum appropriated for such institution or purpose, nor shall any amount appropriated for any specific purpose or fund be used for or transferred to any other purpose or fund."

§ 1824. Penalty for failure. If any of the persons mentioned in section 1823 shall fail to make the report as therein provided, or if the report as made to the governor shall show that there is reason to believe that the provisions of section one hereof [see note to section 1823 herein] have been violated, it shall be the duty of the governor to promptly notify the attorney-general of such violation and the attorney-general shall prosecute such person for the violations of the provisions of this act; provided, that when in the belief of any such board, person or persons, an emergency exists, and the interests of the state are jeopardized by reason of the exhaustion of the amount appropriated, or by cause for which there is no provision of law, the matter with all relative facts shall be referred to a commission consisting of the governor, secretary of state and state auditor, who may authorize the transfer of money from one fund to another fund of the same institution or purpose, or who may in extreme cases authorize money to be drawn from the state treasury to meet the emergency. [1907, ch. 234, § 3.]

§ 1825. Trustees not to be interested in contracts. No member of any board of trustees or managers, or any officer or employe of any state, educational, charitable or correctional institution now existing in this state or which may hereafter be established by law shall be interested, directly or indirectly, in any contract, purchase or sale for or on account of the institution with which he may be connected. [R. C. 1905, § 1285; 1895, ch. 33, § 1; R. C. 1899, § 1025.]

§ 1826. Penalty. Any violation of the preceding section shall be sufficient cause for removal from office. [R. C. 1905, § 1286; 1895, ch. 33, § 2; R. C. 1899, § 1026.]

ARTICLE 3.—INVENTORY OF STATE PROPERTY.

§ 1827. Inventory required. The person in charge of any state institution in this state shall, on the first Monday in July of each even numbered year, make a complete inventory of all property contained in or used in connection with such state institution, and within thirty days thereafter, said person shall transmit said inventory, with his certificate thereto attached as to the correctness of the same, to the governor of this state. [1907, ch. 235.]

ARTICLE 4.—LIGNITE COAL TO BE USED.

§ 1828. Public institutions to use. The various state institutions, county buildings and public school houses of this state shall use for fuel, native or lignite coal, and it shall be unlawful for any officer to purchase for use in such institutions, county buildings and public schools any coal other than that taken from the mines within the boundaries of this state. This section shall not be construed, however, as prohibiting the use of wood at such institutions, county buildings and public schools, when the cost thereof does not exceed that of native coal, or the use of coal other than native lignite coal at such public schools as are located six miles or more from any mine or railroad station within the boundaries of this state; provided, that the comparative cost of such fuel is not greater than that of lignite coal. [R. C. 1905, § 1290; 1893, ch. 38, § 1; R. C. 1899, § 1030; 1905, ch. 132.]

CHAPTER 18.

CONSTRUCTION OF PUBLIC BUILDINGS.

§ 1829. Building and repair by contract. In altering, repairing or constructing buildings belonging or appertaining to any of the public institutions of the state, or in doing any work thereon amounting to more than one thousand dollars, the board of trustees thereof shall procure all necessary plans, drawings and specifications thereof, and in all cases where expedient, such plans, drawings and specifications shall be procured from an architect or architects maintaining offices and residing and doing business within the state of North Dakota. [1911, ch. 235, § 1.]

§ 1830. Advertising for bids. Said board shall advertise for bids for the doing of such work for which such plans, drawings and specifications are required; such advertisement shall be for three successive weeks, the first publication thereof being twenty-one days prior to the date of the opening of the bid; such advertisement shall be published in some established newspaper of general circulation qualified to publish legal notices, and which is printed and published in the city or town where such public institution is located, and also in some trade publication of general circulation, among the contractors and building material manufacturers and dealers of this state.

Said advertisement shall state:

1. When and where the plans, drawings and specifications therefor may be seen and examined.
2. The place where, and the day and hour when the bids will be opened.
3. Must reserve the rights of the board to reject any and all bids and,
4. Shall require a certified check on some solvent bank within the state of North Dakota; for not less than five per cent of the amount of the bid to accompany the same, as guaranty that the bidder will enter into the contract, if his bid be accepted. [1911, ch. 235, § 2.]

§ 1831. Plans and specifications, filed where. Copies of all plans, drawings and specifications required by this article shall be filed in the office of the secretary of local board of trustees, where institution is located in the office of each and every builders and traders exchange maintaining an office in the state of North Dakota, organized for at least one year prior to date thereof, and such other places as may be designated by the board of trustees, immediately following the first publication of said advertisement for bids. [1911, ch. 235, § 3.]

§ 1832. Opening bids. Award of contract and bond required. At the time and place specified in said notice, the board shall publicly open and read aloud the bids received and may award the contract to the lowest bidder, and when deemed by said board to be for the best interests of the state, such contract shall be awarded to a contractor or contractors who are and have been established and continuously in business in the state of North Dakota for the period of not less than one year prior thereto. The board shall require of the contractor to whom the contract is awarded, a bond complying with the provisions of chapter 80 of the Civil Code, according to the 1905 revision thereof [sections 6832-6835 herein].

The board has power to reject any and all bids and may advertise anew in accordance herewith until a satisfactory bid is received. [1911, ch. 235, § 4.]

§ 1833. Allowance and payment of estimates. At least once during each calendar month during the continuance of work upon any public building, begun and carried on under the provisions of the preceding sections, the board of trustees of such institution, or a committee thereof duly authorized by the board for that purpose, shall meet to receive and allow estimates furnished by the supervising architect or the superintendent of construction of such building, which estimate shall not be less than seventy per cent nor more than

eighty-five per cent of the labor then performed upon such building and of the material then upon the ground for use in the construction thereof, said board or committee thereof shall immediately after accepting and allowing such estimates, certify and forward the same to the state auditor who shall forthwith draw his warrant upon the proper fund and transmit the same promptly to the contractor or contractors entitled thereto; and in case said board or committee shall fail or neglect to certify said estimate or said auditor shall neglect or fail to issue and forward said warrant as above provided, for a period of more than thirty days from the date of said estimate, then and in that event said estimate shall draw interest from its date at the rate of six per cent per annum until the issuance of the auditor's warrant therefor, which interest shall be computed and added to the face of said estimate by said auditor, included in the warrant when drawn and charged to the fund upon which said warrant is drawn; and no payment for or on account of any contract made under the provisions of this article shall be made except upon the estimate of the supervising architect or superintendent, as in this section provided. [1911, ch. 235, § 5.]

§ 1834. Appropriations not to be diverted. No portion of any special appropriation for the erection of any building or for the doing of any work shall be drawn from the state treasury in advance of the work done or the materials furnished, and only upon proper estimates thereof approved by the trustees, and no portion of any appropriation, for any purpose, shall be drawn from the treasury before it shall be required for the purpose for which it was made, and no appropriation which is or may be made for one purpose shall be drawn or used for any other purpose until the building for which the appropriation was made is fully completed and paid for. [1911, ch. 235, § 6.]

§ 1835. Materials produced in state to be used in public buildings. All boards of trustees purchasing materials for use in making alterations, repairs or additions or in erecting new buildings, and all contractors making such alterations, repairs or additions or erecting new buildings shall always, price, fitness and quality being equal, prefer materials manufactured or produced within this state, and shall next prefer such as shall have been partially manufactured or produced in this state. [1911, ch. 235, § 8.]

§ 1836. Specified brands, marks, names or patented articles not to be specified. No board of trustees or officers or employe of any public institution in this state shall, when specifying for materials to be used in or about the work for which plans and specifications are called for as provided in section 1829, ask for bids for any article of a specified brand or name, the product of any manufacturer or any patented apparatus or appliances, when such requirement will prevent proper competition, unless such specifications shall also ask for bids on other similar articles of equal value, utility and merit. [1911, ch. 235, § 9.]

§ 1837. Officers must not be interested in contract. No board of trustees or any member thereof, or any employe or appointee of any of such boards shall be pecuniarily interested or concerned, directly or indirectly, in any contract, either verbal or written, that may be entered into by any person or persons on behalf of the state for any purpose whatever connected with the business of such institution. [1911, ch. 235, § 10.]

§ 1838. Architects and superintendents. That the board of trustees of all public institutions in the state are hereby authorized to employ the architect furnishing the plans as hereinbefore provided, or some other suitable person who shall be a practical mechanic and builder, as superintendent of construction of the work for which the plans and specifications are called for as provided by section 1829, who shall have personal charge and supervision of the contractor on the work under the direction of the architect and board of trustees, and whose duty it will be to see that such contractor performs his work in full compliance with the plans and specifications adopted by the

board of trustees; that the architect, while acting as such superintendent, shall receive such compensation therefor as may be agreed upon by such architect and said board of trustees; and any other person, while acting as such superintendent, shall receive a reasonable compensation to be fixed by the board of trustees; provided, that the duties imposed and powers conferred upon the board of trustees by this article shall apply to any other board hereafter created to have charge of such institution, in lieu of such board of trustees. [1911, ch. 235, § 11.]

CHAPTER 19.

FIREMEN'S ASSOCIATION.

§ 1839. **Appropriation for firemen's association.** There is annually appropriated out of any money in the state treasury not otherwise appropriated the sum of fifteen hundred dollars for the use and benefit of the North Dakota firemen's association for the purpose of promoting the efficiency and growth of its different departments and the holding of an annual tournament according to the rules and regulations of such association. Such money shall be paid to the treasurer of such association and by him paid out only on the order of the president and secretary of such association for the purpose herein mentioned. [R. C. 1905, § 1291; 1893, ch. 65, § 1; R. C. 1899, § 1031; 1903, ch. 12.]

§ 1840. **Report of officers.** The president, secretary and treasurer of such association shall, within thirty days after the termination of each tournament, make to the state auditor a full and complete report, duly verified by the secretary, of the disposition of all moneys received by such association from the state. [R. C. 1905, § 1292; 1893, ch. 65, § 2; R. C. 1899, § 1032.]

§ 1841. **Tournament. Payment of appropriations.** The time and place at which such tournament is to be held shall be determined at the annual state convention of such firemen's association; the name of which place with the date of tournament, shall be forwarded at least thirty days prior to the holding of such tournament, to the state auditor by the secretary of such association. Such secretary shall also furnish the state auditor with the name and address of the treasurer of such association, and it is the duty of the state auditor to pay to such treasurer, not later than the first day of June of each year, the sum so appropriated, but not, however, until such association shall file with the state auditor a good and sufficient bond in the sum of two thousand dollars, conditioned for the faithful disposition of the funds so appropriated. [R. C. 1905, § 1293; 1893, ch. 65, § 3; R. C. 1899, § 1033.]

§ 1842. **Firemen exempt from poll tax.** Every volunteer fireman in any city, town or village having an organized fire department, the same being a member in good standing in the North Dakota firemen's association, shall be exempt from the payment of poll tax. It shall be the duty of the secretary of each fire company or department on or before the first Monday in April to file with the city auditor a report of all members in good standing and doing active fire service, during the past year, and who has attended not less than seventy-five per cent of all fire alarms, to entitle them to such exemption. [R. C. 1905, § 1294; 1903, ch. 138.]

CHAPTER 20.

STATE LIBRARY.

§ 1843. **State law library custodian.** The clerk of the supreme court of the state shall have the care and custody of the state law library. [1911, ch. 284, § 1; R. C. 1905, § 1295; R. C. 1895, § 1034.]

§ 1844. **Same appropriation.** There is hereby appropriated out of any money in the state treasury not otherwise appropriated, the sum of two

thousand dollars annually, to be expended by the clerk of the supreme court under the direction of the judges of that court, in purchasing for the state law library such volumes of the supreme court reports, digests and statutes of any state or territory when such volumes cannot be procured by exchange, and for the purchase of such documents as may be deemed advisable for such library. Before purchasing such books the clerk of the supreme court shall advise with and consult the judges of the supreme court as to what books shall be purchased. [1911, ch. 284, § 2; R. C. 1905, § 1296; 1890, ch. 166, § 1; R. C. 1895, § 1035.]

See note to section 1846.

§ 1845. Librarian. Clerk to employ. Compensation. The clerk of the supreme court shall employ such librarians and assistant librarians in such library as may be deemed necessary and receive the approval of the judges of the supreme court, and said library shall be conducted in accordance with any rules which the judges of the supreme court may prescribe, and there is hereby appropriated out of the state treasury the sum of twelve hundred dollars annually, or so much thereof as may be necessary, for paying for the services of a librarian and assistant librarian or librarians. [1911, ch. 284, § 3; R. C. 1905, § 1297; 1890, ch. 166, § 2; R. C. 1899, § 1036; 1903, ch. 186; 1905, ch. 18.]

See note to section 1846.

§ 1846. Expenses, how paid. Upon the presentation of verified accounts by the clerk of the supreme court for the purchase and cost of transportation of any books, pamphlets or other volumes purchased for the law library, and for the care and custody of such library, and upon such account being approved by the supreme court, the state auditor shall draw his warrant on the state treasury for such amount or amounts. [1911, ch. 284, § 4; R. C. 1905, § 1298; 1890, ch. 166, § 3; R. C. 1899, § 1037.]

All the sections in this chapter (sections 1843-1846) constitute Laws 1911, ch. 284, which was repealed "so far as the same relates to appropriations" in sections 653e, 653i. The appropriations in sections 653a-653h expire July first, 1915. That the repeal is also probably temporary, see comments in note immediately preceding section 653a.

CHAPTER 21.

AGRICULTURAL EXPOSITIONS.

ARTICLE 1. STATE FAIRS, §§ 1847-1859.

2. MISSOURI SLOPE AGRICULTURE AND FAIR ASSOCIATION, §§ 1860-1866.
3. COUNTY FAIRS, §§ 1867-1874.
4. DUTY OF OFFICERS OF FAIR ASSOCIATIONS, §§ 1875, 1876.
5. FARMERS' INSTITUTES, §§ 1877-1880.

ARTICLE 1.—STATE FAIRS.

§ 1847. Location permanently fixed at Grand Forks and Fargo. For the purpose of promoting and improving the condition of agriculture, horticulture, mechanical, manufacturing and household arts, a state fair or exposition shall be held biennially at or near the city of Grand Forks, in the state of North Dakota, during each odd numbered year, and biennially at or near the city of Fargo, in the state of North Dakota, during each even numbered year, subject to the conditions hereinafter named, and the location of the state fairs as herein provided is hereby declared to be permanent. [R. C. 1905, § 1299; 1905, ch. 46, § 1.]

§ 1848. Conditions to be complied with by Grand Forks. If an organization, to be known and designated as the North Dakota state fair association for Grand Forks, or by some similar name, shall be, during the year 1905, created and organized under and pursuant to the general laws of this state, in relation to corporations, with a paid-up capital stock of not less than

twenty thousand dollars, such association shall become entitled to receive the appropriations hereinafter named upon the conditions set forth in this article. The said association may acquire the title to not less than seventy nor more than one hundred and sixty acres of ground at or near the city of Grand Forks, in said state, and such association may, and it is hereby empowered and authorized to convey the title to the land so acquired by it, unto the state of North Dakota, which property, when so conveyed, shall be held by the state of North Dakota forever for the following purposes and no other: For the purpose of exhibiting thereon under the management of such association, or its successors, biennially, during each odd numbered year the agricultural, stock breeding, horticultural, mining, mechanical, industrial and other products and resources of the state of North Dakota, including proper exhibits of the arts, sciences and all other public displays pertinent to and dependent upon exhibitions and expositions of human art, industry and skill. The said association may use so much of its paid-up capital stock as may be necessary for the acquisition of title to the land so to be purchased by it for use as fair grounds, and the balance thereof shall be and constitute a fund toward the construction of buildings and other permanent improvements thereon. [R. C. 1905, § 1300; 1905, ch. 46, § 2.]

§ 1849. Conditions to be complied with by Fargo. If an organization, to be known and designated as the North Dakota state fair association for Fargo, or by some similar name, shall be, during the year 1905, created and organized under and pursuant to the general laws of this state, in relation to corporations, with a paid-up capital stock of not less than twenty thousand dollars, such association shall become entitled to receive the appropriations hereinafter named upon the conditions set forth in this article. The said association may acquire the title to not less than seventy nor more than one hundred and sixty acres of ground at or near the city of Fargo, in said state, and such association may, and it is hereby empowered and authorized to convey the title to the land so acquired by it, unto the state of North Dakota, which property, when so conveyed, shall be held by the state of North Dakota forever, for the following purposes and no other: For the purpose of exhibiting thereon under the management of such association, or its successors, biennially, during each even numbered year, the agricultural, stock breeding, horticultural, mining, mechanical, industrial and other products and resources of the state of North Dakota, including proper exhibits of the arts, sciences and all other public displays pertinent to and dependent upon exhibitions and expositions of human art, industry and skill. The said association may use so much of its paid-up capital stock as may be necessary for the acquisition of title to the land so to be purchased by it for use as fair grounds, and the balance thereof shall be and constitute a fund toward the construction of buildings and other permanent improvements thereon. [R. C. 1905, § 1301; 1905, ch. 46, § 3.]

§ 1850. Custody and control of Grand Forks grounds. The custody and control of the premises upon which said fair at Grand Forks is located shall be vested in said North Dakota state fair association for Grand Forks, and the general offices thereof shall be located and maintained either upon the premises so acquired or at some suitable place in the city of Grand Forks, and said association is hereby authorized, required and empowered to maintain its said offices as aforesaid wherein shall be contained the property and records of such association, and the entire care, custody, management and control of said premises, and the structures thereon, shall be vested in said association. [R. C. 1905, § 1302; 1905, ch. 46, § 4.]

§ 1851. Custody and control of Fargo grounds. The custody and control of the premises upon which said fair at Fargo is located shall be vested in said North Dakota state fair association for Fargo, and the general offices thereof shall be located and maintained either upon the premises so acquired

or at some suitable place in the city of Fargo, and said association is hereby authorized, required and empowered to maintain its said offices as aforesaid wherein shall be contained the property and records of said association, and the entire care, custody, management and control of said premises, and the structures thereon, shall be vested in said association. [R. C. 1905, § 1303; 1905, ch. 46, § 5.]

§ 1852. Governor and attorney-general to accept title. Failure of state appropriations land reverts to original owners. Board of directors. When the state of North Dakota accepts the title to the land so acquired by either of said associations, which acceptance shall be made by the governor and attorney-general, thereupon, and not before such time, shall the deed of conveyance of said property to the state be accepted and recorded. Should the state of North Dakota cease to appropriate the sum of at least five thousand dollars annually to be awarded as premiums in connection with said fairs then the title of said premises shall revert to and become the property of the association that transferred the same to the state; provided, further, that the state shall never become liable for any of the debts and liabilities of said associations, save as appropriations shall be made therefor from time to time by the legislative assembly. The provisions of this article shall not become binding upon the state as to either fair association until the stockholders of such association shall adopt and file with the secretary of state an irrevocable by-law consenting and providing that its board of directors shall consist of fifteen persons; that the governor, commissioner of agriculture and labor and the state auditor shall, ex-officio, constitute three of such directors; that five of the directors of such association shall be residents of the judicial district in which said fair is to be held, and that one director shall be selected from each other judicial district of this state, and shall be a resident of the same. [R. C. 1905, § 1304; 1905, ch. 46, § 6.]

§ 1853. Appointment and duties of executive committee. The board of directors of each association shall appoint an executive committee which shall keep an accurate account of the expenditures of all moneys appropriated to it by the state and of all other receipts and expenditures, and shall collect, arrange and collate all the information in their power in relation to the nature and preparation of soils, the cultivation and growth of crops, the breeding and management of stock, the application and character of manure and fertilizers, the introduction of new cereals and other grains and other agricultural subjects, and report the same together with a statement of their doings, and such account of their expenditures, to the governor on or prior to the first day of January each year following the holding of a state fair, such report to be audited by the governor, commissioner of agriculture and labor and the auditor, and by the governor laid before the legislative assembly. All moneys hereby appropriated shall be paid over to the treasurer of the association entitled to the same on the order of the president attested by the secretary. [R. C. 1905, § 1305; 1905, ch. 46, § 7.]

§ 1854. Treasurer to give bond. It shall be the duty of the directors of any fair association to require the treasurer thereof to give a sufficient bond to such directors, conditioned for the faithful keeping of such money as may come into his hands as such treasurer. [1913, ch. 163, § 1.]

§ 1855. Penalty. Any person violating the provisions of section 1854 shall be guilty of a misdemeanor. [1913, ch. 163, § 2.]

§ 1856. Special appropriation, limit of. For the purpose of enabling said associations to suitably inclose their grounds and to aid them in the erection thereon of proper buildings, structures and other improvements suitable for the purposes of giving expositions or fairs the sum of ten thousand dollars is hereby appropriated out of the moneys in the state treasury, not otherwise appropriated, one-half of which amount shall go to each association; provided, nevertheless, that no part of said appropriation shall be payable until after

a deed of conveyance of the premises upon which the fair is to be held, has been made and accepted by the state as hereinbefore provided; provided, further, that this appropriation shall lapse and shall only be available to the association whose conveyance is made and accepted by the state on or prior to June first, 1906. [R. C. 1905, § 1306; 1905, ch. 46, § 8.]

State fair association conveying mortgaged property to state is entitled to appropriation exclusively. *State ex rel. North Dakota State Fair Asso. v. Holmes*, 17 N. D. 32, 112 N. W. 144.

§ 1857. **General appropriation.** There is hereby appropriated out of any funds in the treasury of the state of North Dakota not otherwise appropriated, the sum of ten thousand dollars for premiums and five thousand dollars for maintenance, annually, to be expended by the directors of said association as follows:

For premiums in the way of live stock, poultry and agricultural products for better farming interests. Such appropriation to be paid to the North Dakota fair association for Grand Forks in the odd numbered years, and to the North Dakota fair association for Fargo in the even numbered years. [1913, ch. 45; R. C. 1905, § 1307; 1905, ch. 46, § 9.]

§ 1858. **Conditions binding on state.** The provisions of this article shall not become binding or effective upon the state as to either of such associations until the stockholders of such association shall adopt a by-law expressly accepting and agreeing to all of the conditions hereof, and file a certified copy of said by-law with the secretary of state. [R. C. 1905, § 1308; 1905, ch. 46, § 10.]

§ 1859. **Conditions governing holding of state fairs.** In the event of the failure of either of such associations to comply with the provisions of this article then the other association shall be entitled to hold a state fair upon its grounds during each year and receive the appropriation herein made for the association failing thus to comply with this article, and such failure on the part of either association shall operate to permanently establish the state fair upon the grounds of the other association; provided, that nothing in this article contained shall be construed to prohibit the fair association leasing said grounds and buildings for the purpose of holding stock and agricultural exhibits when they deem it advisable. [R. C. 1905, § 1309; 1905, ch. 46, §§ 11, 12.]

ARTICLE 2.—MISSOURI SLOPE AGRICULTURE AND FAIR ASSOCIATION.

§ 1860. **Purpose of and location permanently fixed at Mandan.** For the purpose of promoting and improving the condition of agriculture, horticulture, mechanical, manufacturing and household arts, a Missouri slope agriculture and fair association fair or exposition shall be held annually at the city of Mandan, in the state of North Dakota, subject to the conditions hereinafter named, and the location of the Missouri slope agriculture and fair association as herein provided, is hereby declared to be permanent. [1911, ch. 43, § 1.]

§ 1861. **Conditions to be complied with by Mandan.** If an organization, to be known and designated as the Missouri slope agriculture and fair association for Mandan, or by some similar name, shall be during the year 1911, created and organized under and pursuant to the general laws of this state, in relation to corporations, with a paid-up capital stock of not less than twenty thousand dollars, such association shall become entitled to receive the appropriations hereinafter named upon the conditions set forth in this article. The said association may acquire the title to not less than forty acres of ground in the city of Mandan, in said state, and such association may, and it is hereby empowered and authorized to convey the title to the land so acquired by it, unto the state of North Dakota, which property, when so conveyed, shall be held by the state of North Dakota forever for the following purposes and no other: For the purpose of exhibiting thereon,

under the management of such association, or its successors, annually, the agricultural, stock breeding, horticultural, mining, mechanical, industrial and other products and resources of the state of North Dakota, including proper exhibits of the arts, sciences and all other public displays pertinent to and dependent upon exhibitions and expositions of human art, industry and skill. The said association may use so much of its paid-up capital stock as may be necessary for the acquisition of title to the land so to be purchased by it for use as fair ground, and the balance thereof shall be and constitute a fund toward the construction of buildings and other permanent improvements thereon. [1911, ch. 43, § 2.]

§ 1862. Custody and control of Mandan grounds. The custody and control of the premises upon which said fair at Mandan is located shall be vested in said Missouri slope agriculture and fair association for Mandan, and the general offices thereof shall be located and maintained either upon the premises so acquired or at some suitable place in the city of Mandan, and said association is hereby authorized, required and empowered to maintain its said offices as aforesaid wherein shall be contained the property and records of such association, and the entire care, custody, management and control of said premises and the structures thereon shall be vested in said association. [1911, ch. 43, § 3.]

§ 1863. Governor and attorney-general to accept title. Failure of state appropriations land reverts to original owners. Board of directors. When the state of North Dakota accepts the title to the land so acquired by said association, which acceptance shall be made by the governor and attorney-general thereupon, and not before such time, shall the deed of conveyance of said property to the state be accepted and recorded. Should the state of North Dakota cease to appropriate the sum of at least two thousand five hundred dollars annually in connection with said fair, then the title of said premises shall revert to and become the property of the association that transferred the same to the state; provided, further, that the state shall never become liable for any of the debts and liabilities of said association, save as appropriations shall be made therefor from time to time by the legislative assembly. The provisions of this article shall not become binding upon the state as to said fair association until the stockholders of such association shall adopt and file with the secretary of state an irrevocable by-law consenting and providing that its board of directors shall consist of fifteen persons; that the governor, commissioner of agriculture and labor and the state auditor shall, ex-officio, constitute three of such directors; that five of the directors of such association shall be residents of the judicial district in which said fair is to be held, and that one director shall be selected from each other judicial district of the state, and shall be a resident of the same. [1911, ch. 43, § 4.]

§ 1864. Appointment and duties of executive committee. The board of directors of said fair association shall appoint an executive committee, which shall keep an accurate account of the expenditures of all moneys appropriated to it by the state and of all other receipts and expenditures, and shall collect, arrange and collate all the information in their power in relation to the nature and preparation of soils, the cultivation and growth of crops, the breeding and management of stock, the application and character of manure and fertilizers, the introduction of new cereals and other grains and other agricultural subjects, and report the same together with a statement of their doings and such account of their expenditures, to the governor on or prior to the first day of January each year following the holding of a fair, such report to be audited by the governor, commissioner of agriculture and labor and the auditor, and by the governor laid before the legislative assembly. All moneys hereby appropriated shall be paid over to the treasurer of the association on the order of the president attested by the secretary. [1911, ch. 43, § 5.]

Duty of directors to require treasurer to give bond, see sections 1854, 1855.

§ 1865. General appropriation. There is hereby appropriated out of the funds of the treasury of the state of North Dakota not otherwise appropriated, the sum of two thousand five hundred dollars annually to be expended by and under the supervision of the directors of said association. [1911, ch. 43, § 6.]

§ 1866. Conditions binding on state. The provisions of this article shall not become binding or effective upon the state as to such association until the stockholders of such association shall adopt a by-law expressly accepting and agreeing to all of the conditions hereof, and file a certified copy of said by-law with the secretary of state. [1911, ch. 43, § 7.]

ARTICLE 3.— COUNTY FAIRS.

§ 1867. Certain counties may aid. Conditions. Application. Levy of tax. If in any county the taxable real and personal property within which has an assessed value of not less than five million dollars, there may be organized a county agricultural association all of whose executive officers and directors, or trustees, are resident freeholders of such county, such association may apply to the board of county commissioners of any such county for a grant to aid in the erection of suitable buildings and improvements to accommodate its patrons and the exhibits to be made at any fair to be held by any such association and to pay expenses and premiums awarded. Application for such grant must be made in writing and must show that such association is duly incorporated, the names and places of residence of all its executive officers, that it is the owner in fee of real property in such county, sufficient in area for the purpose of its fairs and of the value of at least twenty-five hundred dollars. If such board of county commissioners shall be satisfied that the statements in said application are true and that such association intends in good faith to hold a fair within said county annually for the exhibition of agricultural, horticultural, mechanical and manufactured products of the county, live stock and such articles as are usually exhibited at such fairs, they may, at the time specified in section 2133, levy a tax not to exceed, for the first year's grant of such aid, one-half of a mill on all the taxable property within such county, and the same shall be collected as other taxes. If such tax be levied, the board of county commissioners shall not later than July thirty-first thereafter pay to the secretary of such association the amount of the tax so levied and take the receipt of such association therefor. [R. C. 1905, § 1310; 1897, ch. 66; R. C. 1899, § 163; 1905, ch. 70, § 1.]

§ 1868. Annual reports. Duties of county commissioners. Any county fair association which has received the aid provided for herein, shall at the regular meeting of the board of county commissioners held in the month of February following the holding of such county fair, make a full report to such board of all moneys received by it from all sources and of all disbursements thereof, which report shall show the amount of the debts, the amount of moneys in the treasury of such association and the amount of any deficit after the payment of its expenses. Such report shall contain an estimate of the amount, if any, which it will be necessary to raise above the estimated ordinary receipts of the association for the purposes of its fairs for the ensuing year, and such report and estimate shall be verified by the oath of the president or vice-president, the secretary, treasurer and a majority of the board of directors of such association. Upon the filing and approval of such report such board of commissioners shall, if such report shall show that the funds of such association have not been illegally expended, levy a tax for the then current year equal to the estimate contained in such association's report; provided, that such tax shall not exceed one-fourth of one mill upon the taxable property in said county, and the amount so levied shall be paid over to such association as provided in section 1310. [R. C. 1905, § 1311; 1905, ch. 70, § 2.]

§ 1869. Levy of tax. Upon the filing and approval of such annual reports by such county fair association the board of county commissioners of such county shall levy a tax annually, for the aid of such association; the same shall be levied, paid and collected in the manner and upon the basis provided in the preceding section. [R. C. 1905, § 1312; 1905, ch. 70, § 3.]

§ 1870. One association entitled to benefits. Exception. The aid provided for in this article shall not be granted to more than one such agricultural association in any one county, and shall not be given to any association organized for profit; provided, however, that should there be two such agricultural fair associations, in any county, that have held fairs for three successive years prior to the taking effect of this article, then and in that case the amount of taxes so collected shall be divided equally between each of such agricultural fair associations. [R. C. 1905, § 1313; 1905, ch. 70, § 4.]

§ 1871. If association fails to hold fair commissioners shall refuse to make further levy. Officers liable for misappropriation of funds. If any such association shall fail to hold a fair within such county in any year for which it has received aid from such county, the board of county commissioners shall refuse to make further levy of taxes for its benefit; and in such case it shall be the duty of such county commissioners to inquire into the disposition of moneys paid by such county to such association after its last annual report and, if there has been any misappropriation thereof, to at once institute proceedings to recover the same, and for any such misappropriation the officers and trustees or directors of such association shall be personally liable to such county. [R. C. 1905, § 1314; 1905, ch. 70, § 5.]

§ 1872. Treasurer to give bond. It shall be the duty of the directors of any fair association to require the treasurer thereof to give a sufficient bond to such directors, conditioned for the faithful keeping of such money as may come into his hands as such treasurer. [1913, ch. 163, § 1.]

§ 1873. Penalty. Any person violating the provisions of section 1872 shall be guilty of a misdemeanor. [1913, ch. 163, § 2.]

§ 1874. Tax provided for submitted to vote. Whenever the county commissioners shall have voted and ordered a tax levied in aid of an agricultural fair then at the next general election the question of continuing the annual levy and collection of said tax shall be submitted to a vote of the people affected thereby, and the county auditor shall certify and give notice of the submission to vote of said question as in such cases provided by law. The ballots to be used at such election shall be in the following form:

Yes. ☐
For tax in aid of county fair
No. ☐

In voting upon such question the elector in favor of continuing said tax shall place a cross "X" in the square marked "yes" and the electors opposed to continuing such tax shall place a cross in the square marked "no." If a majority of the ballots cast at such election is in favor of continuing said tax the county commissioners may continue to levy the same annually, but if a majority is against levying said tax the county commissioners shall not thereafter levy any tax under this article; provided, however, the provisions of this article may be submitted by said county commissioners to the electors of the county at any general election, but the result of any election held under the provisions hereof shall remain in force until changed at some subsequent election held hereunder. [R. C. 1905, § 1315; 1905, ch. 70, § 6.]

ARTICLE 4.—DUTY OF OFFICERS OF FAIR ASSOCIATIONS.

§ 1875. File dates claimed. It is hereby made the duty of the secretary, or other executive officer of every county, district or state fair association, or other exhibit at which the resources or products of the state are placed on

exhibition, to file with the commissioner of agriculture and labor, on or before May first of each year, by said organization, or any of them, the dates claimed by said organization on which they intend giving their exhibitions, together with the name of the place where the same is to be held, and the name of the president and secretary of such association. [1907, ch. 125, § 1.]

§ 1876. **Penalty.** Failure to comply with the provisions of section 1875 shall render the officer required to make said report liable to a fine of not more than fifty dollars to be collected as other fines are collected. [1907, ch. 125, § 2.]

ARTICLE 5.—FARMERS' INSTITUTES.

§ 1877. **Board of directors, who constitute.** There is hereby established a state farmers' institute board of directors, composed of the president of the board of trustees of the North Dakota agricultural college, the commissioner of agriculture and labor, the director of the experiment station, the professor of agriculture and the professor of dairying of the North Dakota agricultural college. [R. C. 1905, § 1316; 1899, ch. 72, § 17; R. C. 1899, § 1703; 1901, ch. 172, § 1.]

§ 1878. **Organization of board.** The state farmers' institute board of directors shall have power to organize, by electing one of its members to act as president, and one to act as secretary and shall have power, and it is hereby made its duty to employ a director of farmers' institutes and such other institute conductors and lecturers as may be deemed necessary, to authorize the holding of not less than fifty farmers' institutes each year, the same to be of such a nature as to instruct the farmers of the state in maintaining the fertility of the soil, the improvement of cereal crops grown in the state, principles of breeding as applied to domestic animals, the making and handling of dairy products, the destruction of noxious weeds and injurious insects, forestry and the growing of fruits, feeding and management of live stock, and in general such instruction as will tend to promote the prosperity, home life and comfort of the farming population. [R. C. 1905, § 1317; 1899, ch. 72, § 17; R. C. 1899, § 1703; 1901, ch. 172, § 2; 1903, ch. 11, § 1; 1905, ch. 23, § 2.]

§ 1879. **Compensation of board.** No member of this board shall receive any compensation for his services, but shall be allowed his actual and necessary traveling expenses when engaged upon business connected with the proper discharge of his duties under this article. [R. C. 1905, § 1318; 1901, ch. 172, § 3.]

§ 1880. **Appropriation for institute.** There is hereby appropriated out of any money in the state treasury, not otherwise appropriated, the sum of six thousand dollars annually for carrying out the purpose of this article. All charges, accounts and expenses authorized by this article shall be paid by the treasurer of the state, upon the approval of the president and secretary of the board of directors. [R. C. 1905, § 1319; 1901, ch. 172, § 4; 1903, ch. 11, § 1; 1905, ch. 23, § 4.]

CHAPTER 22.

GOOD ROADS EXPERIMENT STATION.

§ 1881. **Established.** For the purpose of ascertaining the most practical and economical construction and maintenance of public roads and highways in this state, there is hereby established at the city of Bismarck a good road experimental station. [1909, ch. 133, § 1.]

§ 1882. **Management.** The board of trustees of public property shall have general supervision of all roads and highways constructed under the provisions of this chapter. [1909, ch. 133, § 2.]

§ 1883. **State engineer, duties of.** It shall be the duty of the state engineer to furnish the plans and specifications and to establish the line and grade

and to have supervision over the construction and maintenance of all roads and highways constructed under the provisions of this chapter. [1909, ch. 133, § 3.]

§ 1884. **Warden, duties of.** It shall be the duty of the warden of the state penitentiary, upon the requisition of the board of trustees of public property, to furnish convict labor, not otherwise employed, to be used in the construction and maintenance of all roads and highways provided for in this chapter. [1909, ch. 133, § 4.]

§ 1885. **Where to build.** The said board of trustees of public property and the state engineer may lay out, construct and improve the roads and highways from the capitol building to the United States military reservation of Fort Lincoln and from the state penitentiary to the Missouri river, along or upon any public road or highway between such points. [1907, ch. 133, § 5.]

§ 1886. **Cannot purchase right of way.** No expenditure of any money shall at any time be appropriated or used by said board of trustees of public property for the purpose of procuring the right of way for any of the roads or highways herein mentioned; provided, that the said board of trustees of public property may accept and use any money donated by the United States or any private individual for the purpose of aiding in the construction, maintenance and improvement of the roads and highways herein mentioned. [1909, ch. 133, § 6.]

CHAPTER 23.

FISH HATCHERY.

§ 1887. **Establishment of fish hatchery.** There is hereby created and established a fish hatchery and fish cultural station to be located at Fish Lake, Birchwood Park, Rolette county, North Dakota, on the southeast quarter of section three, and the northeast quarter of section ten, all in township one hundred and sixty-three, north of range seventy-one west, for the propagation of fish to stock the lakes and streams of this state; provided, that this fish hatchery shall not be established nor its work undertaken unless a suitable tract of land be donated free of charge by warranty deed to the state of North Dakota. [1909, ch. 129, § 1.]

§ 1888. **Appropriation.** There is hereby appropriated out of the general fund of the state, not otherwise appropriated, the sum of three thousand dollars for the building and establishing of this fish hatchery and two thousand dollars for excavating, piping and connections for rearing, retention and propagating ponds, and for no other purpose. [1909, ch. 23, § 2.]

CHAPTER 24.

CENSUS.

§ 1889. **When enumeration of inhabitants to be taken.** An enumeration of the inhabitants of this state and of each county, city, village and township thereof shall be taken during the year 1905, and during every tenth year thereafter, under the direction of the secretary of state. [R. C. 1905, § 1320; 1905, ch. 168, § 1.]

§ 1890. **Blanks, etc., to be obtained by the secretary of state.** The secretary of state shall, as soon as may be after the taking effect of this article, and also every tenth year thereafter, cause uniform blank returns and abstracts, together with copies of this article and such instructions as he may deem necessary, to be printed for the purpose of taking such enumeration. [R. C. 1905, § 1321; 1905, ch. 168, § 2.]

§ 1891. **Blanks to be transmitted to county auditor.** The secretary of state shall, on or before the first day of April, 1905, and in every tenth year thereafter, transmit in such manner as he may think proper to each of the county

auditors twice as many of such blank returns and as many copies of this article and of said instructions as there are assessor districts in their respective counties. [R. C. 1905, § 1322; 1905, ch. 168, § 3.]

§ 1892. County auditors to deliver blanks to assessors. It shall be the duty of each county auditor at the time of delivering the assessor supplies to the various district, city, village and township assessors of his county in the year 1905, and in every tenth year thereafter, to deliver a sufficient number of blank returns and copies of this article and instructions so as aforesaid transmitted to him by the secretary of state, to supply each assessor of such district, city, village and township with duplicate sets of said blank returns, and one copy of this article and one copy of said instructions. [R. C. 1905, § 1323; 1905, ch. 168, § 4.]

§ 1893. When and how enumeration to be made. During time of making the assessments for the year 1905, and in every tenth year thereafter, every such assessor shall proceed to enumerate truly and accurately the inhabitants residing in the district or territory for which he shall have been elected or appointed, by making actual inquiry at every dwelling house or the head of every family residing therein; and in making this enumeration he shall ascertain and state in separate lines of columns, according to the schedules and instructions to be furnished by the secretary of state, viz.:

1. The number of dwelling houses numbered in order of visitation.
2. The number of families numbered in order of visitation.
3. The names of individuals.

4. The number of inhabitants arranged, as far as practicable, according to families and dwelling houses, and classified as follows: Native white males; native white females; native colored males; native colored females; foreign males—all other nationalities; foreign females—all other nationalities; children of five years of age and under—males; children of five years of age and under—females; all males five to twenty years of age; all females five to twenty years of age; all males twenty to sixty years of age; all females twenty to sixty years of age; all males over sixty years of age; all females over sixty years of age. [R. C. 1905, § 1324; 1905, ch. 168, § 5.]

§ 1894. What assessor to enter in blank returns. Each assessor shall enter in the blank return received the particulars of the enumeration so made, according to the instructions of the secretary of state. [R. C. 1905, § 1325; 1905, ch. 168, § 6.]

§ 1895. What persons to be returned as residents. Every person whose abode shall be in any place or in any family on the first day of April, 1905, and on the first day of April in every such tenth year thereafter, shall be returned as of such place or family, and not otherwise; and every person casually absent at the time of taking the enumeration as belonging to that place in which he usually resides. [R. C. 1905, § 1326; 1905, ch. 168, § 7.]

§ 1896. Returns certified by assessor. The returns so made out shall be certified by each assessor taking the enumeration to be true and accurate, to the best of his knowledge and belief, and shall state the number of pages of which it consists, which certificate shall be subscribed and sworn to by him before some officer authorized to administer oaths. [R. C. 1905, § 1327; 1905, ch. 168, § 8.]

Census returns as evidence of age. 9 L.R.A.(N.S.) 718.

§ 1897. When assessor to transmit returns to secretary of state. Each assessor shall, on or before the tenth day of July, 1905, and on or before the tenth day of July in every such tenth year thereafter, cause the returns so certified to be transmitted to the secretary of state through the county auditor of his county, by express, carefully boxed in such manner as to protect them; and if the assessor shall neglect, for five days after the tenth day of July, to make his returns as aforesaid, the secretary of state shall immediately dispatch a messenger to procure such return and the expense thereof shall

be deducted from the account of such assessor by the board of county commissioners, if they shall think proper. [R. C. 1905, § 1328; 1905, ch. 168, § 9.]

§ 1898. Secretary of state to report general account of enumeration to legislature. The secretary of state, after receiving such returns, shall prepare and report to the two houses of the legislative assembly, on or before the fifteenth day of January at the next following session succeeding the taking of such census, a general account of the enumeration, specifying the result thereof, in the several townships, cities, villages and counties of the state, with a full recapitulation of the whole, and after making such report it shall be the duty of the secretary of state to deposit all of such returns in the state library, with a copy of the said general account and recapitulation thereof. [R. C. 1905, § 1329; 1905, ch. 168, § 10.]

§ 1899. Appointment of enumerator where assessor has died, etc. In case of the death of any assessor, or in his inability from any cause, or his neglect or refusal to perform the duties required by this article at the time therein specified, it shall be the duty of the board of county commissioners immediately to appoint some suitable and proper person residing in said district, city, village or township to act as an enumerator in the place of such assessor so failing to act, which person, so appointed, shall perform the duties imposed by this article on such assessor. [R. C. 1905, § 1330; 1905, ch. 168, § 11.]

§ 1900. Accounts of assessors and enumerators, how paid. The accounts for the services of the assessors done under this article and the enumerators appointed under the provisions of this article shall be audited by the board of county commissioners, and shall be assessed, collected and paid as part of the contingent expenses of such county. [R. C. 1905, § 1331; 1905, ch. 168, § 12.]

§ 1901. Fees for services. The assessors shall be entitled as enumerators, for their services, to two dollars per hundred inhabitants, enumerated as aforesaid, to be paid by the respective counties, and such fees to be in addition to compensation received for services performed as assessor. [R. C. 1905, § 1332; 1905, ch. 168, § 13.]

§ 1902. Costs of printing, etc. All liabilities incurred for printing, postage and transmission of returns shall be paid out of the state treasury on the warrant of the auditor and charged to a special account. [R. C. 1905, § 1333; 1905, ch. 168, § 14.]

CHAPTER 25.

STATISTICS.

§ 1903. Assessors to furnish statistics. It shall be the duty of the several county, township, city and village assessors of this state at the time of listing property for taxation each year to require each person, firm, company and corporation in his assessor district to make a statistical statement of facts relating to agriculture, horticulture, stock raising and such other subjects as may be required by the state statistician, in the manner provided for herein and specified in the instruction given by the state statistician; and each assessor shall make such other statistical returns, not herein mentioned, as may be required by the state statistician, of and through the county auditor; and each assessor shall make a return of such statements in tabulated form to the county auditor at the time of returning the lists of property for taxation. Such statements shall be made under oath by the persons or by the managers or agents of the firms, companies or corporations, and if any such person refuses or neglects to make such statement under oath, it shall be the duty of the assessor to obtain such information to the best of his ability from neighbors or others that may be supposed to be best prepared to furnish it, which information, so obtained, the assessor shall indicate how

procured and whether he has reason to believe the same to be reliable. Each assessor shall make an alphabetical list of the names of the persons refusing to make such statements, with their post office addresses, which list he shall return to the county auditor. [R. C. 1905, § 1334; 1891, ch. 114, § 1; R. C. 1895, § 1038.]

§ 1904. What statistical statement to contain. The statistical statement mentioned in the foregoing section shall contain, among other things, answers properly classified to the following questions: What is the number of farms, the number of acres cultivated or to be cultivated to crop for the current year, together with the acreage and product, for the year immediately preceding, of wheat, oats, barley, flax, corn, rye, potatoes, cultivated and wild hay and other farm produce. The number of mules, horses, milch cows and other cattle, sheep and hogs subdivided into the breed or classes to which they belong. The number of pounds of wool clipped, and the dairy products for the past year. The number and kinds of trees grown in cultivated or planted forests; the number of nurseries and the acreage of each; the number and kind of fruit trees, berries and vines, and the orchard products for the preceding year. The male and female population of each county, township, city and village, and the number of blind, deaf and dumb, insane and idiotic in each assessor's district. [R. C. 1905, § 1335; 1891, ch. 114, § 2; R. C. 1895, § 1039.]

§ 1905. Statistics, how obtained. Each assessor shall perform the service required of him by a personal visit to each dwelling house and to each family in his township, district, city or village, and shall ascertain by inquiries made of some member of each family, if any one can be found capable of giving the information, but if not, then he shall obtain such information from the most reliable source; and he shall personally visit the farm, shops and other places in the district, respecting which information is required, as specified on the blanks furnished him by the state statistician, and he shall obtain all information from the best and most reliable sources. The county auditor shall furnish to each assessor in his county such blanks as may be necessary for taking such statements, which blanks shall be furnished by the state statistician to the county auditors, together with printed instructions explaining the duties of the assessor in collecting the statistics aforesaid; and the county auditor shall, within thirty days after such statements are returned to him, make out in duplicate a tabular statement thereof, by assessors' districts, properly verified, one copy of which shall be preserved in the office of the county auditor and the other forwarded to the state statistician. In case such statement is not received by the state statistician on or before the fifteenth day of August of any year he shall notify such county auditor in writing of such delinquency and shall cite him to the provisions of this section, and if such auditor refuses or neglects to prepare and forward such statement on or before the fifteenth day of September the state statistician shall report such fact to the attorney-general, who shall at once proceed to enforce the penalties provided in section 1907. [R. C. 1905, § 1336; 1891, ch. 114, § 4; R. C. 1895, § 1040.]

§ 1906. Compensation. The services herein required of the several assessors shall be performed at the same time that they list property for taxation. They shall not be paid for such services separately but for the time employed in collecting such statistics and for listing property for taxation they shall be allowed and paid as for one and the same service; and they shall be allowed and paid the same per diem for the discharge of the services required herein as is now or shall hereafter be provided for listing property for taxation; provided, that an assessor shall receive no pay for services as assessor, except on presenting a certificate from the county auditor that he has fully complied with the requirements of the foregoing section; and it is the duty of the county auditor when any assessor fails to make proper

and complete returns of the statistics required herein, to withhold such certificate until the work is fully and properly completed, and to return forthwith the blanks to such assessor, indicating to him the deficiencies in such statistics and what is needed by way of correction, and shall specify a reasonable time within which such assessor shall fully complete the work and return the same to the county auditor; and it shall be the duty of such assessor immediately to carry out the instructions of such auditor and return the statistics completed within the time prescribed. In case of his failure to comply with such requirement, such assessor shall forfeit all compensation and be subject to the penalties prescribed in section 1907; and it is the duty of the county auditor to enter complaint against such assessor and the state's attorney of the county shall prosecute the same; and any judgment or penalty so recovered against any such assessor shall be a lien against all real and personal property owned by such assessor. In case any assessor fails to complete such statistics and return the same to the county auditor within the time prescribed, after they have been returned to him by the county auditor with the proper instructions for completion, such county auditor shall appoint some suitable person to collect or complete the statistics for the district, and such appointee shall perform such work as provided in the case of a regularly chosen assessor and shall be entitled to compensation at the same rate, to be paid as provided for assessors. The failure of any county auditor to require the complete performance of duty by assessors as herein provided or to enter complaint against any assessor who shall fail to perform his duty as herein provided shall be deemed a misdemeanor and such auditor shall be liable to the penalties prescribed in the next section. [R. C. 1905, § 1337; 1891, ch. 114, § 5; R. C. 1895, § 1041.]

§ 1907. Penalty for neglect or refusal. Any assessor or county auditor who shall willfully neglect or refuse in whole or in part to perform the duties required in the foregoing sections, shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than twenty nor more than one hundred dollars. [R. C. 1905, § 1338; 1891, ch. 114, § 6; R. C. 1895, § 1042.]

§ 1908. County auditor to furnish statistics to state statistician. Each county auditor shall, upon request, furnish to the state statistician such information from the county records regarding the county, its financial condition, products and other statistical information as may be requested, on blanks furnished by the state statistician, and the refusal or neglect of any county auditor to furnish such information within thirty days from the receipt of such request shall be deemed a misdemeanor and shall subject such auditor to the penalties prescribed in the preceding section. [R. C. 1905, § 1339; 1891, ch. 114, § 7; R. C. 1895, § 1043.]

§ 1909. Duty of state statistician. The state statistician is hereby required to carry into effect the provisions of the foregoing sections relating to the collection and compilation annually of the statistical data therein mentioned, and he shall cause the returns when received to be arranged, classified and published in the best and most convenient manner in order to exhibit the annual growth and development of each county in the state. [R. C. 1905, § 1340; 1891, ch. 114, § 8; R. C. 1899, § 1044.]

§ 1910. Expenses to be paid by state. The expenses incurred in procuring and furnishing the necessary blanks, stationery and postage and compiling and publishing the statistical information herein required, shall be paid by the state treasurer on the warrant of the state auditor, which shall be issued on the presentation of the account of the state statistician duly verified, when approved by the governor. [R. C. 1905, § 1341; 1891, ch. 114, § 9; R. C. 1899, § 1045.]

CHAPTER 26.

GREAT SEAL OF THE STATE.

§ 1911. **Great seal.** The seal prescribed in section 207 of the constitution shall be the great seal of the state, and a description in writing of the same shall be deposited and recorded in the office of the secretary of state and remain a public record. [R. C. 1905, § 1342; 1890, ch. 149, § 1; R. C. 1899, § 1046.]

§ 1912. **Dimensions of seal.** Upon every seal of a court or officer of this state required or authorized to have a seal, there shall be engraved the words "State of North Dakota," and the name of the court or office in which the seal is to be used, and all such seals, except the great seal, shall be one and five-eighths of an inch in diameter. [R. C. 1905, § 1343; 1890, ch. 149, § 2; R. C. 1899, § 1047.]

§ 1913. **Temporary seal may be authorized, when.** When any court of record is unprovided with a seal, the judge thereof may authorize the use of any temporary seal or of any device by way of seal until the same is provided as aforesaid. [R. C. 1905, § 1344; 1890, ch. 149, § 3; R. C. 1899, § 1048.]

CHAPTER 27.

STATE FLOWER.

§ 1914. **Named.** On and after the passage of this act the state floral emblem of North Dakota shall be the wild prairie rose (*rosa blanda* or *arkansana*). [1907, ch. 231.]

CHAPTER 28.

STATE FLAG.

§ 1915. **State flag.** The flag of North Dakota shall consist of a field of blue silk four feet four inches on the pike and five feet six inches on the fly, with a border or knotted yellow fringe two and one-half inches wide. On each side of said flag in the center thereof, shall be embroidered an eagle with outspread wings and with opened beak, the eagle to be three feet four inches from tip to tip of wing, and one foot ten inches from top of head to bottom of olive branch hereinafter described; the right foot of the eagle shall grasp a sheaf of arrows, the left foot shall grasp an olive branch showing three red berries; on the breast of the eagle shall be displayed a shield, the lower part showing seven red and six white stripes placed alternately; through the opened beak of the eagle shall pass a scroll bearing the words "E Pluribus Unum," beneath the eagle a scroll on which shall be borne the words "North Dakota;" over scroll carried through the eagle's beak shall be shown thirteen five-pointed stars, the whole device being surmounted by a sunburst. The flag shall conform in all respects as to color, form, size and device with the regimental flag carried by the First North Dakota Infantry in the Spanish-American War and Philippine Insurrection, except in the words shown on the scroll below the eagle. [1911, ch. 283.]

CHAPTER 29.

MOTHERS' DAY.

§ 1916. **Governor to designate by proclamation.** It shall be the duty of the governor each year to designate the first Sunday in June as Mothers' Day and the governor shall issue a proclamation asking that the people of the state shall upon that Sunday assemble in their churches or such other place or places as may be most convenient for the purpose of paying respect and tribute to our mothers. [1913, ch. 211.]

CHAPTER 30.

DEPOSITARY FOR STATE TITLES.

§ 1917. **Deeds and title papers of state deposited, where.** All abstracts and conveyances of title to this state of any lands now owned or hereafter acquired by the state, whether such lands are held for penal, educational, charitable or other institutions or purposes, shall be by those in whose charge such conveyances now are or may come, deposited with and remain in the control of the secretary of state. [R. C. 1905, § 1345; 1890, ch. 199, § 1; R. C. 1899, § 1049.]

CHAPTER 31.

HIGHWAYS, BRIDGES AND FERRIES.

ARTICLE 1. OPENING AND VACATING HIGHWAYS, §§ 1918-1939.

2. GENERAL PROVISIONS, §§ 1940-1950.
3. BRIDGES, §§ 1951-1958.
4. ROAD SUPERVISORS, §§ 1959-1976.
5. ROAD DUTIES OF TOWNSHIP SUPERVISORS, §§ 1977-1982.
6. DUTIES OF STATE ENGINEER IN CONSTRUCTION OF HIGHWAYS AND CULVERTS, §§ 1983, 1984.
7. DUTIES OF OVERSEERS OF HIGHWAYS, §§ 1985-1990.
8. APPOINTMENT OF COUNTY SUPERINTENDENTS OF HIGHWAYS, §§ 1990A-1990L.
9. APPOINTMENT OF TOWNSHIP OVERSEER OF HIGHWAYS, §§ 1990M-1990R.
10. CONSTRUCTION OR IMPROVEMENT OF ROADS BY PRIVATE ASSOCIATIONS, §§ 1991-1999.
11. ABANDONED COAL MINES AND WELLS, §§ 2000, 2001.
12. NOXIOUS WEEDS, §§ 2002, 2003.
13. HIGHWAY LABOR AND ROAD TAX, §§ 2004-2034.
14. ROADS IN CITIES, § 2035.
15. GRADES OF HIGHWAYS ADJOINING CITIES, § 2036.
16. OBSTRUCTING HIGHWAYS, § 2037.
17. WATERING PLACES ON HIGHWAYS, §§ 2038-2040.
18. DITCHES FOR DRAINING HIGHWAYS, §§ 2041, 2042.
19. CATTLE-WAYS, §§ 2043-2045.
20. ROADS ON LINE OF CITY OR VILLAGE, §§ 2046, 2047.
21. RIGHT OF WAY FOR HIGHWAYS, §§ 2048-2050.
22. LAW OF THE ROAD, §§ 2051-2054A.
23. BRIDGE PENALTIES, §§ 2055-2061.
24. FERRIES, §§ 2062-2073.

ARTICLE 1.— OPENING AND VACATING HIGHWAYS.

§ 1918. **What are public roads.** All public roads and highways within this state which have been open and in use as such, and included in a road district in the town in which the same are respectively situated during twenty years next preceding the time when this article shall take effect, are hereby declared to be public roads or highways and confirmed and established as such whether the same have been lawfully laid out, established and opened or not. [R. C. 1905, § 1346; 1897, ch. 112, § 1; R. C. 1899, § 1050.]

Section lines constitute public highways when practicable for such purpose without special action of county commissioners. *Lawrence v. Ewert*, 21 S. D. 580, 114 N. W. 709. "Public highways" are routes of travel whose inception was justified by some claim of right, and "roads" or "ways" are routes of travel whose inception was not so justified. *Roche Realty & Invest. Co. v. Highlands Co.*, 29 S. D. 169, 135 N. W. 684.

Highways by prescription based upon adverse user by public for period of twenty years prior to passage of this act and not recognized as statute is prospective only. *Burleigh County v. Rhud*, 23 N. D. 362, 136 N. W. 1082.

As to power of city to construct bridge only on legal highway. *Manning v. Devils' Lake*, 13 N. D. 47, 65 L.R.A. 187, 112 Am. St. Rep. 653, 99 N. W. 51.

Congressional grant in 1866 of the right of way for highways over public lands was in praesenti. *Walcott Township v. Skauge*, 6 N. D. 382, 71 N. W. 544; *Wells v. Pennington Co.*, 2 S. D. 1, 48 N. W. 305, 39 Am. St. Rep. 758; *Keen v. Board of Supervisors*, 5 S. D. 558, 67 N. W. 623.

Withholding public lands for school purposes, not "a grant or reservation for public uses" within the meaning of congressional grant. *Riverside Township v. Newton*, 11 S. D. 120, 75 N. W. 899.

What sufficient to prevent change or vacation of highway under act January 12, 1871. *Keen v. Board of Supervisors*, 8 S. D. 558, 67 N. W. 623.

Highways established by prescription. 57 Am. St. Rep. 744.

§ 1919. What roads are public highways. Every road laid out by the proper authorities, as provided for in this chapter, from which no appeal has been taken within the time limited for taking such appeal is hereby declared a public highway to all intents and purposes, and all persons having refused or neglected to take an appeal, as provided for in this chapter, shall forever be debarred from any further redress. [R. C. 1905, § 1347; 1897, ch. 112, § 2; R. C. 1899, § 1051.]

§ 1920. Section lines considered public roads, when: In all townships in this state outside the limits of incorporated cities, villages or towns, the congressional section lines shall be considered public roads, to be opened to the width of two rods on each side of such section lines, where the same have not already been opened upon the order of the board having jurisdiction as provided by section 1921 without any survey being had, except where it may be necessary on account of variations caused by natural obstacles, subject, however, to all the provisions of this chapter in relation to assessments of damages. [R. C. 1905, § 1348; 1899, ch. 97, § 3; R. C. 1899, § 1052.]

Where on section line, no necessity, and perhaps no authority, for survey. *Williams v. Turner Township*, 15 S. D. 182, 87 N. W. 968.

Congressional grant of 1866 effective. Prescription. Right runs against Railroad Co. *Walcott Township v. Skauge*, 6 N. D. 382, 71 N. W. 544; *Wells v. Pennington Co.*, 2 S. D. 1, 48 N. W. 305; *Keen v. Fairview Township*, 8 S. D. 558, 67 N. W. 623.

What necessary for vacation under act 1871. *Keen v. Fairview Township*, 8 S. D. 558, 67 N. W. 623.

Lands reserved for school purpose subject to highway grant. *Riverside Township v. Newton*, 11 S. D. 120, 75 N. W. 899.

Section line road becomes established public highway, without any action or procedure on part of county. *Lowe v. East Sioux Falls Quarry Co.*, 25 S. D. 393, 126 N. W. 609.

Presumably there is public crossing at least once in every mile on line of railroad. *Lyons v. Chicago, M. & St. P. R. Co.*, 28 S. D. 31, 35 L.R.A. (N.S.) 1219, 132 N. W. 679.

§ 1921. Before whom proceedings brought. In the opening, vacating or changing of a highway outside of the limits of incorporated cities, villages or towns, all proceedings relating thereto to acquire right of way and to all other matters connected therewith shall be under the charge and in the name:

1. Of the board of county commissioners, if the county is without a civil township organization, or if the road is in territory not organized into a civil township.

2. Of the board of township supervisors of organized townships.

3. Of the board of county commissioners of each county in case the road is between or in two or more counties.

4. Of the board of township supervisors of each organized civil township in which any part of the road is situated if the road is situated between two civil townships or in more than one civil township.

5. Of the board of township supervisors of each organized township and of the board of county commissioners in case the road is situated partly in an organized township and partly in an unorganized township.

6. Of the board of county commissioners in any case arising under subdivision four where the board of township supervisors of the respective civil

township cannot agree or will not take action on petition so to do. [1913, ch. 88; R. C. 1905, § 1349; 1897, ch. 112, § 4; R. C. 1899, § 1053.]

§ 1922. County commissioners may condemn and purchase right of way, when. Whenever the expense of constructing a highway or any part thereof is to be borne by the county, the board of county commissioners thereof shall have the power to deviate from section and town lines and condemn and purchase right of way for such highway, whenever in their opinion the cost of constructing and maintaining such highway shall be materially decreased, provided, that the cost of obtaining such right of way shall be borne by the county.

§ 1923. Petition for laying out, altering or discontinuing roads. The board having jurisdiction as provided by the provisions of the preceding section may alter or discontinue any road or lay out any new road upon the petition of not less than six legal voters, who own real estate, or who occupy real estate under the homestead laws of the United States, or under contract from the state of North Dakota, in the vicinity of the road to be altered, discontinued or laid out; said petition shall set forth in writing a description of the road and what part thereof is to be altered or discontinued; and if for a new road, the names of the owners of the land, if known, over which the road is to pass, the point at which it is to commence, its general course, and the point where it is to terminate; provided, that all roads, or parts thereof heretofore or hereafter laid out by authority of the board of county commissioners, or township supervisors, and not open to public use within ten years from the time when so laid out (or which shall thereafter be abandoned and not used for ten years), are hereby declared vacant; provided, further, that whenever any tract of land is surveyed or sold in tracts less than the original subdivision as established by the government survey thereof, so that any part thereof does not touch upon some of the lines now considered as public roads and so allow the owner of such tract access to a public highway, the board of county commissioners or board of township supervisors may, upon a petition as herein provided, open a cartway or highway along the lines of any such tract or tracts when in the judgment of such board such cartway or highway is necessary; provided, however, that no such cartway, or highway shall exceed two rods in width unless in the judgment of such board a roadway two rods in width shall not be sufficient to accommodate the travel thereon. The provisions of this chapter shall apply to all lands owned by the state or any institution thereof, or held by virtue of any contract with the state, and notice of the altering, laying out or discontinuing of any such cartway or highway shall be served by registered mail upon the board of university and school lands not less than thirty days prior to any such board taking action in regard to altering, laying out or discontinuing such cartway or highway. [1911, ch. 148; R. C. 1905, § 1350; 1899, ch. 97, § 5; R. C. 1899, § 1054.]

An amendment of this section was vetoed in Laws 1913, ch. 309.

Highways created only by legal proceedings. *Meek v. Mead Co.*, 12 S. D. 162, 80 N. W. 182.

Petition signed by persons not qualified, immaterial if required number of qualified persons sign. *Bockoven v. Supervisors*, 13 S. D. 317, 83 N. W. 335.

Survey unnecessary when on section lines. *Williams v. Turner Township*, 15 S. D. 182, 87 N. W. 968.

Description sufficient when a competent surveyor can locate road therefrom. *Dunstan v. City of Jamestown*, 7 N. D. 1, 72 N. W. 899; *Yankton County v. Klemisch*, 11 S. D. 170, 76 N. W. 312.

May be opened on section line of land belonging to United States at time statute was enacted. *Keen v. Board of Supervisors*, 8 S. D. 538, 67 N. W. 623.

Omission in petition of description of schoolhouse site did not deprive board of jurisdiction, where tract including site described. *Woodworth v. Spirit Mound Township*, 10 S. D. 504, 74 N. W. 443.

Recital in petition of jurisdictional facts, sufficient without specific finding, as against collateral attack. *Yankton County v. Klemisch*, 11 S. D. 170, 76 N. W. 312.

"One mile" means one mile in direct line. *Kothe v. Berlin Twp.*, 19 S. D. 427, 103 N. W. 657.

Open to full width where declared open by county commissioners, though only one side of section line has been used. *Baker v. Hogaboom*, 12 S. D. 405, 81 N. W. 730.

Recently established highways ought not to be vacated unless new conditions make it desirable. *Miller v. Oakwood Township*, 9 N. D. 623, 84 N. W. 556.

Right to withdraw name from petition for highway. 11 L.R.A.(N.S.) 372.

§ 1924. Copy of petition to be posted. Whenever such number of legal voters determine to petition, as aforesaid, for the alteration or discontinuance of any road, or for the laying out of any new road, they shall cause a copy of their petition to be posted up in three of the most public places in the county or township having jurisdiction thereof twenty days before any action is had in relation thereto. [R. C. 1905, § 1351; 1899, ch. 97, § 6; R. C. 1899, § 1055.]

§ 1925. Notice to all parties to be given, and what deemed to be notices. When the board having jurisdiction receives a petition in compliance with preceding sections for laying out, altering or discontinuing any highway, they shall, within thirty days, make out a notice and fix therein a time and place at which they will meet and decide upon such application, and the applicant shall, ten days previous to such a time so fixed, cause such notice to be given to all occupants of the land through which such highway may pass, which notice shall be served personally or by copy left at the abode of such occupant. The said board shall also cause copies of such notice to be posted in the three public places in said county or township, at least ten days previous to such meeting; every such notice shall specify, as near as practicable, the highway proposed to be laid out, altered or discontinued, and the tract of land through which the same may pass. Provided, however, that in cases where at least seventy per cent of legal voters who are owners or part owners of land bordering on said proposed road or highway shall have signed the original petition and thereby releasing all their claims to damages arising by altering, discontinuing or laying out of such road or highway, that in such cases it shall not be necessary to post notices as provided for in section 1924, nor to post notices or serve notices as above provided for in this section except that the notices must be served personally or left at the abode of such occupants as may have failed to sign the petition and whose land borders on such proposed road or highway. The general knowledge of and the fact that seventy per cent of the legal voters shall have signed the original petition in compliance with this provision shall be deemed sufficient notice to all concerned and for all intents and purposes; provided, further, that the petition under this provision, if for a road between two or more counties, must be filed with the auditor of one of the counties affected at least fifteen days before any action is taken, and it shall be the duty of such auditor to immediately transmit certified copies of such petition to the auditors of all other counties to be affected by such changing, discontinuing or laying out of roads or highways, whose duty it shall be to lay such petition before the board of county commissioners at their next meeting for them to take action in the matter as provided for in this chapter. [1911, ch. 150, § 1; R. C. 1905, § 1352; 1899, ch. 97, § 7; R. C. 1899, § 1056.]

Irregularities waived by appearance of party. *Issenhuth v. Baum*, 11 S. D. 223, 76 N. W. 928.

§ 1926. Examination of proposed highway. The said board upon being satisfied that the notices required in the preceding sections have been duly served, or that at least seventy per cent of the legal voters who are owners of lands have signed the original petition and notice served personally or left at the abode of those who may have failed to sign original petition, proof of which shall be shown by affidavit, shall proceed to examine such proposed highway and shall hear any reasons for or against the laying out, altering or discontinuing the same, and decide upon the application as they deem proper. [1911, ch. 150, § 2; R. C. 1905, § 1353; 1899, ch. 97, § 8; R. C. 1899, § 1057.]

§ 1927. Proceedings when road is laid out, altered or discontinued. Whenever such board of county commissioners or supervisors shall lay out, alter or discontinue any highway, they shall cause a survey thereof to be made when necessary, and they shall make out an accurate description of the highway so altered, discontinued or laid out, and incorporate the same in an order to be signed by them, and shall cause such order, together with all the petitions and affidavits of service of notice, to be filed in the office of the county auditor, if by county commissioners, and in the office of the town clerk if by township supervisors, who shall note the time of filing the same; but on the refusal of said board to lay out, alter or discontinue such road they shall note the fact on the back of the petition and file the same as aforesaid. All orders, petitions and affidavits, together with the award of damages, shall be made out and filed within five days after the date of the order for laying out, altering or discontinuing such highway. But the county auditor or town clerk shall not record such order within thirty days, nor until a final decision is had, and not then unless such order is confirmed, and when such order, together with the award, has been recorded by said county auditor or town clerk as the case may require, the same shall be filed in the office of the county auditor. And in case the board having jurisdiction shall fail to file such order within twenty days they shall be deemed to have decided against such application. [R. C. 1905, § 1354; 1899, ch. 97, § 9; R. C. 1899, § 1058.]

Company operating toll road over route located as highway may show damages. *Lawrence County v. Toll-Road Co.*, 11 S. D. 74, 75 N. W. 817.

Recently established highways should not be vacated, unless conditions have changed since its establishment. *Miller v. Township*, 9 N. D. 623, 84 N. W. 556.

Supervisors may adjourn proceedings. *Issenhuth v. Baum*, 11 S. D. 223, 76 N. W. 928; *Yankton County v. Klemisch*, 11 S. D. 170, 76 N. W. 312.

Order of board and all papers must be filed in office of town clerk within five days after its date. *Town of Wayne v. Caldwell*, 1 S. D. 493, 47 N. W. 547, 36 Am. St. Rep. 750.

Contract of county to keep up fences is void. *Meek v. Meade County*, 12 S. D. 162, 80 N. W. 182.

County commissioners have no power to treat highways in any other way than by regular proceeding. *Meek v. Meade County*, 12 S. D. 162, 80 N. W. 182.

§ 1928. Order or certified copy; competent evidence. The order laying out, altering or discontinuing any highway, or a copy of the record duly certified by the county auditor or town clerk, as each case may require, shall be received in all courts as competent evidence of the facts therein contained and shall be prima facie evidence of the regularity of the proceedings prior to the making of such order, except in cases of appeal, when such appeal has been taken within the time limited in this chapter. [R. C. 1905, § 1355; 1899, ch. 97, § 10; R. C. 1899, § 1059.]

§ 1929. Damages, how ascertained. The damages sustained by reason of laying out, altering or discontinuing any road may be ascertained by the agreement of the owners and county commissioners or township supervisors, as the case may be, and unless such agreement is made, or the owners shall, in writing, release all claim to damages, the same shall be assessed in the manner hereinafter prescribed before the same is opened, worked or used. Every agreement and release shall be filed in the town clerk's office when with a township and in the county auditor's office when with a county and shall forever preclude such owners of land from all further claims for damages. In case the board and the owners of land claiming damages cannot agree, or if the owner of any land through which any highway shall be laid out, altered or discontinued is unknown, the board shall in their award of damages specify the amount of damages awarded to all such owners, giving a brief description of such parcel of land in their award; the board having jurisdiction shall assess the damages at what they deem just and right to each individual claimant with whom they cannot agree. Supervisors shall deposit a statement of the amount of damages assessed with the town clerk, county commissioners with the county auditor, who shall note the time of filing the same. The

board in assessing damages shall estimate the advantages and benefits the new road or alteration of an old one will confer on the claimant for the same as well as the disadvantages. Any person living on United States land who has made his declaratory statement for the same in the proper land office, shall for all the purposes of this article be considered the owner of such lands. [R. C. 1905, § 1356; 1899, ch. 97, § 11; R. C. 1899, § 1060.]

Necessity for maintaining fences, and injury from water flowing back from highway grade, as elements of damage. *Bockoven v. Board of Supervisors*, 13 S. D. 317, 83 N. W. 335.

Diversion of travel from a former highway, increases in taxation, and expense of fencing, as elements of damage. *Schuler v. Board of Supervisors*, 12 S. D. 460, 81 N. W. 890.

Right to appeal secures constitutional right to jury trial upon question of damages. *Town of Dell Rapids v. Irving*, 7 S. D. 310, 64 N. W. 149, 29 L.R.A. 861.

Damages on condemnation of the fee of land over which there is an existing highway. 15 L.R.A. 413; 37 L.R.A.(N.S.) 281.

Measure of compensation to abutting owner for vacation of highway. 36 L.R.A.(N.S.) 1118.

Interference with access to highway from the part of parcel not taken by the taking of another part as element of damages in condemnation. 28 L.R.A.(N.S.) 335.

Liability of county for injuries to real property from construction of road. 39 L.R.A. 68.

Necessity of making compensation and measure thereof upon laying of street across railway property. 24 L.R.A.(N.S.) 1226.

Measure of damages for laying out street across railroad property. 24 L.R.A.(N.S.) 1228.

Liability for injury to highway by removal of lateral support. 68 L.R.A. 707.

Interference by highway with wharf rights in navigable waters. 34 L.R.A.(N.S.) 431.

§ 1930. When damages not allowed. No damages shall be assessed or allowed under the provisions of this chapter to any person, persons or corporation, by reason of the laying out of any new road, or altering any old one, when the title of the land over which such road passes was vested in the state or the United States at the time of the location of such road, excepting as otherwise provided in this chapter. [R. C. 1905, § 1357; 1897, ch. 112, § 12; R. C. 1899, § 1061.]

§ 1931. Determination final for one year. The determination of boards of county commissioners, or supervisors of any town in refusing to lay out, alter or discontinue any highway, shall be final (unless such determination shall be appealed from as is hereinafter provided in this chapter), for the term of one year after the filing of such order or determination in the county auditor's or town clerk's office, as the case may be; and no application for laying out, altering or discontinuing any such highway shall again be acted upon by such board within said time of one year; and in case the determination of any such board in laying out, altering or discontinuing any highway shall be appealed from, as provided in this chapter, and such determination shall be reversed on appeal, the said board shall not, within one year after the making of the determination so reversed on appeal, act again upon an application to lay out, alter or discontinue any such highway. [R. C. 1905, § 1358; 1899, ch. 97, § 13; R. C. 1899, § 1062.]

§ 1932. Notice to party to remove fences. Whenever any public road has been laid out through any inclosed, cultivated or improved lands, in conformity with the provisions of this chapter, and the decision of the board laying out such road has not been appealed from, such board shall give the owner or occupant of the land through which such road is laid out twenty days' notice, in writing, to remove his fences; if such owner does not remove his fences within twenty days after such notice such board shall cause such fences to be removed and direct the road to be opened and worked; provided, no inclosure shall be ordered opened between the first day of April and the first day of October. [R. C. 1905, § 1359; 1899, ch. 97, § 14; R. C. 1899, § 1063.]

§ 1933. Notice to road supervisors. When any highway is to be changed or laid out, the county auditor or the clerk of the board, as the case may be,

must notify the road supervisors or overseer of highways, as the case may be, of the proper district and furnish him with a certified copy of the proceedings of the board. [R. C. 1905, § 1360; 1897, ch. 112, § 15; R. C. 1899, § 1064.]

§ 1934. Repair of highways across railroads, etc. Whenever highways are laid out across railroads, canals or ditches on public lands, the owners must at their own expense so repair their roads, canals or ditches that the public highway may cross the same without damage or delay, and when the right of way for a public highway is obtained through the judgment of any court, over any railroad, canal or ditch, no damages must be awarded for the simple right to cross the same. [R. C. 1905, § 1361; 1897, ch. 112, § 16; R. C. 1899, § 1065.]

§ 1935. Appeals. Any person who shall feel himself aggrieved by any determination or award of damages made by the supervisors of any town or towns, or by the commissioners of any county, either in laying out, altering or discontinuing, or in refusing to lay out, alter or discontinue any highway or cartway, may, within thirty days after the filing of such determination or award of damages, as provided in this chapter, appeal therefrom to a justice of the peace of the county for a jury to hear and determine such appeal; provided, the amount of damages allowed in such appeal does not exceed one hundred dollars. [R. C. 1905, § 1362; 1897, ch. 112, § 17; R. C. 1899, § 1066.]

Course of appeal determined by amount claimed in notice of appeal, and not amount allowed. *Town of Dell Rapids v. Irving*, 9 S. D. 222, 68 N. W. 313.

Not in conflict with § 13, art. 6, S. D. Const., providing that property shall not be taken for public use, unless damages determined by jury. *Town of Dell Rapids v. Irving*, 7 S. D. 310, 64 N. W. 149, 29 L.R.A. 861.

Trial de novo on questions presented by notice of appeal. *Williams v. Turner Township*, 15 S. D. 182, 87 N. W. 968.

Court may refuse to consolidate individual appeals. *Williams v. Turner Township*, 15 S. D. 182, 87 N. W. 968.

§ 1936. Bond, application, etc. Every application to a justice of the peace for an appeal shall be in writing, and shall briefly state the grounds on which it is made, and whether it is brought in relation to damages assessed, or in relation to laying out, altering or discontinuing, or refusal to lay out, alter or discontinue any highway, or whether it is brought to reverse entirely the decisions of the supervisors or commissioners, or any part thereof — if the latter, what part. Upon filing such application and a bond executed to the supervisors of the town, or the commissioners of the county, with sufficient sureties to be approved by the justice, conditioned to pay all costs arising from such appeal (provided the determination of the supervisors or the county commissioners, as the case may be, shall be sustained) such justice shall issue a summons specifying therein a time and place for the hearing of such appeal, which summons shall be served on one or more of the supervisors (or commissioners, if a county road), at least six days before such time, and at the time and place so appointed the justice shall proceed as in other cases of trial by jury. If upon the trial it is deemed necessary by the jury, or either party in the action, that a personal examination by the jury of the road in controversy is necessary, the justice may, on motion of the jury or either party to the action, direct the jury to view and examine the highway described in the application, and consider the determination of the supervisors or commissioners in laying out, altering or discontinuing, or refusing to lay out, alter or discontinue the same, and to make return to him in writing within ten days. [R. C. 1905, § 1363; 1897, ch. 112, § 18; R. C. 1899, § 1067.]

§ 1937. Filing return. Costs, etc. The justice shall file the return of the jury in the office of the town clerk if the appeal was taken from the decision of the board of supervisors of the town, and in the office of the county auditor if the appeal was taken from the decision of the county commissioners; and if the determination of the supervisors or commissioners shall be affirmed by the jury, the party appealing shall pay all costs, but if such determination

shall be reversed or altered, or a greater amount of damages awarded, then the costs in the case shall be a charge against the town or county, as the case may be. [R. C. 1905, § 1364; 1897, ch. 112, § 19; R. C. 1899, § 1068.]

§ 1938. When appeal taken to district court. In case the amount of damages claimed exceeds one hundred dollars, appeal may be taken within thirty days to the district court of the county in which said damages are sustained, by filing in the office of the clerk of such court a bond to be approved by the judge of such district court, or the court commissioner, or the county auditor of the county, of the same nature as provided in the two preceding sections and by the service of a written or printed notice of such appeal upon the chairman of the board of supervisors or county commissioners, as the case may be, signed by the party making the appeal, or his attorney. Such appeal shall bring before the appellate court the propriety of the amount of damages and all matters referred to in such notice of appeal; unless the parties otherwise agree, the matter shall be submitted to a jury and tried as other appeal cases are tried, and the court or jury, as the case may be, shall reassess the damages aforesaid, and make the verdict conform to the justice and facts in the case; but the rule for ascertaining and fixing such judgment shall be based upon the same principles as the supervisors or commissioners were required to adopt in originally determining the same; and upon judgment being rendered the clerk of said court shall serve a certified transcript of such judgment upon the chairman on whom the notice of appeal was served as aforesaid. If the determination of the board of supervisors or commissioners appealed from be affirmed, or if the amount of damages allowed be reduced in said district court, the party appealing shall pay all costs and disbursements incurred in said court; but if the amount of damages allowed be increased, or if such determination shall be altered, modified or reversed in said district court, otherwise than as to the amount of damages, such costs and disbursements shall be paid by the town or county, as the case may be; said costs and disbursements to be taxed and adjusted as in other cases in said district court, and judgment entered therefor in like manner. [R. C. 1905, § 1365; 1897, ch. 112, § 20; R. C. 1899, § 1069.]

§ 1939. When appeal sustained. Duty of board. When an appeal shall have been taken from the determination of any board of supervisors or county commissioners, and such determination shall have been reversed or altered, the supervisors or commissioners from whose determination such appeal was taken, shall proceed to lay out, alter or discontinue such highway, in conformity with the decision of such appeal, and the proceedings thereon shall be the same as if they had originally so determined to lay out, alter or discontinue such highway. The amount of damages finally determined and awarded by the supervisors, commissioners or by the court or jury, together with all the charges of officers and other persons necessarily employed in laying out, altering or discontinuing any town or county road, shall be audited by the county commissioners or township supervisors, as the case may be, specifying the amount of charges and damages due each individual, and the respective amounts shall be certified to by said commissioners or supervisors and by them deposited with the county auditor or township clerk and paid by the county or town, as the case may be. Before any road shall be opened or used, an amount of town orders or county warrants, as the case may be, equal to the damages assessed to individuals, shall be duly issued and deposited with said county auditor or township clerk, as the case may be, for the use and benefit of said individuals, and shall be delivered to him or them on demand. The issuing and depositing of said orders or warrants shall be deemed to be sufficient security for the payment of said damages. In no case shall a town be compelled to pay any damages that may be awarded in laying out, altering or discontinuing any county road. [R. C. 1905, § 1366; 1899, ch. 97, § 21; R. C. 1899, § 1070.]

ARTICLE 2.—GENERAL PROVISIONS.

§ 1940. Highways on county and township lines. Public highways established on county or township lines, or public highways to be laid out parallel and adjacent to county or township lines, where such lines are occupied by a railroad or other obstructions shall be opened, established and repaired by the supervisors of the proper road districts on each side thereof, and by the joint labor of the persons in each of such districts in each county or township. [1907, ch. 254; R. C. 1905, § 1367; R. C. 1899, § 1076.]

§ 1941. Settlers have same rights as freeholders. In all applications for the location, change or vacation of any public highway, actual settlers upon any public lands shall have and possess all the rights in this chapter granted to owners. [R. C. 1905, § 1368; R. C. 1899, § 1077.]

Establishment of highways over public lands subsequent to entry thereon by one who has not perfected his title. 24 L.R.A.(N.S.) 764.

Occupant under United States land laws upon equal footing with owner of fee. *Olson v. Huntamer*, 6 S. D. 364, 61 N. W. 479.

§ 1942. Public lands. Damages. When any person shall acquire the title to government land over which any road has been or may hereafter be duly laid out, subsequent to the laying out of such road, the person so acquiring such title shall within three months after the receipt of his patent therefor assert his claim for damages in the manner hereinbefore provided in case of locating highways, and such roads shall remain and be public highways, but his damages, if any, shall be paid, and in case of a failure to assert his claim for damages within the time aforesaid, he shall thereafter be barred from asserting such claim. [R. C. 1905, § 1369; R. C. 1899, § 1078.]

§ 1943. Occupying claimants. All public lands in this state settled upon and occupied, shall be subject to all the provisions of this chapter so far as the rights and liabilities of such settlers are concerned. [R. C. 1905, § 1370; R. C. 1899, § 1079.]

§ 1944. Hedge protection. Any person cultivating a hedge or trees upon his lands adjoining a public highway and desiring to fence the same, may place such fence seven feet over and upon such highway, provided it does not obstruct the public travel. [R. C. 1905, § 1371; 1889, ch. 132, § 1; R. C. 1899, § 1080.]

§ 1945. County road funds. In each county of this state having a population of two thousand or more according to the latest United States or state census there shall be levied and collected a property tax of not less than one-fourth of one mill, nor more than four mills on each dollar of the assessed valuation of all taxable property in the county, which, when collected, shall be kept in a distinct fund to be known as the county road fund and to be levied and expended in the improvement of highways as provided in this article. All sums levied and collected for the improvement of highways under the provisions of this article shall be expended under the direction of the board of county commissioners under the provisions of section 1946. Such taxes shall be in addition to all other taxes for highway purposes otherwise described by law; provided that the board of county commissioners of any county may contract to expend all money under this article and may contract to expend all money levied and collected under the provisions of section 2150, if deemed best. [1913, ch. 122; R. C. 1905, § 1372; 1893, ch. 69, § 1; R. C. 1899, § 1081; 1903, ch. 162, § 1; 1905, ch. 160.]

§ 1946. Fund, how expended. Such fund shall be expended only in grading, ditching and surfacing, in proper form and condition for public travel, such highways or parts of highways, howsoever established, as constitute the principal thoroughfares of the county, communicating with shipping points and market places resorted to by inhabitants of the county, for which the means otherwise provided are not, in the opinion of the county commissioners, sufficient. [R. C. 1905, § 1373; 1893, ch. 69, § 2; R. C. 1899, § 1082; 1903, ch. 162, § 2.]

§ 1947 Petitions for improvements. Survey. Such petition shall be presented at the regular meeting of the board of county commissioners, and thereupon the board shall direct such investigation as may be necessary to inform it as to the utility and probable cost of the proposed improvement, and may for that purpose order a preliminary survey, and at its next succeeding July meeting, it shall determine what highways or parts of highways designated in such petition shall be so improved, and estimate the probable amount of money that will be required to complete such improvement, and how much can be reasonably provided for, and for the completion of similar improvements previously in part made by the tax levy for the current year, and shall levy such tax accordingly. [R. C. 1905, § 1374; 1893, ch. 69, § 3; R. C. 1899, § 1083.]

§ 1948. Payments, how made. The board of county commissioners shall in case of each improvement ordered by it, designate the place of beginning and the direction in which the work shall proceed and require the same to be completed mile by mile or in parts of miles continuously, as so ordered, and no payment shall be made except for work so completed. It may also require the supervision of the work by the county surveyor, so far as deemed necessary, and shall require him to compute and estimate the amount of completed work and certify the same to the county auditor at the end of each month, and all work so contracted for shall be completed prior to the first day of November next following. The provisions of this section and the orders and directions of the board made in pursuance thereof shall constitute a part of the provisions and conditions of every such contract, whether expressed therein or not. [R. C. 1905, § 1375; 1893, ch. 69, § 5; R. C. 1899, § 1085.]

§ 1949. County auditor to issue warrants. Upon the filing of the surveyor's certificate as hereinbefore provided, the county auditor shall issue warrants accordingly on the county treasurer in favor of the contractor, payable out of the county road fund appropriated thereto, and the same shall be paid by the treasurer. [R. C. 1905, § 1376; 1893, ch. 69, § 6; R. C. 1899, § 1086.]

§ 1950. Compensation of surveyor. The county surveyor shall receive for his services rendered as aforesaid the same compensation as in other cases, to be paid by the county out of such road fund, upon accounts duly verified and allowed by the board of county commissioners. [R. C. 1905, § 1377; 1893, ch. 69, § 7; R. C. 1899, § 1087.]

§ 1950a. Disposition of appropriation for national forest reserve. That all moneys now in the hands of or that hereafter may be received by the treasurer of the state of North Dakota by reason of the act of Congress approved May twenty-third, 1908, creating a national forest reserve in the county of Billings, state of North Dakota, shall be, by the treasurer of the state of North Dakota, paid over at the end of each fiscal year to the county treasurer of the county of Billings, state of North Dakota, to be by him covered into the public road fund of said county. [1911, ch. 193.]

ARTICLE 3.—BRIDGES.

§ 1951. Petition. Bids. Whenever a majority of the freeholders of a civil township or a majority of freeholders living within a radius of three miles of the proposed location, shall petition the board of county commissioners for a bridge at a specified location within such township, or within any incorporated city or village, when the cost of such bridge shall exceed the sum of one hundred dollars, it shall be the duty of the board of county commissioners to view and investigate the necessity of such proposed bridge; and if such county board approves its location and building, it shall proceed to advertise in the official paper in the county, for a period of thirty days, the plans and specifications of the proposed bridge, asking for sealed bids for the building of such bridge, to be submitted to them at their next regular

or special meeting, at which meeting of the board it shall proceed to examine all proposals or bids for the building of such bridge, and shall award the contract to the lowest responsible bidder, requiring such bidder to give a bond in a sum not less than the amount stipulated in the bid or contract, conditioned for the faithful compliance with the terms of such bid or contract, which bond shall be approved by the board of county commissioners and filed in the office of the county auditor. [1907, ch. 42; R. C. 1905, § 1378; 1890, ch. 38, § 1; R. C. 1895, § 1088.]

Liability of county for injury to real property from construction and operation of bridge. 39 L.R.A. 65.

Liability of county for injuries caused by construction or maintenance of a bridge to property thereto adjoining. 21 L.R.A. (N.S.) 209.

Municipal liability for injury to abutting owner from approach to bridge under constitutional provision against "damaging" private property for public use without compensation. 36 L.R.A. (N.S.) 1198.

Liability of town or municipality for injuries by interference with flow of water by bridge. 59 L.R.A. 856.

Obstruction of water of stream by bridge. 59 L.R.A. 862; 28 L.R.A. (N.S.) 156.

§ 1952. Expense, how paid. The expense of constructing such bridge shall be paid out of the county bridge fund, if such bridge is accepted and approved by the board. [R. C. 1905, § 1379; 1890, ch. 38, § 2; R. C. 1895, § 1089.]

§ 1953. Supervision and repairs of bridge. Any bridge built under the provisions of section 1951 shall be under the supervision of the board of county commissioners, and the cost of all such building and repairs shall be estimated by the county commissioners and paid for by the county; provided, however, that should any emergency arise, requiring the immediate rebuilding or repairing of any bridges, the board of county commissioners are hereby authorized to rebuild or repair, as the circumstances require, and without advertising for bids, in case said work can be performed by a responsible party, at a price not to exceed the last bid accepted by said board of county commissioners for like work. [1911, ch. 152; 1907, ch. 42; R. C. 1905, § 1380; 1890, ch. 38, § 3; 1895, ch. 42, § 1; R. C. 1899, § 1090.]

§ 1954. Bridges part of highway. Bridges erected or maintained by the public constitute a part of the public highway. [R. C. 1905, § 1381; R. C. 1899, § 1091.]

As to power of city to construct bridge only on legal highway. *Manning v. Devils' Lake*, 13 N. D. 47, 65 L.R.A. 187, 112 Am. St. Rep. 653, 99 N. W. 51.

Duty to properly guard defective bridge. 20 L.R.A. (N.S.) 681.

Municipal liability for injury by defects or obstructions on bridge. 20 L.R.A. (N.S.) 571.

— for injury to travelers by defective bridges through defect in plan of construction. 67 L.R.A. 268.

— for injuries on tollbridge maintained by it. 33 L.R.A. (N.S.) 449.

Duty of county or town to maintain barriers along bridges. 42 L.R.A. (N.S.) 267.

Duty of municipality to construct and maintain bridges in condition to sustain unusual weight. 27 L.R.A. (N.S.) 832.

§ 1955. Bridges across navigable rivers, petition for. Whenever one-third of the resident taxpayers of any county as appears by the last preceding assessment roll of such county, shall petition the board of county commissioners of such county, praying for an appropriation to build a bridge across any navigable river on the line of any such county, setting forth therein the location of such bridge as near as may be, its estimated cost, and the necessity therefor to accommodate the general traveling public, the manner in which it is proposed to pay for such structure, and the time when it will be completed, such petition to be duly verified by the affidavits of at least fifteen of the petitioners therein named, it shall be the duty of the board of county commissioners to publish a notice in the official paper of the county, once each week for three consecutive weeks, briefly stating the object of such petition and that the same will be heard and considered at the next regular meeting of such board. At the time appointed for the hearing of such petition the board of county commissioners shall investigate the need for such bridge, and

if they find the same to be necessary shall, by resolution duly entered upon the minutes of the board, appropriate toward the building of such bridge, from the county treasury, a sum not exceeding one-half of the estimated cost of such bridge, to be paid as hereinafter provided; provided, however, that the appropriation hereinbefore mentioned shall be upon condition that a sufficient bond be given, conditioned that the remaining one-half or more, as the case may be, of the cost of such bridge will be paid; provided, further, that the consent of the general government to span such river shall first have been obtained. [R. C. 1905, § 1382; 1887, ch. 18, § 1; R. C. 1899, § 1092.]

§ 1956. County aid conditional. If the remaining one-half of the cost of such bridge shall be made up by an appropriation from any neighboring state or by any municipality in this state, to be expended under a commission or through any other agency, the board of county commissioners shall appoint a committee from its own number, of three or more, to meet such other municipal agency, confer with its members and advise and assist in the accomplishment of such improvement in the best possible manner, and when the work is completed and approved jointly by such agency and committee, which approval shall be in writing and duly reported to such board and recorded in the minutes thereof, the board shall thereupon direct the county auditor to draw his warrant upon the treasurer in favor of the contractor for the amount due him from such county. [R. C. 1905, § 1383; 1887, ch. 18, § 2; R. C. 1899, § 1093.]

§ 1957. May vote bonds. When one-half or such other proportion as may be, of the cost of such improvement shall be provided for by any municipality within this state, it shall be lawful for such municipal corporation, by a majority vote of the legal voters thereof after ten days' notice, to meet the necessary expense by the issuance of bonds bearing interest not to exceed seven per cent per annum and not to run longer than twenty years after the date of issue, nor to be sold for less than par value, interest payable semi-annually; provided, that the limit of indebtedness of such corporation prescribed in the constitution is not thereby exceeded. In case the limit of indebtedness of such municipality would be thereby exceeded, then it shall be lawful for such municipality to make a sufficient tax levy for general purposes to meet the necessary expenditure in the construction of such bridge, and when the same shall be completed and accepted the share of the cost thereof to be borne by such municipality shall be paid out of the general fund by orders drawn in the usual form and manner. [R. C. 1905, § 1384; 1887, ch. 18, § 3; R. C. 1895, § 1094.]

§ 1958. Cost of bridge limited. Not more than one wagon bridge across a navigable river in each county shall be built under this article and the total cost of such bridge shall in no case exceed the sum of three hundred thousand dollars. [1911, ch. 151; R. C. 1905, § 1385; 1887, ch. 18, § 4; R. C. 1899, § 1095.]

ARTICLE 4.—ROAD SUPERVISORS.

§ 1959. Road districts. Appointment of supervisors. At the annual meeting of the board of county commissioners in January of each year, or as soon thereafter as practicable, it shall be the duty of such board in each organized county to apportion the county into one or more road districts when such county is not formed into townships, and shall appoint for each district a road supervisor, who shall hold his office until the first day of January succeeding his appointment, and shall take an oath faithfully to discharge his duties as such road supervisor. [R. C. 1905, § 1386; R. C. 1899, § 1096.]

Applies only to counties not formed into townships. *Blue Grass Twp. v. Morton County*, 21 N. D. 557, 132 N. W. 148.

§ 1960. Duties of road supervisors. The road supervisor of each road district or township shall obtain the names and make out a list of all male

persons between the ages of twenty-one and fifty years residing within his district, which list shall be completed on or before the first day of March in each year, and in case any person as aforesaid shall locate in any road district after the first day of March, the supervisor shall enroll his name and he shall be liable to perform labor on the road at the same time and in the manner that those originally enrolled are liable, but any person who has performed labor that year in any road district and has a certificate thereof, shall be credited with the labor so performed, in the same manner as though it had been performed in the district in which he resides. [R. C. 1905, § 1387; R. C. 1899, § 1097.]

§ 1961. Road poll tax. Each male person between the ages of twenty-one and fifty years shall be subject to a poll tax of one dollar and fifty cents, which must be paid in money or by one day's labor in each year on the public highway within his road district at the time and place directed by the road supervisor. [R. C. 1905, § 1388; R. C. 1899, § 1098.]

§ 1962. Notice to be given to persons. The road supervisor must, between the first days of April and December of each year, give at least twenty-four hours' notice to all persons subject to road labor as aforesaid, to perform the work necessary on the public highways within their respective districts, and such notice shall specify the time when and place where they are to appear for that purpose. [R. C. 1905, § 1389; R. C. 1899, § 1099.]

§ 1963. Penalty for neglect to pay tax. Each person subject to labor on the public highways, who has been duly notified to work thereon as hereinbefore provided, who shall not commute or pay the sum of one dollar and fifty cents as provided in section 1961, and who shall refuse or neglect without good cause to appear as above provided, shall for each day's refusal pay the sum of one dollar. [R. C. 1905, § 1390; 1881, ch. 124, § 1; R. C. 1899, § 1100.]

§ 1964. Supervisor to make complaint. Each road supervisor may, within six days after any person shall become liable for the payment of any sum under the provisions of the foregoing section, unless a satisfactory excuse is rendered to him by the person so liable, make complaint in writing on oath to some justice of the peace in the county, stating the default, neglect, refusal or other cause by reason of which such person became so liable, which complaint shall be in the name of the state as plaintiff, and the person liable for such tax as defendant, and no fees of officers nor court expenses or costs shall be paid or charged in enforcing the provisions of this chapter except that the same may be charged and collected from the defendant. [R. C. 1905, § 1391; 1881, ch. 124, § 1; R. C. 1899, § 1101.]

§ 1965. Duty of justice on complaint. The justice of the peace to whom such complaint is made shall forthwith issue a summons directed to the defendant in the form prescribed in the justice's code, which summons shall be for relief and shall be made returnable in not less than two nor more than six days and it shall be the duty of any sheriff or constable to whom it is delivered forthwith to serve the same. [R. C. 1905, § 1392; 1881, ch. 124, § 1; R. C. 1899, § 1102.]

§ 1966. Proceedings to collect tax. On the return day of such summons, or within such reasonable time thereafter as the justice shall allow, if no sufficient cause is shown to the contrary, the justice shall render a judgment in favor of the state against such person for the sum for which such person shall have become liable to pay on account of such default, neglect or delinquency, and for the delinquent tax, with the cost of prosecution, and shall forthwith issue an execution in the usual form, directed to the sheriff or any constable of the county, returnable at the time prescribed therein, commanding him to levy the amount of such judgment, including the costs, out of the goods and chattels of such defendant, and nothing shall be exempt from such execution except the absolute exemptions. [R. C. 1905, § 1393; 1881, ch. 124, § 1; R. C. 1899, § 1103.]

§ 1967. Execution. The officer to whom such execution is delivered shall forthwith proceed to execute the same, and he shall pay the moneys collected thereon to the justice of the peace who issued the execution, who shall pay the same less the costs thereof to the supervisor who entered the complaint, to be by him expended in improving the roads and bridges in his district, and the cost thereof shall be paid to the persons entitled thereto. [R. C. 1905, § 1394; 1881, ch. 124, § 1; R. C. 1899, § 1104.]

§ 1968. Supervisors shall not excuse payment. The acceptance by a supervisor of an excuse for such a refusal or neglect shall in no case exempt the person excused from paying for or working the tax for which he shall have become liable during the year. [R. C. 1905, § 1395; 1881, ch. 124, § 1; R. C. 1899, § 1105.]

§ 1969. Road tax worked, when. Any road tax levied by the board of commissioners in addition to the poll tax may be worked out in the road district in which such person resides when it is a personal tax or a tax on personal property, or in the road district where the real property is situate on which the tax is levied, at the rate in all cases of one dollar and fifty cents per day. [R. C. 1905, § 1396; R. C. 1899, § 1106.]

§ 1970. Work certified for tax. The road supervisor must obtain a list of the road tax assessed against each individual; and a certificate by the supervisor for the amount worked out must be taken by the county treasurer in payment to that amount of such tax. [R. C. 1905, § 1397; R. C. 1899, § 1107.]

§ 1971. Board to expend tax, how. The board of county commissioners must order the expenditure of all road taxes paid into the county treasury, in the improvement of the highways, paying the road supervisors, purchasing implements and repairing bridges in each road district, under such regulations as it may deem most expedient for the public interests, and for this purpose shall order the payment of such sum by the treasurer to the persons performing such labor upon the certificate of the road supervisor; provided, that such funds shall be expended in the road district in which the person resides, when it is a personal tax or a tax on personal property, and where the real estate is situate when it is a tax on real estate. [R. C. 1905, § 1398; R. C. 1899, § 1108.]

Provides manner in which board of county commissioners of counties not divided into townships only, shall expend road taxes collected in such counties. Blue Grass Twp. v. Morton County, 21 N. D. 557, 132 N. W. 148.

§ 1972. Tax levy to pay road supervisor. When the road tax in any road district has been worked out as provided in section 1969, and there are no funds available for paying the road supervisors, the county commissioners may levy a tax, not exceeding one mill on the dollar, upon the taxable property of the road district in which such deficiency occurs, for such purpose, to be paid in cash to the county treasurer as other taxes are collected and paid. [R. C. 1905, § 1399; 1899, ch. 125, § 1; R. C. 1899, § 1109.]

§ 1973. Obstructions in highway. It shall be the duty of each road supervisor having personal knowledge of or on being notified in writing of any obstruction in the highway, or public street in his district, immediately to remove or cause to be removed any such obstruction. [R. C. 1905, § 1400; R. C. 1899, § 1110.]

Personal liability of highway officers for negligence. 22 L.R.A. 824.

§ 1974. Penalty for obstructing highway. If any person shall willfully, carelessly or negligently obstruct or injure any public highway, public street or bridge, it shall be the duty of the road supervisor of the district in which such obstruction is placed or injury done to enter complaint against the person so offending, before a justice of the peace of the county, and on conviction thereof the fine so collected shall be immediately paid over to the county treasurer. [R. C. 1905, § 1401; R. C. 1899, § 1111.]

§ 1975. Report of road supervisor. On or before the first Monday in January in each year, the road supervisors appointed by the board of county

commissioners, shall each make a report to the board of his doings as such during the preceding year, the amount of labor performed, the number of days' labor necessarily performed by him in the discharge of his duties, and the county commissioners shall thereupon cause a warrant to be drawn on the county treasurer in favor of such supervisor for such services at two dollars per day, payable from the road fund belonging to such district. [R. C. 1905, § 1402; R. C. 1899, § 1112; 1903, ch. 155.]

§ 1976. **Penalty for refusal to serve as road supervisor.** Each person elected or appointed road supervisor who shall fail, refuse or neglect to qualify as such for thirty days after having been duly notified of his election or appointment, shall forfeit the sum of ten dollars, to be collected upon a complaint made by any citizen before a justice of the peace of the county, together with all the costs of the prosecution, which forfeiture when collected shall be paid into the road fund of the district in which he resides. [R. C. 1905, § 1403; R. C. 1899, § 1113.]

ARTICLE 5.—ROAD DUTIES OF TOWNSHIP SUPERVISORS.

§ 1977. **Supervisors have care of roads.** The supervisors in the several townships in this state shall have the care and superintendence of roads and bridges therein, shall give directions for the repairing of the roads and bridges in their respective townships, regulate roads already laid out and alter such of them as they deem proper, as hereinafter provided. They may divide the respective townships into as many road districts as they may deem convenient, by an order in writing under their hands, to be filed with the township clerk and by him entered in the township records, such division to be made annually, if they deem it necessary, and in all cases to be made within at least twenty days before the annual township meeting. They shall assign to each of the road districts such of the inhabitants liable to work on highways as they think proper, having regard to proximity of residents and require the overseers of highways as often as they deem necessary to warn all persons liable to work on roads, to perform work thereon, with such tools, carriages, cattle or teams, as the overseers or either of them shall direct. It shall be the duty of the supervisors of every township to inspect the roads, bridges and culverts in their respective townships so far as they may deem necessary, between the first day of May and the first day of June, each year, and to ascertain what repairing and grading on roads is necessary. They shall make plans and specifications of all bridges and culverts to be constructed or repaired, stating the size of the same, also to make plans and specifications of the grading of roads, stating the shape, width and length of said grade or grades and furnish to each of the road overseers in their townships copies of such plans and specifications of the work to be done in their respective road districts on printed or written forms not later than the first day of June of each year. It shall be the duty of such supervisors to see that any grade or grades so started shall be finished according to such plans and specifications. The supervisors shall inspect such roads between the twenty-fifth day of July and the tenth day of September of each year and see that all work is done according to their instruction. The supervisors shall at the annual township meeting make a detailed report of all culverts, bridges and all road work performed by every road overseer, stating in said report whether or not in their opinion said work has been well and properly done in accordance with their plans and specifications. In fulfilling all their duties, as in this article provided, the supervisors of townships shall be governed and guided by the amount of road tax available. [R. C. 1905, § 1404; 1883, sub-ch. 2, ch. 112, § 4; R. C. 1899, § 1114; 1905, ch. 176.]

As to power of city to construct bridge only on legal highway. Manning v. Devils' Lake, 13 N. D. 47, 65 L.R.A. 187, 112 Am. St. Rep. 653, 99 N. W. 51.

Personal liability of highway officers for negligence. 22 L.R.A. 824; 83 Am. Dec. 563.

§ 1978. Report of labor performed on roads. The supervisors in each township shall render to the annual township meeting an account in writing, stating the labor assessed and performed in such township, the sums received by them for fines and commutations, and all other moneys received under this article, a statement of the improvements necessary to be made on the roads and bridges, and an estimate of the probable excess of the expense of making such improvements over the road and poll tax for that year; also a statement in writing of all expenses and damages in consequence of laying out, altering or discontinuing roads. [R. C. 1905, § 1405; 1883, sub-ch. 2, ch. 112, § 5; R. C. 1895, § 1115.]

§ 1979. Board authorized to purchase tools. The township board of any township is authorized to purchase for the use of the township, upon credit or otherwise, any tools, road machine or grader, or either of them or one or more of either of them for the use of the township, or the use of the overseer of the districts therein, as in this article provided. Such implements, when purchased, shall be paid for in not to exceed five annual payments out of the highway tax of the township, according to the contract therefor, and the chairman of the township board shall issue orders for the payment of the same, and such orders shall be attested by and registered with the township clerk, and the township clerk shall certify to the supervisors of such township, at the time of assessing the highway tax for such township, the sum necessary to pay such orders, and this sum shall be added to the other taxes to be raised for highway purposes, and when collected shall be applied to the payment of such orders and to no other purpose until all such orders are paid. The township board shall have the custody and control of all implements so purchased. [R. C. 1905, § 1406; 1899, ch. 140, § 1; R. C. 1899, § 1115a.]

Township board authorized to purchase grader without authorization by freeholders. *Bank of Park River v. Norton*, 14 N. D. 143, 104 N. W. 525.

§ 1980. Purchase road machine. In any township in which the whole or any part of the highway tax is paid in labor, the township board thereof may upon being petitioned in writing by a majority of the resident freeholders of the town, contract for and purchase, upon credit, or otherwise, a road machine, road grader or wheeled scrapers, or one or more of either of them for the use of the township, which implements shall be used and owned and cared for by the townships. Such implements shall be paid for out of the highway tax of the township and may be paid for in not to exceed five annual installments. A copy of the note or contract issued upon such purchase shall be filed in the office of the township clerk, and it shall be the duty of such township clerk to present a statement of the sum due thereon, to the township board, at each regular meeting held thereafter for the audit of the township claims and charges, and the township board shall audit the same. Not more than one-half of the highway tax of the township shall be applied to the payment thereof in any one year. The portion of such tax so applied shall be required to be paid in money, and shall be assessed and levied upon property of the township and collected in the same manner as other township charges are assessed, levied and collected, except that the amount thereof shall be put into a separate column of the tax roll, and the township board shall cause the same so certified to by the township clerk, to be levied upon the taxable property of the township. [R. C. 1905, § 1407; 1899, ch. 140, § 2; R. C. 1899, § 1115b; 1901, ch. 147.]

§ 1981. Overseer responsible. Each road overseer of highways shall be personally responsible for the proper use and care of such implements while in his charge, or in use in his district, and any overseer of highways, or other person who shall through negligence or otherwise willfully injure or damage such implements or permit them to be injured, shall be liable for such damage to such township, in an action to be brought by the chairman of the township

board before any justice of the peace in said town or any adjoining township. [R. C. 1905, § 1408; 1899, ch. 140, § 3; R. C. 1899, § 1115c.]

§ 1982. Storage of implements. It shall be the duty of the township board of each township to provide suitable places for the storage and proper housing of all tools, implements and machinery owned by the township, and to cause such tools, implements and machinery to be stored and housed therein when not in use. [R. C. 1905, § 1409; 1899, ch. 140, § 4; R. C. 1899, § 1115d.]

ARTICLE 6.—DUTIES OF STATE ENGINEER IN CONSTRUCTION OF HIGHWAYS AND CULVERTS.

§ 1983. Preparing plans, and making examinations and surveys. It shall be the duty of the state engineer, whenever requested by any board of county commissioners of any county in the state, or by any board of township supervisors, to prepare plans for the construction of any bridge or culvert, or to examine and report on any existing bridge or culvert. In making examinations and surveys and plans for such bridges or culverts, he shall, in so far as possible, co-operate with the county surveyor or county superintendent of highways in such county. [1913, ch. 180, § 1.]

See also section 1990k.

§ 1984. Compensation. Fees transmitted to state treasurer. For any services rendered under section 1983, he shall receive for such services the sum of ten dollars per day and actual and necessary traveling expenses while employed on this work, to be paid by the board of county commissioners or the board of township supervisors, as the case may be. All fees received for services rendered under section 1983 shall be transmitted to the state treasurer monthly. [1913, ch. 180, § 82.]

ARTICLE 7.—DUTIES OF OVERSEERS OF HIGHWAYS.

§ 1985. Duties of overseers of highways. The overseers of highways in each township shall repair and keep in order the roads within their respective districts, warn all persons from whom labor is due to work on highways at such times and places within their several districts as they may deem proper, collect all fines and commutation money, execute all lawful orders of the supervisors, and deliver to the township clerk within sixteen days after his election or appointment, a list subscribed by such overseer, of the names of all inhabitants of his road district who are liable to work on the highways; provided, it shall be unlawful for any road overseer to perform any road work by contract for any person, corporation or company, during his incumbency in the office. Any road overseer who violates any of the provisions of this act [section], shall be subject on conviction to a fine not exceeding one hundred dollars, or imprisonment in the county jail for a period not exceeding ten days. [1907, ch. 253; R. C. 1905, § 1410; 1883, sub-ch. 2, ch. 112, § 6; R. C. 1899, § 1116.]

Officers of, liability of, for injuries occasioned by their neglect of duty. 83 Am. Dec. 563.

§ 1986. Weeds. Road overseer to destroy. All weeds of every name and nature and description shall be cut by the road overseer of public highways on such roads that are graded or otherwise cultivated. Such weeds shall be cut for a distance extending at least sixteen feet from the center on each side of the road. [R. C. 1905, § 1411; 1905, ch. 117, §§ 1, 2.]

§ 1987. When to be cut. How paid for. Owner of adjoining premises who cuts to be credited on his road taxes. Such weeds shall be cut not earlier than July fifteenth and not later than August fifth of each year and said work shall be paid for out of the road fund the same as any other road work; provided, that if the owner of adjoining premises shall cut the weeds therein required to be cut, he shall be credited on his road taxes with the cost of

cutting said weeds, said cost to be determined by the road overseer. [R. C. 1905, § 1412; 1905, ch. 117, § 3.]

§ 1988. Bills, how audited. All overseers of public highways shall file their bill for road work with the board of township supervisors in organized townships and with the board of county commissioners in unorganized townships, but such bill shall not be allowed until such cutting of weeds is completed, and at the time said bill is filed it shall be accompanied by an affidavit of the overseer that the said weed cutting has been completed. [R. C. 1905, § 1413; 1905, ch. 117, § 4.]

§ 1989. When overseer shall be appointed. If any person chosen or appointed to the office of overseer of highways refuses to serve or if his office becomes vacant, the supervisors of the township shall in writing under their hands appoint some person in his stead, and the overseer so appointed shall have the same powers, be subject to the same orders, and liable to the same penalties as overseers chosen at township meetings. [R. C. 1905, § 1414; 1883, sub-ch. 2, ch. 112, § 7; R. C. 1899, § 1117.]

§ 1990. Notice of appointment. The supervisors making the appointment shall cause the same to be forthwith filed in the office of the township clerk, who shall give notice to the person so appointed as in other cases. [R. C. 1905, § 1415; 1883, sub-ch. 2, ch. 112, § 8; R. C. 1899, § 1118.]

ARTICLE 8.—APPOINTMENT OF COUNTY SUPERINTENDENTS OF HIGHWAYS.

This article 8 (sections 1990a-1990l) constitutes Laws 1911, ch. 145; the title of which chapter reads as follows. (See also section 1990c):

"An Act Providing for the Appointment of County Superintendents of Highways and Deputy Superintendents in Organized Counties, Who Shall Have Charge and Supervision of the Construction, Improvement and Maintenance of Roads Within Said Counties, Providing for Road Institutes, Prescribing the Duties of the State Engineer in Connection Therewith."

§ 1990a. Appointment, duties, compensation, terms of office, bond. The board of county commissioners may at its first regular meeting after April first, 1911, and biennially thereafter at its first regular meeting after January first, appoint a competent engineer or practical road builder who may or may not be the present county surveyor, who shall be known as the county superintendent of highways, and whose compensation shall be fixed by the county board. He shall be allowed by the county commissioners his actual and necessary traveling expenses incurred by him while in pursuance of his duties, upon presentation of properly itemized account. Such county superintendents of highways shall survey, lay out, superintend and inspect the construction and maintenance of all roads and ditches connected with the construction of highways. He shall hold office for two years or until his successor is appointed and qualified. Before entering upon his duties he shall give bond to the county, approved by the county board, in the sum of one thousand dollars, conditioned for the faithful discharge of his duties. [1911, ch. 145, § 1.]

§ 1990b. Deputy superintendents. Compensation. In counties where county superintendent of highways has been appointed, the offices of the township road overseer and county road superintendent are hereby abolished and in place thereof the county superintendent of highways shall appoint a competent and practical road builder who is acceptable to the township board of supervisors in organized townships and to the board of county commissioners if in unorganized townships and who shall be known as deputy county superintendent of highways who shall have charge, under the direction of the county superintendent of highways, of the construction and maintenance of all roads in the township. Provided, however, that this article shall not apply in cases where townships have heretofore adopted, or which may hereafter adopt the system of cash payment of road taxes, and the contract system of road labor, pursuant to section 3210 of the Revised Codes of 1905 [section 4266 herein]. Such deputy superintendent may with the approval

of the county superintendent and township board employ one or more assistants. The county superintendent may, if he deems advisable, appoint one deputy for two or more townships. Such deputies shall serve under the direction and supervision of the county superintendent and may be discharged by him at any time. The salary of such deputy county superintendent shall be fixed by the township supervisors in organized townships and by the county superintendents in unorganized townships and shall not be less than three dollars nor more than four dollars per day for each day actually engaged in the performance of his duties. Such deputy superintendent shall furnish a sworn statement of his accounts, giving dates, and when his account is approved by the superintendent and the board of county commissioners, the county auditor shall issue his warrant on the treasurer for said amount so approved for deputies in other than organized townships. The accounts of deputy superintendents in organized townships upon approval of the county superintendent and chairman of the board of township supervisors shall be presented to the town clerk and chairman of the board of supervisors who shall issue their warrant upon the town treasurer for payment. [1911, ch. 145, § 2.]

Township road overseer ex-officio deputy county superintendent of highways, see section 1990n.

§ 1990c. Purpose of this article. It is the intent of this article to impose upon the county superintendent of highways and his deputies the duties of constructing, improving and maintaining of public highways within the county, not included within an incorporated city or village; throughout the entire year, also to cause all weeds along public highways to be cut in proper season at the expense of the abutting land owners as provided by law. [1911, ch. 145, § 3.]

§ 1990d. Examination and inspection of work on highways. Before any person, firm or corporation shall receive credit for labor performed upon the highways, it shall be the duty of the county superintendent of highways or his deputies, in conjunction with the chairman of the board of township supervisors in organized townships, to examine and inspect the work done by said person or corporation and unless accepted by said county superintendent or deputy superintendent of highways and the chairman of the township board, then said person, firm or corporation shall not receive pay for work done. Provided, that in unorganized townships such examination, inspection and acceptance shall be made by said county superintendent or deputy superintendent of highways. [1911, ch. 145, § 4.]

§ 1990e. Moneys raised, how used. Apportionment of expenses. All moneys raised by organized townships for road purposes shall be used and expended for construction, improvement and maintenance within such township, and the township supervisors shall designate the places where the work shall be done. In case of construction or maintenance on township or county boundary lines, then the expenses thereof shall be apportioned by the county superintendent or deputy superintendent between such organized township and any adjoining organized township or county, as the case may be. [1911, ch. 145, § 5.]

§ 1990f. Employment of engineer or surveyor. Whenever the county superintendent of highways deems it necessary to employ an engineer or surveyor to establish grade lines or to do any surveying or engineering work in connection with the construction and maintenance of highways, he is hereby authorized to employ such engineer or surveyor, subject to the approval of the county commissioners. [1911, ch. 145, § 6.]

§ 1990g. Penalty for neglect of duty. Any county superintendent or deputy superintendent who willfully and knowingly neglects the duties imposed upon him by this article is guilty of a misdemeanor and upon conviction shall be made to pay a fine of not less than ten dollars nor more than twenty-five dollars, and in addition thereto shall be removed from office. [1911, ch. 145, § 7.]

§ 1990h. Adoption of rules and regulations. It shall be the duty of the county superintendent of highways to adopt rules and regulations for the guidance of deputy superintendents of highways in the construction and maintenance of roads. [1911, ch. 145, § 8.]

§ 1990i. Annual meeting in road institute. The county superintendent of highways and deputy superintendents of highways in each and every county in the state shall meet annually in a road institute at such time and place in each county as the county superintendent may designate, there to consider and discuss such matters of road improvement as may be of special interest to such county superintendents and deputies. Such institute shall be open to the public during its entire session. [1911, ch. 145, § 9.]

§ 1990j. Report of county superintendent. The county superintendent of highways shall on or before December thirty-first each year make and file with the county auditor a full report of all work done by him or under his supervision during the year immediately preceding. [1911, ch. 145, § 10.]

§ 1990k. Duties of state engineer. It shall be the duty of the state engineer upon request of the county superintendent of highways to furnish any information or bulletins on road construction and maintenance that he may have at his command, and it shall also be his duty to attend the road institutes in each county when the time and duties of his office will permit. [1911, ch. 145, § 11.]

See also section 1983.

§ 1990l. Officers or employees not to be interested in contracts. No county superintendent of highways or deputy superintendent or any of their assistants or employees shall be directly or indirectly interested in any contract for the construction, improvement or maintenance of any road under this article. [1911, ch. 145, § 12.]

ARTICLE 9.—APPOINTMENT OF TOWNSHIP OVERSEER OF HIGHWAYS.

§ 1990m. Appointment, compensation and duties. There shall be appointed by the township board of supervisors at their next meeting succeeding the annual town meeting one township overseer of highways for each township, who shall be a practical road builder and whose compensation shall be fixed by the township board, to be paid on presentation of a verified bill at the regular meeting of the township supervisors. All duties now by law resting upon district road overseers shall be performed by this township overseer of highways. He shall have direct charge of the construction and maintenance of all highways and township bridges in the township, whether the work done on same is done by contract or by day labor. He shall be responsible for the maintenance of said highways throughout the entire year. In unorganized territory, in counties where no county superintendent of highways has been appointed the board of county commissioners shall appoint a district overseer of highways whose powers and duties shall be the same as in the organized township, and whose compensation shall be fixed by the county commissioners to be paid on presentation of a verified bill at the regular meeting of the county commissioners. [1913, ch. 92, § 1.]

§ 1990n. Ex-officio deputy county superintendent. In counties having a county superintendent of highways the township road overseers shall be ex-officio deputy county superintendent of highways, as provided in chapter 145 of the Session Laws of 1911, for his respective township. [1913, ch. 92, § 2.]

The provision referred to in Laws 1911, ch. 145, is section 1990b herein.

§ 1990o. Taxes for road fund. All road taxes and assessments upon persons or property shall be paid in cash, and it shall be the duty of the township clerk immediately after the board of township supervisors have made the levy of taxes for road purposes to notify the county auditor of the amount of the levy, who shall enter the same upon the county tax lists to be collected by

the county treasurer in the same manner as other township taxes are collected. Such taxes, when collected, shall constitute a road fund belonging to the township in which it is levied, and shall be returned by the county treasurer to the township treasurer. [1913, ch. 92, § 3.]

§ 1990p. Road labor of taxpayers. Any taxpayer in any township, who so elects, shall notify the township overseer of highways before May first of his intention to work out his road tax, and the township overseer shall file a list of such names with the township clerk before May fifteenth. Provided, that in unorganized territory the district overseer of highways or the deputy county superintendent of highways shall file said list with the county auditor. Said taxpayers shall then be employed on the highways at the time and place at which the district overseer or the deputy county superintendent of highways shall designate. The compensation for this labor shall be paid as provided in chapter 149 of the Session Laws of 1911. [1913, ch. 92, § 4.]

Chapter 149 of the Session Laws of 1911 constitutes sections 2012-2016 herein.

§ 1990q. Expenditure of road taxes. The board of township supervisors must order the expenditure of all road taxes paid into the township treasury in the improvement of the highways under such regulations as it may deem most expedient for the public interests, and for this purpose shall issue a warrant upon the road funds of the township upon the certificate of the township overseer that such work has been satisfactorily performed. Provided, that in unorganized townships all road taxes shall be expended in the district in which they are levied. [1913, ch. 92, § 5.]

§ 1990r. Work to proceed at once. It shall be lawful in operating under this law [article] for the officers charged with the duty of expending the road tax to proceed at once with the work upon the roads in their districts and cause warrants to be issued in payment thereof in anticipation of the current year's tax. [1913, ch. 92, § 6.]

ARTICLE 10.— CONSTRUCTION OR IMPROVEMENT OF ROADS BY PRIVATE ASSOCIATIONS.

§ 1991. Construction authorized. Consent of city or town. It shall be lawful for any private organization or association of people to enter upon any work of improvement or construction of the public highways of this state under authority of the county commissioners of the county in which such road lies, and to construct, work upon, improve, drain, and guide board the same at their own expense in such manner as said county commissioners shall approve of; provided, however, that this act [sections 1991-1999] shall not apply to highways in any city or town without the consent of the proper authorities thereof. [1913, ch. 181, § 1.]

§ 1992. Application for permission. Wherever any such association or organization desires to so enter upon and improve or do any such work of road construction of a trunk line of road in or across any county they shall first apply to the county commissioners of such county for permission to make such improvement or do such work of construction, furnishing a general statement and plan of the work to be so done to the satisfaction of such board, and if such commissioners are satisfied that the proposed work will result in the betterment of the road in question they may grant such application. [1913, ch. 181, § 2.]

§ 1993. Name of road. Where application is made as in section 1992 provided for permission to so improve or construct a trunk line of road the association or organization proposing to do such work, may present with their application a proposed distinctive name for such road, which name so proposed shall thereupon become the name of such road if the application is allowed, unless the county commissioners for good cause shown refuse to allow such name. [1913, ch. 181, § 3.]

§ 1994. Names heretofore adopted. In any case where any association or organization has heretofore entered upon any work of improvement of any such road as is mentioned in section 1992, and worked, built or improved the same, or erected guide boards along the line thereof, or named and marked any such road, their acts in that regard shall be deemed in all things equivalent to a naming of such road under the provisions of section 1993, and the name so heretofore given to such road shall be recognized as the name thereof. [1913, ch. 181, § 4.]

§ 1995. Name of parallel road. Provided, wherever any road has heretofore or may hereafter be named as provided herein no other parallel or competing road in the state shall be named with the same name or any combination or variation thereof likely to attract travel from said road so first named, and in all cases the road so first named by designation with the county commissioners as herein provided, or the road so first actually named and marked heretofore shall have the right to use such name to the exclusion of all other roads, except roads being improved under the provisions hereof and connecting with and extending said road in the same general course. [1913, ch. 181, § 5.]

§ 1996. Improvement by public authorities. This article shall not be construed as in any manner excluding any of the public authorities from also working upon or improving such roads, except that it shall be unlawful for any one working under public authority to so work upon such roads as to destroy their usefulness as highways of general travel, or destroy or obstruct the same, or the improvements so made upon them, and any one doing so shall be guilty of a misdemeanor. [1913, ch. 181, § 6.]

See also section 1998.

§ 1997. Destruction or removal of guide boards or markings. It shall be unlawful for any one to destroy or remove from any such road as described in section 1992 any guide boards or markings indicating the course, condition, or name of such road, and any one violating this section shall be guilty of a misdemeanor. [1913, ch. 181, § 7.]

§ 1998. Work of public authorities. No work done by any such organization or association under the provisions hereof shall be or become a public charge upon any municipality, but any of the towns, cities, villages or townships through, or by which said road runs, or the county in which the same lies may work upon and improve such road in connection with such organization or society in the same manner and to the same extent as though no private work was being done thereon. [1913, ch. 181, § 8.]

See also section 1996.

§ 1999. Liberal construction of this article. It is the purpose of this article to encourage the co-operation of private enterprise with the public authorities in the construction of through lines of road in this state, and to permit roads so constructed to become known and recognized as highways of travel, and to protect the private interests engaged in the improvement thereof from appropriation by others of their distinctive name, and this article shall be liberally construed to effectuate that purpose. [1913, ch. 181, § 9.]

ARTICLE 11.—ABANDONED COAL MINES AND WELLS.

§ 2000. Mines and wells not in common use. Any individual, firm or corporation owning or occupying lands within this state, shall fill with earth or stone, or cover securely with plank of the thickness of two inches, any and all coal mines and wells, situated on such lands, which have become dry, or are not in common use, or which are not otherwise securely protected. [R. C. 1905, § 1416; 1899, ch. 43; R. C. 1899, § 1118a.]

Duty to trespasser with respect to excavations maintained on uninclosed land near highway. 5 L.R.A. (N.S.) 733.

§ 2001. Duties of overseers. It shall be the duty of the overseer of highways to cause to be filled or covered, as provided in the previous section,

any and all wells situated on any United States lands, state lands or common school lands within his district and for so doing such overseer shall receive such compensation, payable out of the road and bridge funds of the township, as the township board of supervisors, on presentation of his account therefor, verified by oath, shall deem reasonable. It shall be the duty of the overseer of highways, in case any individual, firm or corporation owning or occupying lands within his district shall neglect or refuse to comply with the provisions of this article, to serve a written notice on such owner or occupant, and if such owner or occupant shall neglect or refuse to comply with the provisions hereof the overseer of highways shall, within thirty days after having given such notice, cause such wells to be filled or covered as herein provided, and the owner of such land shall be liable to the township for the cost of such work and material furnished, and the necessary expense incurred in collecting the same to the township, and the township board of supervisors shall take proper proceedings to obtain judgment against the owner or occupant of the subdivision on which such wells are located for the amount expended in filling or covering such wells and all costs which may have accrued in obtaining judgment therefor. [R. C. 1905, § 1417; 1899, ch. 43; R. C. 1899, § 1118b.]

ARTICLE 12.—NOXIOUS WEEDS.

See also as to noxious weeds sections 623-631, 2817-2823.

§ 2002. Cutting and removing weeds. It shall be the duty of the road overseer in all organized townships, and the street commissioner of all villages or cities within the state of North Dakota to cause all weeds growing along or upon all public highways, streets and alleys in their respective road districts, villages or cities, to be cut or removed before the first day of August of each year, such work to be performed same as all other road work, and paid for in the same manner. [R. C. 1905, § 1418; 1899, ch. 115; R. C. 1899, § 1118c.]

§ 2003. Penalty for neglect to perform duties. Every overseer of highways who refuses or neglects to perform any of the duties prescribed in this article, or which may be lawfully required of him by the supervisors of his township, shall for every such refusal or neglect forfeit the sum of ten dollars to be sued for by the chairman of the board of supervisors of the township, and when recovered to be applied by him in making and improving the roads and highways therein. [R. C. 1905, § 1419; 1883, sub-ch. 2, ch. 112, § 9; R. C. 1899, § 1119.]

Action for penalty must be in name of person beneficially interested. *State v. Messner*, 9 N. D. 186, 82 N. W. 737.

ARTICLE 13.—HIGHWAY LABOR AND ROAD TAX.

§ 2004. Meetings of supervisors. The supervisors of each township shall meet at the township clerk's office on the last Tuesday of March each year and afterwards at such other times and places as they may deem proper. [R. C. 1905, § 1420; 1883, sub-ch. 2, ch. 112, § 10; 1887, ch. 155, § 4; R. C. 1899, § 1120.]

§ 2005. Make estimate of labor. The township clerk shall deliver the list filed by the overseers to the supervisors, who shall proceed to ascertain, estimate and assess the highway labor and road tax to be performed and paid in their township the next ensuing year. [R. C. 1905, § 1421; 1883, sub-ch. 2, ch. 112, § 11; R. C. 1899, § 1121.]

Delegation by the legislature of the power to exercise the right of taxation. 74 Am. Dec. 590.

§ 2006. Who liable to labor. Each male inhabitant above twenty-one years and under fifty years of age, excepting paupers, idiots, lunatics and such others as are exempt by law, shall be assessed one day in each year. Supervisors shall levy a road tax on all real estate and personal property liable to taxation in the township to any amount they may deem necessary not exceeding one dollar on each one hundred dollars of valuation as shown on

the assessment roll of the preceding year. They shall prepare a list in which they shall write in separate columns:

1. The name of each person named in the list furnished by the overseers.
2. The number of days assessed to each person for highway labor.
3. A description of each tract of real property, in the name of the owner if known.
4. The valuation thereof as shown by the assessment roll of the previous year.
5. The amount of road tax assessed thereon.

The list so prepared shall be signed by the supervisors and deposited with the township clerk to be filed in his office. [R. C. 1905, § 1422; 1883, sub-ch. 2, ch. 112, § 12; 1885, ch. 128, § 1; R. C. 1899, § 1122.]

Highway, labor and road tax assessed by town supervisor but expended by road overseers. *Aldrich v. Collins*, 3 S. D. 154, 52 N. W. 854.

Right to compel labor on highway. 74 Am. St. Rep. 667.

§ 2007. Highway tax list. The supervisors shall also place on the land road list the names of all persons against whom a road tax on personal property only has been assessed, and place in a separate column opposite the name of each person on the list the amount of road tax assessed on personal property, which amount shall be subject to collection or commutation by labor the same as a land road tax assessed on real estate. [R. C. 1905, § 1423; 1883, sub-ch. 2, ch. 112, § 13; R. C. 1899, § 1123.]

§ 2008. Copy of list to overseers of highways. The supervisors shall direct the township clerk to make a certified copy of each list, after which the township clerk shall deliver the several copies to the respective overseers of highways of the several districts in which highway labor is assessed, for which he shall receive a fee of twenty-five cents for each copy so delivered. One copy for each overseer shall contain the name of each person against whom a poll tax has been assessed, the other the land and personal property road tax. [R. C. 1905, § 1424; 1883, sub-ch. 2, ch. 112, § 14; R. C. 1895, § 1124.]

§ 2009. Overseer to add certain names to list. The overseers of highways shall add the names of persons omitted from such lists and of new inhabitants, and they shall be rated in the same proportion to work on the highways as others are rated by the supervisors on such list. [R. C. 1905, § 1425; 1883, sub-ch. 2, ch. 112, § 15; R. C. 1899, § 1125.]

§ 2010. Notice to all persons assessed. Overseers of highways shall give at least three days' notice to all persons assessed to work on highways and living within the limits of their respective districts, of the time and place when and where they are to appear for that purpose, and with what implements; but no person who is a resident of the township shall be required to work on any highway other than in his own district in which he resides, but may elect to pay any land road tax in labor in the district in which said land is situated, and shall be allowed one dollar and fifty cents for himself and a like amount for the use of his team and wagon or plow. Such labor shall be at the disposition of the overseers of their respective districts. If any person shall have done any road work under the direction of the road overseer, such person shall be entitled on demand to a receipt from such overseer, which receipt shall state the value of such labor and the name of the person, when the assessment is against personal property, and the description of the land, when the assessment is against real property. Such receipt shall be received by the county treasurer or road overseer in payment of any road or bridge tax levied and assessed in that or any succeeding year in such township against such person or land. If from any cause the amount stated in such receipt shall exceed the amount of the tax then due, the county treasurer or the road overseer shall accept and retain such receipt, and shall give to the owner of such receipt another receipt for the amount of the excess of the original receipt over and above said tax. Such receipt shall be received in payment of taxes to the amount stated therein, in the same manner as the

original receipt. [R. C. 1905, § 1426; 1883, sub-ch. 2, ch. 112, § 16; 1890, ch. 42, § 1; R. C. 1899, § 1126.]

§ 2011. Obstructions to be removed by overseers. Road overseers have power and it is their duty whenever any public highway becomes obstructed or unsafe from any cause whatever, to call upon any or all persons liable to poll tax in his district to come forth with such tools or teams as the overseer may direct, and work upon such highway in removing obstructions or repairing dangerous places, and for all such labor performed under the direction of the overseers, by any person in excess of the road tax assessed against him for that year, the road overseer shall give a receipt stating the value of such labor, and such receipt shall be received in payment of any road tax due from any person to such district in that or any succeeding year; and any road overseer who fails to perform his duty as required by law shall be subject to prosecution therefor by the supervisors of the township, and upon conviction shall be liable to a fine of not less than five nor more than fifty dollars. [R. C. 1905, § 1427; 1883, sub-ch. 2, ch. 112, § 17; R. C. 1895, § 1127.]

Persons obstructing road overseers in performance of duty liable to arrest without warrant, when. *Richardson v. Dybedahl*, 14 S. D. 131, 84 N. W. 486.

§ 2012. Compensation for labor. Electors to fix rate. In organized townships the electors at the regular annual town meeting each year may by resolution fix the rate per diem which shall be allowed for work to be done during each year on the highways in payment of road taxes; but the rate of such compensation shall not be less than one 50-100 dollars per day nor more than two dollars per day for the work of one man or one team of horses or mules. [1911, ch. 149, § 1.]

§ 2013. Supervisors to fix rate, when. If the electors shall fail to fix the rate of compensation for road labor as provided in the preceding section, then the board of supervisors shall fix and determine the rate of compensation at the first meeting of the board after the annual town meeting; and the rate so fixed at the annual town meeting or by the supervisors shall not be changed during that fiscal year. [1911, ch. 149, § 2.]

§ 2014. County commissioners to fix rate, when. In counties where road supervisors are appointed by the board of county commissioners, such board shall annually at the time of appointing the road supervisors, fix the rate of compensation to be allowed during such year for road work performed in payment of road taxes; the rate so to be fixed not to be less than one 50-100 dollars per day nor more than two dollars per day for one man, or for a team of horses or mules. [1911, ch. 149, § 3.]

§ 2015. Minimum rate. In case the rate per day of compensation for road work shall not have been fixed as herein provided in an organized township, or in a county where road supervisors are appointed by the board of county commissioners, then the rate of compensation in such township or county, as the case may be, shall be two dollars per day for the work of one man, and the same amount for one team of horses or mules. [1911, ch. 149, § 4.]

§ 2016. Commutation. In case of commutation of road taxes by payment in cash, such commutation shall be at the rates fixed as in this act [sections 2011-2015] provided. [1911, ch. 181, § 5.]

§ 2017. Commutation of road labor. Each person liable to work upon the highways shall work the whole number of days for which he is assessed, but every such person other than the overseer of highways, may elect to commute for the same or some part thereof, at the rate of one dollar and fifty cents per day, in which case such commutation money shall be paid to the overseer of highways of the district in which the person commuting shall reside; such overseer shall pay over such commutation money to the county or township treasurer taking his receipt therefor, stating the district wherefrom received, which receipt shall be filed with the township clerk within

thirty days from the date such commutation money is collected. Such commutation money shall be expended by the township board of supervisors in improvements upon the roads and bridges in the same district wherein collected. Overseers of highways when such road tax is paid either in money or labor, shall write in their list the word "Paid" opposite the name, tract of land or personal property on which the same is paid. [R. C. 1905, § 1428; 1897, ch. 113; R. C. 1899, § 1128.]

§ 2018. Payment of commutation money. Each person intending to commute for his assessment or any part thereof shall within two days after he is notified to appear and work on the highways, pay the commutation money for the work required of him by such notice, and the commutation shall not be considered as made until such money is paid. [R. C. 1905, § 1429; 1883, sub-ch. 2, ch. 112, § 19; R. C. 1899, § 1129.]

§ 2019. Power of overseer to require team or cart. Each overseer of highways has power to require a team or cart, wagon or plow, with a pair of horses or oxen and a man to manage them, from any person having the same within his district. [R. C. 1905, § 1430; 1883, sub-ch. 2, ch. 112, § 20; R. C. 1899, § 1130.]

§ 2020. Person assessed may procure substitute. Each person assessed to work on the highways and warned to work may appear in person or by an able bodied man as a substitute and the person or substitute so appearing shall work eight hours in each day, under a penalty of fifteen cents for each hour such person or substitute is in default, to be imposed as a fine on the person assessed. [R. C. 1905, § 1431; 1883, sub-ch. 2, ch. 112, § 21; 1885, ch. 128, § 2; R. C. 1899, § 1131.]

§ 2021. Fine for neglect to appear. Each person so assessed and duly notified, who does not commute or who refuses and neglects to appear as above provided, shall be fined for each day's refusal or neglect the sum of two dollars. If he was required to furnish a team, carriage or implements, and refused or neglected so to comply, he shall be fined as follows:

1. For wholly omitting to comply with such requisition, four dollars for each day.

2. For omitting to furnish a cart, wagon or plow, one dollar for each day.

3. For omitting to furnish a pair of horses or oxen, one dollar and fifty cents each day.

4. For omitting to furnish a man to manage the team, one dollar and fifty cents for each day. [R. C. 1905, § 1432; 1883, sub-ch. 2, ch. 112, § 22; R. C. 1899, § 1132.]

§ 2022. When overseer shall make complaint. Each overseer of highways within nine days after any person so assessed and notified is guilty of any refusal or neglect for which a penalty or fine is prescribed in this article, unless satisfactory excuse is rendered to him for such refusal or neglect, shall make complaint to one of the justices of the peace of the township or of an adjoining township. [R. C. 1905, § 1433; 1883, sub-ch. 2, ch. 112, § 23; R. C. 1899, § 1133.]

§ 2023. Duty of justice on complaint. The justice to whom such complaint is made shall forthwith issue a summons directed to the sheriff or any constable of the county, requiring him to summon such delinquent to appear at the time and place specified in the summons, to show cause why he should not be fined according to law for such refusal or neglect, which summons shall be served personally. [R. C. 1905, § 1434; 1883, sub-ch. 2, ch. 112, § 24; R. C. 1899, § 1134.]

§ 2024. Fine and collection thereof. If upon the return of such summons no sufficient cause is shown to the contrary, the justice of the peace shall impose a fine as provided in this article for the offense complained of, and shall forthwith issue an execution under his hand directed to such sheriff or constable, commanding him to levy such fine and the costs out of the

goods and chattels of the delinquent, and no property shall be exempt therefrom. [R. C. 1905, § 1435; 1883, sub-ch. 2, ch. 112, § 25; R. C. 1899, § 1135.]

§ 2025. **Fine disposed of, how.** The officer to whom such execution is directed shall forthwith collect the moneys therein mentioned. He shall pay the fine when collected to the justice of the peace who issued the warrant, who is required to pay the same to the overseer who entered complaint to be by him expended in improving the roads and bridges in his district. The costs when collected shall be paid to the persons entitled thereto. [R. C. 1905, § 1436; 1883, sub-ch. 2, ch. 112, § 26; R. C. 1899, § 1136.]

§ 2026. **Overseer cannot excuse person.** The acceptance by an overseer of any excuse for refusal or neglect shall in no case exempt the person excused from commuting for or working the whole number of days for which he is assessed during the year. [R. C. 1905, § 1437; 1883, sub-ch. 2, ch. 112, § 27; R. C. 1899, § 1137.]

§ 2027. **Compensation of overseers.** Each overseer of highways is entitled to two dollars per day, to be paid out of the fines and commutation money for each day he is necessarily employed in the execution of his duties as overseer. When there are no funds from fines or commutations the supervisors may pay the overseers out of any funds in their hands raised for the purpose of repairing and making roads and bridges. [R. C. 1905, § 1438; 1883, sub-ch. 2, ch. 112, § 28; R. C. 1899, § 1138.]

§ 2028. **Overseer to return tax list.** Each overseer of highways shall deliver to the township clerk of his township on or before the fifteenth day of September in each year the list furnished by the supervisors containing the land and personal property road tax, with his certificate thereon that all taxes in such list opposite which the word "paid" is not written, are due and unpaid according to the best of his knowledge and belief. [R. C. 1905, § 1439; 1883, sub-ch. 2, ch. 112, § 29; 1887, ch. 158, § 1; R. C. 1899, § 1139.]

§ 2029. **Refusal or neglect to deliver tax list.** If any overseer refuses or neglects to deliver such list with his certificate as provided in the last section, he shall, for each offense, forfeit the sum of five dollars, and also the amount of tax remaining unpaid, to be recovered by the supervisors of such township and applied by them in improving roads and bridges in such township. [R. C. 1905, § 1440; 1883, sub-ch. 2, ch. 112, § 30; R. C. 1899, § 1140.]

§ 2030. **Township clerk to make out delinquent list.** The township clerk of each township shall receive the lists returned by the overseer of highways pursuant to section 2028 and keep the same on file in his office, and shall make out and deliver to the county auditor of the county, on or before the first day in October in each year, a list containing a description of each tract or parcel of land on which the tax is delinquent, together with the name of the owner, if known, and if unknown, so state, and the amount of tax due and remaining unpaid on each, and containing all of the unpaid road taxes levied upon personal property according to the lists on file in his office, and shall make his certificate thereon to the effect that the same is a correct list of delinquent road taxes for the year therein stated, as appears from the several lists returned by the overseers of highways and on file in his office; and it is the duty of the county auditor to extend such unpaid taxes upon the tax lists for the current year, to be collected in the same manner as other taxes. Such road tax, when collected, shall be paid to the township treasurer of the proper township upon the certificate of the county auditor, and shall be expended by the supervisors in the construction or repair of roads and bridges, to be paid by the township treasurer upon the order of the supervisors. [R. C. 1905, § 1441; 1883, sub-ch. 2, ch. 112, § 31; 1887, ch. 158, § 2; R. C. 1899, § 1141.]

§ 2031. **Work done prior to August first.** It shall be the duty of each overseer of highways to have at least three-fourths of the road labor assessed in his district worked out or actually expended on the highways previous to

the first day of August in each year. [R. C. 1905, § 1442; 1883, sub-ch. 2, ch. 112, § 32; R. C. 1899, § 1142.]

§ 2032. Report of road overseers. Each overseer of highways shall, on the last Tuesday in October of each year for which he is elected, or appointed, render to the clerk of the township an account in writing containing:

1. The names of all persons assessed to work on the highways in his district.

2. The names of all those who have actually worked on the highways, with the number of days they have worked.

3. The names of all those who have been fined and the sums in which they have been fined.

4. The names of all those who have commuted and the manner in which the moneys arising from fines and commutations has been expended by him.

5. The amount of all material purchased by him, together with the bills of all those from whom the material has been purchased.

6. The present condition of all road machinery intrusted to him. [R. C. 1905, § 1443; 1883, sub-ch. 2, ch. 112, § 33; R. C. 1899, § 1143; 1901, ch. 148.]

§ 2033. Overseer to pay over money. Every such overseer shall then and there pay to the supervisors all unexpended moneys remaining in his hands, to be applied by the supervisors on the roads and bridges in the township. [R. C. 1905, § 1444; 1883, sub-ch. 2, ch. 112, § 34; R. C. 1899, § 1144.]

§ 2034. Penalty for refusal to render account. If any overseer refuses or neglects to render such account or if, after rendering the same, he shall refuse or neglect to pay any balance which may be due from him, he shall for every such offense, forfeit the sum of five dollars, to be recovered with the balance of the moneys remaining in his hands, by the supervisors of the township and applied to the improvement of the roads and bridges in such township. [R. C. 1905, § 1445; 1883, sub-ch. 2, ch. 112, § 35; R. C. 1899, § 1145.]

ARTICLE 14.—ROADS IN CITIES.

§ 2035. Powers of city authorities. The same powers and duties in and by this chapter conferred and imposed upon township supervisors, are also conferred and imposed upon the city councils of the several cities throughout this state, and in addition thereto it shall be the duty of the city council to appoint some qualified elector of each road district in the city to be overseer of roads in such district, and the overseers of roads, city clerks or auditors, justices of the peace and constables of the several cities of the state shall exercise the same powers and perform the same duties and be subject to the same liabilities as are in and by this article conferred and imposed upon the township overseers, clerks, justices of the peace and constables, and all the provisions of this article shall be applicable to the several cities in this state unless otherwise provided for in their several charters, subject, however, to the reservations made by law in regard to incorporated cities. [R. C. 1905, § 1446; 1883, sub-ch. 2, ch. 112, § 53; R. C. 1899, § 1146.]

Jurisdiction to compel railroad to construct crossing over section line highway, in incorporated city, was in city council and not in county commissioners. *Spink County v. Chicago, M. & St. P. R. Co.*, 28 S. D. 44, 132 N. W. 675, Ann. Cas. 1914a, 1048.

County liable for payment of road warrants issued before passage of act. *Custer County Bank v. Custer County*, 18 S. D. 274, 100 N. W. 424.

ARTICLE 15.—GRADES OF HIGHWAYS ADJOINING CITIES.

§ 2036. Grades, how established. In all places where highways are improved and graded under the contract system, in a township where land contiguous to, adjoining and outside of the limits of any city or village has been surveyed into a block or blocks and divided into city or village lots, the person to whom such contract is awarded shall comply strictly with the ordinances of such city or village as to roads, streets, grades, space for sidewalks,

berms and gutters, where, in the opinion of the township board having control of the same, the cost of such grading shall be one hundred dollars or upwards. An estimate, profile and cross section of such desired improvement shall be made by the county surveyor of said county, and the contract for such improvement shall be let to the lowest responsible bidder not a member of the said board and the work done under such contract shall not be accepted or paid for until said surveyor has reported that the said contract has been substantially complied with; provided, that all roads and streets in city, town or village additions of outlots shall be graded according to the requirements of such city, town or village ordinance or custom as to space for sidewalks, berms and gutters. [R. C. 1905, § 1447; 1905, ch. 118.]

ARTICLE 16.—OBSTRUCTING HIGHWAYS.

§ 2037. Penalty for obstructing highway. Whoever at any time obstructs any of the public highways in this state in any manner, with intent to prevent the free use thereof by the public, or whoever shall do or cause to be done any planting or plowing thereon within one rod on either side of the center line of such highway, shall be subject to a fine of not less than five nor more than twenty-five dollars, together with the costs of prosecution, and on failure to pay such fine and costs, he may be committed to the county jail, there to remain until such fine and costs are paid or until discharged according to law; and it is the duty of the board of supervisors of the several townships in this state to make complaint and to prosecute or cause to be prosecuted all persons violating the provisions of this section. [R. C. 1905, § 1448; 1883, sub-ch. 2, ch. 112, § 74; R. C. 1899, § 1147.]

Contributory negligence authorizing direction of verdict is shown in action to recover for injury to buggy striking stone placed in road by defendant, where it is shown that plaintiff had laid down reins and permitted young and spirited horse to go unreined. *Hendrickson v. Swenson*, 28 S. D. 323, 133 N. W. 250, 1 N. C. C. A. 590.

Right of private persons to temporarily obstruct highway. 1 Am. St. Rep. 840.

Injunction against obstruction of highway on behalf of private citizens. 53 Am. Rep. 574.

Obstructions upon any part of highway are nuisances. 38 Am. Rep. 127.

Obstruction of street in violation of police ordinance as ground for private action. 5 L.R.A. (N.S.) 257.

Duty and liability of one who maintains temporary obstruction in street for purpose of loading or unloading vehicle. 24 L.R.A. (N.S.) 97.

Obstruction in highway preventing access to property except by circuitous route as a special injury entitling owner to maintain action for damages or abate the nuisance. 8 L.R.A. (N.S.) 227; 21 L.R.A. (N.S.) 75.

Does the fact that one is prevented by an unlawful obstruction from using a highway cause him a special damage which will sustain an action by him against the wrongdoer. 28 L.R.A. (N.S.) 1053.

Obstruction or defect in highway as justification for entry on adjoining land which would otherwise be a trespass. 20 L.R.A. (N.S.) 153.

Effect of encroachment as an abandonment of highway. 26 L.R.A. 465.

Right of abutting property owner to extend steps into street. 24 L.R.A. (N.S.) 193.

Hitching posts or stepping blocks in public streets as unlawful obstructions. 31 L.R.A. (N.S.) 853.

Fright of horse from obstructions in highway, right of recovery for. 34 Am. Rep. 630.

ARTICLE 17.—WATERING PLACES ON HIGHWAYS.

§ 2038. Watering troughs. Bounty for. Any person in any city, village or township in this state who shall construct and maintain a watering trough beside the highway, which shall be above the ground and made easily accessible for horses, shall be allowed by the city, village or township, five dollars out of his highway tax for each year during which he shall maintain the same. [R. C. 1905, § 1449; 1883, sub-ch. 2, ch. 112, § 84; R. C. 1899, § 1148.]

§ 2039. Well or spring. Bounty for. Any person in any city, village or township who shall construct and maintain a good well or spring beside the

highway, easily accessible, and provided with a suitable pail or bucket, and keep the same so supplied and in good repair, shall be allowed by the city, village or township, three dollars out of his highway tax for each year during which he shall furnish the same. [R. C. 1905, § 1450; 1883, sub-ch. 2, ch. 112, § 85; R. C. 1899, § 1149.]

§ 2040. Proceedings to furnish watering places. Any person upon any highway or road in any district or ward desiring to furnish such watering trough, well or spring, shall make application to the aldermen of the city or supervisors of the township, who shall decide where such trough, well or spring shall be located, and the number of persons who may receive the benefits of the last two sections. [R. C. 1905, § 1451; 1883, sub-ch. 2, ch. 112, § 86; R. C. 1899, § 1150.]

ARTICLE 18.—DITCHES FOR DRAINING HIGHWAYS.

§ 2041. Proceedings for. Whenever any overseer of highways or road supervisor shall file with the board of supervisors of the township in which his road district is located, or with the board of county commissioners, as the case may be, his affidavit stating that a certain road in his district runs into or through swamp, bog, meadow or other low land, and that it is necessary or expedient that a ditch should be constructed and maintained through land belonging to any person, also stating the probable length of such ditch and the width and depth of the same as near as may be, the point at which it is to commence, its general course and the point at or near which it is to terminate, the names of the persons owning the land, if known, and a description of the land over which such ditch must pass, the board of township supervisors or county commissioners as the case may be, if the right to construct and maintain such ditch is not voluntarily given by the person owning the land over which it is to pass, shall cause proceedings to be instituted in its name under the provisions of the chapter on eminent domain in the code of civil procedure, to acquire the right to construct and maintain the same. [R. C. 1905, § 1452; 1883, sub-ch. 2, ch. 112, § 87; R. C. 1895, § 1151.]

Acquisition by municipality of right of way for drain. 65 L.R.A. 273.

Exercise of eminent domain for drains and sewers. 60 L.R.A. 195.

§ 2042. Penalty for injuring ditch. Any person who shall dam up, obstruct, or in any way injure any ditch so opened, shall be liable to pay to the overseer of highways of such road district double the damages caused by such injury, which shall be assessed by the jury or court and shall also be guilty of a misdemeanor, and upon conviction shall be punished by imprisonment for a period not exceeding three months, or by a fine not exceeding one hundred dollars, and such damages and fine when collected shall be, by such overseer, expended on the roads in his district. [R. C. 1905, § 1453; 1883, sub-ch. 2, ch. 112, § 92; R. C. 1889, § 1152.]

ARTICLE 19.—CATTLE-WAYS.

§ 2043. Cattle-ways under highways. Upon application to the board of county commissioners of any county or the board of township supervisors of any organized township by any person for permission to construct a cattle-way under any public road, it may grant the same upon condition that such way shall not interfere with the public travel; that the grade of the road over the cattle-way shall not exceed one foot in ten feet; and that it shall not obstruct watering at any running stream. The applicant shall construct the same at his own expense and be responsible for all damages that may arise from its construction or from the same not being kept in repair. [1909, ch. 138, § 1.]

§ 2044. Failure to keep in repair. If the person on whose land such cattle-way is constructed fails to keep the same in repair, it shall be the duty of the

road supervisors to make all necessary repairs, and charge the same to the owner of the land upon which such way is constructed, and, upon his refusal to pay, the county or township board in which such cattle-way is situated shall recover the same in an action brought in the name of such board and it shall be the duty of the state's attorney to prosecute such action, which money, when collected, shall be expended in improving or repairing the public roads in the road district where such cattle-way is constructed. [1909, ch. 138, § 2.]

§ 2045. Board may prescribe regulations. The board granting such application may prescribe such further regulations and specifications in the construction of such ways as it may deem proper, not inconsistent with the provisions of sections 2043 and 2044. [1909, ch. 138, § 3.]

ARTICLE 20.—ROADS ON LINE OF CITY OR VILLAGE.

§ 2046. Roads on lines between township and city. Whenever the supervisors of any township and the trustees or common council of any incorporated village or city shall receive a petition praying for the location of a road or for the altering or discontinuing of any road on the line between such village or city, such road shall be laid out, altered or discontinued by two or more of the supervisors of such township, and a majority of the common council or trustees of such incorporated city or village. [R. C. 1905, § 1454; 1883, sub-ch. 2, ch. 112, § 95; R. C. 1899, § 1153.]

§ 2047. Laws applicable. The provisions of this chapter applicable to roads on the line between two townships shall be applicable to roads on the line between any township and an incorporated city or village. [R. C. 1905, § 1455; 1883, sub-ch. 2, ch. 112, § 97; R. C. 1899, § 1154.]

ARTICLE 21.—RIGHT OF WAY FOR HIGHWAYS.

§ 2048. Right-of-way over Devils Lake. There is hereby granted to the public, and to each and every county, township, municipal corporation and political subdivision interested in, or affected or benefited by the provisions hereof, the consent and permission of the state of North Dakota to construct and at all times maintain a public highway, consisting either in whole or in part of grades, fills, embankments or bridges, or any combination thereof, or otherwise, across, within, under or through the waters of Devils Lake, extending from the point known as Pelican Point on the northerly bank of said lake, in a southerly direction by the most feasible and practical route to the southerly bank of said lake. All acts heretofore performed in the construction or partial construction or maintenance of a highway between the points designated in this section by grades, fills, embankments or otherwise, are hereby ratified, approved and confirmed. [R. C. 1905, § 1456; 1903, ch. 141.]

§ 2049. Right of way across military grounds. A right of way is hereby granted for the laying out of a public highway across the military encampment grounds at Rock Island, Ramsey county, from north to south, upon a route to be determined by the proper authorities of Ramsey county, subject to the approval of the governor. [R. C. 1905, § 1457; 1901, ch. 134.]

§ 2050. Right-of-way over Des Lacs Lake. There is hereby granted to the public, and to each and every municipal corporation and political subdivision interested in, affected or benefited by the provisions hereof, the consent and permission of the state of North Dakota to construct and at all times maintain a public highway, consisting either in whole or in part of grades, fills, embankments or bridges, or any combination thereof, or otherwise, across, within, under and through the waters of Des Lacs Lake, on or as near as feasible and practicable to the township line between township one hundred sixty-one and township one hundred sixty-two in Ward county, North Dakota; provided, that said construction does not block or interfere with the naviga-

tion on said lake; and provided, that plans for said bridge are approved by the department of war of the government of the United States. [R. C. 1905, § 1458; 1905, ch. 57.]

ARTICLE 22.—LAW OF THE ROAD.

§ 2051. Vehicles turn to the right. Whenever persons shall meet on any bridge or road, traveling with carriages, wagons, sleds, bicycles, or other vehicles, each shall pass to the right of the middle of the traveled part of such bridge or road so that the respective carriages, or other vehicles aforesaid, may pass each other without interference. [R. C. 1905, § 1459; R. C. 1895, § 1155.]

Rights of travelers in highway and the presumption of negligence from being on the wrong side thereof. 48 Am. St. Rep. 366.

The law of the road. 73 Am. Dec. 404; 13 Am. Rep. 135.

When contributory negligence bars a recovery for injuries suffered. 47 Am. Rep. 744.

Driving on wrong side of defective highway as contributory negligence. 13 L.R.A. (N.S.) 1267.

Violation of law of the road by person injured on defective street. 21 L.R.A. (N.S.) 668.

Rule of the road governing vehicles proceeding in the same direction. 41 L.R.A. (N.S.) 337.

Rule of the road governing vehicles proceeding in opposite directions. 41 L.R.A. (N.S.) 332.

Rule of the road governing vehicles at intersection of streets and when turning a cross street. 41 L.R.A. (N.S.) 336.

Law of the road as applied to bicyclists. 47 L.R.A. 293.

Rule of the road as affecting street cars and vehicles meeting or passing. 42 L.R.A. (N.S.) 1188.

Violation of ordinance against fast or reckless driving as ground for private action. 5 L.R.A. (N.S.) 254.

§ 2052. Penalty for violation of last section. Every person violating the provisions of the preceding section shall for each offense forfeit a sum not exceeding twenty-five dollars, and shall also be liable to the party injured for all damages sustained thereby. [R. C. 1905, § 1460; R. C. 1899, § 1156.]

§ 2053. Drunken drivers. No person owning or having the direction or control of any coach or other vehicle running or traveling upon any road in this state for the conveyance of passengers shall employ or continue in his employment any person to drive such coach or other vehicle who is addicted to drunkenness or to the excessive use of intoxicating liquors; and if any person shall violate the provisions of this section, he shall forfeit and pay a sum of not less than ten nor more than fifty dollars, and shall be liable for all damages sustained thereby. [R. C. 1905, § 1461; R. C. 1899, § 1157.]

§ 2054. Unlawful not to hitch passenger teams. It shall be unlawful for the driver of any carriage or other vehicle used for the conveyance of passengers to leave the horses attached thereto while any passenger remains in or upon the same, without making such horses fast with a sufficient halter, rope or chain, or without some suitable person to take charge or guidance of them so as to prevent their running; and if any person shall violate the provisions of this section, he and his employer shall each forfeit and pay a sum not exceeding twenty dollars; but no prosecution shall be commenced therefor after the expiration of three months from the time of committing the offense. [R. C. 1905, § 1462; R. C. 1899, § 1158.]

Negligence in leaving horse unhitched in highway. 10 L.R.A. (N.S.) 845; 20 L.R.A. (N.S.) 958.

Violation of ordinance as to unfastened and unguarded animals on street as ground for private action. 5 L.R.A. (N.S.) 255.

Warranty of horse or vehicle kept for hire. 19 L.R.A. 283.

§ 2054a. Passenger conveyance. Liability of owner. The owner of each carriage or other vehicle running or traveling upon any road or public highway for the conveyance of passengers for hire shall be liable jointly and severally with the driver of such vehicle to the party injured, in all cases,

for all damages done by such driver while in the employment of such owner in driving such carriage, or other vehicle, to any person, whether the act occasioning such injury or damage was willful, negligent or otherwise. [R. C. 1905, § 1463; R. C. 1899, § 1159.]

Duty of livery-stable keeper as to character of horse. 25 L.R.A.(N.S.) 372.

Who is responsible for acts of driver furnished with a hired vehicle. 13 L.R.A.(N.S.) 1122; 16 L.R.A.(N.S.) 816; 25 L.R.A.(N.S.) 33; 38 L.R.A.(N.S.) 973.

Liability of hirer for injury to horse while being used for a purpose other than that for which it was hired. 26 L.R.A. 366; 28 L.R.A.(N.S.) 1106.

ARTICLE 23.— BRIDGE PENALTIES.

§ 2055. Notices on bridges. It shall be the duty of the county commissioners of each county of the state to cause notices to be posted at each end of all bridges in their respective counties, where the span of such bridge is fifty feet or more, stating the number of cattle, horses or other animals that may be driven onto or across such bridge at any one time. [R. C. 1905, § 1464; 1883, sub-ch. 2, ch. 112, § 77; R. C. 1899, § 1160.]

Nonobservance of public regulations by one using bridge as affecting recovery of damages caused by obstruction or defect therein. 42 L.R.A.(N.S.) 1035.

§ 2056. Driving cattle on bridges. Any person driving or having charge of any drove of cattle, horses or other animals who shall drive or permit more of such animals to enter upon or cross such bridge at any one time than is specified in such notice, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not exceeding one hundred dollars nor less than ten dollars. [R. C. 1905, § 1465; 1883, sub-ch. 2, ch. 112, § 78; R. C. 1899, § 1161.]

§ 2057. Penalty for driving across bridge faster than a walk. Whoever drives or rides upon any bridge, belonging to any incorporated bridge company or any bridge which has been or may be erected by any county or township, or upon any bridge which has been or may be erected by any individual, and upon which the notice hereinafter prescribed is conspicuously displayed, faster than a walk shall forfeit and pay for the use and benefit of the county wherein such bridge is located in whole or in part, as a penalty therefor, a sum not less than five nor more than ten dollars for each offense. [R. C. 1905, § 1466; 1883, sub-ch. 2, ch. 112, § 79; R. C. 1899, § 1162.]

§ 2058. Proceedings on complaint. Upon complaint made to any justice of the peace in any county where such bridge is located in whole or in part, that any such offense has been committed, such justice shall issue his warrant in the usual manner, requiring the officer to whom it is directed forthwith to arrest the accused and bring him before such justice or some other justice of the county, to be dealt with according to law. [R. C. 1905, § 1467; 1883, sub-ch. 2, ch. 112, § 80; R. C. 1899, § 1163.]

§ 2059. Judgment on conviction. In all cases of conviction under the provisions of the foregoing sections the justice shall enter judgment for the fine and costs against the defendant, and may commit him until the judgment is satisfied, or issue execution upon the judgment to the use of the county. [R. C. 1905, § 1468; 1883, sub-ch. 2, ch. 112, § 81; R. C. 1899, § 1164.]

§ 2060. Fine imposed only when notice is posted. No fine shall be imposed under the provisions of this article unless there was at each end of such bridge at the time when such offense was committed, a conspicuous sign board upon which was printed the following: "Ten dollars fine for riding or driving on this bridge faster than a walk," or words importing substantially the same meaning. [R. C. 1905, § 1469; 1883, sub-ch. 2, ch. 112, § 82; R. C. 1899, § 1165.]

§ 2061. Penalty for running tollgate. When any bridge or ferry company or individual is authorized by law to collect toll for the crossing of any bridge or ferry belonging to such company or individual, any person who willfully runs the tollgate of such company or individual and passes over such bridge or ferry with the intention of avoiding the payment of the toll prescribed by

law, or who refuses to pay such toll when lawfully requested so to do, shall forfeit and pay for the use and benefit of the county wherein such bridge or ferry is located a fine of five dollars for each offense, which fine shall be prosecuted for and collected, together with the costs of prosecution in the manner prescribed in the preceding section. [R. C. 1905, § 1470; 1883, sub-ch. 2, ch. 112, § 83; R. C. 1899, § 1166.]

ARTICLE 24.—FERRIES.

§ 2062. Ferries unlawful without lease. Must be two miles apart. It shall be unlawful for any person to establish, maintain or run upon any waters within the state any ferry upon which to convey, carry or transport any person or property for hire or reward, without first having obtained a license therefor as hereinafter provided, and where but one bank or shore is in this state, the board of county commissioners of the proper county have the same authority, and this law applies with like effect, as if the entire stream was within this state, so far as the banks and waters actually within it are concerned, and when any ferry lease has been granted no other lease shall be granted within a distance of two miles thereof across the same stream. Any person violating any of the provisions of this section shall for each offense forfeit and pay to the proper county not less than five nor more than one hundred dollars with costs to be recovered in an action in the name of the state. [R. C. 1905, § 1471; R. C. 1899, § 1167.]

No right to operate without license. *Evans v. Hughes County*, 3 S. D. 580, 54 N. W. 603; *Patterson v. Wollmann*, 5 N. D. 608, 67 N. W. 1040, 33 L.R.A. 536.

The law is constitutional. *Evans v. Hughes County*, 6 D. 102, 50 N. W. 720.

The license is exclusive for a distance of 2 miles on either side. *Nixon v. Reid*, 8 S. D. 507, 67 N. W. 57, 32 L.R.A. 315; *Patterson v. Wollmann*, 5 N. D. 608, 67 N. W. 1040, 33 L.R.A. 536.

Law not unconstitutional because giving special privileges. *Patterson v. Wollmann*, 5 N. D. 608, 67 N. W. 1040, 33 L.R.A. 536.

Establishment, regulation and protection of ferries. 59 L.R.A. 513.

What amounts to interference with ferry franchise. 30 L.R.A. (N.S.) 462.

Bridge as disturbance of ferry franchise. 1 B. R. C. 341.

§ 2063. Duties of commissioners to grant ferry licenses. The board of county commissioners of the county to whom application shall be made for a ferry in the manner hereinafter provided, is hereby authorized, and it shall be its duty, to grant a lease of such ferry for a term not exceeding fifteen years, to such person or persons as shall bid and secure the payment of the highest amount of rent for the same, such lease to be executed by the board of county commissioners as lessors, and such bidder as lessee; and such board shall be empowered to extend to such person the lease so granted to any person putting in a steam ferry, at the same rate as previously paid; provided, that such extended time shall not exceed fifteen years from the time of the granting of the first lease; and when in the opinion of the board of county commissioners, of the county wherein such lease is granted, the rates fixed by law for crossing such ferry are too high, it shall have the right to fix such rates as in its judgment may seem just; provided, that upon the petition of fifty or more persons owning taxable property and residing in said county, the county commissioners shall survey, lay out and keep in repair a public highway to and from said ferry; provided, further, that the mayor and city council of any incorporated city, and the board of trustees of any incorporated town or village in the state of North Dakota, within whose corporate limits the landing of any ferry shall be situated, shall have the sole authority to grant a lease of such ferry and the right to fix the rates for crossing such ferry, and upon the granting thereof such city, town or village shall lay out and keep in repair a public highway and approach to and from such ferry. [R. C. 1905, § 1472; 1899, ch. 90; R. C. 1899, § 1168; 1901, ch. 96, § 1.]

Where bid is properly tendered it is equivalent to "highest bidder." *Willson v. Gabler*, 11 S. D. 206, 76 N. W. 924.

No license to one who does not secure rent or execute lease. *Wilson v. Gabler*, 11 S. D. 206, 76 N. W. 924.

State grant of franchises for ferries over interstate streams. 27 Am. St. Rep. 555.

§ 2064. Rates of ferriage. The rates for crossing the Missouri River on ferries shall not exceed the following:

For two horses, mules or oxen and wagon, with or without load, one dollar.

For each additional pair of horses, mules or oxen, thirty cents.

For each two horses or mules and buggy, seventy-five cents.

For each one horse or mule with buggy and driver, fifty cents.

For each horse or mule led, twenty-five cents.

For loose cattle per head, fifteen cents.

For sheep and swine per head, ten cents.

For each one hundred pounds of freight or merchandise unloaded, ten cents.

For each thousand feet of lumber unloaded, one dollar.

Each ferryman is required to keep a schedule of his legal rates posted up in a convenient place at or near his ferry in easy view of the passing public. [R. C. 1905, § 1473; R. C. 1899, § 1169.]

Legislative regulation of ferry rates. 33 L.R.A. 180.

Power of judiciary to fix ferry rates to be charged. 8 L.R.A.(N.S.) 529.

Business of ferries affected with a public interest subjecting them to regulation and control as to rates or prices. 6 L.R.A.(N.S.) 835.

Right to take tolls without franchise. 37 L.R.A. 712.

§ 2065. Ferries in unorganized counties. The secretary of state is authorized upon application to grant a lease of any ferry in any unorganized county for the like period and under the provisions of this chapter in every respect which are applicable thereto. The money received therefor shall be by him paid into the state treasury. All licenses granted by the secretary of state under this section shall terminate upon the organization of the county in which the same or any part thereof lies, and it shall thereafter be subject to the provisions of law relating to organized counties. [R. C. 1905, § 1474; R. C. 1899, § 1170.]

§ 2066. Safety of ferry boats. Each person obtaining a lease to run a ferry as aforesaid shall provide and keep in good repair a good and sufficient boat for the safe conveyance of persons or property, and when the river or creek over which the ferry is run is passable, shall, with a sufficient number of hands to work and manage the boat from sunrise to sunset and with reasonable care and promptness, convey across such ferry all persons and property presented for transportation across the same. If any lessee as aforesaid shall fail or neglect to perform all or any of the duties enjoined upon him by this and the preceding section or shall demand or receive a higher rate than is allowed in section 2064, the lessee so offending shall for each offense forfeit and pay the sum of ten dollars. [R. C. 1905, § 1475; R. C. 1899, § 1171.]

Duties and liabilities of keepers of ferries. 87 Am. Dec. 720.

Ferryman as common carrier. 68 L.R.A. 153.

Employer's nonliability for torts of independent contractor in operation of ferries. 65 L.R.A. 654.

§ 2067. Penalty for unlawful ferry. If any person shall keep a ferry in any of the organized counties of this state without a lease from the board of county commissioners as aforesaid, the owner or person so offending shall forfeit and pay a sum of not less than fifty nor more than five hundred dollars for each year or fractional part of a year such person shall keep such ferry, to be recovered in a civil action in the name of the state. [R. C. 1905, § 1476; R. C. 1899, § 1172.]

§ 2068. Money from ferry leases to go to school fund. All moneys received by the board of county commissioners upon leases granted for ferries as aforesaid, shall within thirty days after the receipt thereof, be paid to the county treasurer for the use of the public schools of the county, and the same shall be apportioned among the several districts of the county in like manner as other school funds are now by law apportioned; provided, that all moneys received by the mayor and city council of any incorporated city, or by the

board of trustees of any incorporated town or village, in this state, for the leasing of any ferry whose landing shall be within the corporate limits of such city, town or village, shall immediately upon the receipt of the same, be turned over to the treasurer of such city, town or village, to be by him deposited in the general fund and paid out in like manner as other moneys are paid out of said general fund for the use of said city, town or village. [R. C. 1905, § 1477; R. C. 1899, § 1173; 1901, ch. 96, § 2.]

§ 2069. Temporary ferries. Nothing in this article shall prevent any person from ferrying persons and property across any small stream in time of high water, when in the opinion of the board such stream is too small to justify a regular ferry. [R. C. 1905, § 1478; R. C. 1899, § 1174.]

§ 2070. Forfeiture for not maintaining ferry. All persons, who have heretofore received either a permit, lease, grant or charter in any form, either from the legislative assembly or any tribunal or board, for the keeping of a ferry of any kind, who shall neglect or fail during the period of one month at any one time, to keep their ferry in operation for the safe transportation of persons and property over the same according to law, shall forfeit all the ferry rights, franchises and privileges, and all right, title or claim to the same, granted by or under this law, or any former act as aforesaid; and upon due proof being made to the board of county commissioners of the proper county, of such failure or neglect, the board is authorized and empowered to declare such forfeiture absolute, and thereupon and thereafter all the rights, franchises and privileges, granted by or under this article, or any other law, shall cease and be of no more force or effect. [R. C. 1905, § 1479; R. C. 1899, § 1175.]

CHAPTER 32.

STATE PARKS — ISLANDS IN MISSOURI RIVER.

§ 2071. Dedication for public park. The island situated in the Missouri River immediately south of the city of Williston, in this state, and all islands that may appear in said river within five miles of said city of Williston in the state of North Dakota, shall be a public park, and shall remain dedicated to the people of the state under such restrictions as may be provided by law. [1913, ch. 216.]

CHAPTER 33.

TERMINAL ELEVATORS.

§ 2072. State terminal elevator fund created. There shall be levied upon each dollar of assessed valuation of all taxable property within this state, for the year of 1914 and the year 1915 and the year 1916, and to be paid during said years, one-eighth of one mill on every dollar; and all such revenue as may be collected under such levy shall be covered into a special fund to be known as the "state terminal elevator fund," which shall be used for the following and no other purpose, viz.: For the erection, purchase, leasing, equipment, maintenance and operation of a terminal elevator system or systems in the state of Minnesota, or in the state of Wisconsin, or in both said states, and for the operation of the same. [1913, ch. 279, § 1.]

§ 2073. Board of control to submit plans and specifications. It shall be the duty of the board of control, in addition to all other duties imposed upon them by law, to investigate the matter of the location of such elevators and costs of buildings and sites, and to submit plans and specifications of buildings and equipment, machinery and methods and rules of operation of the same to the 1915 legislative assembly of this state, it being the duty of the board of control under this act [sections 2072, 2073] to devise methods of operation and submit plans and specifications covering in detail the establishment of a terminal elevator system in the states mentioned herein, with recommendations as to the most favorable location, and estimates of the cost of such system or systems. [1913, ch. 279, § 2.]

CHAPTER 34.

REVENUE AND TAXATION.

- ARTICLE 1. DEFINITIONS OF TERMS, § 2074.
2. TAXABLE PROPERTY, §§ 2075-2077.
 3. EXEMPTIONS, §§ 2078, 2079.
 4. NONPARTISAN TAX COMMISSION, §§ 2080-2092.
 5. MANNER OF LISTING PROPERTY, §§ 2093-2132.
 6. BOARDS OF EQUALIZATION, §§ 2133-2143.
 7. ASSESSMENT OF EXPRESS AND OTHER COMPANIES, §§ 2144-2147.
 8. RATE OF TAXATION AND LEVY, §§ 2148-2154.
 9. THE COUNTY TREASURER AND HIS DUTIES, §§ 2155-2163.
 10. TAX PAID BY MISTAKE, § 2164.
 11. DELINQUENCY, PENALTY AND LIEN OF TAXES, DISTRESS AND SALE, §§ 2165-2188.
 12. TAX SALE, §§ 2189-2205.
 13. TAX DEED, §§ 2206-2214.
 14. ABBREVIATIONS IN DESCRIPTIONS AND PROCEEDINGS IN CASE OF FALSE LISTS AND RETURNS, §§ 2215-2224.
 15. ASSESSMENT AND TAX LEVY IN UNORGANIZED COUNTIES, §§ 2225, 2226.
 16. TAXING LIVE STOCK OF NONRESIDENT OWNERS, § 2227.
 17. LEGALIZING IRREGULARITIES IN ASSESSMENTS AND LEVIES, §§ 2228-2231.
 18. VALIDATING ASSESSMENTS SINCE 1889, §§ 2232-2237.
 19. VALIDATING FUTURE ASSESSMENTS AND TAX LEVIES, §§ 2238-2241.
 20. ASSESSMENT OF RAILROAD PROPERTY, §§ 2242-2246.
 21. ASSESSMENT AND TAXATION OF PUBLIC UTILITIES, §§ 2247-2252.
 22. TAXATION OF BANKRUPT STOCKS, §§ 2253-2255.
 23. TAXATION OF GRAIN, §§ 2256-2259.
 24. COUNTY COMMISSIONERS TO LEVY TAXES IN CERTAIN CASES, § 2260.
 25. GOPHER TAX, §§ 2261, 2262.
 26. TAXATION FOR PROMOTION OF DIVERSIFIED FARMING, §§ 2263-2265.
 27. APPROPRIATIONS BY COUNTIES TO PREVENT SPREAD OF TUBERCULOSIS, §§ 2266-2268.
 28. ADJUSTMENT OF DELINQUENT TAXES DUE THE STATE FROM COUNTIES, §§ 2269-2275.
 29. REFUNDING OF OUTSTANDING BONDED AND OTHER INDEBTEDNESS OF THE STATE, §§ 2276-2280.
 30. TAX FOR BONDED INDEBTEDNESS AND SINKING FUND, §§ 2281-2284.
 31. STATE REVENUE BONDS, §§ 2285-2290.
 32. PROVIDING FOR ASSESSMENT, LEVY AND COLLECTION OF TAXES WHERE TAXABLE PROPERTY FOR ANY REASON ESCAPED TAXATION FOR THE YEAR 1889 AND PRIOR YEARS, §§ 2291-2304.
 33. PROTECTION OF PUBLIC CREDIT, § 2305.
 34. PROPERTY SOLD TO STATE OR COUNTY FOR TAXES, §§ 2306-2346.

ARTICLE 1.— DEFINITIONS OF TERMS.

§ 2074. **Definitions of terms used.** The terms used in this chapter are defined as follows: The word "money" or "moneys" means gold and silver coin, treasury notes, bank notes, and every deposit which any person owning the same or holding in trust and residing in this state is entitled to withdraw as money or on demand; the term "credits" means and includes every claim and demand for money or other valuable things, and every annuity or sum of money receivable at stated periods, due or to become due, and all claims and

demands secured by deeds, or mortgages due or to become due; the terms "tract" or "lot" and "piece or parcel of real property," and "piece or parcel of land," means any contiguous quantity of land in the possession, owned by, or recorded as the property of the same claimant, person or company; every word importing the singular number only may be extended to and embrace the plural number; and every word importing the plural may be applied and limited to the singular number; and every word importing the masculine gender only may be extended and applied to females as well as males; the word "oath" means oath or affirmation; and the word "swear" means to swear or affirm; the words "town" or "district" mean township, village, city or ward, as the case may be; the term "true and full value" means the usual selling price at the place where the property to which the term is applied shall be at the time of the assessment, being the price which could be obtained therefor at private sale, and not at a forced public auction sale. The term "person" includes a firm, company or corporation. [R. C. 1905, § 1480; 1897, ch. 126, § 1; R. C. 1899, § 1176.]

"Contiguous" as used in statute means land which touches on sides. *Griffin v. Denison Land Co.*, 18 N. D. 246, 119 N. W. 1041.

Corporation is liable in action at law for deceit to same extent as is natural person. *Gunderson v. Havana-Clyde Min. Co.*, 22 N. D. 329, 133 N. W. 554.

ARTICLE 2.—TAXABLE PROPERTY.

§ 2075. Property subject to taxation. All real and personal property in this state, and all personal property of persons or of corporations residing or doing business therein, and the property of corporations residing or doing business therein, and the property of corporations now existing or hereafter created, and the property of all banks or banking companies now existing or hereafter created, except such as is hereinafter expressly excepted, is subject to taxation, and such property, or the value thereof, shall be entered in the list of taxable property for that purpose, in the manner prescribed by this chapter. [R. C. 1905, § 1481; 1897, ch. 126, § 2; R. C. 1899, § 1177.]

Purposes for which power of taxation may be exercised. 2 Am. St. Rep. 94; 8 Am. St. Rep. 506; 16 Am. St. Rep. 365.

Classification of property for the purposes of taxation. 62 Am. St. Rep. 175.

Is property for which no method of taxation is prescribed subject to taxation under a statute declaring that all property not exempt shall be taxed "in the manner provided by this act." 28 L.R.A. (N.S.) 251.

§ 2076. Real property defined. Real property, for the purpose of taxation, includes the land itself, whether laid out in town lots or otherwise, and, except as otherwise provided, all buildings, structures and improvements (except plowing and trees thereon) and all rights and privileges thereto belonging or in any wise appertaining, and all mines, minerals, quarries in and under the same. [R. C. 1905, § 1482; 1897, ch. 126, § 3; R. C. 1899, § 1178.]

What constitutes real estate for purposes of taxation. 15 L.R.A. 297.

Taxation of property of private water companies. 60 L.R.A. 850.

§ 2077. Personal property defined. Personal property includes all goods, chattels, moneys, credits and effects wheresoever they may be; all ships, boats and vessels, whether at home or abroad, and all capital invested therein; all moneys at interest, whether within or without the state, due the person to be taxed, and all other debts due such persons; all public stocks and securities; all stock in turnpikes, railroads, canals and other corporations, except national banks out of the state, owned by the inhabitants of this state; all personal estate of moneyed corporations, whether the owner thereof resides in or out of the state, and the income of any annuity, unless the capital of such annuity be taxed within the state; all shares of stock in any bank organized, or that may be organized, under any law of the United States or of this state; and all improvements made by persons upon lands, held by them under the laws of the United States, and all such improvements upon land, the title to which is still vested in any railway company, and which

is not used exclusively for railroad purposes, and the improvements of any other corporation whose property is not subject to the same mode and rule of taxation as other property. [R. C. 1905, § 1483; 1897, ch. 126, § 4; R. C. 1899, § 1179.]

Personal property issued to Indians who have taken lands allotted to them by United States is taxable. *United States v. Rickert*, 106 Fed. 1.

Taxation of credits. 74 Am. Dec. 93.

Option as taxable credit. 10 L.R.A.(N.S.) 1061; 34 L.R.A.(N.S.) 1221.

Outstanding accounts as "property" or "credits" subject to taxation. 29 L.R.A.(N.S.) 60.

Shares of stock in building and loan association as "credits" within taxing statute. 38 L.R.A.(N.S.) 137.

Amount due under contract for the purchase of land, not evidenced by note or purchase-money mortgage, as a credit subject to taxation. 17 L.R.A.(N.S.) 1220.

Taxation of patent rights and patented articles. 37 Am. St. Rep. 747.

Exemption of copyrights from taxation. 57 L.R.A. 57; 58 L.R.A. 564.

Trademark as a subject of taxation. 21 L.R.A.(N.S.) 30.

Exemption of goodwill of business from taxation. 58 L.R.A. 566.

Exemption of property right in intellectual productions from taxation. 51 L.R.A. 381.

Assessment and taxation of pew. 22 L.R.A. 215.

Privilege or license to sell intoxicating liquors as subject of taxation. 37 L.R.A.(N.S.) 455.

Deposit by insurance company as subject of taxation. 36 L.R.A.(N.S.) 226.

Interest of one other than the owner of the soil in growing trees or timber, or their products, as separate subject of taxation. 17 L.R.A.(N.S.) 693.

Interest of one other than the owner of the soil in mineral *in situ* as independent subject of taxation. 17 L.R.A.(N.S.) 688.

Implied exemption from taxation of state or municipal bonds. 7 L.R.A.(N.S.) 663.

Taxation of United States bonds as part of capital stock of corporation. 57 L.R.A. 57; 58 L.R.A. 568.

ARTICLE 3.—EXEMPTIONS.

§ 2078. **Property exempt from taxation.** All property described in this section to the extent herein limited shall be exempt from taxation, that is to say:

1. All public school houses, academies, colleges, institutions of learning, with the books and furniture therein, and the grounds attached to such buildings necessary for their proper occupancy, use and enjoyment, not to exceed forty acres in area, and not leased or otherwise used with a view to profits; also all houses used exclusively for public worship and the lots and part of lots upon which such houses are erected.

2. All land used exclusively for burying grounds or cemeteries.

3. All property, whether real or personal, belonging exclusively to the state or to the United States.

4. All buildings belonging to the counties, used in holding courts, for jails, for county offices, with the ground, not exceeding in any county ten acres, on which buildings are erected.

5. All land, houses and other buildings belonging to any county, township or town, used exclusively for the accommodation or support of the poor.

6. All buildings and contents thereof, belonging to institutions of public charity, including public hospitals under the control of religious or charitable societies, used wholly or in part for public charity, together with the land actually occupied by such institution, not leased or otherwise used with a view to profit; and all moneys and credit appropriated solely to sustaining and belonging exclusively to such institutions; also all dormitories and boarding halls, including the land upon which they are situated, owned and managed by a religious corporation for educational and charitable purposes for the use of students in attendance upon the state educational institutions; provided, that such dormitories and boarding halls be not managed or used for the purpose of making a profit over and above the costs of maintenance and operation.

7. All properties belonging to counties and to municipal corporations that are used for public purposes.

8. Personal property of each individual subject to taxation to the amount of fifty dollars.

9. The personal and real property owned by charitable associations known as posts, lodges, chapters, councils, commanderies, consistories, and like organizations and associations not organized for profit, grand or subordinate, and used by them for places of meeting, and to conduct their business and ceremonies; provided, however, that such property is used exclusively for such charitable purposes, provided, further, all personal and real property owned by any fraternity, sorority or organization of college students.

10. The real and personal property of any agricultural fair association, duly incorporated for the exclusive purpose of holding agricultural fairs, and is not conducted for profit to any of its members. [1913, ch. 280; 1911, ch. 290; R. C. 1905, § 1484; 1897, ch. 126, § 5; R. C. 1899, § 1180; 1901, ch. 152.]

Tax levied upon exempt property is void. *McHenry v. Britt*, 9 N. D. 68, 81 N. W. 65. Question as to exemption from taxation as Federal question. 62 L.R.A. 537.

Liability to local assessments for benefits, of property exempt from general taxation. 18 L.R.A.(N.S.) 451; 32 L.R.A.(N.S.) 303.

Power of state legislature to exempt from taxation. 19 L.R.A. 77.

Municipal power to exempt from taxation. 15 L.R.A. 860; 29 L.R.A.(N.S.) 183.

Power of municipality to exempt rural lands within corporate limits from taxation. 34 L.R.A. 200.

Exemption of patent rights from taxation. 29 L.R.A. 792; 57 L.R.A. 57; 58 L.R.A. 564.

1. Exemption of library from taxation when not expressly included in the exemption statute. 24 L.R.A.(N.S.) 1205.

Exemption of property used for private school from taxation. 21 L.R.A.(N.S.) 164.

3-5. Lands granted to the N. P. R. Co. not subject to local taxation while United States holds legal title as security for payment of cost of survey. *Northern Pac. R. Co. v. Rockne*, 115 U. S. 600, 29 L.ed. 477, 6 St. R. 201.

Exemption from taxation of lands owned by governmental bodies or in which they have an interest. 132 Am. St. Rep. 291.

Taxation of public property, when not subject to. 33 Am. St. Rep. 406.

Property leased by public as subject of taxation. 35 L.R.A.(N.S.) 167.

Property granted or sold with reservation of title or lien in favor of public, as subject of taxation. 35 L.R.A.(N.S.) 669.

Property held by municipal corporation in trust as subject of taxation. 34 L.R.A.(N.S.) 143.

Property leased by municipality as subject of taxation. 35 L.R.A.(N.S.) 167.

Exemption of municipal light plant from taxation. 16 L.R.A.(N.S.) 867.

Taxation of waterworks owned by municipality. 60 L.R.A. 851.

Taxation of water company belonging to municipality. 1 L.R.A.(N.S.) 766.

Exemption from state taxation of paper given for interest on obligations of Federal government. 5 L.R.A.(N.S.) 608.

6. Real estate used for public charity, but not owned by an "institution," not exempt. *Engstad v. Grand Forks County*, 10 N. D. 54, 84 N. W. 577.

Building owned by charitable institution and rented in part for store is not exempt from taxation, although the rent is used for charitable purposes. *State ex rel. Hayes v. Board of Equalization*, 16 S. D. 219, 92 N. W. 16.

What exempt from taxation as charitable institutions. 38 Am. Rep. 300.

Right of charitable, educational, or religious institution to exemption from taxation as affected by the geographical field of operation. 17 L.R.A.(N.S.) 733.

9. Exemption of property of patriotic societies from taxation. 26 L.R.A.(N.S.) 707.

Fraternal benefit society as a benevolent or charitable association within exemption statutes. 7 L.R.A.(N.S.) 380.

Effect of fact that property otherwise exempt from taxation is devoted to purposes of a particular society. 16 L.R.A.(N.S.) 829; 26 L.R.A.(N.S.) 696.

§ 2079. Religious property exempt from taxation. Former taxes void. Property used exclusively for religious purposes is exempt from taxation as hereinafter provided. All real property, not exceeding one acre in extent, owned by any religious corporation or organization, upon which there is a building used for the religious services of such organization, or upon which there is a dwelling and usual outbuildings, intended and ordinarily used for the residence of the bishop, priest, rector or other minister in charge of such services, shall be deemed to be property used exclusively for religious services, and exempt from taxation, whether such real property consist of one tract or more. All taxes heretofore assessed or levied on any such real property,

while the same was so used for religious purposes, are void and of no effect, and must be cancelled. All personal property of any religious corporation or organization used for religious purposes is exempt from taxation. [R. C. 1905, § 1485; 1901, ch. 160.]

Effect of using property of a religious, charitable, or educational institution in secular business or for revenue, upon its right to exemption from taxation. 19 L.R.A. 289.

Liability of property of religious society to local assessment. 35 L.R.A. 36.

Exemption of parish house from taxation. 27 L.R.A. (N.S.) 910.

Exemption of parsonage from taxation. 39 L.R.A. (N.S.) 437.

ARTICLE 4.—NON-PARTISAN TAX COMMISSION.

§ 2080. Tax commission. Creation of. There is hereby created a state board to be designated and known as the tax commission. [1911, ch. 303, § 1.]

§ 2081. Appointment of. Term of office defined. Said tax commission shall be composed of three commissioners, who shall be appointed by the governor by and with the advice and consent of the senate. Of such three persons, one shall be appointed and designated to serve for a term ending on the first Monday in May, 1915, one for a term ending on the first Monday in May, 1917, and one for a term ending on the first Monday in May, 1919, each of said terms to begin upon the qualification of the person appointed therefor. Upon the expiration of the terms of the three commissioners first to be appointed as aforesaid, each successive commissioner shall be appointed and hold his office for the term of six years, except in case of a vacancy as hereinafter provided, and such commissioner shall hold his office until his successor shall have been appointed and qualified. [1911, ch. 303, § 2.]

§ 2082. Vacancies. How filled. After the appointment of said first three commissioners, and except when appointed to fill a vacancy, each commissioner shall be appointed on or before the last Monday in January, during the biennial session of the legislature, next preceding the commencement of the term for which he shall be appointed. In case of vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which such vacancy shall occur, subject to confirmation by the senate. If such appointment be made when the legislature is not in regular session, the appointee shall hold his office until the third Monday in January in the next biennial session of the legislature, when if such appointment is not confirmed by the senate, the office shall become vacant, and, on or before the last Monday in February, the governor, by and with the advice and consent of the senate, shall appoint a suitable person to fill such vacancy for the remainder of such term. [1911, ch. 303, § 3.]

§ 2083. Qualification of. The persons to be appointed as members of such commission shall be such as are known to possess knowledge of the subject of taxation and skill in matters pertaining thereto. So far as practicable, they shall be so selected that the board will not be composed wholly of persons who are members of, or affiliated with, the same political party, or organization. No person appointed as such commissioner shall hold any other office under the laws of this state, or any office under the government of the United States, or of any other state. Each such commissioner shall devote his entire time to the duties of the office, and shall not hold any position of trust or profit, engage in any occupation, or business interfering with or inconsistent with his duties, or serve on, or under, any committee of any political party. [1911, ch. 303, § 4.]

§ 2084. Oath. Salary. Each commissioner, within thirty days after notice of his appointment, and before entering upon the discharge of the duties of his office, shall take, subscribe, and file with the secretary of state, the oath of office prescribed by law. Each of said commissioners shall receive an annual salary of three thousand dollars, payable in the same manner that salaries of other state officers are paid. [1911, ch. 303, § 5.]

§ 2085. Organization. Salary of secretary. Quorum. Place of meeting. The commissioners first appointed under this article, after having duly qualified, shall without delay meet at the capitol at Bismarck and shall thereupon organize by electing a secretary, who shall receive a salary of not more than two thousand four hundred dollars per annum. The member having the shortest term to serve, except when serving without the approval of the senate, shall be the chairman of the commission. A majority of said commission shall constitute a quorum for the transaction of business and the performance of the duties of the commission. The said commission shall be in continuous session, and open for the transaction of business every day, except Sundays, and legal holidays; and the sessions of such commission shall stand, and be deemed to be adjourned from day to day, without formal entry thereof upon its records. The commission may hold sessions, or conduct investigations at any place other than the capitol when deemed necessary to facilitate the performance of its duties. Individual members of the commission may, upon direction of said commission, likewise, conduct hearings and investigate at any other place than the capitol. [1911, ch. 303, § 6.]

§ 2086. Assistants. Appointment and salary. Rules. The commission may, in addition to secretary provided for in section 2085, also employ such other persons as clerks, stenographers and experts as may be necessary for the performance of the duties required of the commission. The commission shall fix the compensation of such secretary, clerks, stenographers and experts employed by them, but the total amount expended for that purpose shall not exceed six thousand dollars per annum. The secretary shall keep full and correct minutes of all hearings, transactions, and proceedings of said commission, and shall perform such duties as may be required by the commission. The commission shall have the power to make all needful rules, not inconsistent with law, for the orderly and methodical performance of its duties as a board of assessment or otherwise, and for conducting hearings and other proceedings before it. [1911, ch. 303, § 7.]

§ 2087. Expenses of. Supplies and travel. The commission shall keep its office at the capitol, and shall be provided with suitable rooms, necessary office furniture, supplies, stationery, books, periodicals and maps; and all necessary expenses shall be audited and paid as other state expenses are audited and paid. The commissioners, secretary and clerks and such experts and assistants as may be employed by the commission shall be entitled to receive from the state their actual necessary expenses while traveling on business of the commission; such expenditure to be sworn to by the party who incurred the expense, and approved by the chairman of the commission, or a majority of the members of such commission, but the total amount to be expended for such office supplies and traveling expenses shall not exceed the sum of \$4500. [1911, ch. 303, § 8.]

§ 2088. Powers and duties of. It shall be the duty of the commission, and it shall have power and authority:

1. To have and exercise general supervision over the administration of the assessment, and tax laws of the state, over assessors, board of review and boards of equalization, to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law.

2. To confer with, advise, and direct assessors, and boards of review, and boards of equalization as to their duties under the statutes of the state.

3. To direct proceedings, actions, and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities, and punishment of public officers, persons, and officers or agents of corporations for failure or neglect to comply with the provisions of the statutes governing the return, assessment and taxation of property, and to cause complaints to be made against assessors, members of boards of review, members of county boards of equalization, or other assessing or taxing officers, in the proper district court, or their removal from office for official misconduct, or neglect of duty.

4. To require states attorneys to assist in the commencement and prosecution of actions and proceedings, or penalties, forfeitures, removals, and punishment for violation of the laws of the state in respect to the assessment and taxation of property, in their respective counties.

5. To require township, village, city, county and other public officers to report information as to the assessments of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and such other information as may be needful in the work of the commission, in such form and upon such blanks as the commission may prescribe.

6. To inquire into the system of accounting of public funds in use in townships, cities, villages and counties, and to make needed recommendation for a uniform system of account of the receipts and disbursements of public funds in the municipalities of the state.

7. To require individuals, partnerships, companies, associations, and corporations to furnish information concerning their capital funds or other debt, current assets and liabilities, value of property, earnings, operating and other expenses, taxes, and all other facts which may be needful to enable the commission to ascertain the value and relative burdens borne by all kinds of property in the state.

8. To summon witnesses to appear and give testimony, and to produce records, books, papers and documents relating to any matter which the commission shall have authority to investigate or determine; to cause the deposition of witnesses residing within or without the state, or absent therefrom, to be taken, upon notice to the interested party, if any, in like manner that depositions of witnesses are taken in civil actions pending in the district court in any matter which the commission shall have authority to investigate or determine.

9. To visit the counties in the state, unless prevented by other necessary official duties, for the investigation of the work and methods adopted by local assessors, boards of review, and county boards of equalization, in the assessment, equalization, and taxation of real and personal property.

10. To carefully examine into all cases where evasion or violation of the laws for assessment and taxation of property is alleged, complained of, or discovered, and to ascertain wherein existing laws are defective, or are improperly or negligently administered.

11. To investigate the tax system of other states and countries, and to formulate and recommend such legislation as may be deemed expedient to prevent evasion of assessment and tax laws, and to secure just and equal taxation and improvement in the system of taxation in the state.

12. To consult and confer with the governor of the state upon the subject of taxation, the administration of the laws in relation thereto, and the progress of the work of the commission, and to furnish the governor from time to time such assistance and information as he may require.

13. To transmit to the governor and to each member of the legislature, thirty days before the meeting of the legislature, the report of the commission, showing all the taxable property in the state, and the value of the same in tabulated form with recommendations for improvement in the system of taxation in the state, together with such measures as may be formulated for the consideration of the legislature.

14. To assess at their actual value all light, heat, and power companies doing business in the state.

15. To consult and confer with the state board of equalization and to aid them in the discharge of their duties.

16. To exercise and perform such further powers and duties as may be granted to or imposed upon the commission by law.

17. One or more members of the commission shall visit officially at least one-half of the counties of the state and some county in each judicial district, annually, and every county biennially, for the investigation of the work and methods adopted by the local assessors, county boards of equalization and other tax officials, in the assessment, equalization and taxation of real and personal property.

18. To review the assessments made by the different assessors and as equalized by the county boards of equalization, and to order a reassessment of property, where the assessment made seems grossly unjust.

19. To require local assessors to place upon the assessment rolls property which may have escaped taxation during the previous six years, and are available and remaining within the taxing jurisdiction. [1911, ch. 303, § 9.]

§ 2089. **Legal procedure.** Oaths to witnesses in any matter under the investigation or consideration of the commission may be administered by the secretary of the commission, or by any member thereof. In case any witness shall fail to obey any summons to appear before said commission, or shall refuse to testify or answer any material question, or to produce records, books, papers, or documents when required to do so, such failure or refusal shall be reported to the attorney-general, who shall thereupon institute proceedings in the proper district court to compel obedience to any summons or order of the commission, or to punish witnesses for any such neglect or refusal. Any person who shall testify falsely in any material matter under the consideration of the commission shall be guilty of, and punished for perjury. In the discretion of the commission, officers who serve summons or subpoenas, and witnesses attending, shall receive like compensation as officer and witness in the district court. [1911, ch. 303, § 10.]

§ 2090. **Method of reassessment. Payment of assessor.** For the purpose of making a reassessment of property as provided in subsection 18 of section 2088, the tax commission is hereby authorized to appoint such assessor or assessors as may be needed, who shall make a reassessment of the property, or of the assessment district or districts specified by the commission, in accordance with the provisions of law now governing local assessors, and such assessor shall be allowed for his services the sum of five dollars (\$5.00) per day and his necessary expenses to be itemized and sworn to by the party incurring the expenses and approved by the commission, and the tax commission is hereby authorized and empowered to certify the expenses of such reassessment to the auditor of the county in which such reassessment has been made, who shall promptly issue his warrant on the county treasurer payable out of the general fund of the county, said fund to be reimbursed out of the moneys due the taxing district in which the reassessment was made at the next settlement of collection of taxes. [1911, ch. 303, § 11.]

§ 2091. **Constitutionality.** In case any of the provisions of this article should be declared unconstitutional that shall not affect the validity of any of the other provisions of this article. [1911, ch. 303, § 13.]

§ 2092. **Appropriation.** There is hereby annually appropriated out of any moneys in the state treasury, not otherwise appropriated the sum of three thousand dollars, or as much thereof as may be needed for the purpose of carrying out the provisions of this article. [1911, ch. 303, § 14.]

ARTICLE 5.—MANNER OF LISTING PROPERTY.

§ 2093. **Listing of property.** All property subject to taxation shall be listed and assessed every year, at its value, on the first day of April preceding the assessment. [R. C. 1905, § 1486; 1897, ch. 126, § 6; R. C. 1899, § 1181.]

Assessment not void because assessed at less than actual value by assessor. *Shattuck v. Smith*, 6 N. D. 56, 69 N. W. 5.

Personal property not in existence April first not taxable, nor when brought into state subsequent to April first. *Gaar, Scott & Co. v. Soruin*, 11 N. D. 164, 97 N. W. 99.

Assessability of property brought into tax district after tax day. 38 L.R.A.(N.S.) 856.

Personal property acquiring a taxable nature after tax day. 38 L.R.A.(N.S.) 1157.

§ 2094. Manner of listing personal property. Personal property shall be listed in the manner following:

1. Every person of full age and sound mind, being a resident of this state, shall list all his moneys, credits, bonds or stock shares, or stock of joint or other companies (when the property of such company is not assessed in this state), moneys loaned or invested, annuities, franchises, royalties and other personal property.

2. He shall also list separately and in the name of his principal all moneys and other personal property invested, loaned or otherwise controlled by him as the agent or attorney, or on account of any other persons, company or corporation whatsoever; and all money deposited subject to his order, draft or check, and credits due from or owing to any person or persons, body corporate or politic.

3. The property of a minor child shall be listed by his guardian or by the person having such property in charge.

4. The property of an idiot or lunatic, by the person having charge of such property.

5. The property of a person for whose benefit it is held in trust, by the trustee; of the estate of a deceased person, by the executor or administrator.

6. The property of persons or corporations whose assets are in the hands of receivers, by such receivers.

7. The property of a body politic or corporate, by the president, agent or officer thereof.

8. The property of a firm or company, by a partner or agent thereof.

9. The property of manufacturers and others in the care of an agent, by such agent in the name of his principal, as merchandise.

10. Personal property shall be listed and assessed annually with reference to its value on the first day of April. [R. C. 1905, § 1487; 1897, ch. 126, § 7; R. C. 1899, § 1182.]

April first is date for determining taxability, ownership, and value of real and personal property for taxation. *Gaar, S. & Co. v. Soruin*, 11 N. D. 164, 90 N. W. 799.

§ 2095. Place of listing personal property. Except as otherwise provided in this chapter, personal property shall be listed and assessed in the county, town or district where the owner or agent resides; the capital stock and franchises of corporations and persons shall be listed in the county, town or district where the principal office or place of business of such corporation or person is located in this state; and if there be no principal office or place of business in this state where any such corporation or persons transact business then personal property pertaining to the business of a merchant or manufacturer or corporation shall be listed in the town or district where his business is carried on. [R. C. 1905, § 1488; 1897, ch. 126, § 8; R. C. 1899, § 1183.]

Cattle ranging in several counties to be listed where the owner resides when he has corrals and headquarters for the herders there. *Holcomb v. Keliher*, 5 S. D. 438, 59 N. W. 227.

Personal property must be listed and assessed in county where owner or agent resides. *Knapp v. Charles Mix County*, 7 S. D. 399, 64 N. W. 187.

Each separate "ranch" for live stock was situs for taxation of stock thereon, though owner resided in another county. *Morse v. Stanley County*, 26 S. D. 313, 128 N. W. 153.

Situs of personal property for the purposes of taxation. 56 Am. Dec. 522, 62 Am. St. Rep. 448.

Situs, for taxation, of tangible personal property of domestic corporation. 69 L.R.A. 431.

Taxation of capital stock of corporation, whose property is out of state bounds. 58 L.R.A. 529.

Taxation of shares of stock owned by nonresidents. 58 L.R.A. 580.

Personal property having a situs for taxation elsewhere, as subject of taxation in the state of the owner's domicil. 36 L.R.A.(N.S.) 295.

Bank deposit to credit of nonresident of the state as subject of local property taxation. 26 L.R.A.(N.S.) 1120.

When transit commencing in another state deemed terminated or definitely interrupted so as to render goods liable to local taxation. 2 L.R.A. (N.S.) 662.

When do logs intended for exportation pass beyond state's power of taxation. 13 L.R.A. (N.S.) 800.

Situs for taxation of debts, evidenced by notes and mortgages. 16 L.R.A. 729.

Place of taxation of trust property. 20 L.R.A. 151.

Situs of water credit for tax purposes. 69 L.R.A. 447; 37 L.R.A. 518; 29 L.R.A. (N.S.) 105.

What is home port of vessel for purpose of taxation. 2 L.R.A. (N.S.) 197, 1196.

§ 2096. Property of stage companies, etc., where to be listed. The personal property of stage companies shall be listed and assessed in the county, town or district where the same is usually kept. All persons, companies and corporations in this state owning steamboats, sailing vessels, wharve boats, barges and other water crafts shall be required to list the same for assessment and taxation in the county, town or district in which the same may belong, or be enrolled, registered or licensed, or kept not enrolled, registered or licensed. [R. C. 1905, § 1489; 1897, ch. 126, § 9; R. C. 1899, § 1184; 1901, ch. 26.]

§ 2097. Gas and water, telegraph and telephone companies, where listed. The personal property of gas and water companies shall be listed and assessed in the town where the works are located; gas and water mains and pipes laid in roads, streets or alleys shall be held to be personal property. All personal property of telegraph and telephone companies, including poles, wires, instruments, office fixtures and all other apparatus used in conducting their business, shall be listed and assessed by the state board of equalization as provided in sections 2144 to 2147, inclusive. [R. C. 1905, § 1490; 1897, ch. 126, § 10; R. C. 1899, § 1185; 1901, ch. 26, §§ 1-4.]

Taxation of water power on interstate stream. 18 L.R.A. 755.

Location of street franchise for purposes of taxation. 5 L.R.A. (N.S.) 174.

§ 2098. Street railway companies, where listed. The personal property of street railroad, plank road, gravel road, turnpike or bridge companies shall be listed and assessed in the county, town or district where the property is located; and the track, road or bridge shall be held to be personal property. [R. C. 1905, § 1491; 1897, ch. 126, § 11; R. C. 1899, § 1186.]

§ 2099. Nonresident's farm property, where listed. Where the owner of live stock or other personal property connected with a farm does not reside thereon, all such live stock and other personal property shall be listed and assessed in the town or district where the farm is situated, whenever the live stock or personal property assessed is in the same county as the owner thereof; otherwise such livestock or other personal property shall be assessed wherever found. [R. C. 1905, § 1492; 1897, ch. 126, § 12; R. C. 1899, § 1187.]

§ 2100. Personal property moved between April first and June first, where listed. The owner of personal property moving into this state or from one county, town or district to another, between the first day of April and the first day of June, shall list his property for assessment whenever called upon by the assessor of the county, town or district in which he resides; provided, if such person has been assessed and can make it appear to the assessor that he has paid or is held for tax of the current year on the property in another territory or state, county, town or district, he shall not be again assessed for such year, and the assessor shall make a record of all the facts in every such case and report them to the county auditor. [R. C. 1905, § 1493; 1897, ch. 126, § 13; R. C. 1899, § 1188.]

§ 2101. Place of listing, how decided in case of doubt. All personal property wherever and whenever found between the first day of April and the first day of June shall be listed by the assessor, and in all questions that may arise under this chapter as to the proper place to list personal property, or where the same cannot be listed as stated in this chapter, if between

several places in the same county, the place for listing and assessing shall be determined and fixed by the county board; and when between different counties, or places in different counties, by the auditor of the state; and when so fixed shall have the same effect and be as binding as if listed by the assessor as required by this chapter. [R. C. 1905, § 1494; 1897, ch. 126, § 14; R. C. 1899, § 1189.]

April first is date for determining *taxability*, ownership and value of real and personal property for taxation. *Gaar, S. & Co. v. Soruin*, 11 N. D. 164, 90 N. W. 799.

§ 2102. List of personal property to be made under oath. Every person required by this chapter to list property shall, when called upon by the assessor, make out and deliver to the assessor a statement verified by oath, of all the personal property in his possession or under his control, and which by the provisions of this chapter he is required to list for taxation, either as an owner or holder thereof, or as guardian, parent, husband, trustee, executor, administrator, receiver, accounting officer, partner, agent or factor; but no person shall be required to include in his statement any share or portion of the capital stock or property of any company or corporation which such company or corporation is required to list or return as its capital or property for taxation in this state. [R. C. 1905, § 1495; 1897, ch. 126, § 15; R. C. 1899, § 1190.]

§ 2103. Value to be fixed by assessor. Items of list. It shall be the duty of the assessor to determine and fix the true and full value of all items of personal property included in such statement, and enter the same opposite such items respectively, so that, when completed, such statement shall truly and distinctly set forth:

1. The number of horses one year old, two years old, three years old and over, and separately the number of stallions kept for service, with the value thereof, in the separate classes.
2. The number of cattle one year old, two years old; the number of cows three years old and over; the number of work oxen, and the number of all other cattle three years old and over, and the value thereof, in the separate classes.
3. The number of mules and asses one year old, two years old, three years old and over, and the value thereof, in the separate classes.
4. The number of sheep and the value thereof.
5. The number of hogs and the value thereof.
6. The number of sleighs, sleds, wagons, carriages and all wheeled vehicles of whatsoever kind, including bicycles and the value thereof.
7. The number of melodeons and organs and the value thereof.
8. The number of pianofortes and the value thereof.
9. The value of household furniture.
10. The value of agricultural tools, implements and machinery.
11. All threshing machines, engines and boilers, and the value thereof.
12. The value of gold and silver plate and plated ware.
13. The value of diamonds and jewelry.
14. The value and description of every franchise, annuity, royalty and patent right.
15. The value of every steamboat, sailing vessel, wharve boat, barge or other water craft.
16. The value of goods and merchandise which such person is required to list as a merchant.
17. The value of materials and manufactured articles which such person is required to list as a manufacturer.
18. The value of manufacturer's tools and implements and machinery, including engines and boilers.
19. The amount of moneys other than of banks, bankers, brokers or stock jobbers.

20. The amount of credits other than of banks, bankers, brokers and stock jobbers.

21. The amount and value of bonds and stocks, other than bank stock.

22. The number of shares of bank stock and the value thereof.

23. The amount and value of shares of capital stock of companies and associations not incorporated by the laws of the state.

24. The value of stock and furniture of sample rooms and eating houses, including billiard tables or other similar tables.

25. The value of all other articles of personal property, not included in the preceding twenty-four items.

26. The value of all elevators, warehouses and granaries and of all grain contained in either thereof, wheresoever the same may be situated.

27. The value of all improvements, except plowing on lands held under the law of the United States, to which final certificates of entry have not issued, and on lands the title to which is vested in any railroad company. [R. C. 1905, § 1496; 1897, ch. 126, § 16; R. C. 1899, § 1191.]

An act authorizing changes in the schedule of items was vetoed in Laws 1913, ch. 314.

County of owner's residence proper county for listing personal property, though kept temporarily in another county. *Knapp v. Charles Mix Co.*, 7 S. D. 399, 64 N. W. 187.

As to necessity of city assessor's affidavit to assessment roll. *Douglas v. Fargo*, 13 N. D. 469, 101 N. W. 919.

Classification of personal property provided for as well as how value of each class shall be fixed. *Advance Thresher Co. v. Beck*, 21 N. D. 60, 128 N. W. 315, Ann. Cas. 1913B, 517.

§ 2104. Range stock, where listed. The owner of range stock, including cattle, horses or sheep, or his agent, foreman or superintendent, shall list the same for purposes of assessment and taxation in the assessor's district in which he claims his home ranch for rounding and branding purposes, and where his herdsmen or employes are boarded and subsisted, regardless of where the cattle may range. If such owner of range stock, including horses, cattle or sheep, has at the time the assessment is made, no such home ranch, then such range stock shall be listed and assessed in the assessor's district in which the home ranch was situated at the last round-up and branding; provided, that any such stock, owned outside of this state, and ranging within this state, shall be assessed wherever and whenever found ranging within this state. When the home ranch of any owner of range stock is situated in an unorganized county of this state, such range stock shall be subject to taxation and assessed as provided in section 2225. [R. C. 1905, § 1497; 1897, ch. 126, §§ 17, 18, 19; R. C. 1899, § 1192.]

Listed in name of owner if known, if not to "unknown owner." *Sweigle v. Gates*, 9 N. D. 538, 84 N. W. 481.

Home ranch proper location for assessment of all cattle ranging from same in organized county. *Halcom v. Keliher*, 5 S. D. 438, 59 N. W. 227.

Houses not assessed, even though assessable in certain county, may be assessed in another county, if found ranging there. *Morse v. Stanley County*, 26 S. D. 313, 128 N. W. 153.

§ 2105. Combination for undervaluation. Penalty. If any assessor or county commissioner shall enter into any contract, agreement or understanding with the owner of any range stock whereby and pursuant to which such stock are to be assessed at less than their cash value, in consideration that the owner of such range stock shall remove his home ranch into the county of such assessor or commissioner, the owner of such range stock and all persons aiding or abetting such corrupt transaction and agreement shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not less than five hundred dollars nor more than one thousand dollars and by imprisonment in the county jail for not less than three months nor more than six months. [R. C. 1905, § 1498; 1897, ch. 126, § 20; R. C. 1899, § 1193.]

§ 2106. Duty of assessor when personal property liable to be removed from state or county. If at the time of making the assessment upon any personal

property, or at any time thereafter, before taxes upon personal property become due, the assessor believes that there is danger of such personal property being removed from the state or from the county in which the same is situated at the date of assessment, before the taxes to be levied upon such assessment shall be paid, such assessor may immediately demand of the owner, agent or person having such property in charge, an undertaking to be made in favor of the treasurer of said county, signed by two resident freeholders of such county, conditioned that all the taxes to be levied upon such property shall be paid when due, which undertaking shall be approved as to its sufficiency by the clerk of the district court of said county, and until such undertaking be given such assessor may seize and hold a sufficient quantity of such personal property or any part thereof as in the judgment of such assessor shall secure the payment of all such taxes and the costs of such seizure and the holding of such property. But when such assessor seizes any such personal property before the tax upon such assessment thereof shall be levied, he shall seize and hold only so much of said property as shall amount to, in his best judgment, ten per cent upon its assessed value, which shall be deemed to cover the amount of said taxes and costs aforesaid. As soon as said taxes become due, the county treasurer of such county shall proceed to collect said taxes by levy upon and sale of said property so seized and held in the manner provided by law for the collection of taxes by the sale of personal property, or such treasurer shall bring an action upon and recover the amount of such taxes from such undertaking when the same shall have been given. Any sum of money, the proceeds of the sale of such property or any part of such property remaining in the hands of such treasurer after the payment of said taxes and costs, shall be returned to the proper party upon his order in writing to such treasurer. At the time the treasurer shall levy upon such personal property in the hands of the assessor, the assessor shall give notice to such treasurer, in writing, of the amount of costs for the seizure and holding of such property. [R. C. 1905, § 1499; 1897, ch. 126, § 21; R. C. 1899, § 1194.]

§ 2107. Examination under oath by assessor. Refusal to answer. Whenever the assessor shall be of the opinion that the person listing property for himself or for another person, company or corporation, has not made a full, fair and complete list of such property, he may examine such person under oath in regard to the amount of property he is required to list; and if such person shall refuse to answer under oath and a full discovery make, the assessor may list the property of such person or his principal, according to his best judgment and information, and shall also make a minute of the name of the person refusing to swear to such list or refusing to testify in relation to the property, and report the same, with all the facts relating thereto, to the county auditor at the time he makes his returns. [R. C. 1905, § 1500; 1897, ch. 126, § 22; R. C. 1899, § 1195.]

§ 2108. Who are deemed to be merchants. Property consigned. Whoever owns or has in his possession or subject to his control, any goods, merchandise, grain or produce of any kind or other personal property, within this state, with authority to sell the same, which has been purchased either in or out of the state with a view of being sold at an advanced price or profit, or which has been consigned to him out of this state, for the purpose of being sold at any place within this state, shall be held to be a merchant, and when he is by this article required to make out and deliver to the assessor a statement of his personal property, he shall state the value of such property pertaining to his business as a merchant. [R. C. 1905, § 1501; 1897, ch. 126, § 23; R. C. 1899, § 1196.]

§ 2109. Who are deemed to be manufacturers. What to be listed. Every person who purchases, receives or holds personal property of any description, for the purpose of adding to the value thereof by any process of manufac-

turing, refining, rectifying or by the combination of different materials, with a view of making gain or profit by so doing, shall be held to be a manufacturer; and he shall, when required to make and deliver to the assessor a statement of the amount of his other personal property subject to taxation, also include in his statement the value of all articles purchased, received or otherwise held for the purpose of being used, in whole or in part, in any process or operation of manufacturing, combining, rectifying or refining. Every person owning a manufacturing establishment of any kind, and every manufacturer shall list as a part of his manufacturer's stock the value of all his engines and machinery of every description, used or designed to be used in any process of refining or manufacturing including all tools and implements of every kind used or designed to be used for the aforesaid purpose. [R. C. 1905, § 1502; 1897, ch. 126, § 24; R. C. 1899, § 1197.]

§ 2110. Property of companies or associations, how and by whom listed. The president, secretary or principal accounting officer of any company or association, whether incorporated or unincorporated, except banking corporations whose taxation is especially provided for in this article, shall make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

1. The name and location of the company and association.
2. The amount of capital stock authorized and the number of shares into which said capital stock is divided.
3. The amount of capital stock paid up.
4. The market value, or if they have no market value, then the actual value of the shares of the stock.
5. The total amount of all indebtedness except the indebtedness of current expenses, excluding from such expenses the amount paid for purchase or improvement of property.
6. The value of all real property, if any.
7. The value of its personal property.

The aggregate amount of the fifth, sixth and seventh items shall be deducted from the total amount of the fourth, and the remainder, if any, shall be listed as "bonds or stocks," under subdivision 23 of section 2103. The real and personal property of each company or association shall be listed and assessed the same as other real and personal property. In all cases of failure or refusal of any person, officer, company or association to make such return or statement, it shall be the duty of the assessor to make such return or statement from the best information he can obtain. [R. C. 1905, § 1503; 1897, ch. 126, § 25; R. C. 1899, § 1198.]

An amendment to this section was vetoed in Laws 1913, ch. 293.

Practice and procedure of assessors in taxing capital stock of corporation. 58 L.R.A. 612.

Different methods of assessment and procedure in taxation of corporations. 60 L.R.A. 372.

Power to compel production of corporate books to aid in assessing holder of stock or his estate. 8 L.R.A.(N.S.) 788.

§ 2111. Assessment of grain in warehouses. Statement of ownership. All grain in any elevator, warehouse or grainhouse in this state on the first day of April in each year shall be assessed and taxed in the name of the person, firm, company or corporation owning or operating such elevator, warehouse or grainhouse on said date. All agents or other persons in charge of any such elevator, warehouse or grainhouse shall furnish the assessor under oath a statement of all grain in any such elevator, warehouse or grainhouse on the first day of April in each year, such statement to include the number of bushels of each and all kinds of grain on said date in any elevator, warehouse or grainhouse of which he is agent or has under his care or control, and shall further show in said statement the owner, or owners, of such elevator, warehouse or grainhouse, or if said elevator, warehouse or grainhouse is not

operated by the owner then the person, firm, company or corporation operating the same. [R. C. 1905, § 1504; 1899, ch. 5, §§ 1, 2; R. C. 1899, § 1199.]

Assessment of grain in elevators. Sections 2111 to 2113 inclusive are constitutional. *Minneapolis & Northern Elevator Co. v. Traill County*, 9 N. D. 213, 82 N. W. 727; *State v. Elevator Co.*, 6 N. D. 41, 68 N. W. 81.

§ 2112. **Lien of agent or warehouseman for taxes.** If the grain so assessed is not owned by the person, firm, company or corporation against whom it is assessed and taxed under the provisions of this article then such person, firm, company or corporation shall have a lien upon such grain for the amount of the tax charged under such assessment and taxation, and can hold such an amount of the grain assessed and taxed under the provisions of this article as may be necessary to pay the tax charged against such person, firm, company or corporation on the grain so assessed and taxed. [R. C. 1905, § 1505; 1899, ch. 5, § 3; R. C. 1899, § 1200.]

§ 2113. **Penalty for failure to make true statements.** Any agent of any person, firm, company or corporation engaged in the handling, buying, selling, transferring or storing of grain in this state or any person having any elevator, warehouse or grainhouse under his charge or control who shall refuse to make the statement as provided in section 2111 shall be deemed guilty of a misdemeanor, and any agent of any person, firm, company or corporation engaged in the handling, buying, selling, transferring or storing of grain in this state, or any person having any elevator, warehouse or grainhouse under his charge or control who in making the statement provided in section 2111 makes any false statements shall be deemed guilty of perjury, and it is hereby made the duty of the assessor to report any violation of this section to the state's attorney of the proper county for his action. [R. C. 1905, § 1506; 1899, ch. 5, § 4; R. C. 1899, § 1201.]

§ 2114. **Telephone property, where listed.** All telephone property within this state, including lines, instruments of every kind, office furniture, etc., owned, managed or constructed by companies, associations, partnerships or individuals shall be listed and assessed at its true value, as provided in section 2144. [R. C. 1905, § 1507; R. C. 1895, § 1202.]

§ 2115. **Bank stock, where and at what valuation to be listed.** The stockholders of every bank located in this state, whether such bank has been organized under the banking laws of this state, or of the United States, shall be assessed and taxed on the value of their shares of stock, in the county, town, district, city or village where such bank or banking association is located, and not elsewhere, whether such stockholders reside in such places or not; such shares shall be listed and assessed annually, with regard to the ownership and value thereof on the first day of April of each year. To aid the assessor in determining the value of such shares of stock, the accounting officer of every bank shall furnish a statement to the assessor, verified by oath, showing the amount and number of such shares of capital stock of such bank, the amount of its surplus or reserve fund and undivided profits in excess of an amount equal to five per cent of the loans and discounts of such bank; the amount of its net investment in real estate, which real estate shall be returned in the name of the bank and shall be assessed and taxed as other real estate is under this article. To determine the real value of such real estate investments the assessor shall strike from his lists all real estate which said bank has sold to any party or parties under any contract whereby the party or parties making and signing such contract agrees to pay all taxes levied against said property. The assessor shall deduct the net amount of said investment in real estate from the aggregate amount of such capital and surplus, and the remainder shall be taken as a basis for the valuation of such shares of stock in the hands of the stockholders subject to the provisions of law requiring all property to be assessed at its true and full value. The shares of capital stock in national banks not located in this state, held in this

state, shall not be required to be listed under this article. [R. C. 1905, § 1508; 1899, ch. 29; R. C. 1899, § 1203; 1903, ch. 159.]

An amendment to this section was vetoed in Laws 1913, ch. 292.

Legal right of bank was infringed by equalizing bank stock at 40 per cent of its value, while all other property was equalized at not exceeding 33½ per cent. *Sioux Falls Sav. Bank v. Minnehaha County*, 29 S. D. 146, 135 N. W. 689.

Where state tax on national bank is to be assessed. 45 L.R.A. 759.

§ 2116. Bank to keep and furnish list of stockholders. In every bank and banking office there shall be kept at all times a full and correct list of the names and residences of the stockholders, owners or parties interested therein, showing the number of shares and amount held, owned or controlled by each party in interest, which statement or list shall be subject to the inspection of the officer authorized to assess property for taxation; and it shall be the duty of the accounting officer or cashier of each bank or banking institution to furnish the assessor with a duplicate copy of such statement, verified by oath, which shall be returned to the county auditor and filed in his office. [R. C. 1905, § 1509; 1897, ch. 126, § 27; R. C. 1899, § 1204.]

§ 2117. Taxes on bank stock to be a lien on dividends. To secure the payment of taxes on bank stock or banking capital, it shall be the duty of every bank, or managing officer or officers thereof, to retain so much of any dividend or dividends belonging to such stockholders or owners as shall be necessary to pay any taxes levied upon their shares of stock or interest respectively, and the amount of such taxes shall be a lien on the dividends, the capital stock and the assets of the bank, and until it shall be made to appear to the county treasurer or to such bank or its officers that such taxes have been paid, any officer, or any such bank who shall pay over or authorize the paying over of any such dividend or a portion thereof, contrary to the provisions of this section, shall thereby become liable for such tax; and if the said tax shall not be paid, the county treasurer where said bank is located shall sell such shares or interest to pay the same, like other personal property; and in case of sale the provisions of law in regard to the transfer of stock when sold on execution shall apply to such sale. [R. C. 1905, § 1510; 1897, ch. 126, § 28; R. C. 1899, § 1205.]

§ 2118. Certain property held to belong to lessee or equitable owner. Property held under a lease for a term of years or a contract for the purchase thereof, belonging to the state (except such state lands as have been leased for pasture or grazing purposes), or to any religious, scientific or benevolent society or institution, whether incorporated or unincorporated, or to any railroad company or corporation whose property is not taxed in the same manner as other property, shall be considered for all purposes of taxation as the property of the person so holding the same. [R. C. 1905, § 1511; 1897, ch. 126, § 29; R. C. 1899, § 1206.]

§ 2119. Assessors list coal mines. When. The several assessors within the state shall list for taxation all lignite coal and minerals and all titles to coal and minerals underlying any and all lands, the ownership of which lignite coal and minerals has been severed from the ownership of the overlying strata, and assess each division of lignite coal and minerals and such title to such coal or minerals, whether known to exist or not, in the county in which it actually lies. [1911, ch. 297, § 1; 1907, ch. 214.]

§ 2120. County auditor to furnish lists to assessors. It shall be the duty of the county auditor, at the time of furnishing the assessors with books and blanks for making their assessments, to give every assessor an accurate description of all lands where the titles to the coal or minerals therein and the title or fee to the overlying strata or land are not in the same person. Such list shall accurately describe the land in which such coal or minerals reservations lie, giving the name of the holder of the title to such land; and of the holder of the reserved mineral rights thereunder; the said list shall also accurately describe, when known and when possible, the location of the

coal or minerals lying in such land and shall disclose the name of the person in whom the title to such minerals is reserved as provided herein. It shall be the duty of the register of deeds to furnish the county auditor with such information as is contained in his office, and as will enable the said auditor to prepare the lists described in sections 2119 and 2120. [1911, ch. 297, § 2.]

§ 2121. Delinquent tax sale. If any holder of the title to coal or minerals, reserved after the overlying strata or land has been sold, neglects or refuses to pay any taxes legally assessed and levied thereon at such time as is now or may hereafter be required by law for the payment of real property taxes in this state, such title shall be sold in the manner now provided by law for the sale of real property for delinquent taxes. [1911, ch. 297, § 3.]

§ 2122. All property to be assessed at full value. Value, how determined. All property shall be assessed at its true and full value in money. In determining the true and full value of real and personal property the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation; nor shall he adopt as a criterion of value the price at which said property would sell at auction or at forced sale or in the aggregate with all the property in the town or district, but he shall value each article or description of property by itself and at such sum or price as he believes the same to be fairly worth in money. In assessing any tract or lot of real property the value of the land, exclusive of improvements, shall be determined; also the value of all improvements and structures thereon, and the aggregate value of the property, including all structures and other improvements, excluding the value of crops growing upon cultivated lands. In valuing any real property upon which there is a coal or other mine or stone or other quarry, the same shall be valued at such a price as such property, including the mine or quarry, would sell at a fair voluntary sale for cash. Money, whether in possession or on deposit, shall be entered in the statement at the full amount thereof. Every credit for a sum certain, payable either in money, property of any kind, labor or services, shall be valued at the full price of the same so payable; if for a specific article or a specific number or quantity of any article of property, or for a certain amount of labor, or for services of any kind, it shall be valued at the current price of such property, or for such labor or services at the place where payable. [R. C. 1905, § 1512; 1897, ch. 126, § 30; R. C. 1899, § 1207.]

Duties of tax assessor—valuation of bank stock—inequality. *Sioux Falls Sav. Bank v. Minnehaha County*, 29 S. D. 146, 135 N. W. 689.

Valuation of capital stock for purpose of taxation. 58 L.R.A. 594.

Method of fixing values of national bank shares for purpose of taxation. 45 L.R.A. 756.

Valuation of corporate franchise for purpose of taxation. 57 L.R.A. 98.

§ 2123. Auditor to furnish books, etc. Real property. Meeting of assessors. Compensation of assessors. The county auditor shall annually provide the necessary books and blanks at the expense of the county for and to correspond with each assessment district or township. He shall make out in the real property assessment book a complete list of all lands or lots subject to taxation (showing the name of owners, if to him known, and if unknown, so state it) the number of acres and the lots and parts of lots or blocks included in each description of property. The assessment books and blanks shall be in readiness for delivery to the assessors on the second Wednesday in April of each year, and all the assessors in the county shall meet on that day at the office of the county auditor for the purpose of receiving such books and blanks and for conference with the auditor in reference to the performance of their duties. Said assessors shall each be allowed for the time they are necessarily employed in attending said meeting the sum of four dollars per day and five cents per mile for the distance necessarily traveled in attendance at such meeting. [1911, ch. 291: 1909, ch. 41; R. C. 1905, § 1513; 1897, ch. 126, § 31; R. C. 1899, § 1208; 1901, ch. 27.]

Description as W. 2 of W. 2 insufficient as basis for taxation. (For other descriptions see cases cited.) *Lee v. Crawford*, 10 N. D. 482, 88 N. W. 97; *Power v. Larabee*, 2 N. D.

141, 49 N. W. 724; *Power v. Bowdle*, 3 N. D. 107, 54 N. W. 404; *Stokes v. Allen*, 15 S. D. 421, 89 N. W. 1023; *Turner v. Hand Co.*, 11 S. D. 348, 77 N. W. 589; *Van Cise v. Carter*, 9 S. D. 234, 68 N. W. 539.

§ 2124. Auditor to furnish tax list. It shall be the duty of the county auditor of each county within this state to make and transmit to the township clerk of each civil township within such county on the first day of March of each and every year, a copy of the tax list of each township for the preceding year showing the owner and description of each piece or parcel of land assessed and the valuation thereof, also a list of the valuation of personal property assessed to each person or corporation within such township. [R. C. 1905, § 1514; 1905, ch. 175.]

§ 2125. Assessors' districts. Vacancy. Compensation. All counties or parts of counties in this state not organized into civil townships shall be divided into assessor districts, which shall comprise the same territory as the commissioner districts of said county, excluding organized civil townships and the district assessor thereof shall be elected at the same time that state officers are elected, and his term of office shall be two years from and after the first day of January following. In case of vacancy in the office of district assessor in any of such districts, such vacancies shall be filled by the board of county commissioners of the proper county. Each organized civil township in the state shall continue an assessor district, and there shall annually be one township assessor elected for each one of said townships, at the time the other township officers are elected; provided, that any vacancy in township assessor may be filled by appointment by the board of supervisors of said township where such vacancy exists; provided, further, that cities, towns and villages organized under the general laws of this state shall not be included in the districts provided for in this section, but assessors of such cities, towns or villages shall act with the board of county assessors in any meetings which may be held by such board of county assessors. All assessors of territory not organized into civil townships shall be paid four dollars per day each and no more, for the time actually spent by them in making and completing said assessment. All assessors of civil townships shall receive three dollars per day, and no more, for the time actually employed in making and completing the assessment of their respective townships, but shall not receive more than sixty dollars for assessing any civil township; provided, further, that no person shall be eligible to be assessor unless he is a voter and owner of real estate in the district or township of which he seeks to be assessor. [1909, ch. 198; R. C. 1905, § 1515; 1897, ch. 138; R. C. 1899, § 1209; 1903, ch. 36.]

§ 2126. Bond and oath of assessor. Every person elected or appointed to the office of assessor shall, at or before the time of receiving the assessment books, file with the county auditor his bond, issued by the state bonding department, payable to the state of North Dakota, to be approved by the chairman of the board of township supervisors, in counties organized into civil townships, and in counties not so organized, by the board of county commissioners, and in cities as provided by law, in a penal sum of not less than one thousand dollars nor more than two thousand dollars, in the discretion of the board requiring such bond, conditioned that he will diligently, faithfully and impartially perform the duties enjoined on him by any law of this state now in force or which may hereafter be enacted; and he shall moreover take and subscribe on said bond the oath prescribed by section 211 of the constitution, and if any person so elected or appointed fails to give bond or fails to take the oath required within the time prescribed by law, such failure shall be deemed a refusal to serve, and create a vacancy that shall be filled as hereinafter provided. [1913, ch. 50; R. C. 1905, § 1516; 1897, ch. 126, § 33; R. C. 1899, § 1210.]

§ 2127. Assessments, when and how made. The assessor shall perform the duties required of him during the months of April and May of each year, except in cases otherwise provided, and in the following manner, to wit: He shall by actual examination determine the true and full value of each tract or lot of real property listed for taxation, and shall enter the value thereof in one column and the value of all improvements and structures thereon in another column, opposite each description of property; also the total value of the same including improvements and structures. He shall make an alphabetical list of the names of all persons in his town or when the assessor's district is the same as the commissioner's district he shall make in alphabetical order a list of all persons in each school district liable to assessment of personal property, and require each person to make a correct list and statement of such property according to the prescribed form, which statement and list shall be subscribed and sworn to by the person listing the property with full name; and the assessor shall thereupon determine the value of the property included in such statement and enter the same in his assessment books opposite the name of the party assessed; and in making such entry in his assessment books he shall give the full name and post office address of the party listing the property, and if the party resides in a city, the assessor shall give the street and number or other brief description of residence or place of business; provided, that personal property shall be assessed upon view, by the assessor at any time within the limits prescribed by the provisions of this article, as its then actual value regardless of any change of ownership prior to such assessment; but if the owner, factor or agent can show by duly authenticated certificate that the property has been lawfully assessed in any other town, city, village or district in this state for that year, then such property shall not be assessed. [R. C. 1905, § 1517; 1897, ch. 126, § 34; R. C. 1899, § 1211.]

April first is date for determining taxability, ownership, and value of real and personal property for taxation. *Gaar, S. & Co. v. Soruin*, 11 N. D. 164, 90 N. W. 799.

Wheat in elevator sold before, but on hand May first, not assessable. *State v. Elevator Co.*, 6 N. D. 41, 68 N. W. 81.

§ 2128. Statement of personal property to be made by the owner. The assessor shall call at the office, place of business or residence of each person required by this article to list property and list his name, and shall require such person to make a correct statement of his property in accordance with the provisions of this article, and every person so required shall enter a true and correct statement of such property in the form prescribed, which statement shall be signed and verified by the oath of the person listing the property and delivered to the assessor, who shall thereupon assess the value of such property and enter the same in his book; provided, if any such property is listed or assessed on or after the fourth Monday in May and before the return of the assessor's books, the same shall be as legal and binding as if listed and assessed before that time. [R. C. 1905, § 1518; 1897, ch. 126, § 35; R. C. 1899, § 1212.]

§ 2129. Sickness and absence of owner, duty of assessor. If any person required by this chapter to list property be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the residence, office or usual place of business of such person, if known, a written or printed notice, requiring such person to make out and leave at the place named by such assessor, on or before some convenient day named therein, the statement or list required by this article; the date of leaving such notice, and the person required to list the property, shall be noted by the assessor in his assessment book. [R. C. 1905, § 1519; 1897, ch. 126, § 36; R. C. 1899, § 1213.]

§ 2130. Refusal to list or swear to statement, duty of assessor. Oath. In any case where any person whose duty it is to list personal property for taxation, has refused or neglected to list the same when called on by the assessor for that purpose, or to take and subscribe an oath in regard to the

truth of his statement of personal property, or any part thereof, when required by the assessor, the assessor shall enter opposite the name of such person in an appropriate column the words, "refused to list" or "refused to swear," as the case may be; and in every case where any person required to list property for taxation has been absent or unable by sickness to list the same, the assessor shall enter opposite the name of such person in an appropriate column the words, "absent" or "sick." The assessor is hereby authorized to administer oaths to all persons who by the provisions of this article are required to swear, or whom he may require to testify in any case; and he may examine under oath any person whom he may suppose to have knowledge of the amount or value of the personal property of any person refusing to list or to verify his list of personal property. [R. C. 1905, § 1520; 1897, ch. 126, § 37; R. C. 1899, § 1214.]

§ 2131. **Number or name of school district to be given where property is assessed.** It shall be the duty of assessors when assessing personal property, to designate the number or name of the school district in which each person assessed is liable for tax, which designation shall be made by writing the number or name of the district opposite each assessment, in a column provided for that purpose in the assessment book. When the personal property of any person is assessable in several school districts, the amount in each shall be assessed separately and the name of the owner placed opposite each amount. [R. C. 1905, § 1521; 1897, ch. 126, § 38; R. C. 1899, § 1215.]

§ 2132. **Failure to obtain assessment, duty of assessor.** In all cases of failure to obtain a statement of personal property from any cause, it shall be the duty of the assessor to ascertain the amount and value of such property, and assess the same at such amount as he believes to be the true value thereof. The assessor when requested shall deliver to the person assessed a copy of the statement of property so listed, which copy shall be signed by the assessor. The assessor of each district shall, on or before the first Monday in June of each year, file with the town or city clerk of each organized town or city, the assessment list or roll for such town or city, where it shall remain subject to the inspection of the residents or property owners of such town or city until the Saturday following. [R. C. 1905, § 1522; 1897, ch. 126, § 39; R. C. 1899, § 1216.]

ARTICLE 6.—BOARDS OF EQUALIZATION.

§ 2133. **Town board of review, duties. Complaints and grievances.** The board of supervisors of each town, the president and auditor of each incorporated village, and the mayor, auditor and senior aldermen from the several wards of each city (except cities organized under the general law and cities whose charters provide for a board of equalization) shall meet on the second Monday of June at the office of the town clerk or recorder for the purpose of reviewing the assessment of property in each town or district, and they shall immediately proceed to examine, ascertain and see that all taxable property in their town or district has been properly placed upon the list and duly valued by the assessor; and in case any property, real or personal, shall have been omitted by inadvertence or otherwise, it shall be the duty of the said board to place the same upon the list, with the true value thereof, and proceed to correct the assessment, so that each tract or lot of real property, and each article, parcel or class of personal property shall be entered on the assessment list at the true value thereof; but the assessment of the property of any person shall not be raised until each person shall have been duly notified of the intent of the board to do so, and on the application of any person considering himself aggrieved, they shall review the assessment and correct the same as shall appear to them just; any two of said officers are

authorized to act at such meeting, and they may adjourn from day to day until they shall finish the hearing of all cases presented on that day; provided, that they shall complete the equalization within ten days. All complaints and grievances of individuals, residents of the town or districts, in reference to the assessments of personal property, shall be heard and decided by the town board; provided, further, that the complaints of nonresidents in reference to the assessment on any property, real or personal, and of others, in reference to any assessment made after the meeting of the town board of review, shall be heard and determined by the county board. The clerk of the city, town and township boards of equalization shall keep accurate record of the proceedings of said boards, showing the facts and evidence upon which their action is based, a copy of which shall be furnished the assessor and filed by him with the county auditor as part of the assessment returns. [R. C. 1905, § 1523; 1897, ch. 126, § 40; R. C. 1899, § 1217.]

As empowering county board to hear and act on complaints in respect to assessments. *First Nat. Bank v. Lewis*, 18 N. D. 390, 121 N. W. 836.

Scheme of classification to be used by local board of review in equalizing assessments, must be same as that outlined in section 1496, subdiv. 11. *Advance Thresher Co. v. Beck*, 21 N. D. 55, 128 N. W. 315, Ann. Cas. 1913B, 517.

§ 2134. Notice of meeting of board of review to be posted. The assessor shall cause, at least ten days previous, notice of the time and place of the meeting of the township board of review to be given by posting notice in at least three public places in each township or district; but failure to give such notice or hold such meeting shall not vitiate such assessment, except as to the excess of valuation of tax thereon shown to be unjustly made or levied. [R. C. 1905, § 1524; 1897, ch. 126, § 41; R. C. 1899, § 1218.]

As to notice to taxpayer of tax proceedings. *Begg v. Paine*, 15 N. D. 436, 109 N. W. 322.

§ 2135. Assessor's statement and return to auditor. The assessor shall add and note the amount of each column in his assessment books after making the corrections made by the town board of review. He shall also make in each book, under proper headings, a tabular statement showing the footings of the several columns upon the page, and shall add and set down under the respective headings the total amount of the several columns, and on or before the last Monday of June he shall make return to the county auditor of his assessment books, and deliver therewith the lists and statements of all persons assessed, all of which shall be filed and preserved in the office of the county auditor; except in cities having charters, the assessor's returns shall be made to the county auditor not later than July tenth. Such returns shall be verified by his affidavit substantially in the following form:

State of North Dakota, } ss.:
County of

I,.....assessor of.....do solemnly swear that the book to which this is attached contains a full list of all real property (or personal property, as the case may be) subject to taxation in.....so far as I have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is in each case the true and full value of such property, to the best of my knowledge and belief, (where the assessment has been corrected by the town board, except as corrected by the town board) and that the footings of the several columns in said books and the tabular statement returned herewith are correct as I verily believe.

.....Assessor.

Subscribed and sworn to before me this.....day of.....19..

.....

Auditor of.....County.

[R. C. 1905, § 1525; 1897, ch. 126, § 42; R. C. 1899, § 1219; 1901, ch. 28.]

Assessor's failure to sign affidavit will not affect return where oath was administered. *Bandow v. Wolven*, 20 S. D. 443, 107 N. W. 204.

Sufficiency of tax assessor's oath. *Richardson v. Howard*, 23 S. D. 86, 120 N. W. 768.

Description of land, as W. 2 of W. 2 or N. E. 4 of N. W. 4 not sufficient. *Power v. Larabee*, 2 N. D. 141, 49 N. W. 724; *Power v. Bowdle*, 3 N. D. 107, 54 N. W. 404, 44 Am. St. Rep. 511, 21 L.R.A. 328; *Stokes v. Allen*, 15 S. D. 421, 89 N. W. 1023; *Lee v. Crawford*, 10 N. D. 482, 88 N. W. 97.

The descriptions of lands in a tax as "s 2 e d s 2 s to sec. or lot 30 twp. or blk. 113 rmg. 69" is not sufficient. *Turner v. Hand County*, 11 S. D. 348, 77 N. W. 589.

Description must be sufficiently specific to identify property. *Van Cise v. Carter*, 9 S. D. 234, 68 N. W. 539.

Irregularity in assessors' signed affidavit to return does not invalidate tax deed founded on proceedings. *Peters v. Lohr*, 24 S. D. 605, 124 N. W. 853.

§ 2136. List given to auditor for persons sick or absent. If any person required to list property for taxation is prevented by sickness or absence from giving to the assessor such statement, such person or his agent having charge of such property, may at any time before the extension of taxes thereon by the county auditor make out and deliver to the county auditor a statement of the same as required by this chapter, and the county auditor in such case shall make an entry thereof and correct the corresponding item or items in the return made by the assessor, as the case may require; but no such statement shall be received by the county auditor from any person who refused or neglected to make oath to his statement when required by the assessor, as provided herein; nor from any person unless he makes and files with the county auditor an affidavit that he was absent from his town and district without design to avoid the listing of his property, or was prevented by sickness from giving the assessor the required statement when called upon for that purpose. [R. C. 1905, § 1526; 1897, ch. 126, § 43; R. C. 1899, § 1220.]

§ 2137. Auditor to examine assessment books and have returns corrected. The county auditor shall carefully examine the assessment books when returned to him by the assessors, and if he discovers that the assessment of any property has been omitted he shall enter the same upon the proper list and forthwith notify the assessor making such omission, who shall immediately proceed to ascertain the value of such property and make the necessary correction. [R. C. 1905, § 1527; 1897, ch. 126, § 44; R. C. 1899, § 1221.]

County auditor or board of equalization may add omitted property to tax list. *Billinghurst v. Spink County*, 5 S. D. 84, 58 N. W. 272; *Grigsby v. Minnehaha County*, 6 S. D. 492, 62 N. W. 105.

Personal notice before adding property must be given; but omission of notice waived if owner present when done and no protest is made. *Avant v. Flynn*, 2 S. D. 153, 49 N. W. 15.

No authority is given to place upon tax list any property for other than current year. *Pierson v. Minnehaha County*, 28 S. D. 534, 38 L.R.A.(N.S.) 261, 134 N. W. 213.

§ 2138. County board of review and equalization. The board of county commissioners of each county at its regular meeting in July shall constitute a board of review and equalization of the assessments made within their respective counties and an accurate record of all its proceedings in pursuance of the provisions of this section shall be separately entered upon its minute book. Such board shall perform the duties prescribed by section 2133 as respects all assessments made in districts not embraced in an incorporated city, town or village or civil township having a board of review; and in addition thereto such board shall examine and compare the assessments returned by the assessors of all the districts within the county, including those embraced in incorporated cities (whether organized under general law or special charter), and in incorporated towns and villages and civil townships, and proceed to equalize the same throughout the county between the several assessment districts, subject to the following rules:

1. They shall raise the valuation of each tract or lot of real property which, in their opinion, is returned below its true and full value to such price and sum as they believe to be the true and full value thereof.

2. They shall reduce the valuation of each tract or lot of real property which, in their opinion, is returned above its true and full value to such price and sum as they believe to be the true and full value thereof.

3. They shall raise the valuation of each class or article of personal property which, in their opinion, is returned below its true and full value to such price and sum as they believe to be the true and full value thereof, and they shall raise the aggregate value of the personal property of each individual whenever they believe that such aggregate valuation is less than the valuation of the taxable personal property of such individual to such amounts as they believe was the true and full value thereof; provided, however, that the value of the property of any person or corporation shall not be raised until due notice shall be given to the owner or agent thereof.

4. They shall reduce the valuation of each class of personal property enumerated in section 2103 which, in their opinion, is returned above its true and full value to such price and sum as they believe to be the true and full value thereof; and upon complaint of any party aggrieved they shall reduce the aggregate valuation of the personal property of such individual, who, in their opinion, has been assessed at too large a sum, to such sum or amount as they believe is the true and full value of his personal property.

5. Except as provided in the second and fourth subdivisions of this section, they shall not reduce the aggregate value of the real property, or the aggregate value of the personal property of their county below the aggregate value thereof as returned by the assessors, except as it may be necessary to make the valuation in the different townships equal with the additions made thereto by the auditor as hereinbefore required, but they may raise the aggregate valuation of such real property and of each class of personal property of said county or any town or district thereof, whenever they believe the sum is below the true and full value of said property or class of property, to such aggregate amount as they believe to be the true and full value thereof.

6. The county auditor shall keep an accurate journal or record of the proceedings and orders of said board, showing the facts and evidence upon which their action is based; and said record shall be published the same as other proceedings of county commissioners, and a copy of such published proceedings shall be transmitted to the auditor of the state, with the abstract of assessment herein required. The county board of equalization shall continue in session until such equalization has been completed, and upon completion of such equalization the county commissioners must proceed to make the levy for taxes for the current fiscal year as in this chapter provided. [R. C. 1905, § 1528; 1897, ch. 126, § 45; R. C. 1899, § 1222.]

Board of equalization cannot lawfully assemble at a time and place other than that fixed by statute. *Power v. Larabee*, 2 N. D. 141, 49 N. W. 724.

After the board has met, adjournment by less than quorum will preserve duration of session. *O'Neil v. Tyler*, 3 N. D. 47, 53 N. W. 434.

Refusal to reduce an assessment appealable. *Pierre Waterworks Co. v. Hughes Co.*, 5 D. 145, 37 N. W. 733.

County board empowered to review assessments. *First Nat. Bank v. Lewis*, 18 N. D. 390, 121 N. W. 836.

Does not provide for county board of assessment. *Pierson v. Minnehaha County*, 28 S. D. 534, 38 L.R.A. (N.S.) 261, 134 N. W. 212.

Taxpayer assessed proportionately higher than others must ask board of equalization to equalize valuations before applying to court for relief. *Sioux Falls Sav. Bank v. Minnehaha County*, 29 S. D. 146, 135 N. W. 689.

§ 2139. Town and municipal officers to advise with board. The chairmen of the boards of township supervisors, the presidents of city councils and the presidents of the boards of trustees of towns and villages in each county may attend the meetings of the board of equalization in such county, and it shall be the duty of each of such officers to advise with such board of equalization in regard to the equalization of the assessment of such county, the amount of taxes to be levied in such county, and the best means of caring

for the poor of such county. Any such officer who shall attend the meeting of such board, as herein prescribed, shall be allowed as full compensation for all services in connection therewith his actual expenses while in attendance, to be paid as other bills are paid, by such township, city, town or village. [R. C. 1905, § 1529; 1897, ch. 149; R. C. 1899, § 1223.]

County commissioners, sitting as board of county commissioners, have no power to reduce individual assessments or abate individual taxes, except in certain instances. *Minot v. Amundson*, 22 N. D. 236, 133 N. W. 551.

§ 2140. Corrected lists. Abstracts for state auditor. The county auditor shall calculate the changes of the assessment lists determined by the county board of equalization, and make corrections accordingly. Having made such corrections he shall make duplicate abstracts of the real and personal property lists, one copy of which he shall file in his office and one copy he shall forward to the auditor of the state, on or before the last day of July following each county equalization. [R. C. 1905, § 1530; 1899, ch. 137; R. C. 1899, § 1224.]

§ 2141. State board of equalization, how constituted. Meetings. Rules for equalizing. The governor, state auditor, state treasurer, attorney-general and commissioner of agriculture and labor shall constitute the state board of equalization, a majority of which shall constitute a quorum for the transaction of business. The governor shall be ex-officio president of said board, and the state auditor shall act as secretary. The said board shall meet annually on the first Tuesday in August, at the office of the state auditor, and shall then examine and compare the returns of the assessment of the property in the several counties of the state, and proceed to equalize the same, so that all taxable property in the state shall be assessed uniformly, and at its true value in money. In the performance of their duties they shall be governed by the following rules:

1. They shall raise the valuation of each class of personal property of every county, which in their opinion is returned below its true and full value, to such price and sum as they believe to be the true and full value thereof.

2. They shall reduce the valuation of each class of personal property enumerated in section 2103 of every county, which in their opinion is returned above its true and full value, to such price and sum as they believe to be the true and full value thereof.

3. They shall add to the aggregate valuation of the property of every county which they believe to be valued below its true and full value in money, such per centum in each case as will bring the same to its true and full value in money.

4. They shall deduct from the aggregate valuation of the property of every county, which they believe to be valued above its true and full value, such per centum in each case as will reduce the same to its true and full value in money.

5. They shall not reduce the aggregate valuation of all the property in the state, as returned by the several county auditors, more than one per centum on the whole valuation thereof.

6. Upon the completion of such equalization and determination of the aggregate valuation of all the property of the state, the said board shall then decide upon the rate of the state tax to be levied for the current year, together with any other general or special state taxes required by law to be levied. [R. C. 1905, § 1531; 1897, ch. 126, § 47; R. C. 1899, § 1225; 1903, ch. 182.]

An amendment to this section was vetoed in Laws 1913, ch. 298.

Increase of 12½ per cent in assessed valuation is authorized. *Clark v. Lawrence County*, 21 S. D. 254, 111 N. W. 558.

State board of equalization not authorized to raise valuation of bank stock without increasing that of other stocks and shares. *Campbell v. Minnehaha County*, 11 S. D. 133, 76 N. W. 10.

Telephone company failing to furnish sworn statement cannot complain of irregularity as to time of assessment. *Iowa & D. Teleph. Co. v. Schamber*, 16 S. D. 588, 91 N. W. 78.

"State board of assessment" does not exist in this state. *Pierson v. Minnehaha County*, 28 S. D. 534, 38 L.R.A.(N.S.) 261, 134 N. W. 212.

§ 2142. **Record of proceedings to be published. Synopsis to be sent to county auditors.** The secretary shall keep a record of the proceedings of the board, which shall be published in the annual report of the state auditor, and upon final adjournment he shall transmit to each county auditor an abstract of such proceedings specifying the per centum added to or deducted from the valuation of the real property of each of the several counties, in case an equal per centum has not been added to or deducted from each, and specifying also the per centum added to or deducted from the several classes of personal property, in each of the counties in the state, and such other information as will enable each auditor to properly equalize the valuation in their respective counties and the taxable rates thereof. [R. C. 1905, § 1532; 1897, ch. 126, § 48; R. C. 1899, § 1226.]

§ 2143. **Duty of county auditor after equalization by the state board.** Upon receipt of the report of the proceedings of the state board of equalization it shall be the duty of the county auditor to add to or deduct from each tract or lot of real property in his county the required per centum on the valuation thereof, as it stands after the same has been equalized by the county board of equalization, adding in each case any fractional sum of fifty cents, or more, and deducting in each case any fractional sum of less than fifty cents, so that the value of any separate tract or lot shall contain no fraction of a dollar, and shall also add to or deduct from such class of personal property in his county the required per centums on the valuation thereof, as it stands after the same has been equalized by the county board of equalization, adding or deducting in manner as aforesaid, any fractional sum, so that the value of any separate class of personal property shall contain no fraction of a dollar. [R. C. 1905, § 1533; 1897, ch. 126, § 49; R. C. 1899, § 1227.]

ARTICLE 7.—ASSESSMENT OF EXPRESS AND OTHER COMPANIES.

§ 2144. **Express, telegraph, telephone, freight line and equipment companies, assessment of.** The state board of equalization shall at its annual meeting in August in each year assess at its actual value the franchise and all property within the state of all express companies, freight line companies, car equipment companies, sleeping car companies, dining car companies, telegraph or telephone companies. To enable said board to make a correct valuation of such franchises and property, it shall have access to all reports of such corporations which may be on file in any public office of the state, and they shall have power to compel and require every such company, on reasonable notice, to report to them a full statement of the property and mileage operated by it within this state, and shall have power to summon and compel the attendance of witnesses, and may examine such witnesses under oath in any matter relating to the value of such property. In estimating the value of such franchises and property the board shall be governed by the same rules as are provided for the government of county and township assessors in valuing other property in this state. It shall cause a record to be made of the estimated value placed upon each of the items which go to make up the aggregate valuation of such assessments. [R. C. 1905, § 1534; 1901, ch. 26, § 1.]

§ 2145. **Valuation, how apportioned.** The board of equalization shall divide the valuation so found and determined of each continuous line by the number of miles of such line contained in the state, and the result shall be the valuation per mile for which said line shall be assessed. Such valuation per mile shall be apportioned to each county according to the number of miles of such line contained in such county. [R. C. 1905, § 1535; 1901, ch. 26, § 2.]

§ 2146. **Miles of line and valuation. State auditor shall certify.** The state auditor shall at the time of certifying the equalized value of each organized

county to the county auditor, also certify to the number of miles of line operated by each of the companies before mentioned contained in said county and the valuation per mile as determined by the state board of equalization, and the county auditor of such county shall apportion such valuation to the cities, towns, villages, townships and districts through which such lines run according to the number of miles contained in each, as a part of the valuation of such city, town, village, township and district for the purpose of taxation, and the same shall be taxed as personal property is taxed in each county. [R. C. 1905, § 1536; 1901, ch. 26, § 3.]

§ 2147. Valuation in unorganized counties. Taxes for state purposes only. The valuation so apportioned to unorganized counties shall be taxed for state purposes only; and such tax shall be levied annually by the state auditor at the same rate as other property is taxed for state purposes and the state auditor shall notify each company so taxed of the amount of such tax on or before the first day of December in each year, and such tax must be paid to the state treasurer at the same time, and subject to the same penalty, as is prescribed by law for the collection of personal property taxes in organized counties, and the state treasurer shall have the same powers and it shall be his duty to collect such tax in the same manner as county treasurers are authorized by law to collect personal property taxes. [R. C. 1905, § 1537; 1901, ch. 26, § 4.]

Express company's property used in interstate commerce is assessable. *State v. State Board*, 3 S. D. 338, 53 N. W. 192.

All railway property, including side tracks, station, and freight houses, assessable by state board. *C. M. & St. P. Ry. Co. v. Cass County*, 8 N. D. 18, 76 N. W. 239.

Assessment not invalid because value fixed was less than actual value when there is doubt as to liability of property taxation. *Schuttuck v. Smith*, 6 N. D. 56, 69 N. W. 5.

A telephone company neglecting to file a statement cannot complain of assessment. *Iowa & Dakota Tel. Co. v. Schamber*, 15 S. D. 588, 91 N. W. 78.

Mileage tax does not cover lands to be used for railroad purposes in future. *St. Paul, M. & M. R. Co. v. Howard*, 119 N. W. 1032, 23 S. D. 34.

ARTICLE 8.—RATE OF TAXATION AND LEVY.

§ 2148. Taxes to be levied in specific amounts. Rate, how determined. All county, township, town, city and school district taxes, except special taxes for local improvements, in cities or villages, or unless specially provided for by law, shall be levied or voted in specific amounts and the rate per centum shall be determined from the amount of property as equalized by the state board of equalization each year. The state tax shall be levied by the state board of equalization at its annual meeting in August of each year, and the rate of such tax shall be certified by the state auditor to each county auditor on or before the first day of September annually. In levying said tax the state board of equalization shall be limited by the amount necessary to raise for the purpose of meeting the appropriations made by the legislative assembly and the estimated general expenses of the state, as made by the auditor. Such levy shall be made in a specific amount, and the rate shall be determined by the state auditor; provided, that if the amount is greater than the rate prescribed in the constitution will raise, then the state auditor shall only certify the limited rate. The county taxes shall be levied by the county commissioners at the time of their meeting in July in each year. Such taxes shall be based upon an itemized statement of the county expenses for the ensuing year and a general statement of the outstanding indebtedness of the county, which statements shall be included in the published proceedings of said board, and no greater levy of county tax shall be upon the taxable property of any county than will equal the amount of such expense, plus five per cent of such amount, together with the amount of one year's interest upon, and ten per cent of the principal sum of its outstanding indebtedness. The taxes voted by incorporated cities, villages, townships or school districts shall be certified by the proper authorities to the county auditor on or before the twentieth

day of July in each year. The rate per centum of all taxes, except the state tax and such other taxes, the rate of which may be fixed by law, shall be calculated and fixed by the county auditor, according to the limitations herein-after prescribed; provided, that if any county, city, town or school district shall return a greater amount than the prescribed rate will raise, then the county auditor shall only extend such amount of tax as the limited rate will produce. Any city, village, town, township or school district officer required by law to report the amount of taxes to be levied for such city, town, township, village or school district, and neglecting or refusing to make such report within the time required by this section, shall be subject to a penalty of not less than twenty-five dollars for such refusal or neglect, to be recovered on complaint of the county auditor before any court of competent jurisdiction. [R. C. 1905, § 1538; 1897, ch. 126, § 50; R. C. 1899, § 1228.]

Tax upon roadbed, franchise, real estate, rolling stock and other railroad property tax upon personal property. Minn. St. P. & S. Ry. Co. v. Dickey County, 11 S. D. 107, 90 N. W. 260.

§ 2149. County auditor to acknowledge receipt of tax levy. The county auditor of such [each] county in this state upon receipt of tax levies certified to him by the proper authorities of any incorporated city, village, town, township or school district in this state, shall, immediately upon receiving such tax levies so certified to him, acknowledge receipt thereof to the proper officer of any incorporated city, village, town, township or school district transmitting any such tax levy to him. [1911, ch. 113.]

§ 2150. State and county tax. Rate. Road tax. Sinking fund. The rate of the general state tax shall not be more than four mills on the dollar valuation; and for ordinary county revenue, including the support of the poor, not more than eight mills on the dollar; and for roads and bridges, a poll tax of one dollar and a half, or one day's work, on every male person between the ages of twenty-one and fifty years; a bridge tax not to exceed two mills on the dollar, and a road tax not to exceed five mills on the dollar, valuation, to be paid in money, or in labor at the rate of one dollar and a half per day, at the option of the person taxed, and the certificate that the person named therein has actually performed eight hours' labor for each day's work so certified, shall be received by the county treasurer in discharge of said tax to the amount so certified; and a further tax of not to exceed two mills on the dollar upon all taxable property in the county for emergency purposes; for county sinking fund, such rate as may be fixed by any funding act passed by the legislative assembly, or in the absence of a provision in any such act, or in counties that shall have not funded their indebtedness, then such rate as, in the estimation of the board of county commissioners, will pay one year's interest on all the outstanding debts of the county, with ten per cent on the principal sum of such debts. [R. C. 1905, § 1539; 1897, ch. 126, § 51; R. C. 1899, § 1229; 1901, ch. 151.]

§ 2151. Electors may vote sums of money for road work. The electors of each township have power at the annual meeting to vote to raise such sums of money for the repair and construction of roads and bridges, for the support of the poor, and for all township charges and necessary expenses, as they deem expedient; provided, that they may, at their annual meeting, direct such an amount of the poll or road tax of the township to be expended on the highways in an adjoining township, as they deem conducive to the interests of the township, which labor and tax shall be expended under the direction of the supervisors of the township furnishing the same; provided, further, that where more than one entire congressional township is included within an organized township, the poll and road taxes raised within the limits of each of such congressional townships shall be expended within such congressional townships, unless raised to be expended outside of such organized townships

in an adjoining township; provided, further, that the amount of tax for road purposes shall not exceed eight mills, and for bridge purposes shall not exceed two mills, and that the levy of all township taxes shall be in the manner prescribed in section 2148, and that the township clerk shall notify the county auditor of all such levies as provided in section 4237; provided, further, that none of the provisions of this section shall be construed as conflicting with the provisions of article 9, chapter 19, of the political code [sections 2004-2034 herein]; provided, also, that the board of county commissioners shall have the same jurisdiction in relation to roads and bridges, and the same power to levy road taxes in the unorganized parts of counties, as the township supervisors now have in organized townships. [R. C. 1905, § 1540; 1883, sub-ch. 1, ch. 112, §§ 13, 101; 1895, ch. 91, § 3; R. C. 1899, §§ 2542, 2640, 2670; 1901, ch. 151, § 2; 1903, ch. 172.]

On right to raise money for highway purposes at annual town meeting, and disposition of fund illegally raised. *Miner v. Clifton Twp.*, 30 S. D. 127, 137 N. W. 585.

§ 2152. Tax list made out by county auditor. Form. As soon as practicable after the taxes are levied, the county auditor shall make out the tax lists according to the prescribed form, and to correspond with the assessment districts of the county. The rate per cent necessary to raise the required amount of the various taxes shall be calculated on the assessed valuation of property as determined by the state board of equalization; but in calculating such rates, no rates shall be used resulting in any fraction of less than one-half of one-tenth of a mill; and in extending any tax whenever it amounts to the fractional part of a cent it shall be made one cent. The tax list shall also be made out to correspond with the assessment book, in reference to ownership and description of property, with columns for the valuation and for the various items of tax included in the total amount of all taxes set down opposite such description of property. The amount of special taxes shall be entered in the proper columns, but the general taxes may be shown by entering the rate per cent of each tax at the head of the proper columns without extending the same, in which case a schedule of the rates per cent of such taxes shall be made on the first page of each tax list; such tax lists shall also show in a separate column the years for which any piece or parcel has been sold for taxes, if the same has not been redeemed or deeded for such taxes. The county auditor shall on or before the first day of November in each year, make and transmit to the state auditor, in such form as the state auditor may prescribe, a complete abstract of the tax list of his county. [1911, ch. 112; R. C. 1905, § 1441; 1883, sub-ch. 2, ch. 112, § 31; 1887, ch. 158, § 2; R. C. 1899, § 1141.]

§ 2153. Certificate of county auditor in tax book. It shall be the duty of the county auditor to make in each tax book or list a certificate in the following form, viz.:

State of North Dakota, } ss.:
County of

I, auditor of county, state of North Dakota, hereby certify that the following is a correct list of the taxes levied on the real and personal property in the town (or district as the case may be) of for the year

Witness my hand and the official seal this day of 19...
..... County Auditor.

[R. C. 1905, § 1542; 1897, ch. 126, § 53; R. C. 1899, § 1231.]

§ 2154. Tax lists, when delivered to treasurer. The county auditor shall deliver the tax lists of the several districts of the county to the county treasurer on or before the first day of December in each year, taking his receipt therefor; and such list shall be full and sufficient authority for the county treasurer to receive and collect taxes therein levied. [R. C. 1905, § 1543; 1897, ch. 126, § 54; R. C. 1899, § 1232; 1903, ch. 164.]

As to necessity of attaching warrant to tax list. *Fisher v. Betts*, 12 N. D. 197, 96 N. W. 132.

ARTICLE 9.—THE COUNTY TREASURER AND HIS DUTIES.

§ 2155. Notice of rates of taxation and time for payment. Deputy treasurer. On receiving the tax lists from the county auditor, the treasurer shall give notice in one or more official newspapers of the county, once in each of three successive weeks, specifying particularly in said notice the rates of taxation for all general purposes, and the amounts raised for each specific purpose, also designating a day on which he or his deputy will attend at the place of holding elections, or at some other convenient place in each town or district, which day shall not be prior to the first day of January in each year, for the purpose of receiving such taxes, and the treasurer or his deputy shall attend, for the purpose aforesaid, on the day and at the place named in said notice. The county treasurer shall, if directed by the county commissioners, have duplicate tax lists made, at the expense of the county, for his use while collecting taxes away from the county seat; and he may appoint one or more deputies to assist him in the collection of taxes, and may take such bond as security from the person so appointed as he deems necessary for his indemnity, and shall in all cases be liable and accountable for the proceedings and misconduct of his deputies in office. [R. C. 1905, § 1544; 1897, ch. 126, § 55; R. C. 1899, § 1233.]

As to notice to taxpayer of tax proceedings. *Beggs v. Paine*, 15 N. D. 436, 109 N. W. 322.

§ 2156. County treasurer collector of taxes. The county treasurer shall be the receiver and collector of all taxes extended upon the tax lists of the county, whether levied for state, county, city, town, school, poor, bridge, road or other purposes, notwithstanding anything in the charter of any city, or town, or in any other act heretofore passed to the contrary, including the special taxes of local improvements in cities as provided for by law, and also of all fines, forfeitures or penalties received by any person or officer for the school fund or for the use of his county and he shall proceed to collect the same according to law, and place the same when collected to the credit of the proper funds; but this provision shall not be construed so as to include any fines or penalties accruing to any municipal corporation for the violation of its ordinances. All tax receipts issued by the county treasurer shall be numbered consecutively, commencing with number one on the first receipt issued for the taxes of any one year, and he shall not receipt for more than one year's taxes on the same property in one tax receipt, but shall keep a separate and distinct series of numbers of receipts issued for the taxes of each year, for which the same has been levied and assessed in this state. [R. C. 1905, § 1545; 1897, ch. 126, § 56; R. C. 1899, § 1234.]

County not authorized to retain from amounts collected as taxes for school district any portion of expenses incurred in making collection. *Mineral School Dist. No. 10 v. Pennington County*, 19 S. D. 602, 104 N. W. 270.

§ 2157. Tax receipts, what to specify. Numbered consecutively. Duplicates. The county treasurer, upon the payment of any tax, shall give to the person paying the same a receipt therefor, specifying therein the land, town or city lot, or other property on which said tax was levied, according to its description on the tax list, or in some other sufficient manner, and the year or years for which the tax was levied, and each year's tax shall be on a separate receipt and the receipts for each year shall be numbered from one upwards, until the tax list is returned to the auditor. Each receipt shall also specify the years for which any of the real estate described therein has been sold for taxes and not redeemed. The said receipt shall be made in duplicate, showing the name of the person, description of property, and the amount and date of payment; and the county treasurer shall return all such duplicate receipts, made by himself or deputies, to the auditor at the end of each day, who shall file and preserve them in his office, charging the treasurer with the amount thereof. [R. C. 1905, § 1546; 1897, ch. 126, § 57; R. C. 1899, § 1235.]

§ 2158. Treasurer may summon posse. Penalty for refusal. If the treasurer is resisted or impeded in the execution of his office he may require any suitable person or persons to aid him therein, and if any such person refuses to aid, he shall forfeit a sum not exceeding ten dollars, to be recovered by civil action in the name and for the use of the county, and the person or persons resisting shall be liable, as in the case of resisting the sheriff in the execution of civil process. [R. C. 1905, § 1547; R. C. 1899, § 1236.]

§ 2159. Treasurer to keep a cash book. The county treasurer is required to keep a cash book, in which he shall enter an account of all moneys by him received, specifying, in proper columns provided for that purpose, the date of the payment, the number of the receipt issued therefor, by whom paid, and the several items as the same appear on the tax list, and the amount paid in road orders and supervisor's receipts, each in a separate column, and the total amount for which the order or receipt was given in another column, and the treasurer shall keep his account of money received for and on account of taxes levied and assessed for any one year separate and distinct from those levied or assessed for any other year, and all entries in said cash book of moneys received for taxes shall be in the numerical order of the receipts issued therefor. [R. C. 1905, § 1548; R. C. 1899, § 1237.]

§ 2160. Receipts for fines. Office hours. Custodian of warrants. Whenever the treasurer receives any money on account of fines or any other account, except taxes charged on the duplicate, he shall make out duplicate receipts, one of which receipts he shall deliver to the person paying, and the other he shall deposit with the county auditor at the close of business each day, in order that the treasurer may be charged with the amount thereof. The treasurer shall enter the same in his cash book, as in case of moneys received for taxes, but in a separate place, and with a separate and distinct series of numbers of receipts issued therefor. The county treasurer shall keep his office open from nine o'clock a. m. to four o'clock p. m. of each business day, and shall, within seven days after the close of business on each day, transmit to the county auditor the duplicate receipts of all moneys received and cancelled by him during the day, all warrants paid, all receipts taken and received for money paid out, except as hereinbefore provided. The auditor shall be custodian of such receipts, warrants and vouchers, and shall keep the same in some safe place to be provided by the county commissioners. He shall receipt to the treasurer for each and every receipt, warrant and voucher delivered to him, stating in said receipt the number and amount of each receipt, warrant and voucher. The county auditor shall forthwith compare said tax receipts and all other receipts, warrants and vouchers with the books of the treasurer; and if, upon said comparison, he finds said receipts are in all respects correct, and are given for the actual amount due and paid into the treasury or for the amount actually paid out, as the case may be, that the warrants were actually paid, and that all such items and amounts have been properly entered upon the treasurer's books, he shall so certify on the back of said receipts, but if any errors or omissions are found, he shall report the same to the county commissioners without delay, unless the error is corrected in his presence. [R. C. 1905, § 1549; 1881, ch. 117, § 1; R. C. 1899, § 1238.]

§ 2161. Auditor to keep duplicate treasurer's cash book. The county auditor is required to keep a duplicate of the treasurer's cash book, and to enter therein all duplicate receipts by him received from the treasurer, in the same manner and form as the treasurer is required to enter the same. [R. C. 1905, § 1550; R. C. 1899, § 1239.]

§ 2162. What orders receivable for taxes. The county treasurer shall receive in payment of taxes, orders or warrants on the several funds for which taxes may be levied, to the amount of the tax for such fund, without regard to priority of the numbers of the same, except when otherwise provided by law; and he shall write or stamp across the face of all such orders or warrants

the date of their receipt and the name of the person from whom received. [R. C. 1905, § 1551; 1897, ch. 126, § 58; R. C. 1899, § 1240.]

City warrant upon general fund should be received by county treasurer in payment of city taxes. *Western Town Lot Co. v. Lane*, 7 S. D. 599, 65 N. W. 17.

§ 2163. Erroneous assessment, how and by whom corrected. If on the assessment roll or tax list there is any error in the name of the person assessed or taxed, the name may be changed and the tax collected from the person intended, if he is taxable and can be identified by the assessor or treasurer; and when the treasurer, after the tax list is committed to him, shall ascertain that any land or other property is omitted, he shall report the fact to the county auditor, who, upon being satisfied thereof, shall enter the same upon his assessment roll and assess the value, and the treasurer shall enter it upon the tax list and collect the tax as in other cases. [R. C. 1905, § 1552; R. C. 1899, § 1241.]

Assessment of real estate in name of another than owner does not render tax void. *Hartzler v. Freeman*, 12 N. D. 187, 96 N. W. 294.

ARTICLE 10.—TAX PAID BY MISTAKE.

§ 2164. Tax paid by mistake. Correction. When any tax upon land for a given year shall have been paid through error or mistake of the county treasurer or auditor or by reason of the mistake of the party so paying the same, the county commissioners, upon affidavit of the party paying said tax and sufficient showing thereon and upon the filing of a satisfactory bond in the penalty of three times the face of the tax to indemnify the county, and all parties interested, shall cause to be corrected such error or mistake and may make proper application of the tax payment according to the affidavit of the party paying said taxes, and the books in the office of the county treasurer and auditor shall be corrected by making proper notation in red ink. Provided, that the treasurer, upon making any such correction, shall immediately cause a written notice of the same to be served personally or by registered mail upon the record owner of the land upon which the tax payment was cancelled. [1911, ch. 296.]

ARTICLE 11.—DELINQUENCY, PENALTY AND LIEN OF TAXES, DISTRESS AND SALE.

County commissioners, sitting as board of county commissioners, have no power to reduce individual assessments except in special instances. *Minot v. Amundson*, 22 N. D. 236, 133 N. W. 551.

§ 2165. Abatement of taxes, how made. The board of county commissioners may, upon affidavit or other evidence, when satisfied beyond a doubt as to the illegality or unjustness of the assessment or in case of error, abate taxes whether real or personal. Full record of such abatement must be made, showing the reason for their action, and the county auditor shall certify such abatement to the county treasurer, who shall enter such facts opposite the tax so abated, which shall have the effect of discharging such tax. And whenever taxes on any real estate remain unpaid and such property has not been sold to any purchaser other than the county, by reason of depreciation in value or other cause, the board of county commissioners may compromise with the owner of such property by abating a portion of such delinquent taxes on payment of the remainder. The county auditor shall also make out a certified statement of the amount of state taxes so abated, which statement shall be forwarded to the state auditor, who shall give the county credit for the amount so abated. [R. C. 1905, § 1553; 1897, ch. 126, § 59; R. C. 1899, § 1242.]

As to powers of board of county commissioners. *Hagler v. Kelly*, 14 N. D. 218, 103 N. W. 629.

County commissioners sitting as board of county commissioners have no power to reduce individual assessments except in special instances. *Minot v. Amundson*, 22 N. D. 236, 133 N. W. 551.

Fee owner of land not subject to taxation may recover money paid to redeem from tax sale, although sale was not declared void. *Tisdale v. Ward County*, 20 N. D. 401, 127 N. W. 512.

§ 2166. Delinquent personal property taxes. When due. Penalty. Distress. All personal property taxes shall become due on the first day of December in each and every year for which the tax was levied, and become delinquent on the first day of March next after they become due, and thereupon a penalty of five per cent shall attach and be charged upon all delinquent taxes, and thenceforth there shall be charged interest at the rate of one per cent per month on the original amount of the tax until the same is paid. The county treasurer shall, during the month of January preceding the time when such tax shall become delinquent, give notice of the fact by mailing to each person, firm or corporation, a written notice stating the amount of tax due from each person, firm or corporation, and the date when same shall become delinquent. On or before the first day of September in each year the county treasurer shall make out a list of the unpaid delinquent personal property taxes, in the same order as they appear on the tax list, and shall, on or before the fifteenth day of September thereafter, notify by mail each of the delinquents that unless such taxes are paid on or before the fifteenth day of October, such taxes will be placed in the hands of the sheriff for collection, and the county treasurer shall on said fifteenth day of October deliver such list of delinquent taxes to the sheriff of his county, who shall immediately proceed to collect all such delinquent personal property taxes, and if such taxes are not paid upon demand he shall distrain sufficient goods and chattels belonging to the person, firm or corporation charged with such taxes if found within the county, to pay the same, with the said penalty of five per cent and all accruing interest and costs, and shall immediately proceed to advertise the same by posting notices in three public places in the town or district where such property is taken, stating the time when, and the place where, such property shall be sold, and the amount of said delinquent tax, together with the penalty and accruing interest, which place of sale shall be at the residence or place of business of the person, firm or corporation whose goods have been distrained, or in case such person, firm or corporation has no residence or place of business within the town or district where such goods have been distrained, then at the place of sale of mortgaged chattel property within such town or district and no personal property shall be exempt from distraint and sale; and if the tax for which said property is distrained, together with the penalty and accrued interest and costs is not paid before the day appointed for such sale, which shall not be less than ten days after the taking of such property, such sheriff or his deputy shall proceed to sell such property at public vendue, or so much thereof as shall be sufficient to pay such taxes, penalty and costs of such distress and sale, and any surplus arising from said sale shall be disposed of as in case of sale of mortgaged personal property. On the first day of each month after receiving such list from the county treasurer such sheriff shall make out and file with the county treasurer a statement of the personal property tax collected by him, since the date of his last preceding statement, giving the name, town or district and post office address of each person, firm or corporation from whom collected, and the amount of the tax, including the penalty and interest collected from each, and at the same time turn over to the county treasurer the moneys collected as shown by such statement, and the treasurer shall issue receipts for the same as provided in section 2157, mailing such receipt to the person, firm or corporation entitled thereto. Such sheriff shall, at the time of filing such statement with the county treasurer, file a duplicate thereof with the county auditor, and shall on or before the first day of January next after receiving such list from the county treasurer file his annual statement of taxes collected as herein provided, together with the list of uncollected taxes as provided in section 2169; provided that all personal property taxes shall be a lien upon the property assessed from and after the date upon which assessment is made and it shall be the duty of the sheriff when

any person to whom personal property shall have been assessed is, in his opinion, about to sell, barter or remove said property from the county, to collect such taxes at any time after the property shall have been assessed. The sheriff shall retain in his office the original delinquent tax list furnished him by the county treasurer, and it shall be his duty to collect at any time any taxes remaining uncanceled, unabated or unpaid, and on sending his notice for each succeeding year he shall include any unpaid balances together with interest, penalties and costs, with the new delinquent amount, and they shall be collected in the same manner as the current delinquent tax. [1911, ch. 300; 1909, ch. 197; R. C. 1905, § 1554; 1899, ch. 134; R. C. 1899, § 1243; 1903, ch. 134; 1905, ch. 145.]

Injunction against sale of property for illegal taxes. 69 Am. Dec. 198; 49 Am. Rep. 287; 23 Am. Rep. 622; 53 Am. Rep. 110.

§ 2167. Sheriffs shall file tax receipts. What to specify. Numbered consecutively. Triplicates. Every sheriff, upon the payment of any delinquent personal property tax collected by him or his deputy, shall give to the person paying the same a receipt therefor, specifying therein the name of the person paying the same, the year's tax, and the amount and date of payment; each year's tax shall be on a separate receipt, which receipt shall be numbered consecutively from one upwards; each receipt shall be made in triplicate showing the name of the person, year's tax, and the amount and date of payment; and the sheriff shall return all duplicate receipts made by himself or his deputy to the auditor at the end of each month and keep the triplicate receipts on file in his office; and the auditor shall carefully compare and check such duplicate receipts with the report filed with the county treasurer each month by the sheriff for the collection of said taxes and the auditor shall file and preserve them in his office and give to the sheriff a receipt therefor. [1911, ch. 274, § 1.]

§ 2168. Failure. Penalty. Any sheriff who shall fail to comply with the provisions of section 2167 shall, upon conviction thereof, be fined not less than twenty-five dollars nor more than one hundred dollars for each offense. [1911, ch. 274, § 2.]

§ 2169. List of uncollected taxes, how disposed of. If the sheriff is unable to collect any of the taxes appearing in the list of delinquent taxes delivered to him by the treasurer, he shall write on the margin opposite the name of each person against whom such tax is assessed the word "uncollected," and append to such list his affidavit, or the affidavit of his deputy intrusted with the collection thereof, stating that he has made diligent search and inquiry for goods and chattels out of which to make collection of the taxes so remaining uncollected, and is unable to make or collect the same; he shall also note on the margin of such list the place to which any delinquent taxpayer has moved, with the date of removal, if he can ascertain such facts, and shall on or before the first day of January following the receipt of such lists, deliver the same with the affidavit aforesaid to the county auditor. The county auditor shall exhibit such list to the board of county commissioners at its next meeting and the board shall thereupon examine and compare the same with the sheriff's return of taxes collected, to the auditor and treasurer, and may cancel on said list such taxes as they are satisfied cannot be collected, furnishing such lists of cancellation to the sheriff, who shall note on his list that such taxes have been cancelled, and it shall be the duty of the county auditor to certify to the state auditor the amount of state taxes so cancelled and the state auditor shall enter the same to the credit of the county accordingly. [R. C. 1905, § 1555; 1897, ch. 126, § 61; R. C. 1899, § 1244; 1903, ch. 134; 1905, ch. 145.]

§ 2170. Removal or disposal of personal property on which taxes are unpaid a misdemeanor. Any person who shall remove from the state or dispose of any personal property that has been assessed for the purpose of taxation while such person shall be owing any personal property taxes within

the state shall be deemed guilty of a misdemeanor; provided, such property be so removed or disposed of with the intention of avoiding the payment of personal property taxes. [R. C. 1905, § 1556; 1905, ch. 144.]

See also section 2187.

§ 2171. Lien of state and county for personal taxes. The right of the state and each and every county thereof to enforce the collection of personal property taxes shall take and have precedence of any and all liens on or against personal property of a tax debtor; provided, that any person holding a lien on personal property of any tax debtor may demand and require the property of the tax debtor not covered by a lien to be first exhausted in the payment of such taxes. [R. C. 1905, § 1557; 1901, ch. 150.]

Preference created was right merely to extent of taxes assessed against particular property covered by lien and property included in same class and assessed with it as one indivisible item as disclosed by assessment list. *Advance Thresher Co. v. Beck*, 21 N. D. 55, 128 N. W. 315, Ann. Cas. 1913B, 517.

§ 2172. Delinquent personal taxes. Collection. Whenever it is deemed expedient by the board of county commissioners of any county to collect delinquent personal taxes by action, they shall have the power to institute such an action in the name of the county for and on behalf of the county. [R. C. 1905, § 1558; 1901, ch. 163.]

Personal liability for taxes, and remedies for its enforcement. 42 Am. St. Rep. 655.
Recovery by taxpayer of taxes paid. 22 Am. Dec. 519; 45 Am. Dec. 164; 94 Am. St. Rep. 425.

§ 2173. Contract for collection. In any county where for any reason personal property taxes that have been delinquent more than one year remain unpaid, uncanceled or not put into personal property tax judgment, or in any county where delinquent taxes have been put into tax judgment, the commissioners of such county may contract with the sheriff of the county to pay him a percentage of such delinquent personal property taxes, or personal property tax judgments, as compensation for collecting the same, in lieu of or in addition to the compensation now provided by law. And such expense of collection shall be borne pro rata by the state, county, city, village, township or school district in which such tax is laid. [R. C. 1905, § 1559; 1901, ch. 164.]

§ 2174. Lien for delinquent personal taxes. After the county commissioners have cancelled so much of the delinquent taxes as they deem uncollectible as provided in the preceding section, the county auditor shall extend to and enter upon the tax list in the hands of the treasurer for the same year in an appropriate column or columns for remarks, opposite each description of real property belonging to any person owning such uncollected personal property tax, words showing the year for which the same remains due, and the principal sum of such tax, as for example, "personal tax, 1896, twelve dollars and seventy-eight cents." And when the delinquent afterwards acquires any real property in the county such delinquent taxes may be entered in like manner upon any subsequent tax list; and from the time of such entry the delinquent taxes so entered shall become a lien on any real property of the delinquent against which they are so entered in the same manner and to the same extent as the taxes upon such real property, and collection thereof shall be enforced accordingly by sale of the lands against which they are so entered, or so much thereof as may be necessary, at the time when the lands are sold for delinquent taxes, and in the same manner as if originally charged against such lands. [R. C. 1905, § 1560; 1897, ch. 126, § 62; R. C. 1899, § 1245.]

§ 2175. Neglect or refusal of treasurer or sheriff. Penalty. If any county treasurer shall refuse or neglect to collect any tax assessed upon personal property where the same is collectible, or to file the delinquent list and affidavit as herein provided, he shall be held, in his next settlement with the auditor, liable for the whole amount of such taxes uncollected, and the same shall be deducted from his salary or fees and applied to the several funds

for which they were levied, and any refusal or neglect on the part of the sheriff to perform the duties herein provided, whereby he fails to collect such delinquent taxes, shall be deemed malfeasance in office and he shall be liable to the county for the whole amount of tax, penalty and interest that he may neglect or refuse to collect. A failure of an assessor to return his assessment to the county auditor, or of the county auditor to report the changes made therein to the state auditor, or to return to the state auditor an abstract of the tax lists of his county, or to deliver said lists to the county treasurer, or a failure of the treasurer to return the same to the county auditor at the time or times specified in this article, or a failure on the part of the treasurer to do any of the things prescribed in section 2155 and section 2166, or a failure on the part of the sheriff to make an affidavit prescribed by section 2169, or to return his list at the time therein prescribed, or to make collection of any taxes appearing thereon, or a failure on the part of any officer to do any act at the particular time specified in this chapter, shall in no manner invalidate any tax levy or any certificate of tax sale or tax deed. And when any notice is required to be published in a newspaper by the provisions of this article, if the same is printed in a supplement mailed and distributed with and as a part of the newspaper receiving the same for publication, such publication shall be deemed sufficient. [R. C. 1905, § 1561; 1897, ch. 126, § 63; R. C. 1899, § 1246.]

§ 2176. Removal of delinquent taxpayer to another county. Duty of auditor. In case of the removal of any delinquent taxpayer from the county in which his personal property was taxed to any other county in the state, it shall be the duty of the assessor to immediately make proper effort to ascertain the place of his destination and report the same to the county auditor, and thereupon it shall be his duty to make out and forward to the clerk of the district court of any county in this state to which any delinquent taxpayer may have removed, a statement of the amount of such delinquent taxes, including all penalties, interest and costs that may have attached, specifying the value of property on which said taxes were levied. [R. C. 1905, § 1562; 1897, ch. 126, § 64; R. C. 1899, § 1247.]

§ 2177. Manner of collecting from such person. On receipt of any such statement or account, the clerk of the court receiving the same shall issue his warrant to the sheriff of his county, and the sheriff shall immediately proceed to collect the same of the person so charged with said taxes and per centum, together with a fee of twenty-five cents for each warrant so issued; which sum, when collected, shall be paid to the clerk as his fee for issuing the same, and all taxes thus collected shall be by him remitted to the treasurer of the county to which said taxes belong; and at the same time he shall return the original statement or account to the auditor of the county from which it was received, stating the amount of his collections, and if any taxes remain unpaid, the reason why said taxes could not be collected, certifying in his official capacity to the same; and the auditor shall charge the treasurer to whom such remittance is made with the amount thereof, and cancel said taxes from the list; provided, that in all cases of delinquent taxes collected by the sheriff receipts shall be issued to him and payment shall be made in the manner provided in section 2157. [R. C. 1905, § 1563; 1897, ch. 126, § 65; R. C. 1899, § 1248.]

§ 2178. Fees of sheriff. The sheriff or his deputy shall be allowed the same fees for making distress and sale of goods and chattels, for the payment of taxes, as are allowed by law for making levy and sale of property on execution; provided, however, that the traveling fees shall be five cents a mile for each mile actually and necessarily traveled, and that in no case shall the mileage herein provided for be charged more than once under any pretext whatever, which fees shall be added to any tax and collected by the sheriff, and it shall be the duty of the sheriff or his deputy to furnish the county

commissioners, together with his bill for such services, a full and complete description of his route traveled, and in no case shall mileage be charged more than once from the county seat of the county in which the services required in this article are performed; provided, further, however, that when the sheriff collects delinquent personal tax without distress and sale he shall receive a fee of one dollar on such collection, to be paid by the delinquent. [R. C. 1905, § 1564; 1897, ch. 126, § 66; R. C. 1899, § 1249; 1903, ch. 170.]

Error to assess in owner's name does not render tax void, statute merely directory. *Hertzler v. Caas Co.*, 12 N. D. 187, 96 N. W. 294.

§ 2179. Payment of taxes after judgment. Duty of treasurer. Upon payment to the county treasurer of any personal property tax for which judgment has been obtained, the treasurer shall deliver a certificate of the fact of such payment to the clerk of the court, who shall satisfy the judgment upon the margin of the record thereof, by stating the date of payment, and number of the receipt given therefor, and file such certificate. [R. C. 1905, § 1565; 1897, ch. 126, § 67; R. C. 1899, § 1250.]

§ 2180. Settlement between treasurer and auditor. On the first day of each month of each year the county treasurer shall make a full settlement with the county auditor of his receipts and disbursements since the last settlement, and turn over to the auditor county warrants and other vouchers paid by him and all auditor's warrants paid, taking the receipt of the auditor for such vouchers, and the auditor and treasurer shall distribute and credit to the proper funds all sums received since the last settlement. [R. C. 1905, § 1566; 1897, ch. 126, § 68; R. C. 1899, § 1251.]

Distress may be made without actual seizure of bulky property. *Elevator Co. v. Bottineau County*, 9 N. D. 346, 83 N. W. 212.

§ 2181. Accounts to be kept by auditor and treasurer with township. The county auditor and county treasurer shall keep accounts with the state and county, and with each township, city, incorporated village and school district in the county; and immediately after the settlement as provided in the preceding section they shall credit the collections to the proper funds; and upon application of any town, city, village or school district treasurer, the auditor shall give him an order on the county treasurer for the amount due such township, city, village or school district, and shall charge them respectively with the amount of such order; and at the same time shall notify the clerk of each township, city, village or school district of the issuance of such order; provided, that the county auditor shall not issue his order as in this section provided until the bond of the person applying for such order shall have been filed as required by law. [R. C. 1905, § 1567; 1897, ch. 126, § 69; R. C. 1899, § 1252.]

§ 2182. When treasurer shall pay over the funds collected. The county treasurer shall immediately after each settlement pay over to the treasurer of the state, upon warrant of the state auditor, and to any municipal corporation or organized township, or any body politic, on the order of the county auditor, all moneys received by him arising from taxes levied and collected, belonging to the state, or to such municipal corporation or organized township or school district. If any county treasurer shall willfully and negligently fail to settle with the state treasurer at the times and in the manner prescribed by law, he shall forfeit to the use of the state the sum of five hundred dollars, which sum may be recovered of him or his sureties on suit brought by the state treasurer in the name of the state, in any court in this state having jurisdiction; or, in case of failure of the state treasurer to bring such suit, then any citizen of the state may bring the same. [R. C. 1905, § 1568; 1897, ch. 126, § 70; R. C. 1899, § 1253.]

County not authorized to retain from amounts collected as taxes for school district any portion of expenses incurred in making collection. *Mineral School Dist. No. 10 v. Pennington County*, 19 S. D. 602, 104 N. W. 270.

§ 2183. County responsible for state taxes. Liability of county treasurer. Each county is responsible to the state for the full amount of tax levied for

state purposes, excepting such amounts as are certified to be unavailable, double or erroneous assessments as hereinafter provided. If any county treasurer proves to be a defaulter to any amount of state revenue, such amount shall be made up to the state within the next three coming years by additional levies in such manner in annual amounts as the board of commissioners may direct. In such case the county can have recourse to the official bond of the treasurer for indemnity. [R. C. 1905, § 1569; R. C. 1895, §§ 1248, 1249; R. C. 1899, § 1254.]

§ 2184. County treasurer's final settlement, how made. When the county treasurer goes out of office, he shall make a full and complete settlement with the board of commissioners, and deliver up all books, papers, moneys and all other property pertaining to the office to his successor, taking his receipt therefor. The board of commissioners shall make a statement so far as state dues are concerned to the state treasurer, showing all charges against the treasurer during his term of office, and all credits made, the delinquent taxes and other unfinished business charged over to his successor, showing to what year and to what account the amount so paid over belongs. They shall also see that the books of the treasurer are correctly balanced before passing into the possession and control of the treasurer-elect. They shall witness and attest the actual transfer and delivery of accounts, books, vouchers and all funds by any outgoing treasurer to his successor in office, whether the treasurer is succeeded by himself or another; and they shall cause to be entered of record their full compliance with the requirements of this section. [R. C. 1905, § 1570; 1895, § 1254; R. C. 1899, § 1255.]

§ 2185. Real estate taxes due and delinquent, when penalty and interest. All real estate taxes shall become due on the first day of December in each and every year for which the tax is levied, and become delinquent on the first day of March following, and if unpaid there shall attach thereto a penalty of five per cent as soon as the same become delinquent; also on the first day of June following an additional penalty of two per cent, and on the first day of November following a further penalty of three per cent on the original tax, and the same shall be charged and collected accordingly, without being specially entered or noted on the tax list. [1911, ch. 299; R. C. 1905, § 1571; 1899, ch. 134; R. C. 1899, § 1256; 1903, ch. 163.]

Special assessments bear simple interest at 7 per cent per annum from time that they must be paid. *Hackney v. Elliott*, 23 N. D. 373, 137 N. W. 433.

§ 2186. Taxes a perpetual lien. Vendor and vendee. Taxes upon real property are hereby made a perpetual paramount lien thereupon against all persons and bodies corporate, except the United States and the state, and taxes due from any person upon personal property shall be a lien upon any and all real and personal property owned by him at the time the tax became due, or which may be subsequently acquired by him, and the title to any of which personal property so owned or subsequently acquired remains in him at the time of the distraint. All taxes shall, as between vendor and purchaser, become a lien upon real estate on and after the first day of December in each year. [R. C. 1905, § 1572; 1897, ch. 126, § 72; R. C. 1899, § 1257.]

Tax not a personal obligation, mere charge on land. *Hertzler v. Cass Co.*, 12 N. D. 187, 96 N. W. 294.

Personal taxes not a superior lien to prior mortgage. *Miller v. Anderson*, 1 S. D. 539, 47 N. W. 957; *Buell v. Boylen*, 10 S. D. 180, 72 N. W. 406.

Timber culture claim after issuance of final certificate is subject to levy for prior personal taxes. *Danforth v. McCook County*, 11 S. D. 258, 76 N. W. 940, 74 Am. St. Rep. 808.

Lien for personal property taxes not invalid because county auditor filed no return showing them uncollectible out of personal property. *Danforth v. McCook County*, 11 S. D. 258, 76 N. W. 940, 74 Am. St. Rep. 808.

The lien of a county not lost by bidding in land at tax sale. *Rochford v. Fleming*, 10 S. D. 24, 71 N. W. 317.

Lien for personal taxes is superior to subsequent mortgage. *Iowa Land Co. v. Douglas County*, 8 S. D. 491, 67 N. W. 52.

Holder of tax certificates, paying taxes, acquires lien on building removed from lot after levy and before payment of tax by owner. *Easton v. Crammer*, 19 S. D. 224, 102 N. W. 944.

Owner of tax sale certificates may pay subsequent delinquent general taxes, without paying subsequent special assessments, and receipts for such taxes constitute additional lien. *State ex rel. Moore v. Furstenau*, 20 N. D. 540, 129 N. W. 81.

Lien upon tax debtor's property was not preferential. *Advance Thresher Co. v. Beck*, 21 N. D. 55, 128 N. W. 315, Ann. Cas. 1913B, 517.

§ 2187. Shipment of emigrant movables. Tax receipt required. That it shall be the duty of the agent of any transportation company, or common carrier within and operating in the state of North Dakota, to require of the shipper of, or person or persons offering for shipment any emigrant movables, live stock or household goods, in weight more than one thousand pounds, that the party or parties offering such shipment for transportation shall before the same is received for shipment deposit with the agent of such transportation company the paid tax receipt for the current year in which such shipment is offered for transportation. [1911, ch. 250.]

An emergency section attached to the foregoing section in Laws 1911 recites that "there now being no law by which shipment of emigrant movables and live stock on which taxes are due, can be prevented."

See, however, the threat in section 2170.

§ 2188. Return of tax list to county auditor. Whenever any taxes are paid the treasurer shall immediately write upon the tax list opposite the name, in suitable column or columns for remarks, the word "paid," with the number of the receipt given. And, when a receipt is given for the payment of any taxes on real property on the first Monday in October, the county treasurer shall make and deliver to the county auditor a certified list of uncollected delinquent taxes of the preceding year, giving full description of the property and name of the party to whom assessed, owned by any person who is charged with taxes on personal property for the same on any previous year which remains unpaid, he shall note the same on the tax list in like manner, and across the face of the tax receipt and duplicate, substantially in the following form:

"Personal taxes of A. B. for (giving the year or years) unpaid." And, after comparing the tax lists with his duplicate receipts on file in the county auditor's office, he shall, at the July meeting of the board of county commissioners, exhibit such lists to the board and the county auditor, and the auditor shall make the entries concerning personal taxes as prescribed by section 2174 without regarding any payment of taxes on such real property. On the first day in December in each year the treasurer shall return the tax lists of the preceding year to the county auditor, and thereafter any person desiring to pay his delinquent taxes charged on said lists may pay the same to the treasurer at any time before the sale of the real property charged therewith, as in this chapter prescribed, on first obtaining from the auditor a statement of the amount due, including penalties and costs of advertising. [1913, ch. 220, § 1; R. C. 1905, § 1573; 1897, ch. 126, § 73; R. C. 1899, § 1258.]

ARTICLE 12.—TAX SALE.

§ 2189. Auditor's notice of sale; publisher thereof must give bond. The county auditor, under the direction of the board of county commissioners, or a majority thereof, shall give notice of said sale in a legal newspaper in said county, having at least three hundred bona fide subscribers. In case no newspaper published in the county has three hundred bona fide subscribers, then such tax list shall be published in a legal newspaper in the county to be selected by the board of county commissioners. Each legal newspaper in said county desiring to be considered by the board of county commissioners as an applicant for the publication of the tax list of the current year, shall under oath state the average number of such paper's bona fide subscribers for the year last past, not including exchanges, free subscribers

and sample copies, and shall, when requested so to do by the board of county commissioners, submit the subscription book or books of such paper to the board of county commissioners as proof of such bona fide subscription list. The newspaper in which said delinquent tax sale notice is to be printed shall be selected at the regular October meeting of each year. Said delinquent tax sale notice shall be printed for the three successive weeks immediately preceding the tax sale. If there be no newspaper printed in the county the county auditor shall give notice of such delinquent tax sale by a written or printed notice posted on the door of the court house or the building in which terms of court are usually held, or the usual place of meeting of the board of county commissioners. In case the newspaper designated to print the tax list has a daily edition, then such delinquent tax list shall be published in one issue of the daily edition and in two consecutive issues of the weekly edition of the same paper. The publisher or publishers of the newspaper selected by the board of county commissioners for the publication of said tax list shall give bond to the county in the sum to be fixed by the board of county commissioners of not less than five hundred nor more than one thousand dollars, to be approved by the board of county commissioners, or a majority thereof, for the correct and legal publication of such tax list in conformity with a copy furnished by the county auditor. Said notice shall contain the information that all lands on which the taxes of the preceding year (describing the same) remaining unpaid, shall be sold and the time and place of sale shall be the second Tuesday in December following. Such notice of delinquent tax sale shall contain a list of the lands to be sold, the name of the owner, as the records appear, and the amount of taxes and penalty due, to which the auditor shall add to each description of land so advertised the sum of twenty-five cents, and for each description of town lot the sum of ten cents, to defray the expenses of advertising. The cost of such advertising shall be paid by the county commissioners at the expiration of the sale upon the affidavit of the publisher; provided, that in no case shall the property so advertised be charged for such advertising an amount exceeding the sum actually paid for the same. To give further notice to the public of such tax sale, it shall be the duty of the county treasurer to mail to each owner, as the records appear, whose lands or lots are to be sold, a notice giving a legal description of the land offered for sale, said notice to be mailed not earlier than October first, nor later than October fifteenth, prior to date of sale. Provided, further, that in case the auditor's copy furnished to the publisher of the delinquent tax lists contains matter other than description of the land to be sold and total and amount due thereon, including penalty, interest and costs, which shall be printed, in one sum total, then the extra space required to print the same shall be paid for by the county at the rate required for other legal printing. [1913, ch. 220, § 2; 1911, ch. 301; 1909, ch. 196; R. C. 1905, § 1574; 1897, ch. 126, § 74; R. C. 1899, § 1259.]

Publication must be for twenty-one days preceding the sale. *Finlayson v. Peterson*, 5 N. D. 587, 67 N. W. 953; *Dever v. Cornwell*, 10 N. D. 123, 86 N. W. 227.

Tax sales and tax deed considered and construed. *Fisher v. Betts*, 12 N. D. 197, 96 N. W. 132.

Tax sale "at door of the courthouse" is sale "at the court house." *Hobart v. Scott*, 25 S. D. 20, 125 N. W. 124.

Duty of county treasurer, and not commissioners, to designate paper in which to publish tax sale notices. *Dewell v. Board*, 8 S. D. 452, 66 N. W. 1079.

Publication of notice must be for three full weeks of seven days each. *Dever v. Cornwell*, 10 N. D. 123, 86 N. W. 227.

Notice must describe lands to be sold, and amount of both real and personal taxes. *Mather v. Darst*, 13 S. D. 75, 82 N. W. 407.

Counties entitled to interest and penalties on city taxes. *Fargo v. Ross*, 11 N. D. 369, 92 N. W. 449.

Unpaid taxes for any preceding year may be included in annual sale for delinquent taxes. *Scott & B. Mercantile Co. v. Nelson County*, 14 N. D. 407, 104 N. W. 528.

As to notice to taxpayers of tax proceedings. *Beggs v. Paine*, 15 N. D. 436, 109 N. W. 322.

As to what constitutes weekly edition of newspaper within meaning of statute. *Griffin v. Denison Land Co.*, 18 N. D. 246, 119 N. W. 1041.

On sufficiency of notice of tax sale. *Bandow v. Wolven*, 20 S. D. 445, 107 N. W. 204.

As to disposition of interest and penalties on taxes. *State ex rel. Mitchell v. Mayo*, 15 N. D. 327, 108 N. W. 36.

§ 2190. Penalty and interest, disposition of. All penalty and interest collected on taxes shall belong to the county and become a part of the general fund, or such other fund as the county commissioners may direct; except the penalty and interest collected on taxes and parts of taxes and special assessments due to organized townships and incorporated villages, towns and cities and school districts therein and special assessments made for drains and other improvements. Such penalties and interest shall be paid to the township, village, town, city or school district therein, or drainage or other improvement fund for which was levied the tax or special assessment upon which the penalty and interest is collected. [1911, ch. 298; R. C. 1905, § 1575; 1899, ch. 4; R. C. 1899, § 1260.]

Special assessments bear simple interest at seven per cent per annum from time the same should be paid. *Hackney v. Elliott*, 23 N. D. 373, 137 N. W. 433.

All penalties and interest, except on special assessments, belong to the county collecting them. *Fargo v. Ross*, 11 N. D. 369, 92 N. W. 449.

Special assessments are not taxes within meaning of general tax provisions, and penalty or interest collected on special assessments does not belong to county. *State ex rel. Viking Twp. v. Mikkelsen*, 24 N. D. 175, 139 N. W. 525.

Prior to this amendment no authority existed in absence of sale, for collection of any interest or penalty on special drain assessments. *Hackney v. Elliott*, 23 N. D. 373, 137 N. W. 433; *State ex rel. Viking Twp. v. Mikkelsen*, 24 N. D. 175, 139 N. W. 525.

§ 2191. Auditor to sell at public vendue. Said sale shall be made at public auction at the office of the county auditor or usual place of holding court in the same building, and shall commence at the hour of ten in the forenoon, but may be adjourned from day to day for a period of ten days, whenever it is necessary for the disposal of the lands advertised. The lands and lots shall be offered for sale by the county auditor or his deputy in the order in which they appear in the advertised list, and each tract or lot shall be offered separately and struck off to the bidder who will pay the total amount of taxes, penalties and costs charged against it, including any personal taxes specified in the list and in the advertisement, which are a lien upon it, and who will agree to accept the lowest rate of interest from the date of sale on the amount of such taxes, penalties and costs so paid by him, which said rate shall in no case exceed twelve per cent per annum. But if the sum bid for the same is not paid before the sale closes, such tract or lot shall again be offered for sale in like manner. The county treasurer shall attend the sale and receive all moneys paid therein and when any tract of land or lot remains unsold for want of bidders, the same shall again be offered before the sale closes, and if there is no other bidder he shall bid for the same in the name of the county and the same shall be struck off and become forfeited to the county. Such tract or lot shall be assessed and taxed like others until the period of redemption expires, but shall not again be offered for sale for such subsequent taxes unless the county has made an assignment of the certificate of sale, and if not so assigned such forfeiture shall become absolute at the expiration of such period for redemption. [1911, ch. 293; R. C. 1905, § 1576; 1897, ch. 126, § 76; R. C. 1899, § 1261; 1901, ch. 154.]

Tax deeds, see section 2206.

Tax sale purchaser bound by rule of "caveat emptor." *Budge v. Grand Forks*, 1 N. D. 309, 47 N. W. 390; *Tyler v. Cass County*, 1 N. D. 369, 48 N. W. 232; *McHenry v. Brett*, 9 N. D. 68, 81 N. W. 65; *Investment Co. v. Beadle County*, 5 S. D. 410, 59 N. W. 212.

Recital in tax deed that purchaser bid full amount of taxes and recital as to rate of interest, were not essential to validity of tax deed. *Sobek v. Bidwell*, 24 S. D. 469, 124 N. W. 431.

Tax deed is valid which shows sale at "county treasurer's office in courthouse." *Lauderdale v. Pierce*, 27 S. D. 460, 131 N. W. 514.

Town lots assessed separately must be sold separately. *Salmer v. Lathrop*, 10 S. D. 216, 72 N. W. 570.

Lots assessed together cannot be sold separately. *O'Neil v. Tyler*, 3 N. D. 47, 53 N. W. 434.

As to necessity of each tract sold at tax sale being struck off to bidder accepting lowest rate of interest. *Youker v. Hobart*, 17 N. D. 296, 115 N. W. 839.

Tax deed must show that entire tract was sold to one offering to pay taxes, etc., at lowest rate of interest bid. *King v. Lane*, 21 S. D. 101, 110 N. W. 37.

Injunction against sale of property for illegal taxes. 69 Am. Dec. 198; 49 Am. Rep. 287; 23 Am. Rep. 622; 53 Am. Rep. 110.

§ 2192. Certificate of sale of each parcel. What title passes. The auditor shall execute to the purchaser of any piece or parcel of land a certificate which may include all lands sold to him and which may be substantially in the following form:

COUNTY CERTIFICATE OF SALE FOR TAXES.

I,, auditor of the county of, in the state of North Dakota, do hereby certify that the following described real estate in said county and state, to wit: (describing the same), was on the day of, A. D. 19...., sold by me in the manner provided by law for the delinquent taxes of the year 19...., thereon, amounting to dollars, including interest and penalty thereon, and the costs allowed by law to for the sum of dollars, he being the bidder who agreed to accept the lowest rate of interest thereon from the date of sale on the amount of such taxes, penalties and costs so paid by him, and that said rate of interest which said purchaser so agreed to accept was per cent per annum.

And, I further certify that unless redemption is made of said real estate in the manner provided by law the said or assigns will be entitled to a deed therefor on and after the day of, A. D., 19...., on the surrender of this certificate.

In Witness Whereof, I have hereunto set my hand and seal this day of, A. D., 19....

(Seal.)

.....
Auditor.

[1913, ch. 113; R. C. 1903, § 1577; 1897, ch. 126, § 77; R. C. 1899, § 1262.]

Sufficiency of description in certificate of tax sale. *Beggs v. Paine*, 15 N. D. 436, 109 N. W. 322.

Holder of tax certificates, paying taxes, acquires lien on building removed from lot after levy and before payment of tax by owner. *Easton v. Crammer*, 19 S. D. 224, 102 N. W. 944.

§ 2193. Certificates as evidence. Grounds for voiding sale. Such certificates shall in all cases be prima facie evidence that all requirements of law with respect to the sale have been duly complied with, and that the grantee named therein is entitled to a deed therefor after the time of redemption has expired; and no sale shall be set aside or held invalid, unless the party objecting to the same shall prove either that the property upon which the tax was levied was not subject to taxation, or that the taxes were paid prior to such sale, or that notice of such sale as required by law was not given; or that the piece or parcel of land was not offered at said sale to the bidder who would pay the amount for which the piece or parcel was to be sold, in which cases, but in no other, the court may set aside the sale or reduce the amount of taxes upon such land, rendering judgment accordingly. [R. C. 1905, § 1578; 1897, ch. 126, § 78; R. C. 1899, § 1263.]

Tax sale excludes every objection to proceedings except irregularities specifically mentioned. *Beggs v. Paine*, 15 N. D. 436, 109 N. W. 322.

Bars objection to tax sale under tax law of 1897 for assessors' failure to verify assessment roll. *State Finance Co. v. Mather*, 15 N. D. 386, 109 N. W. 350, 11 A. & E. Ann. Cas. 1112.

Defect in complaint in action to annul tax sale in omitting itemized statement as basis for county levy, is cured by statute. *Scott & B. Mercantile Co. v. Nelson County*, 14 N. D. 407, 104 N. W. 528.

On certificate of tax sale as prima facie evidence of all prior proceedings, where description in notice of sale is defective. *Hackney v. Elliott*, 23 N. D. 373, 137 N. W. 433.

Is possession under tax certificate during redemption period adverse. 13 L.R.A.(N.S.) 637.

Validity of tax sales where nonpayment is due to mistake or negligence of the tax officers. 20 L.R.A. 487.

§ 2194. Limitation of action to quiet title. Any person having or claiming title to or lien or incumbrance upon any land, whether in his possession or the possession of another, or vacant or unoccupied, may commence and maintain an action, either in law or in equity, at any time before or after the issuing of a tax certificate, and within three years after the execution and delivery of a deed, or in case of deeds heretofore issued, then within three years after the taking effect of this section, against any party, person, county, state or corporation claiming any title to or interest in such lands or lien upon the same adversely to him by or through such tax sale, tax certificate or tax deed heretofore or hereafter made, to test the validity of the tax sale, tax certificate or tax deed, or to quiet the title to said lands as against such claims of such adverse claimant, or to remove the cloud from the title arising from such tax sale, tax certificate or tax deed, and if no action is commenced within the time aforesaid such tax deed shall vest in the grantee a fee simple title to the lands and premises described in such deed, free from all liens and incumbrances made or accrued at or prior to the date of the execution and delivery of such deed, except taxes, and such grantee may at any time thereafter maintain an action against any and all parties for the possession of such premises, and the rights of action herein given shall be governed by the same rules of procedure as rights of action given by section 8044; provided, that nothing in this section shall be construed to prevent any person holding a tax deed from beginning an action against parties claiming title to or lien upon such premises at any time after the execution of the deed, to obtain possession of such premises, or to quiet the title to such lands as against such adverse claimants. [R. C. 1905, § 1579; 1897, ch. 126, § 79; R. C. 1899, § 1264.]

Inapplicable to redemptions under former sales. *Blakemore v. Cooper*, 15 N. D. 5, 4 L.R.A.(N.S.) 1074, 125 Am. St. Rep. 574, 106 N. W. 566.

A tax deed void on its face cannot operate to set statute of limitations in motion. Attorney's fees not properly recoverable as damages. Allowance or not of interest on rental value optional with jury. *Hegar v. DeGroat*, 3 N. D. 354, 56 N. W. 150; *Sweigle v. Gates*, 9 N. D. 538, 84 N. W. 481; *Salmer v. Lathrop*, 10 S. D. 216, 72 N. W. 570; *Horsnill v. Farnham*, 16 S. D. 414, 92 N. W. 1082; *Roberts v. Bank*, 8 N. D. 504, 79 N. W. 1049; *Eaton v. Bennett*, 10 N. D. 346, 87 N. W. 188.

In a suit to set aside a tax deed which is conceded by the record and admitted by the answer to have been merged in fee title, section does not apply. *McKinney v. Minnehaha County*, 17 S. D. 407.

Court can decree that party attacking tax deed shall reimburse the purchaser, if deed has been set aside for defects not affecting the validity of the tax. *Idem*, 17 S. D. 407.

Does not apply where plaintiff conceded on record and defendant's answer showed to have been merged in the fee title. *McKinney v. Minnehaha County*, 17 S. D. 407.

A tax deed void on its face cannot operate to set the statute of limitations in motion. *Beck v. State Finance Co.*, 112 C. C. A. 413, 192 Fed. 25.

Statute limiting time for attack on tax sale, or creating a conclusive presumption as to its validity as applied to a sale under proceedings, void for jurisdictional defects, under which possession has not been taken. 8 L.R.A.(N.S.) 157.

Effect of void proceedings under which real estate is sold for taxes to start limitations running in favor of purchaser in possession. 8 L.R.A.(N.S.) 356.

Does a void tax deed set in motion special statutes of limitations governing actions to recover lands sold for taxes. 27 L.R.A.(N.S.) 339.

§ 2195. Tax sale record. The county auditor shall make a record of the sale of real estate for delinquent taxes in a book kept for that purpose, which shall show the name of the owner (if known), the description of each piece or parcel of property as contained in the tax list, the amount of tax, the

penalty and costs, the amount sold for, date of sale, to whom sold, number of the certificate, to whom assigned, date and amount of redemption (if redeemed), and by whom redeemed. All lists, books and records pertaining to tax matters shall be turned over to the county auditor for the purposes of this chapter, who shall have authority to make redemptions and assignments of tax sale certificates and tax deeds thereon according to law. [R. C. 1905, § 1580; 1897, ch. 126, § 80; R. C. 1899, § 1265.]

§ 2196. Who may not purchase. Effect of purchase by owner. Any person except county auditors, county treasurers, and each of their deputies or clerks, may become the purchaser at such sale. If the owner purchase, the sale shall have the effect to pass to him (subject to redemption as herein provided) every right, title and interest of any and every person, company or corporation, free from any claim, lien or incumbrance, as the owner so purchasing may be legally or equitably bound to protect against such sale, or the taxes for which such sale was made; and no such sale of real estate for taxes shall be considered invalid on account of the same having been charged in any other name than that of the rightful owner; provided, that nothing herein contained shall be so construed as to prevent any officer or his deputy or clerk from becoming the purchaser at such sale of any lands of which he may be the owner, or upon which he may have a lien; provided, further, that no county auditor, county treasurer, their deputies or clerks, shall act as agent or attorney for the purchasers at such sale. [R. C. 1905, § 1581; 1897, ch. 126, § 81; R. C. 1899, § 1266.]

Assessment of real estate in name of another than owner does not render tax void. *Hartzler v. Freeman*, 12 N. D. 187, 96 N. W. 294.

Failure to assess in name of owner will not invalidate assessment. *Sykes v. Beck*, 13 N. D. 242, 96 N. W. 844.

Who may purchase at sale for taxes and enforce title. 15 Am. Dec. 684; 75 Am. St. Rep. 229.

Right of cotenant to acquire and enforce tax title. 116 Am. St. Rep. 367.

Right of cotenant to purchase in his own right at a sale for taxes assessed against the person from whom the cotenants derived title. 19 L.R.A.(N.S.) 591.

Purchase by tenant at tax sale during tenancy. 53 L.R.A. 939.

Right of wife to secure husband's property at tax sale. 9 L.R.A.(N.S.) 674.

Effect of purchase at tax sale by or in the interest of mortgagor, guarantor of mortgage indebtedness, or purchaser of equity of redemption. 16 L.R.A.(N.S.) 121.

§ 2197. Redemption of real estate. If at said sale any piece or parcel of land shall be sold to a purchaser, the same may be redeemed at any time within three years from the date of sale by any person or corporation having an interest therein who shall pay into the treasury of the county for the credit of the person thereto entitled, the amount paid by the purchaser at the time of sale, with a penalty of five per cent and interest thereon at the rate specified in such certificate of sale together with all amounts of subsequent taxes, penalties and interest paid by the holder of such certificate of sale up to the date of redemption with interest at the rate of one per cent per month from the date of payment of such subsequent tax, which date of payment shall not be prior to the day upon which such subsequent tax became delinquent. In case any piece or parcel of land was not sold for want of bidders, then any person or corporation having an interest therein shall have the same right of redemption from the county, and on the same terms, as from a purchaser at a tax sale. The county auditor shall certify to the amount due upon such redemption, and on payment of the same to the county treasurer, he shall make duplicate receipts for the certified amount, describing the property redeemed, one of which shall be filed with the county auditor, which shall have the effect to annul the sale. If the amount so paid for the purpose of redemption be less than required by law it shall not invalidate such redemption, but the county auditor shall be liable for the deficiency to the person entitled thereto. Minors, insane persons or persons in captivity, or in any country with which the United States is at war, having an estate in, or liens on lands sold for taxes, may redeem the

same within three years after such disability ceases; but in such cases the right to redeem must be established in a suit for that purpose, brought against the party holding the title under sale. Any person who has or claims an interest in, or lien upon, any undivided estate in any piece or parcel of land sold, may redeem such undivided estate by paying into the treasury a proportionate part of the amount required to redeem the whole and in such case the certificate of redemption shall express the estate or interest redeemed. [1909, ch. 199; R. C. 1905, § 1582; 1897, ch. 126, §§ 83-85; 1899, ch. 136; R. C. 1899, § 1267; 1905, ch. 158.]

Right to redeem from tax sale is "right accrued" which cannot be affected by repealing statute. *Blakemore v. Cooper*, 15 N. D. 5, 4 L.R.A. (N.S.) 1074, 125 Am. St. Rep. 574, 106 N. W. 566.

Forfeited lands under tax sale cannot be again sold for taxes while forfeited lands. *Patton v. Cass County*, 13 N. D. 351, 102 N. W. 174.

Tender, although not accepted, will work redemption. *Gibson v. Pekarek*, 27 S. D. 423, 131 N. W. 728.

Mortgagee whose mortgage recorded before taxes due on personal property became a lien, may redeem from tax sale without paying such taxes. *Buell v. Boylan*, 10 S. D. 180, 72 N. W. 406.

Notice of redemption from tax sale which omits to give section, township, or range of property is insufficient. *Stokes v. Allen*, 15 S. D. 421, 89 N. W. 1023.

First and last days in computing time for redemption from tax sale. 49 L.R.A. 237.

Effect of tender of redemption money. 20 L.R.A. 491.

§ 2198. Warrants to be drawn for money due owners. Upon application of the party entitled thereto, the auditor shall give to such party his warrant upon the treasurer for any money paid into the treasury on the sale of any piece or parcel of land in excess of the amount due upon such piece or parcel at the time of sale, or for any money paid in for redemption which may be due to the purchaser at the sale, or his assignee; provided, that the certificate of sale shall be surrendered and cancelled at the time of such payment, or if the redemption is for a part or undivided interest in such piece or parcel the amount of such redemption and the proportion redeemed shall be indorsed thereon, which shall be a cancellation of such part of the certificate. [R. C. 1905, § 1583; 1897, ch. 126, § 86; R. C. 1899, § 1268.]

§ 2199. Rights of purchaser when land is not redeemed. The purchaser of any piece or parcel of land shall, if there be no redemption, be entitled to the possession, rents and profits at the end of three years from the date of the certificate, and if on demand of such purchaser to the party or parties in possession such party or parties refuse or neglect to render such possession, such party or parties may be proceeded against as parties holding over after the determination of his or their estate, which proceedings may be instituted and prosecuted pursuant to the provisions of law in such case made and provided; provided, however, that all rights of such purchaser and his assigns to possession, title or lien of any kind of, to or upon such piece or parcel of land, shall cease absolutely and be deemed forfeited and extinguished (and the auditor shall cancel such lien from his records), unless possession thereof be taken by him or them, or proceedings for such possession be by him or them instituted or deed therefor be executed and delivered to him or them by the proper officer, prior to the expiration of six years from and after the date of such certificate, or in case of sales heretofore made and where five years or more have already elapsed since the date of such certificate, then prior to the expiration of one year after the taking effect of this section. [1907, ch. 220; R. C. 1905, § 1584; 1897, ch. 126, § 87; R. C. 1899, § 1269; 1901, ch. 165.]

Limitations do not run against void tax deed, though recorded three years. *Hegar v. De Groat*, 3 N. D. 354, 56 N. W. 150; *Salmer v. Lathrop*, 10 S. D. 216, 72 N. W. 570; *Sweigle v. Gates*, 9 N. D. 538, 84 N. W. 481; *Duncan v. Newcomer*, 9 S. D. 375, 69 N. W. 580; *Horswill v. Farnham*, 16 S. D. 414, 92 N. W. 1082.

Inapplicable to sales to state or county where rights are unassigned. *Scott & B. Mercantile Co. v. Nelson County*, 14 N. D. 407, 104 N. W. 523.

Tax deed which has been recorded three years and is not void on its face, as bar to action to recover possession of property.

Constitutional as valid limitation act. *State Finance Co. v. Mather*, 15 N. D. 386, 109 N. W. 350, 11 A. & E. Ann. Cas. 1112.

Irregularity in tax proceedings insufficient ground to commence action to avoid tax deed. *Stoddard v. Lyon*, 18 S. D. 207, 99 N. W. 1116.

Action to determine adverse claims not barred by three years' record of tax deed invalid because property was not assessed. *Moran v. Thomas*, 19 S. D. 469, 104 N. W. 212.

Mere recording of instrument in form of tax deed will not start running of statute. *Bandow v. Wolven*, 20 S. D. 445, 107 N. W. 204.

Action by former owner to quiet title as against tax deed barred after three years. *Northwestern Mortg. Trust Co. v. Levitzow*, 23 S. D. 562, 122 N. W. 600.

Tax sale certificates, barred by this statute, are not liens on land. *Hodgson v. State Finance Co.*, 19 N. D. 139, 122 N. W. 336.

Tax deed is fair on its face, and running three-year statute of limitation, where no jurisdictional step is shown to be defective. *Lauderdale v. Pierce*, 27 S. D. 460, 131 N. W. 514.

Tender, although not accepted, will work redemption. *Gibson v. Pekarek*, 27 S. D. 423, 131 N. W. 728.

§ 2200. Void sales. Void taxes. Repayment. When any sale of land for taxes is adjudged to be void, the judgment shall state the reason why it is void, and in all such cases and in cases where, by mistake or wrongful act of the county treasurer or auditor, land has been sold upon which no taxes were due, and in cases where taxes have been or may be paid on lands not subject to taxation, or on lands where subsequent to payment the entry has been or may be cancelled, the money so paid and all subsequent taxes, penalties and costs which have been or which may be paid, shall be refunded, with interest at seven per cent per annum from the date of payment to the person making such payment, his heirs or assigns and the same shall be refunded out of the county treasury to which such money was paid, on an order from the county auditor, and a pro rata share of the money so refunded shall be charged to the state and to any incorporated city, town, village or school corporation which may have received any part of such void tax. Whenever any sale of land or certificate or tax deed made or delivered under this chapter is adjudged to be void, unless the judgment declares the tax to be illegal, the tax and all subsequent taxes returned to the purchaser or assignee, shall remain and be a lien upon the land sold, and the county auditor shall advertise and resell the same at the next succeeding annual sale for the full amount of taxes, penalties and costs due thereon. All lands which may have been or may be bid in for the state or any county in the state by virtue of the provisions of law, may be disposed of by the county auditor at public or private sale as the county commissioners may direct, subject to such rules and restrictions as they may prescribe. [R. C. 1905, § 1585; 1897, ch. 126, § 88; 1899, ch. 139; R. C. 1899, § 1270.]

Does not conflict with section 61 of constitution. *Paine v. Dickey County*, 8 N. D. 581, 80 N. W. 707; *Sherwood v. Barnes County*, 22 N. D. 310, 134 N. W. 38.

County not liable for taxes paid on tax sale not adjudged void, though land exempt. Money paid to protect tax sale void because property exempt from taxation, not recoverable. *Van Ness v. Sargent County*, 7 N. D. 139, 73 N. W. 1083; *Sheets v. Paine*, 10 N. D. 103, 81 N. W. 118.

Repayment under erroneous sales. *Roberts v. Bank*, 8 N. D. 504, 79 N. W. 1049; *Paine v. Dickey Co.*, 8 N. D. 581, 80 N. W. 707; *Investment Co. v. Thayer*, 7 S. D. 72; *Investment Co. v. Beadle Co.*, 5 S. D. 410.

Fee owner of land not subject to taxation may recover money paid to redeem from tax sale, although sale was not declared void. *Tisdale v. Ward County*, 20 N. D. 401, 127 N. W. 512.

Holder of tax sale certificate, which has been adjudged void, may recover amount paid therefor, notwithstanding fact that he has not paid subsequent taxes. *Sherwood v. Barnes County*, 22 N. D. 310, 134 N. W. 38.

No action to recover purchase money of land at tax sale void because of improper description. *Iowa & Dakota Land Co. v. Barnes County*, 6 N. D. 601, 72 N. W. 1019.

Taxes not recoverable where land sold not subject to taxation because property of United States. *Stutsman County v. Wallace*, 142 U. S. 293, 35 L. ed. 1018, 12 S. Ct. R. 227.

Statute does not apply to sales made prior to its enactment. *American Invest. Co. v. Thayer*, 7 S. D. 72, 63 N. W. 233.

No demand is necessary before suit to recover taxes illegally paid. *Boynton v. Faulk County*, 7 S. D. 423, 64 N. W. 518.

Taxes paid are recoverable where treasurer wrongfully advertises and sells real estate of one person for taxes of another. *Erickson v. Brookings County*, 3 S. D. 434, 53 N. W. 857, 18 L.R.A. 347.

Purchaser at tax sale bound to know that the property is rightfully sold. *American Invest. Co. v. Beadle County*, 5 S. D. 410, 59 N. W. 212; *Budge v. Grand Forks*, 1 N. D. 309, 47 N. W. 390, 10 L.R.A. 165; *Tyler v. Cass County*, 1 N. D. 369, 48 N. W. 232; *McHenry v. Brett*, 9 N. D. 68, 81 N. W. 65.

County auditor cannot issue refundment order as means of saving purchaser at tax sale harmless. *Re Freerks*, 11 N. D. 120, 90 N. W. 265.

Unpaid taxes for any preceding year may be included in annual sale for delinquent taxes. *Scott & B. Mercantile Co. v. Nelson County*, 14 N. D. 407, 104 N. W. 528.

As to who is entitled to reimbursement on void tax sale certificate. *State Finance Co. v. Beck*, 15 N. D. 374, 109 N. W. 357.

Necessity of judgment showing reasons why taxes or sales are void. *Beggs v. Paine*, 15 N. D. 436, 109 N. W. 322.

Purchaser of tax certificate with erroneous description cannot recover amount paid for taxes and certificate. *Minnesota Loan & Invest. Co. v. Beadle County*, 18 S. D. 431, 101 N. W. 29.

Special assessments bear simple interest only, at seven per cent per annum from time of delinquency. *Hackney v. Elliott*, 23 N. D. 373, 137 N. W. 433.

Right of purchaser at void sale to recover money paid. 42 Am. St. Rep. 588.

Right of purchaser at invalid tax sale, in absence of statute, to be reimbursed by taxing authority for the purchase price, or for taxes subsequently paid by him. 31 L.R.A. (N.S.) 1141.

Right of one holding under invalid tax deed to be reimbursed for improvements. 34 L.R.A. (N.S.) 549.

Liability of tax officers or their bond for failure of tax purchaser's title on account of irregularities in procedure. 41 L.R.A. (N.S.) 967.

As to similar provision in Iowa Revision of 1860, § 785, see *Coulter v. Mahaska County*, 17 Iowa, 92; *Scott v. Chickasaw County*, 53 Iowa, 47, 3 N. W. 820.

§ 2201. Irregularity does not annul tax. In any action or proceeding for the collection or annulment of taxes levied or assessed against any person or property in this state and in any action or proceedings to determine adverse claims to real estate, no tax shall be set aside for any irregularity or defect in form, or illegality in assessing, laying or levying such tax if the person against whom or the property upon which such tax is levied, assessed or laid is in fact liable to taxation, unless it be made to appear to the court that such irregularity resulted to the prejudice of the party objecting, or that the taxes against such person or property have been partially, unfairly or unequally assessed, and in such cases the court may reduce the amount of such taxes and give judgment accordingly; the court shall also have power to amend and correct all irregularities or defects in the form or manner of assessment. [R. C. 1905, § 1586; 1903, ch. 166.]

Inapplicable to jurisdictional defects in assessments of real property. *State Finance Co. v. Bowdle*, 16 N. D. 193, 112 N. W. 76.

As to necessity of one seeking relief in equity paying taxes due. *Powers v. First Nat. Bank*, 15 N. D. 466, 109 N. W. 361.

§ 2202. Sale of property bid in for the county. All pieces or parcels of real property bid in for the county under the provisions of this chapter, and not redeemed or assigned within three years from the date of the certificate of sale, shall, upon the giving of the required notice of expiration of redemption, become the absolute property of the county and may be disposed of by the county auditor at public or private sale, as the county commissioners may direct, subject to such rules and restrictions as they may prescribe. The county auditor shall execute deeds for all property so sold to the purchasers thereof, in the same manner and with like effect as upon other certificates of purchase of tax sale, and the proceeds of such sale shall be paid into the county treasury, and the amounts due the state, or any city, township, incorporated village or school district from the taxes for which the same were sold, or their just proportion thereof, shall be apportioned and placed to the credit of the state, city, township, incorporated village or school corporation entitled thereto, and the remainder shall go into the general fund of the county. Any person having an interest or lien upon any piece or parcel of forfeited land may redeem the same any time after forfeiture, and before the

sale thereof, by paying the amount due thereon. [R. C. 1905, § 1587; 1897, ch. 126, § 89; R. C. 1899, § 1271; 1903, ch. 168.]

As curing defects in tax proceedings. *State Finance Co. v. Mather*, 15 N. D. 386, 109 N. W. 350, 11 A. & E. Ann. Cas. 1112.

§ 2203. Property bid in for the county. Assignment form. At any time after any piece or parcel of land shall have been bid in for the county, and before such piece or parcel of land shall become forfeited to the county, and while such tract or parcel of land shall remain unredeemed, the county auditor may assign and convey the same and all the right of the county in such piece or parcel of land acquired at such sale, to any person (except the county auditor, county treasurer, their deputies and clerks) who shall pay the amount for which the same shall have been bid in, and the amount of all subsequent delinquent taxes, penalties, interest and costs upon the same; and shall execute to such persons a certificate of conveyance for each piece or parcel which may be substantially in the following form:

I, auditor of the county of, state of North Dakota, do hereby certify that at the sale of real estate for the delinquent taxes thereon for the county of and state aforesaid, which sale was held at the in said county of on the day of A. D. 19.... for the taxes of the year, the following described piece or parcel of land situate in said county of, state of North Dakota, to wit: (insert description) was offered for sale to the highest bidder above the amount for which the same was subject to be sold; and no one bidding upon such offer an amount equal to that for which the said piece or parcel was subject to be sold, the same was then bid in for the county at such amount, being the sum of and the same still remaining unredeemed, and on this day having paid into the treasury of said county the amount for which the same was bid in, and all subsequent taxes, penalties, interest and costs, amounting in all to dollars; therefore, in consideration thereof, and pursuant to law, I do hereby assign and convey all the right, title and interest of said county to said piece or parcel of land acquired therein at said sale to the said his heirs and assigns, subject to redemption as provided by law.

And I further certify that unless redemption is made of said real estate in the manner provided by law, the said or assigns will be entitled to a deed therefor on and after the expiration of the time for redemption, as provided by law, and upon the surrender of this certificate. In witness whereof I have hereunto set my hand and seal this day of 19....

..... County Auditor.

[R. C. 1905, § 1588; 1897, ch. 126, § 90; R. C. 1899, § 1272.]

Tax deed is void, unless assignment of certificate of sale is in writing and describes land. *Blessett v. Turcotte*, 20 N. D. 151, 127 N. W. 505.

§ 2204. Deed to be given on sale of forfeited real property. Upon the sale of any tract or lot of forfeited real property, the county auditor shall execute to the purchaser thereof a deed in fee simple of the property so purchased, which shall pass to such purchaser absolute title to the lands therein described. If the former owner of the forfeited property becomes the purchaser, such deeds shall pass to him any and all rights of any action which may have arisen, or may exist, for any trespass committed upon such property prior to the execution of the deed. Such deed may be recorded as other deeds of real estate, and the record thereof shall have the same force and effect in all respects as the record of such other deeds, and shall be evidenced in like manner. The proceeds of lands or lots sold at such sale for a sum equal to or exceeding the amount of taxes thereon shall be distributed the same as other collections of taxes, and all excess over the amount of taxes shall be

credited to the county general fund. [R. C. 1905, § 1589; 1897, ch. 126, § 91; R. C. 1899, § 1273.]

Tender of taxes not condition precedent to recovery held under tax title. Court may ascertain amount of taxes due. *Power v. Larabee*, 2 N. D. 141, 49 N. W. 724; *O'Neil v. Tyler*, 3 N. D. 47, 53 N. W. 434; *Farrington v. Invest. Co.*, 1 N. D. 102, 45 N. W. 191; *Clark v. Darlington*, 11 S. D. 418, 78 N. W. 997; *Campbell v. Loan & Trust Co.*, 14 S. D. 483, 85 N. W. 1015; *McComb v. Lake County*, 9 S. D. 466, 70 N. W. 652; *Rochford v. Fleming*, 10 S. D. 24, 71 N. W. 317; *Bennett v. Darling*, 15 S. D. 1, 86 N. W. 751.

County is entitled to recover just amount of taxes in action against it to cancel voidable tax proceedings. *Pettigrew v. Moody County*, 17 S. D. 275, 96 N. W. 94.

Adjustment of taxes in action to quiet title. *Moran v. Thomas*, 19 S. D. 469, 104 N. W. 212.

As to when judgment for taxes due is not authorized by statute. *Douglas v. Fargo*, 13 N. D. 467, 101 N. W. 919.

§ 2205. County auditor to execute deeds to persons entitled thereto. It shall be the duty of the county auditor of each county in this state to execute, acknowledge and deliver to any person who shall be entitled to receive from the state or from the county the title to any piece, parcel or lot of land within the county, under or by virtue of any law providing for or relating in whole or in part to the levying or collection of taxes or the sale of real estate for nonpayment of taxes, a deed in fee simple of such piece, parcel or lot of land, and such deed shall pass to such person absolute title to the land therein described, and may be recorded as other deeds of real estate are recorded, and the record thereof shall have the same force and effect in all respects as the record of such other deeds and may be evidenced in like manner. [R. C. 1905, § 1590; 1897, ch. 126, § 92; R. C. 1899, § 1274.]

ARTICLE 13.—TAX DEED.

§ 2206. Execution, form and effect of tax deeds. At the expiration of the time for redemption of lands sold for delinquent taxes and after the filing of the proof of notice of expiration of period for redemption, as provided in section 1608 [section 2223 herein] of the Revised Codes of North Dakota for 1905, and on production of the certificate of purchase, the county auditor of the county in which the sale of such lands took place shall execute to the purchaser, his heirs or assigns, in the name of the state, a deed of the land remaining unredeemed, which shall vest in the said purchaser, his heirs or assigns, an absolute estate in fee simple in such land, subject, however, to all the claims which the state may have thereon for taxes, or other liens or incumbrances; and such deeds shall be executed by the county auditor under his hand and the seal of the county, and such deed shall be conclusive evidence of the truth of all the facts therein recited and prima facie evidence of the regularity of all the proceedings from the assessment and valuation of the land by the assessor up to the execution of the deed, and such deed shall be substantially in the following or other equivalent form:

"Whereas, did on the day of, A. D., 19.., produce to the undersigned,, county auditor of the county of, in the state of North Dakota, a certificate of purchase, in writing, bearing the date of the day of, A. D., 19.., signed by, who at the last mentioned date was county auditor of said county, from which it appears that did on the day of A. D., 19.., purchase at public auction at the office of the county auditor (or the usual place of holding court in the same building), the tract, parcel or lot of land lastly in this indenture described, and which lot was struck off and sold to for the sum of dollars, being the total amount of taxes, penalties and costs charged against said land, including any personal taxes specified in the lists and in the advertisement, constituting a lien thereon for the year (or years), 19...., to wit: (Herein insert the description of the land offered for sale); and that the said did at the time and place of said public

auction, as a part of his bid, agree to accept the lowest rate of interest on the amount of such taxes, penalties and costs so paid by him, to wit: The rate of per cent per annum, and it appearing that the said is the legal owner of the said certificate of purchase, and the time fixed by law for redeeming the land herein described having now expired and proof of legal notice of expiration of the period of redemption having been filed in the office of the county auditor prior to the maturity of such certificate as provided by law, and said land not having been redeemed from such purchase pursuant to law, and the said having demanded a deed for the tract of land mentioned in said certificate; and it appearing that said lands were legally liable for taxation, and had been duly assessed and properly charged on the tax book or duplicate for the year (or years), A. D., 19.., and that said lands had been legally advertised for taxes and were sold on the day of A. D., 19.., to the said

Now, therefore, this indenture, made this day of A. D., 19.., between the state of North Dakota, by, as county auditor of the said county, party of the first part, and the said, party of the second part:

WITNESSETH, That the said party of the first part, for and in consideration of the premises and the sum of one (1) dollar, in hand paid, has granted, bargained and sold and by these presents does grant, bargain, sell and convey unto the said party of the second part, heirs and assigns, forever, the tract or parcel of land mentioned in said certificate, and described as follows, to wit: in county, in the state of North Dakota.

TO HAVE AND TO HOLD SAID mentioned tract or parcel of land, with the appurtenances thereto belonging, to the said party of the second part,, heirs and assigns, forever, in as full and ample manner as the said county auditor of said county is empowered by law to sell the same.

IN TESTIMONY WHEREOF, the said, as county auditor of the said county of, has hereunto set his hand and seal of the said county, on the day and year aforesaid.

(Seal.)
County Auditor of
North Dakota."

Attest: (Seal.)

Which deed shall be acknowledged by said county auditor before some one authorized by law to take acknowledgments of deeds, for which said deed said county auditor shall be entitled to a charge of fifty cents, to be paid by the grantee in such deed. In case the land is bid in for the county and the certificate assigned under the provisions of section 1588 of the Revised Codes of North Dakota for 1905 [section 2203 herein], the language of such deed inappropriate to such sales shall be stricken out and the following inserted in lieu thereof:

" Offer for sale to the bidder who agreed to accept the lowest rate of interest on the amount of such taxes, penalties and costs so paid, the following described tract or parcel of real property (insert description), which property was returned delinquent for the nonpayment of taxes for the year 19.., amounting to dollars, including interest and penalty thereon and the costs charged against said land including personal property taxes specified in the list and in the advertisement constituting the lien thereon, for the year (or years) 19...., and no one bidding upon such offer an amount equal to that for which said piece or parcel of land was subject to be sold, the same was bid in for the county. And it appearing by said certificate that

the right, title and interest of the county, in said tract or parcel of land acquired therein at said sale was on the day of, 19..., assigned to for the sum of dollars, being the amount due thereon at that time."

Which deed shall be acknowledged as aforesaid. In case the certificate of purchase is assigned by the purchaser then a statement shall be inserted in such tax deed briefly describing each assignment of such certificate, which may be in substantially the following or other equivalent form:

"And which said certificate of purchase issued to said, purchaser, at said tax sale and the right, title and interest of the said purchaser, in said tract or parcel of land acquired therein at said sale was on the day of, A. D., 19..., assigned to" Which said deed shall be acknowledged as aforesaid. [1913, ch. 281; R. C. 1905, § 1591; 1899, ch. 155; R. C. 1899, § 1275.]

An emergency section attached to the foregoing in Laws 1913 recites that the supreme court of the state has held that deeds issued in the form prescribed by R. C. 1905, § 1591 — for which the foregoing section is substituted — are invalid.

Statutory form of tax deed must be substantially pursued. *Rector & Wilhelmy v. Maloney*, 15 S. D. 271, 88 N. W. 575.

Tax deed void upon its face may constitute color of title. *Parker v. Vinson*, 11 S. D. 381, 77 N. W. 1023.

Deed reciting a sale at a time legally impossible and that two town lots were sold as one parcel is void on its face. *Salmer v. Lathrop*, 10 S. D. 216, 72 N. W. 570.

Tax deed regularly issued cuts off delinquent taxes for prior years. *Emmons County v. Bennett*, 9 N. D. 131, 81 N. W. 22.

Tax deed cuts off all interest under prior tax deed. *Meldahl v. Dobbin*, 8 N. D. 115, 77 N. W. 280.

Treasurer cannot sell and deed part of city lot which was assessed in solido. *Roberts v. Bank*, 8 N. D. 504, 79 N. W. 1049.

Recitals in tax deed cannot be controverted although they show that sale was made in contravention of later statutes. *Reckitt v. Knight*, 16 S. D. 395, 92 N. W. 1077.

Tax deed must show that entire tract was sold to one offering to pay taxes, etc., at lowest rate of interest bid. *King v. Lane*, 21 S. D. 101, 110 N. W. 37.

Tax deed regular on its face is prima facie evidence that proper notice had been given and served. *Bandow v. Wolven*, 23 S. D. 124, 120 N. W. 881.

Validity of tax deed unaffected by omission of seal therefrom. *Northwestern Mortg. Trust Co. v. Levtzow*, 23 S. D. 562, 122 N. W. 600.

Variance in description between tax deed and assessment record makes tax deed void. *Sheets v. Paine*, 10 N. D. 103, 80 N. W. 118.

In equity action the absence of assessor's affidavit from assessment roll does not invalidate sale or levy. Fatal in law action. *Douglas v. Fargo*, 13 N. D. 467, 101 N. W. 919.

To cancel and set aside tax sale and levy in equity, complaint must show tender. Legal portion of tax must be tendered as condition to equitable relief. *Idem*, 13 N. D. 467, 101 N. W. 919.

Separate parcels sold to same person may be included in one deed. *Bennett v. Darling*, 15 S. D. 1, 86 N. W. 751.

Including property described in different certificates of sale in one tax deed does not show that property was sold together for gross sum. *Cornelius v. Ferguson*, 17 S. D. 481, 97 N. W. 388.

Provision for tax deed to "assigns" includes executors. *Blakemore v. Cooper*, 15 N. D. 5, 4 L.R.A.(N.S.) 1074, 125 Am. St. Rep. 574, 106 N. W. 566.

Recital in tax deed that purchaser bid full amount of taxes and recital as to rate of interest were not essential to validity of tax deed. *Sobek v. Bidwell*, 24 S. D. 469, 124 N. W. 431.

Recital in tax deed that property was "duly assessed" as effectually establishes the fact as would verbal evidence of assessor or county auditor. *Peters v. Lohr*, 24 S. D. 605, 124 N. W. 853.

Tax deeds as evidence. 17 Am. Dec. 505; 28 Am. St. Rep. 19.

Power of the legislature to make prima facie or conclusive evidence. 4 Am. St. Rep. 187.

Effect of recitals in tax deeds as evidence. 31 Am. St. Rep. 233.

Execution of tax deed in name of deputy. 19 L.R.A. 179.

Right of holder of tax deed to take possession. 28 L.R.A.(N.S.) 398.

Judgment dismissing bill to set aside tax deed as a cloud on title as res judicata in action under tax deed to recover possession of property. 25 L.R.A.(N.S.) 1011.

Presumption as to time of alteration in tax deed. 39 L.R.A.(N.S.) 100, 115.

Marketability of tax title. 38 L.R.A.(N.S.) 26.

§ 2207. County auditor to keep tax deed record. It shall be the duty of the county auditor to keep a record to be known as the "tax deed record," in which the county auditor shall record at length all tax certificates as they may be presented for tax deed, the notice of expiration of the time for redemption issued thereon, and the return of such service of the notice of the expiration of the time for redemption as may be made. [R. C. 1905, § 1592; 1905, ch. 157, § 1.]

§ 2208. Certified copy prima facie evidence. A certified copy of said record, or any part thereof, under the hand and seal of the county auditor, shall be prima facie evidence of the matters and things therein contained in the courts of North Dakota. [R. C. 1905, § 1593; 1905, ch. 157, § 2.]

§ 2209. Fees of auditor. For services of and recording these instruments the auditor shall be entitled to receive from the applicant for such deed the same fees as are allowed by law to the register of deeds for placing instruments of record. [R. C. 1905, § 1594; 1905, ch. 157, § 3.]

§ 2210. Taxes paid by occupant or tenant. When any tax on any real estate is paid by or collected of any occupant or tenant, or any other person, which, by agreement or otherwise, ought to have been paid by the owner, lessor or other party in interest, such occupant, tenant or other person may recover by action the amount which such owner, lessor or party in interest ought to have paid, with interest thereon at the rate of twelve per cent per annum, or may retain the same for any rent due and accruing from him to such owner or lessor for real estate on which such tax is so paid, and the same shall, until paid, constitute a lien upon said real estate. [R. C. 1905, § 1595; 1897, ch. 126, § 93; R. C. 1899, § 1276.]

Right of purchaser of property to recover the amount he has paid to relieve land from tax lien, from one who should have paid the same, but with whom he had no contractual relationship. 22 L.R.A.(N.S.) 562.

§ 2211. Taxes paid by mortgagees or others having liens. Any person who has a lien by mortgage or otherwise upon any real property that has been sold for taxes or on which the taxes have not been paid, may redeem from such sale, or may pay such taxes and the interest, penalty and costs thereon, and the receipt of the county treasurer or the certificate of redemption, as the case may be, shall constitute an additional lien on such land to the amount therein stated, and the amount so paid and the interest thereon at the rate specified in the mortgage or other instrument, shall be collected with, as part of, and in the same manner as the amount secured by the original lien. [R. C. 1905, § 1596; 1897, ch. 126, § 94; R. C. 1899, § 1277.]

Owner of tax sale certificates may pay subsequent delinquent general taxes without paying subsequent special assessments, and receipts for such taxes constitute additional lien. State ex rel. Moore v. Furstenuau, 20 N. D. 540, 129 N. W. 81.

§ 2212. Duty of county auditor. When any deed, patent or final decree of distribution is presented to the county auditor for transfer he shall ascertain from the books and records in the office of the county treasurer if there are any current taxes due on the land described therein, or any special assessment due thereon; he shall also ascertain from the books and records in the auditor's office if there be delinquent taxes on the said land described within, or special assessments due thereon, or if it has been sold for taxes, and if there are current taxes, delinquent taxes or special assessments due or installments of special assessments due, he shall certify to the same, and when the receipt of the county treasurer shall be produced for the said current taxes, delinquent taxes or special assessments or installments of special assessments and for any other current or delinquent taxes, or special assessment or installments of special assessments that may be in the hands of the county treasurer or county auditor for collection, the county auditor shall enter on every deed, patent or final decree of distribution of real property so transferred, over his official signature, "taxes and special assessments or installments of special assessments, paid and transfer entered," or if the land de-

scribed has been sold for taxes, "paid by sale of the land described within," or if it is an instrument entitled to record without regard to taxes, "transfer entered," and unless such entry is made upon any deed, patent or final decree of distribution, the register of deeds shall refuse to receive or record the same. A violation of the provisions of this section by the register of deeds shall be deemed a misdemeanor, and upon conviction thereof he shall be punished by a fine of not less than one hundred dollars and not exceeding one thousand dollars, and he shall be liable to the grantee of any instrument so recorded for the amount of any damage sustained; provided, that sheriff's or referee's certificates of sale on execution decrees or foreclosures of mortgages may be recorded by the register of deeds without any such certificate from the county auditor. The county auditor shall keep a record of such transfers in a book kept for that purpose, showing the names of the grantor and grantee, a description of the property and the date of transfer, and shall collect twenty-five cents for each certificate, from the person or persons presenting the same for certification, and said money so collected shall be by him paid into the office of the county treasurer at the end of each month and be placed to the credit of the general funds of the county. [1913, ch. 115; 1911, ch. 302; R. C. 1905, § 1597; 1899, ch. 135; R. C. 1899, § 1278; 1901, ch. 144; 1903, ch. 167.]

§ 2213. **Division of valuation where part of a tract is transferred.** When the transfer of any land or town lot or any part thereof becomes necessary by reason of a sale or conveyance and is of less value than the whole tract or lot, or part thereof as charged in the tax list, said county auditor shall transfer the same whenever the seller and purchaser agree thereto in writing, signed by them, or personally appear before the auditor and agree upon the amount of valuation to be transferred therewith; but if the seller and purchaser do not agree as to the amount of valuation to be transferred the auditor shall make such divisions of the valuation as may appear to him just. If the county auditor is satisfied that the proportion of valuation agreed by the parties in interest to be transferred is greater than the proportional value of the land or lot to be transferred therewith, and that such agreement was made by collusion of the parties and with a view fraudulently to evade the payment of any taxes which might be legally assessed on the entire tract or lot, he may refuse to make such transfer, and when any such transfer has been procured by fraudulent agreement the same shall be cancelled by the auditor and the land or lot so transferred be charged with taxes in the same manner as though said transfer had not been made. [R. C. 1905, § 1598; 1897, ch. 126, § 96; R. C. 1899, § 1279.]

§ 2214. **Irregularities of land to be platted into lots if required.** In all cases where any tract or lot of said land is divided into irregular shapes that cannot be described except by metes and bounds, also any town addition or subdivision that has already been platted into blocks and lots and subsequently sold into parts of blocks or lots which cannot be described only by metes and bounds, or that the courses, distances and sizes of each lot and fractional lot is not given or marked upon said plat so that the precise location of each and every lot and fractional lot can be accurately ascertained, surveyed or laid out, it shall be the duty of the owner of such tract or tracts upon the request of the county auditor to have such land platted or replatted, as the case may be, into lots or blocks as per deeds on record, if such plat cannot be made without actual survey of the land then they shall have the same surveyed, platted and the plat thereof recorded. If the owners of any such tract shall refuse or neglect to cause such plat and survey when necessary to be made and recorded within thirty days after such request, the county surveyor shall, or some other competent surveyor may, upon the request of the county auditor, make out such plat from the records of the register of deeds if practicable; but if it cannot be made from such records then he shall make the necessary

survey and plat thereof, and the said auditor shall have the same recorded; such plat being duly certified and recorded and description of the property in accordance with the number and description set forth in such plat shall be deemed a good and valid description of the lots or parcels of land so described; provided, that no such plat or description as herein provided for shall bear the same name or number that has already been applied to any plat or description previously made and recorded as a part of any such town, village or city. When the owners of such land shall fail to comply with the provisions of this section the costs of surveying, platting and recording shall be paid by the county, upon allowance by the county commissioners, and the amount thereof shall be added to the tax upon such tracts or lots the ensuing year, which tax, when collected, shall be credited to the county fund. Said county surveyor or other surveyor shall be entitled to receive for his services in making such survey of plat the same compensation as is now allowed by law for doing other county surveying or platting, and such fees shall become a legal charge upon such tracts of land as herein provided for. [1911, ch. 287; R. C. 1905, § 1599; 1897, ch. 126, § 97; R. C. 1899, § 1280.]

ARTICLE 14.—ABBREVIATIONS IN DESCRIPTIONS AND PROCEEDINGS IN CASE OF FALSE LISTS AND RETURNS.

§ 2215. **Abbreviations in describing lands.** It shall be sufficient to describe land in all proceedings relative to assessing, advertising or selling the same for taxes by initial letters, abbreviations and figures to designate the township, range, section or parts of sections, and also the number of lots and blocks. Whenever the abbreviation "do" or characters "," or other similar abbreviations or characters shall be used in any such proceedings, they shall respectively be construed and held as meaning and being the same name, word, initial, letter or letters, abbreviations, figure or figures as the last preceding such "do" or "," or other similar characters. [R. C. 1905, § 1600; 1897, ch. 126, § 98; R. C. 1899, § 1281.]

§ 2216. **Auditor to correct false lists and returns.** The county auditor, if he has reason to believe or is informed that any person has given to the assessor a false statement of his personal property, or that the assessor has not returned the full amount of all personal property required to be listed in his township or district, or has omitted or made an erroneous return of any property which is by law subject to taxation, shall proceed at any time before the final settlement with the county treasurer, to correct the return of the assessor and to charge the owners of such property, on the tax lists, with the proper amounts of taxes, to enable him to do which, he is hereby authorized and empowered to issue compulsory process and require the attendance of any person whom he may suppose to have a knowledge of the articles or article of the property and examine such person on oath in relation to such statement or return; and the auditor in all such cases shall notify every such person before making the entry on the tax list that he may have an opportunity of showing that his statement on the return of the assessor is correct; and the county auditor shall, in all cases, file in his office a statement of the facts of evidence upon which he made such correction. [R. C. 1905, § 1601; 1897, ch. 126, § 99; R. C. 1899, § 1282.]

§ 2217. **Property omitted. Taxes added to subsequent years' taxes.** The county auditor of each county shall keep a book to be called "assessment roll of property which has escaped taxation," in which he shall each year enter all property, real or personal, which shall have been omitted in the assessment of any previous year or years, or the assessment of which shall have been set aside by the judgment of any court, and such property shall have thereby escaped taxation, noting therein the year or years in which such property shall have escaped taxation as aforesaid; and such auditor shall present such assessment roll to the county board of equalization at its first

regular meeting in July for review and equalization, and said board of equalization shall thereupon, during its session, proceed to equalize such assessments and hear all complaints that may be made with reference thereto, and for the purpose of equalizing the same shall have power to change and reduce or increase such assessments as it deems just; and the county auditor shall, at the time of making the annual tax list, enter and extend against such property so assessed, taxes for the year or years in which the same has escaped taxation at the same rate and for all the purposes for which taxes were levied upon property in his county in said year or years designating therein the year or years for which such taxes are so entered in said tax list, and if any taxes on any property liable to taxation are prevented from being collected for any year or years by reason of any erroneous proceedings or other cause, the amount of such taxes which such property should have paid shall be likewise entered and extended upon such tax list, and all taxes entered upon such tax list, under the provisions of this section, shall be collected as other taxes. [R. C. 1905, § 1602; 1897, ch. 126, § 100; R. C. 1899, § 1283; 1903, ch. 156; 1905, ch. 149.]

Unpaid taxes for any preceding year may be included in annual sale for delinquent taxes. *Scott & B. Mercantile Co. v. Nelson County*, 14 N. D. 407, 104 N. W. 528.

§ 2218. Debts of municipalities void if entailing taxation beyond the rate fixed by law. It shall be unlawful for any city, town or village officer or for the officers of any school district, unless specially and expressly authorized by law, to contract any debt or incur any pecuniary liability, for the payment of either the principal or interest, for which during the current year, or any subsequent year, it shall be necessary to levy on the taxable property of such county, township, city, town or village or school district, a higher rate of tax than the maximum rate prescribed by law, and every contract made in contravention of the provisions of this section shall be utterly null and void in regard to any obligation thereby imposed on the corporation on behalf of which such contract purports to be made; but every commissioner, officer, agent, supervisor or member of any municipal corporation that makes or participates in making or authorizes the making of any such contract, shall be held individually liable for its performance; and every commissioner, supervisor, director or member of any city, town or village council, or other officer or agent of any such municipal corporation present when any such unlawful contract was made or authorized to be made, shall be deemed to have made or to have participated in making, or to have authorized the making of the same, as the case may be, unless, if present, he dissent therefrom and entered or caused to be entered such dissent on the records of such municipal corporation, or of its council, supervisors or other officer. [R. C. 1905, § 1603; 1897, ch. 126, § 101; R. C. 1899, § 1284.]

School district voters by authorizing bond issue of \$7,000 for school site and building did not impliedly forbid expenditure of more than that amount. *McCavick v. Independent School Dist.*, 25 S. D. 449, 127 N. W. 476.

Personal liability of public officer on contract which he attempts to make for public in excess of his authority. 23 L.R.A. (N.S.) 428.

§ 2219. Exempt property to be valued and assessed. At the time of taking the assessment of real property the assessor shall enter on a separate list each description of property in the town or district exempt under the provisions of section [am'd section 2078 herein] and value and assess the same in the manner and subject to the same rules as he is required to assess all other property, designating in each case to whom such property belongs, and for what purpose used. [R. C. 1905, § 1604; 1897, ch. 126, § 102; R. C. 1899, § 1285.]

§ 2220. Neglect of duty by officers. Every county, district or township officer who in any case refuses or knowingly neglects to perform any duty enjoined upon him by this chapter, or who consents to or connives at any evasion of its provisions whereby any proceeding required by this chapter is prevented or hindered or whereby any property required to be listed for

taxation is unlawfully exempted, or the valuation thereof is entered on the tax list at less than its true value, shall for every such neglect, refusal, consent or connivance, forfeit and pay to the state not less than two hundred nor more than one thousand dollars, at the discretion of the court, to be recovered before any court of competent jurisdiction. [R. C. 1905, § 1605; 1897, ch. 126, § 103; R. C. 1899, § 1286.]

§ 2221. Suits against officers defended at expense of county. Whenever civil action is brought against any person holding the office of county treasurer, county auditor or any town or district officer for performing or attempting to perform any duty authorized or decreed by any statute of this state for collection of the public revenue, such treasurer, auditor or other officer may, in the discretion of the court before whom such action is brought, by an order made by said court and entered in the minutes thereof, be allowed and paid out of the county treasury, reasonable fees for counsel and other expenses of defending such action. [R. C. 1905, § 1606; 1897, ch. 126, § 104; R. C. 1899, § 1287.]

§ 2222. When auditor to forward list of new taxable lands. A list of all lands becoming taxable for the first time in any county of the state shall be procured by the state auditor from the proper land officers and forwarded by him to the county auditor of the proper county on or before the fifteenth day of March of each year.

Provided, further, that a list of all lands which have been taxable in any county of the state, but upon which patents or final proofs have been cancelled by the government, shall be procured by the state auditor from the proper land officers and forwarded by him to the county auditor of the proper county on or before the fifteenth day of March of each year. [1911, ch. 292; R. C. 1905, § 1607; 1897, ch. 126, § 105; R. C. 1899, § 1288.]

Section 653g makes an appropriation for expense of the list of new taxable lands.

§ 2223. Notice of expiration of redemption, certificate holders. Auditor. Every person holding a tax certificate shall, at least ninety days before the expiration of the time for the redemption of the lands therein described, present such certificate to the county auditor and thereupon the auditor shall prepare, under his hand and official seal, a notice to the person in whose name such lands are assessed, specifying the description of such lands, the amount for which the same were sold, the amount required to redeem such lands from sale, exclusive of the costs to accrue upon such notice, and the time when the redemption period will expire, which notice the auditor shall cause to be delivered to the sheriff or his deputy who shall serve it personally upon the owner, if known to be a resident of the state, but which may if the owner be a nonresident be given by registered letter, addressed to such owner at his last known post office address, and by publication once in each week, for three consecutive weeks, in some newspaper printed and published in the county where such lands are situated, if there be one; if none, then in some newspaper printed and published at the capital of the state, and in case the property covered by such certificate is occupied, then service of such notice shall, in addition to the foregoing provision, be made upon the person in possession thereof. Proof of notice herein provided for must be filed in the office of the county auditor prior to the maturing of such certificate, and no deed shall issue until such proof has been duly filed. The fees for serving and the printers' fees for publishing such notice shall be added to the amount required to redeem such land, and shall be paid by the party offering to redeem such land before any certificate of redemption shall be issued. In case of failure on the part of the holder of any tax certificate to present the same to the auditor at the time hereinbefore provided, the same may be so presented at any time hereafter, and thereupon such notice shall be issued and served as hereinbefore provided, and the time for redemption of such lands shall expire ninety days after such

notice; provided that the county shall not be liable for any expense incurred under the provisions of this section. Provided, further, that said tax certificates, also any subsequent taxes paid by the holder thereof, shall continue to draw interest until said taxes are paid or redeemed. Provided, further, that in case said tax certificate should for any reason be declared void the interest thereon shall cease from and after three (3) years from the date of such certificate. [1911, ch. 295; R. C. 1905, § 1608; 1897, ch. 126, § 106; R. C. 1899, § 1289; 1901, ch. 166.]

Must be strictly construed against one claiming title by tax purchase thereunder.

Archer v. N. S. Tubbs Sheep Co., 25 S. D. 399, 126 N. W. 577.

Tax deed is void unless notice as to amount due conforms to statute and describes land. *Blessett v. Turcotte*, 20 N. D. 151, 127 N. W. 505.

Notice of time when redemption from tax sale must be made must be served on non-resident owner by registered letter, and personally upon person in possession. *Hodgson v. State Finance Co.*, 19 N. D. 142, 122 N. W. 336.

Notice of redemption omitting section, town and range insufficient. *Stokes v. Allen*, 15 S. D. 421, 89 N. W. 1023.

Failure to give notice for proper time does not prevent a tax deed from constituting color of title; question of good faith one of fact. *Meadows v. Osterkamp*, 13 S. D. 571, 83 N. W. 624.

Published notice, addressed "to whom it may concern," not sufficient. *Rector & Wilhelm v. Maloney*, 15 S. D. 271, 88 N. W. 575.

Deed by city for nonpayment of assessments is valid although no notice was given that deed would be demanded. *Kirby v. Waterman*, 17 S. D. 314, 96 N. W. 129.

Title to land sold for delinquent taxes does not pass by virtue of certificate but only after proof of giving of proper notice has been filed prior to maturity of certificate. *Hardy v. Woods*, 28 S. D. 151, 132 N. W. 692.

Tax title is not good where proof of service of maturity of certificate of sale was not served for five years after expiration of year for redemption from sale. *Joy v. Midland State Bank*, 26 S. D. 244, 128 N. W. 147.

§ 2224. Redemption when owner dies after sale. Auditor's certificate.

Whenever the lands of any person have been heretofore or shall be hereafter sold for taxes and the owner of such lands, after such sale and before the expiration of the period of redemption, heretofore has deceased or hereafter shall de cease, the executor or administrator of such owner or any person interested in his estate as heir or devisee, or creditor, may redeem such lands from any such sale at any time within four years from the date thereof. If such redemption be made by a creditor, the amount paid to effect such redemption, with interest thereon at the rate of seven per cent per annum, shall constitute a valid claim against the estate of the deceased. If such redemption be made by an executor or administrator he shall at the time of the making thereof produce his letters testamentary, or of administration to the county auditor; if made by another person he shall make and file with such auditor an affidavit stating under what right or claim such redemption is made. Upon any such redemption being made, the county auditor shall make and deliver to the person making such redemption a certificate containing the name of the person redeeming, a statement of the claim or right upon which such redemption was made, the amount paid to redeem, a description of the land redeemed, the date of the sale of such lands and the year in which the taxes were levied for which such sale was made, which certificate shall have the effect to annul any such sale, and such certificate may be recorded as other deeds of real estate, and with like effect as evidence or otherwise. [R. C. 1905, § 1609; 1897, ch. 126, §§ 107, 108; R. C. 1899, § 1290.]

ARTICLE 15.—ASSESSMENT AND TAX LEVY IN UNORGANIZED COUNTIES.

§ 2225. Assessment and taxation in unorganized counties. Any property not exempt from taxation, which is situated or kept in any unorganized county in this state, shall be listed and assessed by an assessor, to be appointed by the board of county commissioners of the organized county to which such unorganized county is attached for judicial purposes; and the taxes due and payable on property in such unorganized county shall be paid

to and collected by the treasurer of such organized county, but such property shall be assessed and taxed for state purposes only. The board of county commissioners of the county to which such unorganized county is attached for judicial purposes shall, at the time and place it equalizes and corrects the assessment roll of its county, equalize and correct the assessment roll of such unorganized county, and at the same time and place it makes its tax levy for county purposes levy a tax upon the assessed property of such unorganized county for state purposes only, and in the same manner and form that it makes levy for state purposes in its own county; and when the tax list is completed the board of county commissioners shall attach to such list its warrant under its hand and official seal in general terms requiring the county treasurer of such unorganized county to collect the tax therein levied according to law; and it shall require an additional bond from such county treasurer in such amount as it may deem necessary for the faithful discharge of his duties in collecting such tax and it shall audit and allow the necessary expenses of the assessor, auditor and treasurer for the assessment and collection of such taxes, which shall be paid upon its warrant out of the taxes so assessed and collected. [R. C. 1905, § 1610; 1897, ch. 126, § 109; R. C. 1899, § 1291.]

County tax cannot be levied in unorganized county for use of organized county to which attached. *Farris v. Vannier*, 6 D. 186, 42 N. W. 31, 2 L.R.A. 713.

Unorganized county subject to taxation for state purposes in nearest organized county. *Dupree v. Stanley County*, 8 S. D. 30, 65 N. W. 426.

Personal property belonging to a resident of Meade county, but situated in the unorganized county of Geoby, is taxable in Meade county. *Meade County v. Hoehn*, 12 S. D. 468, 81 N. W. 886.

§ 2226. Duplicate tax list. The county auditor of the county to which such unorganized county is attached for judicial purposes shall prepare a tax list in duplicate, with the warrant of the county commissioners attached, and deliver the duplicate thereof to the county treasurer on or before the first day of December following the date of the levy for the current year, and such duplicate tax list shall be full and sufficient authority for the collection by the treasurer of all taxes therein contained. The original tax list shall be kept by such auditor as the property of such unorganized county. It shall be the duty of the county treasurer, upon receipt of the tax list aforesaid, to collect such tax in the same manner and form in which other taxes are collected, and he shall pay the warrants drawn by the county commissioners upon such tax for necessary expenses of assessing and collecting the same, and remit the remainder of such tax to the state treasurer. [R. C. 1905, § 1611; 1897, ch. 126, § 109; R. C. 1899, § 1291.]

ARTICLE 16.—TAXING LIVE STOCK OF NONRESIDENT OWNERS.

§ 2227. Nonresident owners of live stock pay for ranging. Amount. Collection by seizure. Any owner of live stock nonresident of this state, who shall enter any county in the state of North Dakota with horses, mules, cattle or sheep for the purpose of herding or feeding them upon the range of said state, or who shall permit or suffer any stock owned by him to enter any county of the state of North Dakota and feed upon the range thereof, shall pay into the treasury of the county thus entered the sum of fifty cents per month for each head of stock so entering and feeding on such range, for each and every month said stock so fed, which tax shall be in addition to other taxes now or hereafter imposed by law. Said amount of fifty cents per head per month as herein provided shall be paid monthly in advance. Should the owner of such stock fail to comply with the provisions of this article within ten days after the time, as herein provided, said tax shall become due, the county treasurer of the county so entered by such stock shall immediately proceed to collect said tax by seizure and sale in the same manner as delinquent personal property taxes are collected by law. [R. C. 1905, § 1612; 1901, ch. 155.]

ARTICLE 17.—LEGALIZING IRREGULARITIES IN ASSESSMENTS AND LEVIES.

§ 2228. **Tax levy of 1895 legalized.** The levy of taxes as made in the various counties for the year 1895 is hereby legalized and made valid for all intents and purposes the same as if made in conformity to the law then in force. [R. C. 1905, § 1613; 1897, ch. 99; R. C. 1899, § 1312.]

§ 2229. **All tax levies of 1895, 1896, 1897, 1898, 1899 and 1900 legalized.** The levy of taxes for the state of North Dakota as made by the state board of equalization, and all levies made in the various counties, townships and school districts in said state for the years 1895, 1896, 1897, 1898, 1899 and 1900, whether the same was levied in mills or in specific amounts, or both, is hereby legalized and made valid in all respects and purposes the same as if made in conformity to the laws then in force. [R. C. 1905, § 1614; 1897, ch. 99; R. C. 1899, § 1312; 1901, ch. 159.]

Curative statutes, power of legislature to supply defects in assessments. 76 Am. Dec. 527.

§ 2230. **Assessments and levies in certain unorganized counties for county purposes.** **Assessment of taxes.** All assessments and tax levies for state and county purposes heretofore made within any territory within the state of North Dakota, over which any county has exercised jurisdiction in criminal and civil matters, and which has to all intents and purposes been treated as a portion of said county for not less than four years last past, shall be and the same is hereby in all respects legalized. [R. C. 1905, § 1615; 1901, ch. 158.]

§ 2231. **How collected.** It shall be the duty of the treasurer of the county exercising such jurisdiction as is mentioned in section 2230 to make out a list of such taxes in the same order as it appears in the tax list, and deliver said list of unpaid delinquent personal taxes to the sheriff of his county, whose duty it shall be to collect such delinquent personal taxes by distraining sufficient goods and chattels belonging to the persons charged with such taxes, together with penalty and interest and all accruing costs and interest, and shall immediately proceed to advertise the same in three public places in said county and in the official newspapers, if there be any in said county, for a period of ten days before such sale, stating the time and place where such property shall be sold, which place of sale shall be at the county seat of said county, and no personal property shall be exempt from such distraint and sale; and if on the date of sale such taxes remain unpaid, then the sheriff shall sell said property, or so much thereof as may be necessary to pay such taxes, together with the interest and penalty and accruing costs, at public auction. [R. C. 1905, § 1616; 1901, ch. 158.]

ARTICLE 18.—VALIDATING ASSESSMENTS SINCE 1889.

§ 2232. **Validating assessments since 1889.** Every assessment of real or personal property for the purpose of taxation, and every assessment roll, heretofore and since the year 1889 made by any officer authorized by law to assess the property described in such assessment roll for the purpose of taxation, and returned to the county auditor of any county in this state, and acted upon and adopted by the board of equalization of such county as an assessment, or assessment roll, is hereby made valid; provided, such assessment or assessment roll, if it purports to be an assessment of real property, contains sufficient data from which can be definitely ascertained the description of the property intended to be assessed, and the valuation fixed thereon by the assessor; and if it is an assessment of personal property, contains the name of the owner of the property assessed, and the valuation of such property. [R. C. 1905, § 1617; 1903, ch. 158, § 1.]

§ 2233. **Validating tax levies since 1889. Exceptions.** All taxes levied for any purpose, heretofore and since the year 1889, made in this state, by any board or officer authorized by law to make the same, and all tax levies

heretofore and since the year 1889 made by the state board of equalization, or by any county board of equalization, are hereby made valid; provided, it can be definitely ascertained from the official records of the proceedings of such officer or board, what amount of taxes, or what rate per cent of taxation was intended to be levied; and provided, further, that this article shall not be construed to validate any tax levy made for any purpose unauthorized by law, or which is in excess of the amount allowed by law to be levied. [R. C. 1905, § 1618; 1903, ch. 158, § 2.]

§ 2234. Fatal defects enumerated. In all actions hereafter tried, in which the validity of any tax heretofore levied comes in question, no tax shall be held invalid unless it shall be made to appear, by the party objecting thereto, that one or more of the following defects exist, to wit:

1. That the property assessed was not subject to taxation; or in the case of an assessment of personal property that the person assessed was not liable to taxation at the time such assessment was made, for the property or some part thereof assessed to him.

2. If the tax is upon real property, that the description of the property intended to be assessed, or the valuation thereof, cannot be definitely ascertained from the assessment roll which is the basis of such tax; and if the tax is upon personal property, that the assessment roll containing the assessment of the property upon which the tax is levied, does not contain either the name of the owner of such property or the valuation thereof.

3. That it cannot be definitely ascertained from the official record of the proceedings of the board or officer levying the tax, what amount of taxes, or what rate per cent of taxation was intended to be levied.

4. That such taxes have been paid.

5. That the valuation of the property assessed upon which such taxes were levied was unfair and unequal; provided, however, that no claim of any unfairness or inequality of any valuation of property in the assessment roll shall be heard, unless it appears, either that there was no meeting of the board of equalization authorized by law to equalize such assessment at the time fixed by law to hear and determine such complaint, or if there was such a meeting of such board of equalization, that such board acted in excess of its powers in relation to the valuation objected to; or that the valuation as fixed by the proper board of equalization has been unlawfully increased; but in all such cases the court shall hear the evidence and determine therefrom the amount that is justly due for such taxes, and the tax list containing the record of such taxes shall be prima facie evidence of the amount thereof justly due.

6. That the tax, or some part thereof, is in excess of the amount limited by law, or for a purpose unauthorized by law, but in such case the court shall not cancel the taxes, except as to such excess or as to such unlawful purpose. [R. C. 1905, § 1619; 1903, ch. 158, § 3.]

§ 2235. Portion of tax shall be valid. In all cases where part of any tax heretofore levied is declared void by the court, the remainder of such tax shall be valid, and shall be enforced against any property liable therefor in the same manner that taxes of like nature are now or hereafter may be enforced. [R. C. 1905, § 1620; 1903, ch. 158, § 4.]

§ 2236. Taxes, when delinquent. All taxes which are validated by this article shall become and be delinquent on the first day of July, 1903, and if then unpaid there shall attach thereto a penalty of five per cent, and thereafter such taxes shall be subject to the same penalties and interest as taxes of like nature under the laws which may then be in force; provided, however, that the provision of this section shall not apply to cases where part of a tax, only, is held valid, as provided in the preceding section, but in all such cases such part of a tax so held valid shall become and be delinquent on the first day on which penalties attach to delinquent taxes of like nature under the

laws then in force, next succeeding the entry of a judgment declaring such part of tax valid, and thereupon and thereafter such penalties and interest, or either, shall attach thereto as attach to other delinquent taxes of like character under the laws then in force. [R. C. 1905, § 1621; 1903, ch. 158, § 5.]

§ 2237. Taxes held valid. Exception. In all cases where real property has been sold for delinquent taxes which shall have been validated by this article, and such sale shall be adjudged void, and such taxes shall be adjudged valid under the provisions of this article, in any action, such taxes so held valid, shall remain and be a lien upon the land so sold, and be subject to the penalties and interest, if any, as in the preceding section provided, unless the party to such action claiming such sale to be invalid, shall have tendered to and deposited in the office of the county treasurer, before commencing such action, the full face amount of such taxes, and unless the action in which the validity of such sale, or of such taxes comes in question shall have been commenced before January first, 1904; provided, that the provisions of this article shall not apply to any action or proceeding now pending between the fee owner of land, and any person or corporation holding a tax certificate or tax deed therefor, involving the validity of such tax certificate or tax deed. [R. C. 1905, § 1622; 1903, ch. 158, § 6.]

ARTICLE 19.—VALIDATING FUTURE ASSESSMENTS AND TAX LEVIES.

§ 2238. Assessments valid, when. Every assessment of real or personal property for the purposes of taxation, and every assessment roll, hereafter made by any officer authorized by law to assess the property described in such assessment roll for the purpose of taxation, and returned to the county auditor of any county in this state, and acted upon and adopted by the board of equalization of such county as an assessment, or assessment roll, shall be held valid; provided, such assessment or assessment roll, if it purports to be an assessment of real property, contains sufficient data from which can be definitely ascertained the description of the property intended to be assessed, and the valuation fixed thereon by the assessor; and if it is an assessment of personal property, contains the name of the owner of the property assessed, and the valuation of such property. [R. C. 1905, § 1623; 1903, ch. 157, § 1.]

§ 2239. Taxes valid, when. All taxes, levied for any purpose, hereafter made in this state, by any board or officer authorized by law to make the same, shall be held valid, provided it can be definitely ascertained from the official records of the proceedings of such officer or board, what amount of taxes, or what rate per cent of taxation was intended to be levied; and provided, further, that this article shall not be construed to validate any tax levy made for any purpose unauthorized by law or which is in excess of the amount allowed by law to be levied. [R. C. 1905, § 1624; 1903, ch. 157, § 2.]

§ 2240. Tax held invalid, when. In all actions in which the validity of any tax hereafter levied comes in question, no tax shall be held invalid unless it shall be made to appear, by the party objecting thereto, that one or more of the following defects exist, to wit:

1. That the property assessed was not subject to taxation; or in the case of an assessment of personal property, that the person assessed was not liable to taxation at the time such assessment was made, for the property or some part thereof assessed to him.

2. If the tax is upon real property, that the description of the property intended to be assessed, or the valuation thereof, cannot be definitely ascertained from the assessment roll which is the basis of such tax; and if the tax is upon personal property, that the assessment roll containing the assess-

ment of the property upon which the tax is levied, does not contain either the name of the owner of such property, or the valuation thereof.

3. That it cannot be definitely ascertained from the official record of the proceedings of the board or officers levying the tax, what amount of taxes, or what rate per cent of taxation was intended to be levied.

4. That such taxes have been paid.

5. That the valuation of the property assessed upon which such taxes were levied, was unfair and unequal; provided, however, that no claim of any unfairness or inequality of any valuation of property in the assessment roll shall be heard, unless it appears, either that there was no meeting of the board of equalization authorized by law to equalize such assessment at the time fixed by law to hear and determine such complaint, or if there was such a meeting of such board of equalization, that such board acted in excess of its powers in relation to the valuation objected to; or that the valuation as fixed by the proper board of equalization has been unlawfully increased; but in all such cases the court shall hear the evidence and determine therefrom the amount that is justly due for such taxes, and the tax list containing the record of such taxes shall be *prima facie* evidence of the amount thereof justly due.

6. That the tax, or some part thereof, is in excess of the amount limited by law, or for a purpose unauthorized by law, but in such case the court shall not cancel the taxes, except as to such excess or as to such unlawful purpose. [R. C. 1905, § 1625; 1903, ch. 157, § 3.]

§ 2241. **Portion of tax valid. Delinquent, when.** In all cases where part of any tax hereafter levied is declared void by the court, the remainder of such tax shall be valid, and shall be enforced against any property liable therefor in the same manner that taxes of like nature are now or hereafter may be enforced, and in all such cases such part of a tax so held valid shall become and be delinquent on the first day on which penalties attach to delinquent taxes of like nature under the laws then in force, next succeeding the entry of a judgment declaring such part of tax valid, and thereupon and thereafter such penalties and interest, or either, shall attach thereto as attach to other delinquent taxes of the character under the laws then in force. [R. C. 1905, § 1626; 1903, ch. 157, § 4.]

ARTICLE 20.—ASSESSMENT OF RAILROAD PROPERTY.

§ 2242. **Railroads, how assessed.** The state board of equalization shall at its annual meeting in August in each year, assess at its actual value the franchise, roadway, roadbed, rails and rolling stock of all railroads operated in this state, including electric and all other street and interurban railways. To enable said board to make a correct valuation of such property, they shall have access to all reports, estimates and surveys of such lines of railroads as may be on file in the office of the commissioners of railroads and shall have power to summon and compel the attendance of witnesses, and may examine such witnesses under oath in any matter relating to the value of such property. In estimating the value of such railroads, branches and sidetracks thereof they shall be governed by the same rules as are provided for the government of county and township assessors in valuing other property in this state. They shall cause a record to be made of the estimated value placed upon each of the items set forth in this section which go to make the aggregate valuation of such assessments. [R. C. 1905, § 1627; 1890, ch. 135, § 1; R. C. 1899, § 1313; 1905, ch. 151.]

§ 2243. **Apportionment to counties according to mileage.** The board of equalization shall divide the valuation so found and determined of each continuous line by the number of miles of such line contained in the state, and the result shall be the valuation per mile for which said line shall be

assessed. The value of each branch line shall be determined in the same manner, and such valuation per mile shall be apportioned to each county according to the number of miles of such line or branch line contained in such county. [R. C. 1905, § 1628; 1890, ch. 135, § 2; R. C. 1899, § 1314.]

§ 2244. Mileage and valuation, how certified to various political subdivisions for taxation. The state auditor shall at the time of certifying the equalized value of each organized county to the county auditor, also certify the number of miles of each main line of railroad, and branches and side-tracks thereof contained in said county and the valuation per mile of such line or branch line as determined by the state board of equalization and the county auditor of such county shall apportion such valuation to the cities, towns, townships and districts through which such railroads run according to the number of miles contained in each, as a part of the valuation of such city, town, township and district for the purpose of taxation, and the same shall be taxed as personal property is taxed in each county. [R. C. 1905, § 1629; 1890, ch. 135, § 3; R. C. 1899, § 1315.]

The franchise, roadway, roadbed, rails and rolling stock of a railroad are personal property for purposes of taxation. *M. & S. Ste. M. Ry. Co. v. Dickey County*, 11 N. D. 107, 90 N. W. 260; *Milwaukee Ry. v. Cass County*, 8 N. D. 18, 76 N. W. 239.

Nature of railroad property for purpose of taxation, 15 L.R.A. 298; 66 L.R.A. 51.

§ 2245. Taxation in unorganized counties. The valuation so apportioned to unorganized counties in this state shall be taxed for state purposes only; and such tax shall be levied annually by the state auditor at the same rate as other property is taxed for state purposes, and the state auditor shall notify each railroad company so taxed of the amount of such tax, on or before the first day of December in each year, and such tax must be paid to the state treasurer at the same time and subject to the same penalty as is prescribed by law for the collection of personal property taxes in organized counties, and the state treasurer shall have the same powers, and it shall be his duty to collect such tax in the same manner as county treasurers are authorized by law to collect personal property taxes. [R. C. 1905, § 1630; 1890, ch. 135, § 4; R. C. 1899, § 1316.]

§ 2246. Provisions of this article inoperative, when. If at any time the legislative assembly shall provide by law for the payment of a per cent of gross earnings by railroads as authorized by section 176 of the constitution of this state, then and during the time such law shall be in force the provisions of this article shall be inoperative. [R. C. 1905, § 1631; 1890, ch. 135, § 5; R. C. 1899, § 1317.]

ARTICLE 21.—ASSESSMENT AND TAXATION OF PUBLIC UTILITIES.

§ 2247. Express, freight line and equipment, telegraph and telephone companies defined. Any person or persons, joint stock association, company or corporation, wherever organized or incorporated, engaged in the business of conveying to, from or through this state, or any part thereof, money, packages, gold, silver, plate or other property by express, on and by passenger and mail trains, shall be deemed an express company; any person or persons, joint stock association, company or corporation, wherever organized or incorporated, engaged in the business of operating cars which are not subject to assessment and taxation under the provisions of sections 2242, 2243, 2244 and 2245, for the transportation of freight, whether such freight be owned by such company or any other person or company, over any railway line or lines in whole or in part within this state, such line or lines not being owned, leased or operated by such company, whether such cars be termed box, flat, coal, ore, tank, stock, gondola, furniture or refrigerator cars or be known by some other name, shall be deemed a freight line company; any person or persons, joint stock association, company or corporation, wherever organized, engaged in the business of furnishing or leasing cars of whatsoever kind

or description to be used for the transportation of freight or for the transportation, accommodation, convenience, comfort or safety of passengers, whether such cars be termed freight, sleeping, tourist, palace, parlor, chair or buffet cars, or be known by some other name, in the operation of any railway line or lines wholly or partially within this state, such line or lines not being owned, leased or operated by such company, and such cars not being subject to taxation under said sections of the revised codes of North Dakota, shall be deemed an equipment company; any person or persons, joint stock association, company or corporation, wherever organized or incorporated, engaged in the business of conveying telegraphic messages, shall be deemed a telegraph company; and any person or persons, joint stock association, company or corporation, wherever organized or incorporated, engaged in the business of conveying messages by the use of the telephone or any similarly constructed instrument or device, shall be deemed a telephone company. [1907, ch. 216, § 1.]

§ 2248. Annual statement to state auditor, what to contain. Every company defined in section one of this act [section 2247], doing business in this state, shall annually, between the first and thirtieth day of June, under oath of the person constituting such company, if a person, or under the oath of its president, secretary, treasurer, superintendent or chief officer if an association, company or corporation, make and file with the state auditor a statement in such form as the state auditor may prescribe, for the year ending June first preceding, containing the following facts: The name of the company; the nature of the company, whether a person or persons, association or corporation, and under the laws of what state or country organized; the location of its principal office; the name and post office address of the president, secretary, auditor, treasurer and superintendent or general manager thereof; the name and address of the chief officer or managing agent of the company in North Dakota, if any; the number of shares of capital stock; the par value and market value, or if there be no market value the actual value of its shares of stock on the first day of June of such year; a detailed statement of the real estate owned by the company in North Dakota on the first day of June of such year, where situated and the value thereof; a full and correct inventory of personal property, including money and credits owned by the company in North Dakota on the first day of June, where situate and the value thereof; the total value of the real estate owned by the company and situate outside the state of North Dakota; the total value of the personal property owned by the company and situate outside the state of North Dakota; the entire gross receipts of the company from whatever source derived for the year ending June first, of business wherever done; the entire gross receipts for the year ending June first, from whatever source derived, of each office within the state of North Dakota, and the total gross receipts of the company for such period in North Dakota; the entire operating and other expenses of such company for such year; the balances of profit or loss for such year; the whole length in miles of the lines or routes over which the company did business in this state during the year ending on the first day of June, and the length of so much of said lines or routes as is without the state and the length of so much of each within each county of the state of North Dakota, naming the lines or routes within this state; such other facts and information as the state auditor may require in the form of returns, to be prescribed by him, to enable the state board of equalization to ascertain the value of the property of such company liable to taxation within this state. Blanks for making the above statement shall be prepared and on application furnished to any company by the state auditor. [1907, ch. 216, § 2.]

§ 2249. Duties of state board of equalization. The state board of equalization shall at its annual meeting in August in each year assess the property

of such companies doing business in this state with reference to the value of such property on the first day of June of such year. On the meeting of the board of equalization the state auditor shall lay before it the statements and schedules returned to him under section two of this act [section 2248]. The said board shall proceed to ascertain the value of the property of each of said companies in North Dakota and in determining the value of the property of each company to be taxed within the state and assessed as herein provided said board shall be guided by the value of said property as determined by the value of the entire capital stock of said company and such other evidence and rules as will enable said board to arrive at the true value in money of the entire property of said company within the state of North Dakota in the proportion which the same bears to the entire property of said company as determined by the value of the capital stock thereof and the other evidence and rules aforesaid. The board may adjourn from time to time until the business before it is finally disposed of. In case a company fails or refuses to make the statement required by law or furnish the board any information requested the board shall inform itself as best it may on the matters necessary to be known in order to discharge its duties with respect to the assessment of the property of such company. At the annual meeting of the board of equalization aforesaid and before the assessment of the property of any such company is determined, any company or person interested shall have the right, upon written application, to appear before the board of equalization and be heard in the matter of the valuation of the property of any company for taxation. [1907, ch. 216, § 3.]

§ 2250. Penalty for failure to file statement. In case any company required to file a statement under the provisions of section two hereof [section 2248] fails to make and file such statement on or before the thirtieth day of June such company shall be subject to a penalty of five hundred dollars and an additional penalty of one hundred dollars for each day's omission after said thirtieth day of June to file such statement, said penalty to be recovered in the name of the state and on collection paid into the state treasury to the credit of the school fund. The attorney-general shall institute such action against any company so delinquent. The state board of equalization shall have power to require the president, secretary, treasurer, receiver, superintendent, managing agent, or other officer or employee or agent of any such company, to attend before such board and produce for the instruction of the board any books or papers of such company in his possession, custody or control, and to testify under oath touching the business, property, moneys, credits and value thereof of such company. Any member of the board is authorized and empowered to administer such oath. Any officers, employee or agent of the company so required to appear before such board as aforesaid who shall refuse to produce and submit for the inspection of the board any such books or papers of such company in his possession, custody or control, or shall refuse to answer any question or questions put to him by the state board of equalization, or any member thereof, touching the business, property, moneys, credits and the value thereof of such company, shall be guilty of a misdemeanor, and on conviction thereof before any court of competent jurisdiction shall be fined for each such refusal not more than five hundred dollars or imprisoned in the county jail not more than thirty days, or both such fine and imprisonment. [1907, ch. 216, § 4.]

§ 2251. State auditor certifies ascertained valuation to county auditors. The state auditor shall certify to the county auditor of each county within this state the total value of the property of such company in North Dakota as ascertained and assessed by said board, at the same time he certifies the assessed valuation of other property assessed or equalized by said board, and shall also certify the number of miles over which such company operates in such county. The total value of the property of said company in North

Dakota as assessed by the state board of equalization shall be apportioned by the state auditor among the several counties in which the company does business in the proportion that the number of miles over which such company operates in each county respectively bears to the entire number of miles over which such company operates in the state, and the county auditor, upon receiving such certificate shall apportion the valuation therein stated among the cities, towns, villages, townships and other tax districts of his county in proportion to the number of miles operated in each, and the county auditor shall place the apportioned valuation on the tax list and taxes shall be levied and collected thereon, at the same rate and in the same manner as taxes are levied and collected on other property within the state, which taxes shall be in lieu of all other taxes upon all property liable to taxation under this article. [1907, ch. 216, § 5.]

§ 2252. Valuation taxed for state purposes only in unorganized counties. The valuation so apportioned to unorganized counties in this state shall be taxed for state purposes only, and such tax shall be levied annually by the state auditor at the same rate as other property is taxed for state purposes and the state auditor shall notify each company so assessed of the amount of such tax on or before the first day of December in each year, and such tax must be paid to the state treasurer at the same time and subject to the same penalty as is prescribed by law for the collection of personal property taxes in organized counties, and the state treasurer shall have the same powers and it shall be his duty to collect such taxes in the same manner as county treasurers are authorized by law to collect personal property taxes. [1907, ch. 216, § 6.]

ARTICLE 22.—TAXATION OF BANKRUPT STOCKS.

§ 2253. Bankrupt stocks, etc., how assessed. All itinerant, transient or other merchants, salesmen or other persons, and all merchants or salesmen of bankrupt stocks of goods or merchandise, or of stocks of goods or merchandise claimed to have been injured by fire or otherwise, who shall bring into this state any stock of goods at any time after the annual assessment is made and returned shall be liable to taxation upon such stock of goods and merchandise, and the assessor of the township or city, in which such goods or merchandise are offered for sale, shall immediately assess such stock at the same rate at which other merchandise of the same character has been assessed and forthwith return his assessment roll thereof, if an assessor in an incorporated city, to the city auditor, and if not, then to the county auditor. [R. C. 1905, § 1632; 1890, ch. 141, § 1; 1893, ch. 111, § 1; R. C. 1899, § 1318.]

§ 2254. Proceedings by city council. If such assessment roll is returned to the city auditor he shall immediately notify the mayor thereof, who shall thereupon call a meeting of the city council for the purpose of equalizing or correcting such assessment. Such meeting shall be held not less than three nor more than ten days after the return of such assessment, and not less than twenty-four hours' notice of the time and place and purpose of such meeting shall be given to the owner of such stock, which notice must be in writing and may be served personally or by leaving a copy thereof with any person in charge of such stock or employed in selling the same. The city council shall at such meeting hear any complaint as to the assessment of such stock and equalize and assess the same, and may adjourn from day to day until the same is completed; and in the absence of a quorum such meeting may be adjourned from day to day by the city auditor and upon the completion of such equalization the city auditor shall immediately certify such equalized assessment roll to the county auditor, who shall thereupon add such assessment to the tax list for the current year, and extend the taxes for such year thereon, and on the duplicate thereof, or if such duplicate has

been delivered to the county treasurer, shall certify the same to such treasurer, who shall thereupon immediately, upon the receipt of such duplicate or certificate, demand such taxes and collect the same by distraint and sale in default of payment thereof on demand. [R. C. 1905, § 1633; 1893, ch. 111, § 2; R. C. 1899, § 1319.]

§ 2255. **Assessment by township assessor.** If such assessment is made by a township assessor he shall return the same to the county auditor, who shall thereupon call a meeting of the board of county commissioners in the manner and within the time provided in the preceding section for calling a meeting of the city council, and thereupon the same proceedings shall be had by the board of county commissioners for the equalization of such assessment, and the same notice given of such equalization as provided in said section, and upon the equalization thereof the county auditor shall enter such assessment on the tax list as provided in said section, and the same proceedings shall be had for the collection of such tax as therein provided. [R. C. 1905, § 1634; 1893, ch. 111, § 3; R. C. 1899, § 1320.]

ARTICLE 23.—TAXATION OF GRAIN.

§ 2256. **Rate fixed.** All grain grown within the state and held therein in elevators, warehouses and granaries shall be taxed at a fixed rate as follows: Flax at the rate of one-half of one cent per bushel; wheat at the rate of three-eighths of one cent per bushel; and oats, barley, corn, speltz and rye each at the rate of one-eighth of one cent per bushel. [1907, ch. 217, § 1.]

See article 5 of the amendments to the state constitution.

§ 2257. **Other grain, how taxed.** All grain other than that specified in section 2256 shall be taxed according to its value, and in pursuance of the revenue and taxation laws of this state. [1907, ch. 217, § 2.]

§ 2258. **Duty of county auditor.** It shall be the duty of the county auditor to extend taxes on the tax lists upon all grain, as shown by the assessment roll, at the rate fixed by this article. [1907, ch. 217, § 13.]

§ 2259. **Taxes apportioned.** All sums received or collected by the county treasurer under the provisions of this article shall be apportioned and distributed pro rata among the several funds, state, county, school, township and municipal, in proportion to the rates of taxation in the taxing district for which the same is collected. [1907, ch. 217, § 4.]

ARTICLE 24.—COUNTY COMMISSIONERS TO LEVY TAXES IN CERTAIN CASES.

§ 2260. **Tax in incorporated towns and cities to be levied by the county commissioners, when.** Whenever any incorporated city, town or village having an existing liability or indebtedness and authorized to levy taxes for the payment of the indebtedness for which such city, town or village may be liable, fails or refuses to elect proper officers for the government of such city, town or village, it shall be the duty of the board of county commissioners of the county in which such city, town or village is located, upon a proper showing by any person having a legal or subsisting claim against such city, town or village, that there are no legal officers in such city, town or village authorized to levy a tax for the payment of such indebtedness, to levy a tax in the same manner and for the same purposes that the board of directors, trustees or city council would be authorized to levy the same for the payment of such indebtedness; and any person having a claim against such municipality shall have the same right to enforce the levy of such tax by the board of county commissioners that he would have had to compel such levy by the proper authorities of such city, town or village, had they been properly elected and qualified. [R. C. 1905, § 1635; 1890, ch. 143, § 1; R. C. 1899, § 1321.]

ARTICLE 25.—GOPHER TAX.

§ 2261. **County commissioners levy gopher tax.** The board of county commissioners of every county in this state may, at any time fixed by law for levy and assessment of taxes, levy a tax not exceeding one-half of one mill on the dollar of assessed valuation upon all real estate in such county, the proceeds of which shall be used solely for the purpose of promoting the destruction of gophers and prairie dogs in said county; the fund provided to be raised in accordance with this section shall be denominated the "gopher and prairie dog destruction fund," and shall be kept separate and distinct by the county treasurer and shall be expended by the board of county commissioners at such time and in such manner as is by said board deemed best to secure the abatement and extermination of the gopher and prairie dog pest. [R. C. 1905, § 1636; 1890, ch. 144, §§ 1, 2; R. C. 1899, § 1322; 1901, ch. 107; 1905, ch. 114, § 1.]

See *State v. Ryan*, 9 N. D. 419, 83 N. W. 865.

§ 2262. **Petition required.** It shall be the duty of the board of county commissioners of any county, on receiving a petition signed by not less than thirty-five per cent of the total number of votes cast at the last general election held in such county requesting them to do so, to offer a bounty or reward for each gopher and prairie dog destroyed during the months of April and May. The board of county commissioners when so petitioned, as herein provided, shall publish in the local papers of the county during the month of March of each year, the amount of bounty or reward to be paid for each gopher and prairie dog destroyed, the manner of ascertaining the number of gophers and prairie dogs destroyed and the manner of procedure necessary to obtain such reward. [R. C. 1905, § 1637; 1905, ch. 114, § 2.]

ARTICLE 26.—TAXATION FOR PROMOTION OF DIVERSIFIED FARMING.

§ 2263. **County commissioners levy tax on petition.** The board of county commissioners for any county in this state may in its discretion, or, upon petition of twenty-five per cent of the taxpayers of said county, shall, annually make an appropriation and levy a tax upon all the taxable property of the county for the purpose of promoting diversified farming and agricultural development through the employment of a person or persons to carry on scientific agricultural work within said county. The amount of tax so levied shall not exceed one-half mill upon the dollar of assessed valuation. [1913, ch. 117, § 1.]

§ 2264. **Acts validated and legalized.** All appropriations, moneys, levies of taxes heretofore made by any county for the purposes specified in section one of this article are hereby validated and legalized. [1913, ch. 117, § 2.]

§ 2265. **Funds, how expended.** All funds raised in accordance with the provisions of this article shall be expended by and under the direction and control of the board of county commissioners, in such manner as they deem best adapted to accomplish the purposes set forth in section 2263. [1913, ch. 117, § 3.]

ARTICLE 27.—APPROPRIATIONS BY COUNTIES TO PREVENT SPREAD OF TUBERCULOSIS.

§ 2266. **Report to county commissioners and action thereon.** In case any town, district, county or state anti-tuberculosis society or association or other society or associations organized and existing for the purpose of controlling the spread of tuberculosis in this state considers it necessary to secure the services of visiting nurse or nurses, or to disinfect any building, room, residence, hotel, or other place in such county infected with tuberculosis such society shall report such fact to the chairman of board of health and to the board of county commissioners, and shall in such report recommend the course

of action advisable to be adopted by the board of county commissioners in relation thereto, and in accordance with the provisions of this article; and such board of county commissioners shall at the next meeting of such board consider such report and recommendation and act on the same, and such board of county commissioners is authorized and empowered to audit and allow bills for services rendered in carrying into effect the action of such board in relation thereto. [1913, ch. 124, § 1.]

§ 2267. **County commissioners may appropriate money.** The boards of county commissioners of the several counties of this state may appropriate money out of the general revenue fund of the county for the purpose of paying for the services of visiting nurses or other necessary medical attention or advice in preventing the spread of tuberculosis in such county, or for the purpose of disinfecting any building, room, residence, hotel, or other place in such county infected with tuberculosis. [1913, ch. 124, § 2.]

§ 2268. **Homes and hospitals.** The board of county commissioners shall have authority to co-operate with neighboring counties to establish homes or hospitals for incurable tuberculosis patients. [1913, ch. 124, § 3.]

ARTICLE 28.—ADJUSTMENT OF DELINQUENT TAXES DUE THE STATE FROM COUNTIES.

§ 2269. **Discrepancies.** Whenever any material discrepancy shall be found to exist between the statements returned from the several counties and the accounts as shown by the books of the state auditor's office, it shall be the duty of the state examiner, when ordered so to do by the state auditor, to make an examination of the accounts and tax lists of such county and ascertain wherein the discrepancy lies, and make the adjustments in accordance with such examination. [R. C. 1905, § 1638; 1899, ch. 73; R. C. 1899, § 1323.]

§ 2270. **Statement of taxes charged.** The state auditor shall furnish the board of county commissioners of each county with a statement showing the amount of state or territorial taxes charged to such county for each year preceding the fourth day of November, 1889; also, showing the amount received by the state treasurer on account of such year's taxes, and the balance still unpaid as shown by the books in his office; such statement shall also show the amount of abatements claimed and allowed, if any; also the amount of penalty and interest paid each year. [R. C. 1905, § 1639; 1891, ch. 102, § 2; R. C. 1899, § 1324.]

§ 2271. **Statement of unpaid taxes.** It is the duty of the board of county commissioners of each county on receipt of such statement to prepare or cause to be prepared at the expense of such county, a statement of the unpaid taxes for each of the years mentioned in the preceding section, showing the amount of unpaid personal property taxes, the amount of abatements remaining in the hands of the treasurer for collection or the amount stricken from the list under the provisions of any law heretofore in force; also showing the amount of taxes on real property uncollected for each year, the amount of abatements or taxes refunded each year and the reasons therefor. Said statement shall be made on such forms and in such manner as may be prescribed by the commission and forwarded to the state auditor as soon as completed. [R. C. 1905, § 1640; 1891, ch. 102, § 3; R. C. 1899, § 1325.]

§ 2272. **Abatements, how allowed.** Upon the receipt of the statements provided for above, it shall be the duty of the commission carefully to compare the same with the accounts of the state treasurer now in the auditor's office, and if it is satisfied that the abatements claimed are just and reasonable, it may allow the same and the state auditor shall credit each county with such abatements and notify the county auditor of each county of the adjustment as so determined, and the amount due each fund in the county and each

township, city or school district shall be determined and adjusted on the same basis. [R. C. 1905, § 1641; 1891, ch. 102, § 4; R. C. 1899, § 1326.]

§ 2273. Abatements allowed, for what reason. Such commission shall also allow abatements on real property for the following reasons: On account of double assessments of property; on all lands assessed and taxed prior to the entry thereof according to the laws of the United States; on all lands when the taxes have been declared illegal by a court of competent jurisdiction. [R. C. 1905, § 1642; 1891, ch. 102, § 5; R. C. 1899, § 1327.]

§ 2274. Consolidated tax account. When the true balance due from each county to the state shall have been determined, the state auditor shall open an account with each county, and charge the balance due for each year in one account to be known as the "consolidated tax account," and all taxes collected by the counties for the years so adjusted shall be credited to such account and may be reported as collections on account of the "consolidated tax account." [R. C. 1905, § 1643; 1891, ch. 102, § 6; R. C. 1899, § 1328.]

§ 2275. Attorney-general to enforce payment, when. In the event of the refusal or neglect of any county to furnish the statement herein required, such commission shall have power to have such statement made at the expense of the county, and in case of the refusal of any county to pay the expense of the county so incurred, the attorney-general shall proceed to enforce such payment according to law. [R. C. 1905, § 1644; 1891, ch. 102, § 8; R. C. 1899, § 1329.]

ARTICLE 29.—REFUNDING OF OUTSTANDING BONDED AND OTHER INDEBTEDNESS OF THE STATE.

§ 2276. Refunding indebtedness. To provide for refunding at a lower rate of interest, if possible, the outstanding bonds of the state the payment of which was assumed by the state of North Dakota under the provisions of the report of the joint commission which was approved by the people of the states of North Dakota and South Dakota, and further to provide for the payment or refunding of any maturing bonds of the state, and the capitol warrants issued pursuant to the provisions of chapter 24 of the laws of 1889, the payment of which was assumed by this state, the state treasurer is hereby authorized and empowered and it is made his duty to prepare for issue, and to issue from time to time as occasion requires, the negotiable bonds of the state of North Dakota for such amounts as may be necessary to refund all such outstanding indebtedness, matured or maturing, or subject to the call of the state, or soon to become subject to such call, and for such amounts as may be necessary to refund all the outstanding bonds, whenever the rate of interest can be reduced, or when they become absolutely due, in accordance with the provisions of this article. Such bonds shall be made payable to the purchaser or bearer, be payable in not less than ten years nor more than thirty years from the date of their issue, and bear interest at a rate not exceeding four per cent per annum, payable semi-annually, on the first day of January and July of each year, with coupons attached for each interest payment, and they may be made payable anywhere in the United States. Such bonds shall be executed under the great seal of the state by the governor and treasurer, shall be attested by the secretary of state, and shall be negotiated by the treasurer. [R. C. 1905, § 1645; 1897, ch. 133, § 1; R. C. 1899, § 1355h.]

§ 2277. Sealed proposals. Such bonds shall be exchanged by the state treasurer, at not less than their par value for an equal amount of the indebtedness of the state permitted to be refunded under the provisions of this article, or such bonds may be sold by him for the highest cash price obtainable, but not less than par, and the proceeds shall be applied solely to the payment of such outstanding indebtedness. If such bonds or any part

thereof are to be sold for cash, as provided in this section, the state treasurer shall receive sealed proposals for the purchase of the same, and shall give public notice of the sale for at least thirty days preceding such sale, in two or more newspapers of general circulation, one of which shall be published in the city of New York, giving date of such sale, and such bonds shall be sold to the highest bidder for cash. [R. C. 1905, § 1646; 1897, ch. 133, § 2; R. C. 1899, § 1355i.]

Accrued interest as part of par value within prohibition against sale of bonds at less than par. 35 L.R.A.(N.S.) 789.

§ 2278. Board of equalization. The state board of equalization at the time the other taxes are levied shall levy a sufficient tax annually to pay the interest on such bonds as the same becomes due, which tax shall be collected in the same manner as other state taxes are collected. Such board shall before the maturity of such bonds provide a sinking fund sufficient to retire and pay such bonds at their maturity, and for such purpose shall annually levy a tax sufficient to provide such fund. No tax or fund provided for the payment of such bonds or interest thereon shall be used for any other purpose. [R. C. 1905, § 1647; 1897, ch. 133, § 3; R. C. 1899, § 1355j.]

§ 2279. Cancellation of coupons. Whenever the interest coupons attached to such bonds become due or any of such bonds mature, it shall be the duty of the state treasurer to pay the same on presentation out of any funds in his hands applicable thereto, and to cancel them when paid. Whenever any of such bonds become subject to the call of the state and funds are in the hands of the treasurer to be applied to the payment thereof, he shall call in for payment and cancellation such portion of the same as he may have funds to pay; and, if to the advantage of the state he may purchase any of said bonds at their market value and retire and cancel the same, with the sinking fund tax, as the same shall be collected and received by him. [R. C. 1905, § 1648; 1897, ch. 133, § 4; R. C. 1899, § 1355k.]

§ 2280. Appropriation. There is hereby appropriated out of the state treasury all of the funds realized by the sale of the bonds provided for in this article for the purposes in this article provided. [R. C. 1905, § 1649; 1897, ch. 133, § 5; R. C. 1899, § 1355l.]

ARTICLE 30.—TAX FOR BONDED INDEBTEDNESS AND SINKING FUND.

§ 2281. State board of equalization to levy tax for bonded indebtedness. The state board of equalization, at the time the other taxes are levied, shall levy a tax in 1902 and annually thereafter, equal in amount to one-thirtieth of the present bonded indebtedness of the state, which tax shall be collected in the same manner as other taxes are collected, and when collected shall be used to retire and pay any state bonds at their maturity to the extent of the tax then collected and available for that purpose. No tax or fund provided for the payment of such bonds shall be used for any other purpose. Nothing in this section shall be construed to repeal any prior law for the levying of a sinking fund, but in no case shall the board levy a double tax for the same purpose. [R. C. 1905, § 1650; 1901, ch. 43.]

§ 2282. Bond interest, normal schools. The state board of equalization at its meeting in 1903, and annually thereafter, is hereby authorized and required to include in the tax levy for bond interest, a sufficient amount to pay the interest on the state normal school bonds issued under the provisions of section 10, chapter 89, session laws of 1891. [R. C. 1905, § 1651; 1903, ch. 125, § 1.]

§ 2283. Sinking fund, normal schools. The state board of equalization at its meeting in 1903, and annually thereafter, is hereby authorized and required to include in the tax levy for bond sinking fund a sufficient amount to create a fund to pay the state normal school bonds issued under the provisions

of section 10, chapter 89, session laws of 1891, at maturity. [R. C. 1905, § 1652; 1903, ch. 125, § 2.]

§ 2284. Duties of state treasurer. The state treasurer is hereby authorized and required to pay all interest that may hereafter become due upon the state normal school bonds issued under the provisions of section 10, chapter 89, session laws of 1891, out of the state bond interest fund, and he is further authorized and required to pay said bonds at maturity out of the state bond sinking fund as provided in section 1652. [R. C. 1905, § 1653; 1903, ch. 125, § 3.]

ARTICLE 31.—STATE REVENUE BONDS.

§ 2285. State bonds authorized. The governor, state auditor and state treasurer are hereby authorized and empowered to prepare for issue negotiable bonds of the state of North Dakota to the amount of one hundred and fifty thousand dollars. Such bonds shall be made payable to the purchaser or bearer and payable in twenty years from date of issue and shall bear interest at a rate not to exceed four per cent per annum, interest payable semi-annually on the first day of January and July of each year, with coupons attached for each interest payment, said interest coupons together with the principal of said bonds to be made payable at the office of the state treasurer in Bismarck. Said bonds shall be executed under the great seal of the state by the governor and treasurer, and shall be attested by the secretary of state, and shall be negotiated by the treasurer. [R. C. 1905, § 1654; 1905, ch. 55, § 1.]

§ 2286. State treasurer authorized to sell. The state treasurer is hereby authorized and empowered to offer the bonds herein provided for to the board of university and school lands and said board is authorized to purchase said bonds for cash at not less than their par value, with accrued interest to date of delivery. [R. C. 1905, § 1655; 1905, ch. 55, § 2.]

§ 2287. Tax for interest and sinking fund. The state board of equalization, at the time other taxes are levied, shall levy a sufficient tax annually, to pay the interest on said bonds as the same shall become due, which tax shall be collected in the same manner that other state taxes are collected. Also, five years before the maturity of the said bonds, said board shall provide a sinking fund sufficient to retire and pay said bonds at their maturity, and for such purpose shall annually levy a tax sufficient to provide such funds. No tax or fund provided for the payment of such bonds or the interest thereon shall be used for any other purpose. [R. C. 1905, § 1656; 1905, ch. 55, § 3.]

§ 2288. Cancellation of coupons and bonds. When the interest coupons attached to such bonds become due, and whenever said bonds mature, it shall be the duty of the state treasurer to pay the same on presentation out of any funds in the treasury applicable thereto, and to cancel the same when paid. [R. C. 1905, § 1657; 1905, ch. 55, § 4.]

§ 2289. Residue of fund and subsequent taxes collected to be transferred to general fund of the state. When said bonds are all redeemed and all interest thereon paid, the residue of said fund and all subsequent collections of said tax shall be transferred to the general revenue fund of the state. [R. C. 1905, § 1658; 1905, ch. 55, § 5.]

§ 2290. Style of bonds. Said bonds shall be known and styled "North Dakota Revenue Bonds, series of 1905," and shall be of denominations as may be required by the purchaser of the same. [R. C. 1905, § 1659; 1905, ch. 55, § 6.]

ARTICLE 32.—PROVIDING FOR ASSESSMENT, LEVY AND COLLECTION OF TAXES WHERE TAXABLE PROPERTY FOR ANY REASON ESCAPED TAXATION FOR THE YEAR 1889 AND PRIOR YEARS.

§ 2291. When assessment omitted. In all cases when any buildings or lands in this state have heretofore been subject to taxation for the year

1889, and subsequent years, but the assessment or levy of taxes therein for any year or years has been omitted, or such assessment and levy has for any cause been omitted, or set aside, and such property has thereby escaped taxation when subject to taxation, all such taxes the assessment or levy of which has heretofore or may hereafter be omitted or set aside, including all buildings on lands heretofore declared forfeited to the state and omitted from assessment by reason thereof, shall hereafter be assessed and levied upon such buildings and lands and collected in the manner hereinafter provided. [R. C. 1905, § 1660; 1897, ch. 28, § 1; R. C. 1899, § 1355m.]

§ 2292. Auditor to make list. Duty of county commissioners. Publication of notice. It shall be the duty of each county auditor, on or before the first day of June next, after the passage of this act, to make a separate list of all lands in his county since the year 1889, and of all buildings standing upon lands owned by parties other than the owners of such buildings, upon which taxes were not assessed and levied for any such year or years, or were for any cause set aside, or omitted, or has for any reason escaped taxation, but which were subject to taxation for such year. Upon the completion of such list or lists, it shall be the duty of the county auditor to forthwith notify each county commissioner of his county of such completion, and thereupon a special meeting of the board of county commissioners of such county for the purpose set forth in this article, shall be called in the manner prescribed by law, to be held at a time and place in such call designated, not less than two weeks from the time of the making of such call and not later than the fifteenth day of July next, after the passage of this act. After any such meeting shall have been called, it shall be the duty of the county auditor of the county to give notice of the time and place of such meeting, by publication in a newspaper published in his county, if there be any newspaper published therein, and if there be none, then in a newspaper published in the judicial district. Such notice shall be published at least three times before the day appointed for such meeting, and at intervals of not less than five days. Such notice may be in the following form:

State of North Dakota, }
County of..... }
Office of County Auditor. }

Notice is hereby given that a special meeting of the board of county commissioners of the county, for the purpose set forth in an act of the legislative assembly, entitled "An act to provide for the assessment, levy and collection of taxes upon property in cases where such property was subject to taxation, but the assessment and levy of taxes thereon have been omitted, or when such property has from any cause escaped assessment and taxation, approved, eighth day of March, A. D. 1897," will be held at the court house in..... county, commencing on the day of..... A. D. 1897, at o'clock, a. m.

.....
County Auditor.

[R. C. 1905, § 1661; 1897, ch. 28, §§ 2, 3; R. C. 1899, § 1355n.]

§ 2293. Meeting of county commissioners. The board of county commissioners shall meet at the time and place appointed therefor in such call, and at such meeting shall add to the list aforesaid, furnished by the county auditor, a description of each tract of land within the county, owned by parties other than the owners of such buildings, not already upon such list, upon which taxes were not assessed and levied for the year or years for which such list shall have been made, which were subject to taxation for such year, but no accidental failure or omission by either the county auditor or the board of county commissioners to place upon any such list any tracts of land or buildings within the county, subject to be placed therein under the provisions

of this act, shall in any manner affect the validity of anything done under the provisions of this article with reference to such lands and buildings as are actually placed upon such list. [R. C. 1905, § 1662; 1897, ch. 28, § 4; R. C. 1899, § 1355o.]

§ 2294. Shall ascertain cash value. After such list shall have been perfected as hereinbefore provided, such board shall proceed at such meetings to ascertain the true and actual cash value for each year for which such lists shall have been made, of each tract of land and of each building described in such list, and for that purpose may summon before it and examine under oath such witnesses as it may deem necessary for its information in regard to such value. In making such valuation the board shall have due regard for the average valuation of real property in the county, made according to law, for the year for which such lists shall have been made, for the purpose of taxation, and also for the relative situation, quality of soil, improvements and natural advantages possessed by such tract and lot. Any person interested in any lands or any buildings on such list shall have a right to be present at such meeting, and to be heard as to the valuation of such lands or buildings, and to swear and examine witnesses before such board upon the question of such valuation. After the valuation of any tract of land or building upon such list shall have been ascertained, as hereinbefore provided, such value shall thereupon be entered upon such list opposite to the description of such tract or building, in a column set apart for that purpose. When the valuation of all of the several tracts of lands and buildings upon such lists shall have been ascertained and entered thereon, such list and valuation shall be authenticated by the signature of the chairman of the board, which shall be a sufficient authentication thereof for all purposes. Such meeting may be adjourned from day to day, but shall not continue longer than for ten days, and the valuation of all tracts of lands and buildings upon such list shall be fully completed and authenticated in the manner hereinbefore provided, on or before the first day of August next, after the passage of this article. [R. C. 1905, § 1663; 1897, ch. 28, § 5; R. C. 1899, § 1355p.]

§ 2295. Duty of state board of equalization. After such list and valuation shall have been completed, as hereinbefore provided, the same shall remain in the custody of the county auditor of the county, and he shall on or before August first of each year, make a certified copy of such list and valuation, and forward the same to the state auditor. At the next session of the state board of equalization it shall be the duty of the state auditor to lay before the same all certified copies of such lists and valuation as shall have been received by him, and it shall thereupon be the duty of such state board to equalize the valuation of the property contained in each of such lists with the valuation of the property throughout the state, made according to law for purposes of taxation for the year for which such lists shall have been made, which equalization shall be made in the same manner as near as may be, as is provided by law for equalization of values of property throughout the state by such board. [R. C. 1905, § 1664; 1897, ch. 28, § 6; R. C. 1899, § 1355q.]

§ 2296. Lists returned to county auditor. When the state board shall have completed its equalization of the property contained in each of such lists as hereinbefore provided, the state auditor shall return each of such copies of lists received by him as aforesaid to the auditor of the county wherein the property therein described is situated, together with a statement specifying the per centum, if any, to be added to or deducted from the valuation as made by the county board as determined by such state board, and upon the receipt of such copy and statement it shall be the duty of the county auditor to add to or deduct from each tract and building upon such list the required per centum on the valuation thereof as made by the county board, and the value of each tract of land and of each building upon such

list as corrected shall be entered by such county auditor upon such list, opposite to the description thereof, in a column provided for that purpose. [R. C. 1905, § 1665; 1897, ch. 28, § 7; R. C. 1899, § 1355r.]

§ 2297. Authenticated by county auditor. After the valuation of such property shall have been corrected as hereinbefore provided, it shall be the duty of the county auditor to ascertain and set down in a list, opposite to the description thereof, in columns provided for that purpose, the rate of taxation for all purposes to which each tract of land and each building upon such list was subject for the year for which such list shall have been made, and such auditor shall thereupon calculate the amount of tax upon each of such tracts of land and buildings at such rate, and set down such amount upon such list, opposite to the description of the tract or building upon which such amount of taxes is so calculated, in columns appropriated for that purpose. When such amounts shall have been so calculated and set down on such list the same shall be authenticated by the signature to such list by such auditor, which shall be deemed a sufficient authentication thereof for all purposes. [R. C. 1905, § 1666; 1897, ch. 28, § 8; R. C. 1899, § 1355s.]

§ 2298. Taxes constitute lien on property. After the amount of tax upon each tract of land and each building upon such list shall have been calculated and entered thereon as hereinbefore provided, the county auditor shall make out and certify two complete duplicates of such list as the same items appear, one of which shall be transmitted to the state auditor for custody in his office, and the other of which shall be forthwith delivered to the county treasurer of the county, and shall constitute his warrant for the collection of the taxes herein specified. Upon the receipt of such duplicate by the county treasurer, the respective amounts of tax therein specified upon each tract of land and buildings therein described shall become forthwith due and payable, and become a lien upon the tract or buildings upon which the same shall have been so levied, and it shall become the duty of such treasurer forthwith to collect such tax. [R. C. 1905, § 1667; 1897, ch. 28, §§ 9, 10; R. C. 1899, § 1355t.]

§ 2299. Notice to be published. In case any tax upon any such duplicate shall not be paid within three months after the receipt of such duplicate by the county treasurer, such tax shall thereafter draw interest at the rate of twelve per cent per year, and it shall be the duty of such treasurer to apply to the district court of the county, at the next term after the receipt by him of such duplicate, for judgment against the tract of land or building upon which such tax shall have been assessed for the aggregate amount of the taxes and interest thereon, upon all duplicates in his hands made under the provisions of this act. Notice of such application shall be given by publication in a newspaper published in the county, if any there be published, and if no newspaper be published in such county, then in a newspaper published in the judicial district. Such notice shall be published at least three times, at intervals of at least five days, the last publication being made at least ten days before the term of court at which such application for judgment is made. Such notice may be in the following form:

State of North Dakota, }
County of } ss.:
Treasurer's Office, }

Notice is hereby given that in pursuance of an act of the legislative assembly entitled (quote title) I shall apply to the district court in and for this county, at a term thereof to be held at in in this county, commencing on the day of A. D. 189..., on the first day of such term, for judgment against each and every one of the tracts of land and buildings hereinafter described for all taxes levied thereon, under provisions of said act, remaining unpaid, together with interest thereon,

and costs as allowed by such act. The following is a description of the lands and buildings against which judgment will be applied for:

Dated at this day of A. D. 189...

County Treasurer.

No service of summons nor notice other than publication of the notice in this section provided for shall be necessary to give the court to which such application is made jurisdiction to receive and act upon the same as herein-after provided. [R. C. 1905, § 1668; 1897, ch. 28, § 11; R. C. 1899, § 1355u.]

§ 2300. Application. The application referred to in the previous section may be in the following form:

To the district court in and for the county of.....
The application of county treasurer, in and for county:

That in pursuance of an act of the legislative assembly entitled (quote title), certain taxes were levied upon each of the several tracts of lands and buildings hereinafter described, situated in said county, and duplicate lists of such tracts and buildings, and such taxes were placed in my hands in accordance with such act for the collection of such taxes; that more than three months have elapsed since the receipt by me of such duplicates, and there remains unpaid upon each of the following described tracts of lands and buildings, taxes charged against the same in such duplicates to the amount in aggregate in the sum hereinafter set opposite the description of such tract or building; and that said duplicates were placed in my hands on the day of A. D. 189...

The following is a list of the lands and buildings referred to, and of the amount of the tax charged against the same upon such duplicates remaining unpaid. (Insert list.)

The applicant therefore prays the judgment of the court that the respective amounts above specified, together with interest thereon from the..... day of 189.. at the rate of twelve per cent a year, be adjudged to be a lien upon the respective tracts of lands and buildings opposite to the description of which the same are set, and that such lands and buildings be sold for the payment thereof.

County Treasurer.

All taxes remaining unpaid upon such duplicates shall be included in one application. [R. C. 1905, § 1669; 1897, ch. 28, § 12; R. C. 1899, § 1355v.]

§ 2301. Filing of application and proof. Upon filing such application with the court, together with proof of publication of the notice hereinbefore provided for, which may be by the affidavit of the publisher of the newspaper in which the same shall have been published, or the foreman, clerk or business manager thereof, the court shall forthwith proceed to enter judgment against each tract of land or building in such application described for which no objection shall be filed, as provided for in the next section; adjudging that the amount of tax stated in such application to be due therein, together with interests thereon as hereinbefore provided, and costs be a lien upon such tract of land or building, as the case may be, and the whole thereof, and that such tract of land or building, as the case may be, be sold for the payment of the same. All the several tracts of lands and buildings described in such application, for which no objection shall be filed, shall be included in one judgment. [R. C. 1905, § 1670; 1897, ch. 28, § 13; R. C. 1899, § 1355w.]

§ 2302. Objections filed. Costs. Any person legally or equitably interested in any such tract of land or in any building described in such application,

may at the time mentioned in such notice of application, appear in court and file objections in writing against the rendition of judgment against such tract or building, as the case may be, and thereupon the court shall proceed to try and determine the issue raised by such objections, and shall render judgment according to law and the rights of the parties. All the several tracts of lands and buildings in such application, for which objections shall be filed, but against which judgment shall be rendered upon the trial thereof shall be included in one judgment. No appeal, certiorari or other proceedings to review any judgments shall stay proceedings upon such judgment. The costs included in any such judgment shall consist of the expense of publication, of notice of application for judgment and fees of officers of the court, as allowed by law for like services in civil actions; such costs shall be apportioned among the several tracts of land and buildings in such judgment described according to the amount of the tax and interest for which judgment is rendered against the same. [R. C. 1905, § 1671; 1897, ch. 28, §§ 14, 15; R. C. 1899, § 1355x.]

§ 2303. Duties of all officers. All tracts of land or buildings against which any judgment shall be rendered shall be sold by the sheriff of the county to satisfy such judgment, together with costs and expenses of advertisement of and sale, in the same manner and upon like notice as is now or may hereafter be prescribed by law for sales of real estate for nonpayment of taxes; and purchasers at such sales shall acquire like rights as are acquired by purchasers of lands at sales of real property made under the laws of this state for nonpayment of taxes, and the duties of all officers in reference to such sales shall be the same as the duties in reference to the sales of real property under the laws of the state for nonpayment of taxes; and such lands and buildings shall be subject to redemption within three years from the time of such sales, in like manner as redemption of real property from sales made under the laws of this state for nonpayment of taxes; provided, however, that the holder of any certificate for any piece or parcel of land sold under any tax judgment must, ninety days preceding the maturity of such certificate, give personal notice to the owner, if a resident of the state, of the expiration and maturity of such certificate, and if the owner of any such piece or parcel of land is a nonresident of the state, such notice may be given by registered letter, addressed to such owner at his last known post office address, and in case the property covered by such certificate is occupied, the service of such notice shall in addition to the foregoing provision be made upon the person in possession thereof; also, by publication of the maturity of such certificate in some newspaper published in the county where the land is situated; or otherwise as hereinbefore provided, at least thirty days preceding the expiration and maturity of such certificate, and the owner may redeem such certificate by paying the amount named therein, together with accrued interest and costs. Proof of the notice herein provided for must be filed in the office of the clerk of the district court prior to the maturity of such certificate. The fee simple of any piece or parcel of land named in any certificate shall not vest in the holder thereof until the notice provided for herein is given and due proof thereof filed with the clerk of the district court. [R. C. 1905, § 1672; 1897, ch. 28, § 16; R. C. 1899, § 1355y.]

§ 2304. Moneys, how accounted for. Article, how construed. All moneys collected or received by the county treasurer under the provisions of this article shall be distributed and accounted for in like manner as taxes levied and collected under the laws of this state. This article shall not be construed to charge taxes against any property which at the time the same may have been purchased in good faith and prior to the taking effect of this article, appeared upon the books of the county as clear and free from any prior taxes thereon. [R. C. 1905, § 1673; 1897, ch. 28, §§ 17, 18; R. C. 1899, § 1355z.]

ARTICLE 33.—PROTECTION OF PUBLIC CREDIT.

§ 2305. **Funding warrants, when issued.** The state treasurer, with the advice and consent of the governor and state auditor, is authorized and directed to pay all state warrants legally issued, that may have been or may hereafter be presented to him for payment; provided, that the money to pay the same can be obtained at a rate of interest not to exceed eight per cent; and the auditor is authorized and directed to issue funding warrants in lieu of the warrants so paid and the treasurer is authorized and directed to apply all state funds by him received and not otherwise lawfully appropriated, to the payment and cancellation of the so-called funding warrants; provided, further, that nothing in this chapter shall authorize said treasurer, nor shall said auditor and governor consent to issue funding warrants in excess of eighty thousand dollars, nor shall they anticipate the needs of the state for a longer period than sixty days at any one time. [R. C. 1905, § 1674; 1879, ch. 58, § 2; 1890, ch. 113, § 1; 1891, ch. 94, § 1; R. C. 1899, § 1330.]

ARTICLE 34.—PROPERTY SOLD TO STATE OR COUNTY FOR TAXES.

§ 2306. **County commissioners to institute and conduct proceedings.** The board of county commissioners in any county in this state is hereby authorized to cause the proceedings hereinafter provided to be instituted and conducted, whenever in the judgment of the said board it is advisable to do so. Whenever the board of county commissioners desire such proceedings to be instituted, it shall, at some regular meeting, pass a resolution to that effect, and the proceedings hereinafter provided shall be thereupon instituted forthwith. [R. C. 1905, § 1675; 1901, ch. 161, § 1; 1903, ch. 161, § 1.]

Not unconstitutional as delegating legislative power to county boards. *Picton v. Cass County*, 13 N. D. 242, 100 N. W. 711, 3 A. & E. Ann. Cas. 345.

§ 2307. **County auditor to make list of lands. Contents.** The county auditor shall make a list of every tract of land which appears upon the records of said county to have been sold to the state or county more than three years prior to the date of such resolution, and upon which land the taxes for which it was sold have not been paid to the county by redemption or assignment to an actual purchaser, subsequent to the sale. Such list shall include all such pieces or parcels which may at such tax sale or sales have been struck off or declared to have been forfeited to the state or county, whether such sale or forfeiture was valid or invalid. The list shall contain a description of each piece or parcel of land upon which said taxes shall not have been paid as aforesaid, the name of the person in whose name the piece or parcel was last assessed at the time of filing the list, or if assessed to unknown owner, so state, and the amount of tax for each year up to but excluding the taxes for the year in which the list is filed, with accrued penalty and interest. The county auditor shall attach to said list his affidavit to the effect that the same is correct. He shall immediately file such list in the office of the clerk of the district court in his county, or in the county to which his county is attached for judicial purposes. The filing of such list shall have the force and effect of the filing of a complaint in an action by the county against each piece or parcel of land in such list described, to enforce against it the taxes therein appearing against it, and the penalties and interest for the several years for which such taxes remain unpaid and also the effect of notice of pendency of such action to all parties interested in such lands or who may become interested therein subsequent to the filing of such list. [R. C. 1905, § 1676; 1897, ch. 67, § 1; R. C. 1899, § 1331; 1901, ch. 161, § 2; 1903, ch. 161, § 2.]

Sufficient affidavit to delinquent tax list. *Emmons Co. v. Lands First National Bank of Bismarck*, 9 N. D. 583, 84 N. W. 379.

"Immediately and forthwith" are directory. List filed in time. *Idem*, 9 N. D. 583, 84 N. W. 379.

A proceeding for the collection of delinquent taxes is a "suit" within the meaning of the federal judiciary statutes providing for the removal of causes to the federal courts. *Re Stutsman County*, 88 Fed. 337.

§ 2308. Duty of county clerk. When the list required in section 2308 shall have been filed the clerk shall forthwith make a copy thereof, and attach thereto a notice which may be in substantially the following form:

State of North Dakota, } ss.: District Court,
County of }Judicial District.

The state of North Dakota, to all persons, companies or corporations who have or claim any estate, right, title or interest in, or claim to, or lien upon any of the several pieces or parcels of land in the list hereto attached described.

Pursuant to a resolution of the board of county commissioners of county, adopted on the day of, 19.., the county auditor of said county has filed in my office a list of all real property heretofore sold to the state or county for taxes, and remaining unredeemed for more than three years, a copy of which list is hereto attached. Therefore you, and each of you, are hereby required to file in the office of the clerk of said court within thirty days after the last publication of this notice, your answer in writing, setting forth any objections or defense you may have to the taxes or any part thereof, or the penalties or interest thereon upon any piece or parcel of land described in such list, in, to or on which you have or claim any estate, right, title, interest, claim or lien, and in default thereof, judgment will be entered against each piece or parcel of land for taxes in such list appearing against it, for penalties and cost.

(Signed).....

Clerk of the District Court in the County of.....
[R. C. 1905, § 1677; 1897, ch. 67; § 3; R. C. 1899, § 1333; 1901, ch. 161, § 3; 1903, ch. 161, § 3.]

Judgment for taxes rendered under general court procedure before the thirty days within which owner of land could answer, was void for want of jurisdiction. *Clifford v. Hyde County*, 24 S. D. 237, 123 N. W. 872.

§ 2309. County auditor shall publish list. Publisher shall make affidavit of publication. The county auditor shall cause the said notice and list to be forthwith published once in each of three consecutive weeks, in some newspaper of general circulation, printed in the English language, published in the county in which the proceedings are instituted, or if there be no such newspaper published in either county, then in some newspaper published within the judicial district. The newspaper in which such publication shall be made shall be designated by a resolution of the board of county commissioners of the county in which the taxes are laid, at least ten days before the publication of such list; a copy of which resolution, certified by the county auditor, shall be filed in the office of the clerk of the district court. The owner, publisher, manager or foreman in the printing office of the newspaper in which such notice and list shall be published, shall make and file with the clerk of the district court an affidavit of such publication, stating the day in which each publication was made, and shall also file with the clerk three copies of each number of the paper in which the notice and list shall have appeared. [R. C. 1905, § 1678; 1897, ch. 67, § 4; R. C. 1899, § 1334; 1901, ch. 161, § 4; 1903, ch. 161, § 4.]

Publication of tax list. Selection of newspaper. *Cass County v. Security Co.*, 7 N. D. 528, 75 N. W. 775; *Emmons County v. Bank*, 9 N. D. 583, 84 N. W. 379

Deviations in phraseology or arrangement not fatal. *Darling et al. v. Purcell et al.*, 13 N. D. 288, 100 N. W. 726.

Not vulnerable to the objection that it delegates legislative power. Act complete and in force in every county is constitutional. *Pickton v. Cass County*, 13 N. D. 242, 100 N. W. 711.

Jurisdiction to enter judgment hinges on the fact of publication. *Cruser & Baker v. Williams*, 13 N. D. 284, 100 N. W. 721.

Absence of county seal does not invalidate certificate designating newspaper. *Darling et al. v. Purcell et al.*, 13 N. D. 288, 100 N. W. 726.

§ 2310. Answer of defense. Any person, company or corporation having any estate, right, title, or interest in, or lien upon any piece or parcel of land embraced in such list as published, may within thirty days after the last

publication of such notice, file in the office of the clerk of the district court an answer verified as pleadings in civil actions setting forth the defense or objections to the tax or penalty against such piece or parcel of land, which answer need not be in any particular form, but shall clearly refer to the piece or parcel of land intended and shall set forth in ordinary and concise language the facts constituting the defense or objections to such taxes or penalties; and if the list shall embrace the taxes for two or more years, the defense or objections may be to the taxes or penalties for one or more of such years. [R. C., 1905, § 1679; 1897, ch. 67, § 5; R. C. 1899, § 1335; 1901, ch. 161, § 5; 1903, ch. 161, § 5.]

§ 2311. County clerk shall enter judgment, when. Form of. Upon the expiration of thirty days from the last publication of such notice and list, the said clerk shall, the affidavit of publication being filed, enter judgment against each and every one of such pieces or parcels as to which no answer shall have been filed for the amount of taxes, interest and penalty appearing from the list to be due thereon and the costs of the proceedings, which judgment shall include all of such pieces or parcels and shall be substantially in the following form:

State of North Dakota, }
County of } ss.:

District Court,
..... Judicial District.

In the matter of proceedings to enforce payment of taxes on real property sold to the state or county and remaining unredeemed for more than three years.

A list of real property sold to the state or county for taxes and remaining unredeemed more than three years, in the county of, having been duly filed in the office of the clerk of this court, and the notice and list required by law having been duly published as required by law, and no answer having been filed by any person, company or corporation as to the taxes upon any pieces or parcels of land hereinafter described, and more than thirty days having elapsed since the publication of such notice and list, it is hereby adjudged and decreed that each piece or parcel of land hereinafter described is liable to taxes, interest, penalties and costs to the amounts set opposite the same, as follows: (Here insert correct description of each piece or parcel and the aggregate amount due thereon.)

And the amount of taxes, interest, penalties and costs to which as hereinbefore stated each of such pieces or parcels of land is liable, is hereby declared a lien upon such piece or parcel of land as against the estate, right, title, interest, claim or lien of whatever nature in law or in equity of every person, company or corporation whatsoever. And it is adjudged that unless the amount to which each of such pieces or parcels is liable, be paid, each of such pieces or parcels be sold as provided by law, to satisfy such amount to which it is liable.

.....
Clerk of District Court, County of

Such judgment shall be entered by the clerk in a book to be kept by him to be called the "real estate tax judgment book," and shall be dated and signed by the clerk. The judgment shall be written out on the left hand pages of said book, leaving the right hand pages blank for entries hereinafter provided; provided, however, that if any person shall desire to pay the taxes charged against any piece or parcel in said list before judgment is entered, he shall procure from the clerk a statement, showing the amount so charged, for the several years against such tract in said list, including accrued costs, and upon the payment of the original taxes so charged, with interest thereon from the time each of the same became delinquent and accrued costs, to the county treasurer, the treasurer shall issue his receipt to such person showing said taxes to be paid in full and shall file a duplicate of such receipt in the

clerk's office, the filing of which duplicate shall be equivalent to a dismissal of the proceedings as to the tract on which the taxes have been paid, and such tax shall be omitted from the judgment entered by the clerk. [R. C. 1905, § 1680; 1897, ch. 67, § 6; R. C. 1899, § 1336; 1901, ch. 161, § 6; 1903, ch. 161, § 6.]

Publication and filing affidavit authorizes entry of judgment. Order for judgment not necessary; clerk acts ministerially. *Emmons Co. v. Thompson et al.*, 9 N. D. 598, 84 N. W. 379.

Judgment not affected by errors in computation of interest or penalty. *Darling et al. v. Purcell et al.*, 13 N. D. 288, 100 N. W. 726.

§ 2312. Commissioners employ attorney, when. Court to dispose of case. If an answer shall be filed within the time hereinafter provided, as to the taxes and penalties upon any piece or parcel of land embraced in said list as published, the issue raised by the answer shall stand for trial at any general or special term appointed to be held in said county. The county commissioners of the county in which such taxes are laid may employ any other attorney to assist the state's attorney therein. At the term at which such proceedings come on for trial, they shall take precedence of all other business before the court. The court shall proceed without delay, without a jury, and summarily hear and determine the objections or defenses made by the several answers, and shall dispose of all said answers, and direct judgment accordingly at said term, and in the trial thereof shall disregard all technicalities and matters of form not affecting the substantial merits, and any person making answer as herein provided shall be entitled to a separate trial upon the issues raised by his answer. [R. C. 1905, § 1681; 1897, ch. 67, § 7; R. C. 1899, § 1337; 1901, ch. 161, § 7; 1903, ch. 161, § 7.]

§ 2313. Judgment against land, when. If after a hearing the court shall sustain the taxes and penalties in whole or in part against any piece or parcel of land, judgment shall be rendered against each of such pieces or parcels for the amount which the court decides is chargeable against the same, which judgment may be substantially in the form prescribed in section 2311, except that it shall, in addition, state that the same was rendered after answer and trial; and, after the description of each piece or parcel shall be stated the name of the person, company or corporation answering as to said piece or parcel. If the court sustains the defense or objection to the taxes and penalties as to any piece or parcel of land, the judgment shall after the statement of the lands against which judgment is given, state that all other pieces or parcels not embraced in that or the prior judgments of the court, and which are described in the list as published, are discharged from the taxes in said list set down against such other pieces or parcels, and from all penalties, and the court may in its discretion award disbursements against the county laying such taxes, and in favor of the party answering as to the pieces or parcels so discharged. [R. C. 1905, § 1682; 1897, ch. 67, § 8; R. C. 1899, § 1338; 1901, ch. 161, § 8; 1903, ch. 161, § 8.]

§ 2314. List filed with clerk prima facie evidence. Tax invalid, when. In all proceedings under this article the list filed with the clerk of the district court shall be prima facie evidence of the validity of all taxes charged therein. No tax involved in such proceedings shall be held invalid by reason of any irregularity in the assessment or assessment roll, or levy; provided, the assessment roll contains sufficient data from which can be definitely ascertained the description of the property intended to be assessed and the valuation fixed thereon by the assessors; and provided, the levy of such tax was made by any board or officer authorized by law to make the same, and it can be definitely ascertained from the official records of the proceedings of such officer or board what amount of taxes or what rate per cent of taxation was intended to be levied; and, provided, such levy was for a lawful purpose and within the limit authorized by law. No tax involved in proceedings under this article

shall be held invalid unless it be made to appear by the party objecting thereto that one or more of the following defects exist, to wit:

1. That the property was not subject to taxation.
2. That the description or valuation of the property cannot be definitely ascertained from the assessment roll.
3. That it cannot be definitely ascertained from the official record of the proceedings of the board or officer levying the tax what amount of taxes or what rate per cent of taxation was intended to be levied.
4. That such taxes have been paid.
5. That the valuation of the property for taxation was unfair or unequal; provided, however, that no claim of any unfairness or inequality of any valuation of property shall be heard unless it appears either, that there was no meeting of the board of equalization authorized by law, to hear and determine such complaint, or if there was such meeting of such board, that it acted in excess of its powers in relation to the valuation objected to; or, that the valuation fixed by the proper board has been unlawfully increased; but in all such cases the court shall hear the evidence and determine therefrom the amount that is justly due for such taxes.

6. That the tax or some part thereof is in excess of the amount limited by law, or for a purpose unauthorized by law; but in such cases the court shall not cancel the taxes except as to such excess or as to such unlawful purpose. [R. C. 1905, § 1683; 1903, ch. 161, § 9.]

Judgment may be rendered notwithstanding taxes paid. *Purcell et al. v. Farm Land Co. et al.*, 13 N. D. 327, 100 N. W. 700.

See note, 13 N. D. 386.

§ 2315. Judgment final. Exceptions. The judgment which the court shall render shall be final, except that upon application of the county, or other party against whom the court shall have decided the point raised by any defense or objection, the court may, if in its opinion the point is of great public importance, or likely to arise frequently, make a brief statement of the facts established, hearing on the point and of its decisions, and forthwith transmit the same to the clerk of the supreme court, who shall enter the same as a cause pending in such court, and place the same on the term calendar of such court for the term then in session, or for the first term thereafter. And the same shall be entitled to preference over any other business before such court, and shall be decided by such court at the term for which it shall be entered on the calendar. As soon as it shall be decided, the clerk of the supreme court shall enter the proper order and forthwith transmit a certified copy of such order to the clerk of the proper district court; provided, that such proceedings if applied for by a party objecting to the taxes shall not stay the entry of judgment nor stay the sale thereunder unless the party applying therefor shall execute and file with the clerk of the district court an undertaking with at least two sufficient sureties to be approved by the judge of the district court, conditioned, that such party will pay all taxes, penalties, interest and costs awarded against him in such proceedings if the decision of the district court is affirmed in whole or in part. The same costs and disbursements shall be allowed to either party on such proceedings as are allowed by law in appeals to the supreme court. [R. C. 1905, § 1684; 1897, ch. 67, § 10; R. C. 1899, § 1340; 1901, ch. 161, § 10; 1903, ch. 161, § 10.]

§ 2316. Tax judgments. Duty of clerk of court. When the tax judgment pursuant to this article shall be entered against those tracts as to which no answer has been filed, the clerk of the district court shall forthwith deliver to the sheriff of the county a certified transcript of such judgment, written on the left hand pages of a book to be provided by the county, and the sheriff upon receipt of such transcript shall proceed as hereinafter provided. [R. C. 1905, § 1685; 1897, ch. 67, § 11; R. C. 1899, § 1341; 1901, ch. 161, § 11; 1903, ch. 161, § 11.]

Sheriff's certificate issued under statute as evidence of valid judgment. *State Finance Co. v. Beck*, 15 N. D. 374, 109 N. W. 357.

§ 2317. Taxes paid before sale. If before sale, any person wishes to pay the amount adjudged against any piece or parcel of land, such person may pay the same to the sheriff, with interest and accrued costs, if any; and the sheriff shall thereupon give a receipt for such payment and pay the amount collected, after deducting his fees, to the county treasurer. [R. C. 1905, § 1686; 1901, ch. 161, § 12; 1903, ch. 161, § 12.]

§ 2318. Sheriff shall sell land, when. After thirty days from the date of any tax judgment, if the amount therein charged shall not have been paid, the sheriff shall sell the piece or parcel of land upon which the taxes stand charged in such judgment; before making such sale he shall give notice thereof by posting such notice, one copy in the office of the clerk where the judgment shall have been entered; one copy in the office of the treasurer; and one copy at the county seat of the county, in some conspicuous place, at least ten days before the day of sale; and by publishing such notice, once in each of three consecutive weeks, the last publication to be not less than ten days before the day of sale, in some newspaper printed in the English language and of general circulation, published in the county where such lands are situated, to be designated by resolution of the board of county commissioners; if there be no such newspaper published in the county where the proceedings are instituted, then in some newspaper published within the judicial district, which notice may be substantially in the following form:

TAX JUDGMENT SALE.

Pursuant to a real estate tax judgment of the district court in the county of entered on the day of, 19.., in proceedings for enforcing payment of taxes upon real estate sold for taxes to the state or county and remaining unredeemed, I shall on the day of at ten o'clock in the forenoon, at, in the town of, and county of, sell the lands which are charged with taxes in said judgment and on which such taxes shall not have been previously paid.

.....
Sheriff of County.

At the time and place appointed in such notice, the sheriff shall commence the sale of such land, and proceed to the sale thereof from day to day (Sundays and legal holidays excepted), until the whole shall be sold. [R. C. 1905, § 1687; 1897, ch. 67, § 12; R. C. 1899, § 1342; 1901, ch. 161, § 13; 1903, ch. 161, § 13.]

§ 2319. Sale by public vendue, how. The sheriff shall sell by public vendue each piece or parcel of land separately in the order in which they are described in the judgment and by the description therein, but if the sum bid for any piece or parcel shall not be paid before the sale closes, he shall again offer such piece or parcel for sale. In offering the lands for sale, he shall state the amount for which each piece or parcel is to be sold; he shall then offer the same in fee to the highest bidder, who shall bid not less than the amount for which the same is to be sold. If no bidder shall bid an amount equal to that for which the piece or parcel is to be sold, then the county treasurer shall bid in the same for the county at such an amount. The treasurer shall attend at the sale and receive all money paid thereon. [R. C. 1905, § 1688; 1897, ch. 67, § 13; R. C. 1899, § 1343; 1901, ch. 161, § 14; 1903, ch. 161, § 14.]

This act annulled all rights obtained by the state under prior sales. *McHenry v. Kidder County*, 8 N. D. 413, 79 N. W. 875.

Sheriff not entitled to a fee of five dollars, for selling each piece of land. *Wilson v. Cass County*, 8 N. D. 456, 79 N. W. 985.

§ 2320. Sheriff executes certificate to purchaser. Form. The sheriff shall execute to the purchaser of any piece or parcel a certificate which may be substantially in the following form: I, sheriff of the county of, North Dakota, do hereby certify that at a sale of land pursuant

to the real estate tax judgment entered in the district court in the county of, North Dakota, on the day of 19.., in proceedings to enforce payment of taxes on lands forfeited to the state or county for taxes, which sale was held at in said county of, North Dakota, the following described piece or parcel of land in said county, to wit: (Insert description) was struck off and sold to, for the sum of dollars; and in consideration thereof, and pursuant to the statute in such case made and provided, I do hereby convey the above described piece or parcel of land to said, his heirs and assigns, to have and to hold the same unto the said, his heirs and assigns forever, subject, however, to redemption as provided by law.

Witness my hand this day of, 19...

.....
Sheriff of County, North Dakota.

Such certificate in case the land shall not be redeemed, shall pass to the purchaser or county the absolute title to the land therein described without any other act or deed whatever, subject, however, to any taxes levied thereon for the year in which the list is filed and subsequent years. Such certificate shall be acknowledged and may be recorded as other deeds of real estate. If any purchaser shall at such sale purchase more than one piece or parcel or if more than one shall be bid in for the county, all of the pieces or parcels so purchased or bid in for the county may be included in the same certificate; but in all cases the certificate must state the amount at which each piece or parcel was sold or was bid in for the county. [R. C. 1905, § 1689; 1897, ch. 67, § 14; R. C. 1899, § 1344; 1901, ch. 161, § 15; 1903, ch. 161, § 15.]

Title complete at end of redemption period if notice of redemption given. *Darling et al. v. Purcell et al.*, 13 N. D. 288, 100 N. W. 726.

Affidavit of mailing notice of expiration of time to redeem from tax sale as competent evidence of mailing. *Nind v. Myers*, 15 N. D. 400, 8 L.R.A.(N.S.) 157, 109 N. W. 335.

Service of notice of expiration of time to redeem from tax sale on grantees in void recorded tax deeds, is insufficient. *State Finance Co. v. Beck*, 15 N. D. 374, 109 N. W. 357.

§ 2321. Redemption, notice how. Not more than ninety days preceding the expiration of one year from the day of sale, the owner of such certificate of sale, except the county, shall give notice of the expiration of the time for redemption as follows: He shall deliver to the sheriff of the county for service a notice in writing containing a description of the land sold, the date of sale, the amount sold for, the amount of any subsequent taxes paid by the purchaser or assigns, with date of payment, and further stating that the time for redemption will expire one year from the date of sale; or if the notice is served less than sixty days before the expiration of the year, then sixty days after the service of said notice; said notice to be signed by the holder of the certificate or his agent or attorney. The said notice shall be served by the sheriff on the occupant of the land therein described in the same manner as a summons in a civil action is served; but if the land is unoccupied the sheriff shall post a copy of the notice in a conspicuous place on the premises. Immediately after completing service of the notice the sheriff shall return the notice to and file the same with the county auditor, together with his return of service thereon, which return shall show when and how the notice was served, and shall be prima facie evidence of the facts therein recited. The time for redemption from any such sale shall not expire until the expiration of sixty days from the date of service of such notice. After the period of redemption shall have expired and no redemption made, the county auditor shall issue to the holder of the certificate of sale a certificate to the effect that the right to redeem has expired, which auditor's certificate of no redemption may be recorded in the office of the register of deeds as an instrument affecting real property. Such certificate or the record thereof shall be prima facie evidence that the right to redeem has expired and after the expiration of two years from its date shall be conclusive evidence of the service of

the notice and failure to redeem. [R. C. 1905, § 1690; 1901, ch. 161, § 16; 1903, ch. 161, § 16.]

Notice of amount of taxes against nonresident, but returned as not delivered, and general notice published in newspaper, is insufficient. *Stubbs v. Hoerr*, 20 N. D. 26, 125 N. W. 1062.

In order to establish title to premises through tax proceedings, it is necessary to prove service of such notice and filing thereof with clerk, as required by statute. *McKenzie v. Boynton*, 19 N. D. 531, 125 N. W. 1059.

First and last days in computing time for redemption from tax sale. 49 L.R.A. 237.

§ 2322. Auditor not to extend notations for regular annual tax sales against lands sold under judgment for same. Whenever in order to comply with the provisions of section 16 of chapter 161 of the Laws of 1903 (being section 1690 of the Revised Codes of 1905 [section 2321 herein]), any county auditor shall issue his certificate, or where theretofore there shall have been issued a county auditor's certificate to the holder of a certificate of sheriff's real estate tax judgment sale (provided for under section 15 of said act [section 2320 herein]) to the effect that the right to redeem the land therein described has or had expired the county auditor shall thereupon at the place of entry of tax against said land upon the original collection tax list of each and every year included in, and for which such judgment against said land was taken, write or stamp the words, "judgment sale," and the date of such judgment sale, and he shall not thereafter make or extend against said land upon the tax list of any subsequent year any entry or notation of the regular annual tax sale or sales originally made to either the state or county for the year or years included in, and for which such judgment was taken. [1913, ch. 114, § 1.]

§ 2323. Empowers auditor to erase, cancel and annul notation. And if at the time of issuing said certificate of no redemption to the holder of such sheriff's certificate of judgment sale as under section 2322 the tax lists of any subsequent years shall have had extended or noted against said land any sale or sales to either the state or county for any year or years included in such judgment sale, then the county auditor is hereby empowered and directed to erase, cancel and annul any such extensions and notations against said land upon the tax lists for any and all years subsequent to the year last included in such judgment. [1913, ch. 114, § 2.]

§ 2324. Certificate evidence of compliance. The certificate of sale shall in all cases be prima facie evidence that all the requirements of law with respect to the sale have been duly complied with. And no sale shall be set aside or held invalid unless the party objecting to the same shall prove, either that the court rendering the judgment pursuant to which the sale was made had no jurisdiction to render the judgment, or that after the judgment, and before the sale such judgment had been satisfied; and such certificate shall be conclusive evidence that due notice of sale, as required by this article, was given and that the piece or parcel of land was duly offered for sale and sold, and the validity of any sale shall not be called in question unless the action in which the validity of the sale shall be called in question shall be brought, or the defense alleging its invalidity be interposed within three years from the date of sale. [R. C. 1905, § 1691; 1897, ch. 67, § 15; R. C. 1899, § 1345; 1901, ch. 161, § 17; 1903, ch. 161, § 17.]

Irregularity in entry of judgment no ground to vacate sale. *Emmons Co. v. Thompson et al.*, 9 N. D. 598, 84 N. W. 385.

Certificate of sale is evidence of lien only. *Cruser & Baker v. Williams*, 13 N. D. 284, 100 N. W. 721.

Certificate of sale for taxes is prima facie evidence of valid sale without proof of precedent judgment. *Nind v. Myers*, 15 N. D. 400, 8 L.R.A.(N.S.) 157, 109 N. W. 336.

Validity of tax sale cannot be questioned after three years. *State Finance Co. v. Beck*, 15 N. D. 374, 109 N. W. 357.

A sale of land for taxes and a tax certificate issued thereon are void where the assessment was void for failure to designate the township and range, notwithstanding above provision limiting the grounds upon which a tax sale can be attacked. *Paine v. Germantown Trust Co.*, 136 Fed. 527.

§ 2325. Duty of sheriff. The sheriff shall immediately after such sale set out in his transcript of judgment book opposite the description of each piece or parcel of land, to whom and for what amount the same was sold, and shall deliver the book to the county auditor, who shall keep the same as one of the records of his office; and the sheriff shall also, as soon as possible after the sale, file with the clerk of the district court a report of his proceedings on such sale showing the completion of the same and accompanied by a copy of the notice of sale as published, and an affidavit of the owner, publisher, manager or foreman in the printing office of the newspaper in which such notice was published, showing the date on which the same was published; the clerk shall then mark said judgment satisfied on his records. [R. C. 1905, § 1692; 1897, ch. 67, § 16; R. C. 1899, § 1346; 1901, ch. 161, § 18; 1903, ch. 161, § 18.]

§ 2326. Lands bought by county not sold for subsequent taxes. Exception. Taxes for subsequent years shall be levied on lands bid in for the county the same as on other lands subject to taxation, but such lands shall not again be sold for subsequent taxes unless the lands are redeemed or the right of the county as a purchaser assigned. After the expiration of the time for redemption all lands bid in for the county remaining unredeemed or unassigned after sale shall cease to be taxed, unless the board of county commissioners otherwise direct. [R. C. 1905, § 1693; 1897, ch. 67, § 18; R. C. 1899, § 1348; 1901, ch. 161, § 19; 1903, ch. 161, § 19.]

§ 2327. Auditor assigns right to unredeemed lands. Form of assignment. After any piece or parcel of land shall have been bid in for the county, at any time before the time to redeem expires, and while the same shall remain unredeemed, the county auditor shall assign the right of the county in such piece or parcel of land to any person who shall at any time before the time for redemption expires pay the amount for which the same shall have been bid in, with interest and the amount of any subsequent taxes, penalties and interest upon the same, and shall execute to such person an assignment which may be substantially in the following form:

Whereas, at the sale of land pursuant to the tax judgment entered in the district court in the county of on the day of in proceedings to enforce the payment of taxes for the county of which sale was had on the day of, the following described piece or parcel of land situated in the county of, state of North Dakota, to wit: (Here insert description) was bid in for the county, and on this day having paid into the treasury of said county the amount for which the same was bid in, and all subsequent taxes, penalties and interest, amounting in all to dollars.

Therefore, pursuant to the law in such cases made and provided, the whole right, title and interest of said county of in or to said piece or parcel of land, acquired at said sale, is hereby assigned to said, his heirs and assigns forever.

Witness my hand and seal this day of

(Signed)

Auditor of the County of

Which assignment shall be acknowledged and may be recorded as deeds of real estate. Such assignee of the county shall succeed to all rights acquired by the county at such sale, but as a condition precedent to acquiring any absolute title to the lands sold, he must give the same notice of the expiration of the time of redemption as is herein required to be given by a purchaser at the sale. [R. C. 1905, § 1694; 1897, ch. 67, § 19; R. C. 1899, § 1349; 1901, ch. 161, § 20; 1903, ch. 161, § 20.]

Assignment valid when required payment made. *Darling et al. v. Purcell et al.*, 13 N. D. 288, 100 N. W. 726.

§ 2328. Redemption, how. Any person having any estate or interest in the property, wishing to redeem from such sale, may make such redemption at any

time within one year by paying into the treasury of the county, to the use of the person entitled thereto:

1. If such piece or parcel shall have been bid in for the county, and the right of the county shall not have been assigned, the amount for which the same was bid in, with interest, and the amount of subsequent taxes, penalties and interest.

2. If the right of the county shall have been assigned, the amount paid by the assignee with interest from the day when so paid, and, if he shall have paid any taxes, penalties or interest, accruing subsequent to the assignment, the amount so paid by him, with interest from the day of such payment, and all unpaid taxes, interest and penalty that may have accrued on such piece or parcel after such assignment, including the fees, if any, for serving notice of expiration of redemption.

3. If the same shall have been sold to a purchaser the amount paid by such purchaser, with interest, and if he shall have paid any taxes, penalties or interest, accruing subsequent to sale, the amount so paid by him, with interest from the day of paying the same and all unpaid taxes, interest and penalties accruing subsequent to such sale including the fees, if any, for serving notice of expiration of redemption.

Upon receipt of such payment from a redemptioner, the treasurer shall deliver to him a receipt therefor and upon the production of such receipt to the county auditor, he shall execute to the person redeeming a certificate which may be substantially in the following form:

I,, auditor of the county of, state of North Dakota, do hereby certify that on the day of, 19..., paid into the treasury of the county the sum of dollars, for redemption of the following described piece or parcel of land situated in the county of, state of North Dakota, to wit: (Insert description of land,) from the sale thereof made on the day of, pursuant to a tax judgment entered in the district court in the county of on the day of, in proceedings to enforce payment of taxes for the county of, and that said piece or parcel of land is redeemed from such sale pursuant to law.

Witness my hand and seal this day of, 19...

.....
Auditor of the County of

And such certificate may be recorded. If the amount so paid for the purpose of redemption is less than that required by law, it shall not invalidate such redemption, but the auditor shall be liable for the deficiency to the person entitled thereto. Such redemption shall have the effect to annul the sale. [R. C. 1905, § 1695; 1897, ch. 67, §§ 20, 21; R. C. 1899, § 1350; 1901, ch. 161, § 21; 1903, ch. 161, § 21.]

As to right of redemption under statute. *Cruser v. Williams*, 13 N. D. 284, 100 N. W. 721.

All sales under statute are subject to redemption. *Darling v. Purcell*, 13 N. D. 288, 100 N. W. 726.

Tax deed, void on its face, will not bar redemption after running of statute. *Battelle v. Wolven*, 22 S. D. 39, 115 N. W. 99.

§ 2329. Minors, insane persons, etc., redeem, when. Minors, insane persons, idiots, or persons in captivity or in any country with which the United States is at war, having any estate in, or lien on lands sold for taxes, may redeem the same within one year after such disability shall cease, but in such cases the right to redeem must be established in a suit for that purpose, brought against the party holding the title under the sale. [R. C. 1905, § 1696; 1901, ch. 161, § 22; 1903, ch. 161, § 22.]

§ 2330. Person interested may redeem, how. Any person who has an interest in or lien on an undivided estate in any piece or parcel of land sold or an estate or interest in any part thereof, may redeem such part of the un-

divided estate by paying into the treasury a proportionate part of the amount required to redeem the whole estate, and in such case the certificate shall express the estate, portion of, or interest redeemed. [R. C. 1905, § 1697; 1897, ch. 67, § 22; R. C. 1899, § 1351; 1901, ch. 161, § 23; 1903, ch. 161, § 23.]

§ 2331. **Procedure in redemption.** Upon application of the party entitled thereto, the treasurer upon the order of the auditor shall pay to such applicant any money paid into the treasury on the sale of any piece or parcel of land in excess of the amount due thereon. The procedure upon redemption except as herein otherwise provided shall be the same as that prescribed by law in respect to sales for delinquent taxes. [R. C. 1905, § 1698; 1897, ch. 67, § 23; R. C. 1899, § 1352; 1901, ch. 161, § 24; 1903, ch. 161, § 24.]

§ 2332. **Person in possession may redeem, when.** Any person in possession under a lease of any piece or parcel of land, or any part thereof, against which a judgment pursuant to this article shall have been rendered, may before the time to redeem shall expire, redeem the same. And the amount paid by him shall, unless by the terms of the lease he is bound to pay such taxes, operate as a payment of the same amount of rent to the party from whom he leases. [R. C. 1905, § 1699; 1897, ch. 67, § 24; R. C. 1899, § 1353; 1901, ch. 161, § 25; 1903, ch. 161, § 25.]

Redemption expires and title passes when statutory notice of redemption given and proof thereof filed. *Cruser & Baker v. Williams*, 13 N. D. 284, 100 N. W. 721.

§ 2333. **Fees of clerk of court.** The fees charged by the clerk of the district court in said proceedings shall be as follows: For making a copy of list for publication, the sum of five cents for each piece or parcel of land described in said list. For entry of judgment against tracts as to which no answer was filed, five cents for each piece or parcel as to which judgment is entered. For making transcript of judgment for sheriff, the sum of five cents for each piece or parcel described in said transcript. For filing an answer, ten cents; for entering judgment against any tract as to which an answer is filed, fifty cents, and said fees shall be included in the amount charged to each tract in the judgment. The auditor shall charge for preparing and filing the list aforesaid, the sum of ten cents for each tract therein described, and said fees shall be included in the amount charged to each tract in the judgment. All such fees shall be retained by the county wherein such proceedings are instituted. [R. C. 1905, § 1700; 1897, ch. 67, § 25; R. C. 1899, § 1354; 1901, ch. 161, § 26; 1903, ch. 161, § 26.]

§ 2334. **County commissioners award advertising, how.** The county commissioners shall award the advertising, provided in sections 2309 and 2318, to the publisher or publishers of some newspaper, daily if there be one published in the county, if not, then in some weekly newspaper, which shall have been published for at least six months prior to the time of such publication, the sum of twenty cents per folio of nonpareil type for each of the three publications, as provided in sections 2309 and 2318, and who shall give a bond to the county, with at least two sureties, freeholders of the county, to be approved, and in an amount to be fixed by said county commissioners, conditioned for the correct and faithful performance of such advertising. And in any suit by the county on such bond, for breach of the conditions thereof, the county shall recover as damages, one-half of the taxes, penalty and interest upon each piece or parcel of land in the copy list made by the clerk which may be affected by an error in the publication of the notice and list, or either, mentioned in section 2308, wherein the printer departed from the copy furnished him. [R. C. 1905, § 1701; 1897, ch. 67, § 26; R. C. 1899, § 1355; 1901, ch. 161, § 27; 1903, ch. 161, § 27.]

§ 2335. **Clerk delivers transcript to sheriff, when.** When judgment shall have been entered on the issue raised by answer to any tract under the provisions of this article, the clerk shall deliver to the sheriff a transcript thereof in the same manner as is provided by section 2316, and the same proceedings shall thereupon be taken as to such additional tract as is herein provided

as to the tracts as to which no answer was made; provided, however, that the clerk may withhold the transcript of any judgment entered in contested cases until all or a convenient number of pending cases are determined and may include all such judgments in one transcript. And the notice of sale in such cases to be posted and published by the sheriff shall specifically describe each tract to be sold. [R. C. 1905, § 1702; 1901, ch. 161, § 28; 1903, ch. 161, § 28.]

§ 2336. Fees of sheriff. The sheriff for all acts required of him under the provisions of this article shall receive the following compensation:

First, for receiving and collecting of money under the provisions of section 2317, the same fees as are allowed by law upon an execution in a civil action.

Second, for making the sale and issuing the certificate, the sum of seventy-five cents for each piece or parcel of land sold, which sum shall be included in the amount for which the tract is offered for sale, and shall be paid to the sheriff out of the general fund of the county.

Third, for serving notice of expiration of redemption, or posting same, the same fees as are allowed by law for service of summons in a civil action. [R. C. 1905, § 1703; 1901, ch. 161, § 29; 1903, ch. 161, § 29.]

§ 2337. Purchaser entitled to possession, when. When any piece or parcel of land shall be sold, the purchaser, after the time for redemption shall have expired, shall be entitled to immediate possession of the piece or parcel purchased by him, and if, on demand and presentation of the certificate of sale, the person in possession of the piece or parcel refuses or neglects to deliver such possession, such person may be proceeded against as a person holding over after the termination of his estate, which proceeding may be instituted and prosecuted as prescribed in the code of civil procedure. [R. C. 1905, § 1704; 1897, ch. 67, § 27; R. C. 1899, § 1355a; 1901, ch. 161, § 30; 1903, ch. 161, § 30.]

Right of holder of tax deed to take possession. 28 L.R.A.(N.S.) 398.

§ 2338. Purchase price refunded when sale declared void. When a sale of lands as provided in this article is for any cause declared void by judgment of court, the money paid by the purchaser at the sale, or by the assignee of the state or county, upon taking the assignment, shall, with interest at the rate of seven per cent per annum from the date of such payment be refunded to the purchaser or assignee or the party holding his right out of the county treasury on the order of the county auditor, and so much of such money as has been paid to the state, city, village, township and school district shall be charged to the same respectively, and deducted from the next money due the state, city, village, township and school district respectively on account of taxes; provided, that if such purchaser or assignee or party holding his right, shall after such purchase or assignment from the county have paid the taxes, penalties and interest upon such piece or parcel of land, he shall have a lien upon such piece or parcel for the amount of taxes, penalties and interest so paid, with interest at the rate by this article allowed, and may enforce such lien by action, or if he is in possession of such piece or parcel shall not be ejected therefrom until such amount and interest shall be paid. [R. C. 1905, § 1705; 1897, ch. 67, § 28; R. C. 1899, § 1355b; 1901, ch. 161, § 31; 1903, ch. 161, § 31.]

Right of purchaser at invalid tax sale, in absence of statute, to be reimbursed by taxing authority for the purchase price, or for taxes subsequently paid by him. 31 L.R.A.(N.S.) 1141.

Right of one holding under invalid tax deed to be reimbursed for improvements. 34 L.R.A.(N.S.) 550.

Has no application to any collections made as penalty and interest in absence of sale. State ex rel. Viking Twp. v. Mikkelson, 24 N. D. 175, 139 N. W. 525.

§ 2339. Taxes, who pay. When. Whenever the proceeding herein provided for shall have been directed to be instituted by the board of county commissioners, any person may pay the taxes mentioned in section 2307, on or before the day when the list is filed with the clerk of the district court

as provided in section 2307, by paying the amount of the tax for the several years, with interest at the rate of seven per cent per annum from the time when the taxes of each year became delinquent, and without any other interest, penalty or costs; and such payment shall relieve the piece or parcel of land on which the taxes shall be so paid from any forfeiture to the county whether valid or invalid. Judgment rendered pursuant to this article shall bear interest at the rate of two per cent per month; the amount for which any piece or parcel shall have been sold or bid in shall bear interest at the same rate from the date of the sale. All subsequent taxes paid by the purchaser or an assignee shall bear interest at the same rate from the date of such payment; the amount paid by any person taking an assignment of the right of the county shall bear interest at the same rate, from the time of such payment. [R. C. 1905, § 1706; 1897, ch. 67, § 29; R. C. 1899, § 1355c; 1903, ch. 161, § 32; 1903, ch. 161, § 32.]

§ 2340. Proceedings in assignment. Whenever an assignment of any right derived from a sale provided in this article, shall be made before the time for redemption expires, the assignee shall present the assignment to the auditor, who shall note on the copy of the judgment book provided by section 2316, the name of the assignee, and the date of the assignment, and indorse on such assignment the word "countersigned," and sign his name to the same; and no such assignment shall be recorded by the register of deeds until such indorsement is made. [R. C. 1905, § 1707; 1897, ch. 67, § 30; R. C. 1899, § 1355d; 1901, ch. 161, § 33; 1903, § 33.]

§ 2341. Record of certificates. Force and effect of. The record of certificates provided for in this article shall have the same force and effect as evidence or otherwise as the records of deeds of real estate. [R. C. 1905, § 1708; 1897, ch. 67, § 31; R. C. 1899, § 1355e; 1901, ch. 161, § 34; 1903, ch. 161, § 34.]

§ 2342. Local assessments deemed taxes. Local assessments shall be deemed taxes for all the purposes of this article. [R. C. 1905, § 1709; 1897, ch. 67, § 32; R. C. 1899, § 1355f; 1901, ch. 161, § 35; 1903, ch. 161, § 35.]

§ 2343. Duty of clerk. The clerk shall attach together and keep in his office the list, notices, affidavit of publication, one copy of the newspaper in which the notice and list were published, all answers, all orders made in the proceedings, and all affidavits and other papers filed in the course of the proceedings. [R. C. 1905, § 1710; 1897, ch. 67, § 33; R. C. 1899, § 1355g; 1901, ch. 161, § 36; 1903, ch. 161, § 36.]

§ 2344. Proceedings, how often. The proceedings provided in this article shall not be resorted to in any county oftener than once in six years. [R. C. 1905, § 1711; 1903, ch. 161, § 37.]

§ 2345. Powers of county commissioners. Forfeit lands. This article shall not be construed so as to repeal any existing laws with respect to the power of county commissioners to dispose of lands forfeited to the state or county for taxes. [R. C. 1905, § 1712; 1903, ch. 161, § 38.]

§ 2346. Valid judgment not waived. Nothing herein contained shall be construed to waive the conclusive effect of any valid judgment heretofore entered against any of the lands affected by this article in proceedings under chapter 67 of the general laws of 1897, and in entering judgment in proceedings under this article against such lands for taxes included in a judgment entered against such lands under said former act, the amount of such taxes included in said former judgment with the interest accrued thereon under said act shall be included in the judgment under this article. [R. C. 1905, § 1713; 1903, ch. 161, § 39.]

CHAPTER 35.

THE MILITARY CODE.

The title of Laws 1909, ch. 165, is "The Military Code" (and see section 2435). It expressly repeals nearly all of the three articles constituting chapter 35 of the Revised Codes of 1905 entitled "the militia." Inasmuch as the act of 1909 likewise legislates for the "militia" (see section 2350), the few sections in R. C. 1905, ch. 35, that were not expressly repealed, but were impliedly continued in force by their omission from the enumerated sections repealed by section 97 of the "Military Code," quoted below in this note, have been incorporated in appropriate places in this chapter, although some of them are evidently superseded in part by the provisions in the Military Code as enacted in 1909.

The last section (97) of the Military Code, Laws 1909, ch. 165, provides as follows:

"Sections 1714, 1715, 1716, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1732, 1733, 1735, 1736, 1738, 1739, 1741, 1742, 1743, 1744, 1745, 1747, 1748, 1749, 1750, 1751, 1752, 1753, 1756, 1757, 1758, 1759, 1760, 1761, 1762, 1763, 1764, 1765, 1766, 1767, 1768, 1769, 1770, 1771, 1772, 1773, 1774, 1775, 1776, 1777, 1778, 1779, 1782, 1783, 1784, 1785, 1786, 1788, 1794, 1795, 1796 and 1798 of the revised codes of 1905 are hereby repealed."

Section 71 of the same chapter is also a repealing section and is quoted in section 2412 note.

§ 2347. Persons subject to military duty. Exemptions. All able bodied male citizens and able bodied males of foreign birth who have declared their intention to become citizens, who are more than eighteen or less than forty-five years of age, and who are residents of this state, shall constitute the militia, subject to the following exemptions:

1. Persons exempted by the laws of the United States.
2. Persons exempted by the laws of this state. [1909, ch. 165, § 1; R. C. 1905, § 1714; 1891, ch. 86, § 1; R. C. 1899, § 1356.]

§ 2348. How militia shall be enrolled. It shall be the duty of the assessor in each assessor's district in this state, when making the assessment, to make out a list containing the names of all persons in their respective districts liable to perform military duty, and file a copy of such lists with the county auditor when he makes his assessment returns. Such list shall state the names, residence, age and occupation of the persons enrolled and their previous or existing military or naval service. [1909, ch. 165, § 2; R. C. 1905, § 1715; 1891, ch. 86, § 2; R. C. 1899, § 1357.]

§ 2349. Notice of enrollment. Exemption claims. The assessor making the enrollment shall, at the time of making the same, serve a notice of such enrollment upon each person enrolled, by delivering such notice to him or leaving it with some person of suitable age and discretion, at his place of residence. All persons claiming exemption must, within fifteen days after receiving such notice, file a written statement of such exemption, verified by affidavit, in the office of the county auditor. Such auditor shall thereupon, if such person be exempted according to law, mark the word "exempt" opposite his name, and the remainder of all thus enrolled, and not thus found to be exempt, shall constitute the militia of the state, and such auditor shall transmit a certified copy of such corrected roll to the adjutant-general on or before July first of each year. [1909, ch. 165, § 3.]

§ 2350. Designation and classification of the militia. The militia of the state shall be divided into two classes: the active and the reserve militia. The active militia shall consist of the organized and uniformed military forces of the state, which shall be known as the North Dakota national guard; the reserve militia shall consist of all those liable to service in the militia, but not serving in the national guard of the state. [1909, ch. 165, § 4.]

§ 2351. Commander in chief. The governor of the state, by virtue of his office, shall be commander in chief of the militia of the state, except of such portion as may at times be in the service of the United States. Whenever the governor is unable to perform the duties of commander in chief, the senior officer of the line of the national guard present for duty in the state shall command the militia of the state. No armed military force from another

state, territory or district shall be permitted to enter the state for the purpose of doing military duty therein, without the permission of the governor, unless such force is part of the United States army or is acting under the authority of the United States. [1909, ch. 165, § 5; R. C. 1905, § 1719; 1891, ch. 86, § 5; R. C. 1899, § 1360.]

§ 2352. Staff of the governor. The staff of the governor shall consist of one adjutant-general, with the rank of brigadier-general, who shall perform the duties of inspector-general; one chief of ordnance; one judge advocate-general, with the rank of colonel, who shall perform the duties of inspector-general; one chief of supply, with the rank of colonel, who shall perform the duties of paymaster-general and commissary-general, and, when a vacancy shall occur in the office of chief of supply, by reason of the death, resignation or promotion of the present chief of supply, the title of this office shall thereafter be paymaster-general, and the said paymaster-general shall thereafter perform the duties of commissary-general and chief of supply. The personal staff of the governor shall consist of nine aides-de-camp. Three of such number shall be detailed by him from the commissioned officers of the national guard holding commissions on the active list of the grade below that of colonel, and shall have the rank of colonel, and their appointment shall operate as commission as aides-de-camp, but shall not add to the actual grade in the guard of the officers so appointed. Such aides-de-camp shall not be relieved from duty with their respective organizations when such organizations shall be performing any ordered duty. The governor is also authorized to appoint additional aides-de-camp, with the rank of lieutenant-colonel, not to exceed six in number, and without restriction as to source of selection. All of these staff officers shall be appointed by the governor, shall hold office during his pleasure, and their commissions or detail as staff officers shall expire with the term of office of the governor appointing them. [1909, ch. 165, § 6; R. C. 1905, § 1719; 1891, ch. 86, § 5; R. C. 1899, § 1360.]

§ 2353. Power of the governor in case of invasion, etc. The governor shall have power, in case of insurrection, invasion, tumult, riot, or breach of the peace, or imminent danger thereof, to order into the active service of the state any part of the militia that he may deem proper. When the militia of this state or a part thereof is called forth under the constitution and laws of the United States, the governor shall order out for service the active militia or such part thereof as may be necessary, and if the number available be insufficient, he shall order out such part of the reserve militia as he may deem necessary. During the absence of organizations of the national guard in the service of the United States their state designations shall not be given to new organizations. [1909, ch. 165, § 7; R. C. 1905, § 1761; 1891, ch. 86, § 43; R. C. 1899, § 1399.]

Forces other than state militia not entitled to subsistence. *Stanton v. State*, 5 S. D. 515, 59 N. W. 738.

Power of governor, in exercise of power to suppress insurrection, to authorize arrest and detention of persons without turning them over to the civil authorities. 12 L.R.A. (N.S.) 979.

§ 2354. Method of drafting reserves for service. Whenever it shall be necessary to call out any portion of the reserve militia for active duty the governor shall direct his order to the adjutant-general, who, upon receipt of same, shall forthwith cause to be drafted by lot, by mustering officers detailed for that duty from the national guard, as many of the reserve militia, or accept as many volunteers as are required by the governor, and the adjutant-general shall forthwith forward to the governor a list of persons so drafted or accepted as volunteers. [1909, ch. 165, § 8.]

§ 2355. Punishment for failure to appear. Every member of the militia ordered out, or who volunteers, or is drafted under the provisions of this act [chapter] who does not appear at the time and place designated by his commanding officer, the adjutant-general or mustering officer, within twenty-

four hours of such time, or who does not produce a sworn certificate of physical disability from a physician in good standing, showing his disability to appear, shall be taken as a deserter and dealt with as prescribed in the articles of war of the United States. [1909, ch. 165, § 9; R. C. 1905, § 1763; 1891, ch. 86, § 45; R. C. 1899, § 1401.]

§ 2356. Organization of reserve militia when ordered out. The portion of the reserve militia ordered out or accepted into the service, as indicated in sections eight and nine of this article [sections 2354, 2355], shall be immediately mustered into the service of the state for three years or such less period as the governor may direct, and shall be organized into batteries or companies, which may be arranged in battalions or regiments, or assigned to organizations of the national guard already existing. The governor is authorized to appoint the officers necessary to commence or complete any organization thus created. Such new organization shall be equipped, disciplined and governed according to this military code and the military regulations of the state. [1909, ch. 165, § 10.]

§ 2357. Proclamation of state of insurrection. Whenever any portion of the militia is employed in aid of the civil authority, the governor, if in his judgment the maintenance of law and order will thereby be promoted, may by proclamation declare the county or city in which the troops are serving, or any specified portion thereof, to be in a state of insurrection. [1909, ch. 165, § 11.]

§ 2358. Occasion when the articles of war of the United States are to be in force. Whenever any portion of the militia shall be on duty under or pursuant to the orders of the governor or shall be on duty or ordered to assemble for duty in time of war, insurrection, invasion, public danger, or to aid the civil authorities on account of any breach of the peace, tumult, riot, resistance to process of this state, or imminent danger thereof, or for any other cause, the articles of war governing the army of the United States, as far as such regulations are consistent with this chapter and the regulations issued thereunder, shall be in force and regarded as a part of this chapter until said forces shall duly be relieved from such duty. As to offenses committed when such articles of war are so in force, courts-martial shall possess, in addition to the jurisdiction and power of sentence and punishment herein vested in them, all additional jurisdiction and power of sentence and punishment exercisable by like courts under such articles of war or the regulations or laws governing the United States army or the customs and usages thereof, but no punishment under such rules and articles which shall extend to the taking of life, shall, in any case, be inflicted except in time of actual war, invasion, or insurrection, declared by proclamation of the governor to exist, and then only after the approval by the governor of the sentence inflicting such punishment. Imprisonment other than in guardhouse shall be executed in jails or prisons designated by the governor for the purpose. [1909, ch. 165, § 12.]

Part of this section was evidently found in R. C. 1905, § 1717, which constitutes the following section herein.

Articles of War of the United States do not govern militia of national guard in times of peace. *State ex rel. Poole v. Peake*, 22 N. D. 457, 40 L.R.A.(N.S.) 354, 135 N. W. 197.

§ 2358a. How governed. The militia while in active service shall be governed by the military law of the state, and the rules and articles of war of the United States; and when any troops are in the field for the purposes aforesaid, the senior ranking officer of the troops present shall take command; provided, that no person shall be eligible to a command in the militia of this state, except citizens of the United States or persons who have declared their intention to become such. [R. C. 1905, § 1717; 1891, ch. 86, § 3; R. C. 1899, § 1358.]

This was R. C. 1905, § 1717, which was not expressly repealed by the Military Code of 1909. See note immediately preceding section 2347 herein.

Articles of War of United States do not govern militia of national guard in times of peace. State ex rel. Poole v. Peake, 22 N. D. 457, 40 L.R.A. (N.S.) 354, 135 N. W. 197.

§ 2359. Relief from civil or criminal liability. Security for costs. Members of the militia ordered into active service of the state by any proper authority shall not be liable, civilly or criminally, for any act or acts done by them while on duty. When a suit or proceeding shall be commenced in any court by any person against any officer of the militia, for any act done by such officer in his official capacity in the discharge of any duty under this act [chapter], or against any person acting under the authority or order of any such officer, or by virtue of any warrant issued by him pursuant to law, the defendant may require the person prosecuting or instituting the suit or proceeding to file security for the payment of the costs that may be awarded to the defendant therein, and the defendant in all cases may make a general denial and give the special matter in evidence. In case the plaintiff shall be nonsuited, or have a verdict or judgment rendered against him, the defendant shall recover treble costs. Active service under this act [chapter] shall be deemed to be service in case of or to prevent insurrection, riot or invasion, under order of the commander in chief, communicated through the proper military channels. [1909, ch. 165, § 13; R. C. 1905, §§ 1761, 1773; 1891, ch. 86, §§ 43, 55; R. C. 1899, §§ 1399, 1411.]

Homicide in discharge of military duty. 67 L.R.A. 295.

§ 2360. The adjutant-general. The adjutant-general shall be in control of the military department of the state. He will perform such duties as pertain to the adjutant-general and the other chiefs of staff departments, under the regulations and customs of the United States army. He will superintend the preparation of all returns and reports required by the United States from the state and will perform all the duties prescribed for him in this military code. He shall receive the sum of nine hundred dollars per annum for the purpose of defraying his personal expenses in the discharge of the duties pertaining to his office and for other necessary expenses, to be paid quarterly without the filing of any itemized statement.

See section 2360a and note.

1. He shall keep a register of all the officers of the militia of the state, and keep in his office all records and papers required to be kept and filed therein, and make a report on or before the thirty-first day of December in each year to the governor, including a detailed statement of all the expenditures for military purposes during that year.

2. He shall, at the expense of the state, when necessary, cause the military law, the general regulations of the state, and articles of war of the United States, to be printed, indexed and bound in proper and compact form and distributed to the commissioned officers of this state at the rate of one copy to each, and to each commissioned officer and headquarters he shall issue one copy of the necessary text books and of such annual reports concerning the militia as the governor may direct.

3. He shall cause to be prepared and issued all necessary blank books, blanks, forms and notices required to carry into full effect the provision of this chapter. All such books and blanks shall be and remain the property of the state.

4. The seal now used in the office of the adjutant-general shall be the seal of his office, and shall be delivered by him to his successor.

5. The adjutant-general may have the necessary clerks and employes and as many laborers as may be required from time to time.

6. In order that the national guard of the state may receive the benefit of the funds provided by congress, it shall be the duty of the adjutant-general of the state to submit a plan of proposed field or camp service of instruction prepared by the commanding officer of the national guard for the ensuing year, with an estimate of funds required for payment, subsistence and transportation of the portion of the national guard participating therein,

said estimate to furnish the details and to be made out in the form required by instructions from the secretary of war.

7. He shall make such regulations relating to the preparation of reports and returns and to the care and preservation of property for military purposes, whether belonging to the state or to the United States, as in his opinion the conditions demand, such regulations to be operative and in force when promulgated in the form of general orders, circulars or letters of instructions.

8. The adjutant-general shall, in addition to other duties, organize and conduct a bureau of pensions, for the purpose of assisting ex-soldiers or sailors, residents of the state, who may apply for pensions on account of wounds or disability incurred in the service of the United States, in establishing their claims, without fee or commissions.

See section 2360a and note.

9. All military property of the state which, after a proper inspection, shall be found unsuitable for the use of the state, shall, under the direction of the governor, be disposed of by the adjutant-general at public auction after suitable advertisement of the sale, daily for ten days, in at least one newspaper published in the English language in the city or county where the sale is to take place; or the same may be sold at private sale when so ordered by the governor. He shall bid in the property or suspend the sale whenever, in his opinion, better prices may or should be obtained. He shall, from time to time, render to the governor a just and true account of the sales made by him, and shall expend the proceeds of the same in the purchase of other military property, as the governor may direct. He shall be responsible for all the arms, ordnance, accoutrements, equipments and other military property which may be issued to the state by the secretary of war in compliance with law; and it shall thereafter be his duty to prepare returns of said arms and other property of the United States at the times and in the manner requested by the secretary of war. He shall, upon the order of the governor, turn into the ordnance department of the United States army the rifles, carbines, bayonets, bayonet scabbards, gun slings, belts and such other necessary accoutrements and equipments, the property of the United States and now in possession of the state, which may be replaced from time to time, by new arms, equipments, etc., sent by the United States in substitution therefor, and cause the same to be shipped, under instructions from the secretary of war, to the designated arsenal or depot at the expense of the United States, and when the national guard of the state shall be fully armed and equipped with standard service magazine arms, and the standard equipment and accoutrement of the United States army, he shall cause all the remaining arms, equipments, etc., the property of the United States and in possession of the state, to be transferred and shipped as above directed.

10. He shall issue and cause to be issued all military property and make purchase for that purpose. No military property shall be issued to persons or organizations other than those belonging to the active militia, except to such portions of the reserve militia as may be called out by the governor. Purchases of property not exceeding one hundred dollars in value shall be made in such manner as the adjutant-general shall direct. If such purchase requires an expenditure exceeding one hundred dollars and not exceeding five hundred dollars, he shall procure written proposals to furnish such property from at least two parties, and shall purchase such property from the lowest responsible bidder. If such purchase shall require the expenditure of a sum exceeding five hundred dollars, he shall publicly advertise, for not less than ten days, for sealed proposals for the furnishing of such property. Such proposals shall be publicly opened by the adjutant-general at the place, day and hour designated in such advertisement. The adjutant-general shall, if the governor approve, make contract with the lowest responsible bidder to furnish such property. All proposals and contracts made under the

authority hereby conferred shall be filed in the office of the adjutant-general. The adjutant-general is authorized and directed whenever, in his opinion, it shall be to the interest of the state, to require a party who shall agree or contract to furnish such property, to give bond to the people of this state, in such sum and with such surety as he shall direct, conditioned for the faithful performance of such agreement or contract. In case default is made, such bond shall be prosecuted by the attorney-general and all moneys recovered shall be applied by the adjutant-general to the benefit of the national guard. All property purchased under the authority hereby granted shall be inspected by an inspector or an officer detailed for that purpose by the commanding officer of the national guard, and no payment shall be made therefor until it shall appear by the certificate of such officer that such property is of the kind and quality specified in such agreement or contract. In case of insurrection, invasion, tumult, riot, breaches of the peace or imminent danger, or other exigency, the governor may, upon the certificate of the commanding officer of the national guard, temporarily suspend the operation of this paragraph and direct the adjutant-general to purchase such military property as may be required in open market. He shall report such action, with the reason therefor, and a statement of the property purchased and the prices paid therefor, to the legislature at its next session.

11. He shall render annually to the governor a statement in detail showing the acquisition and disposition of all clothing, ordnance, arms, ammunition and other military property on hand or issued.

As to report to the governor, see sections 95, 97, 98.

12. He shall keep in his office a list of the retired officers of the organized militia, showing their age, military experience and training. He shall annually request the commandant of cadets of the agricultural college and state university to furnish him with the names of two graduates qualified to act as officers, and shall request from any other state educational institution that maintains an efficient military department, the name of one graduate similarly qualified. The names of the persons so reported to him, together with any others designated by the war department of the United States, shall be added to the list of persons eligible for appointment as officers. In case of a call upon the governor of North Dakota by the president of the United States for volunteers, all regiments organized, in addition to the then organized militia of North Dakota, shall be officered above the rank of second lieutenant by officers selected and commissioned by the governor by and with the advice of the adjutant-general, from the persons whose names are listed in the adjutant-general's office under this section, or from the officers and non-commissioned officers of the organized militia; provided, that no person shall be commissioned colonel of a volunteer regiment who has not served at least two years as a field officer in either the organized militia or volunteers or as a captain or field officer in the regular army of the United States, and that no person shall be commissioned major in a volunteer regiment who has not served at least two years as either captain or first lieutenant in either the organized militia, volunteers or regular army of the United States. [1909, ch. 165, § 14; R. C. 1905, §§ 1736, 1737; 1891, ch. 86, §§ 19, 20; R. C. 1899, §§ 1374, 1375; 1905, ch. 12.]

§ 2360a. **Adjutant-general's salary and expenses.** [The adjutant-general shall, in addition to his other duties, organize and conduct a bureau of pensions, for the purpose of assisting ex-soldiers or sailors, residents of the state, who may apply for pensions on account of wounds or disability incurred in the service of the United States, in establishing their claims without fee or commissions.] The salary of the adjutant-general shall be eighteen hundred dollars per annum, which, with the necessary expenses incurred in conducting the bureau of pensions, office and clerk hire, furniture, light, fuel, postage and other office expenses, shall be paid from the general fund by

warrants drawn by the state auditor on the state treasurer, on the order of the governor. [1911, ch. 1; R. C. 1905, § 1737; 1891, ch. 86, § 20; R. C. 1899, § 1375; 1905, ch. 12.]

The provision in brackets is repeated in section 2360, par. 8. Section 2360a was chapter 1 of Laws 1911 (amending and re-enacting R. C. 1905, § 1737), which is expressly repealed in sections 653e, 653i. See appropriations in sections 653e, 653f, and as to the temporary character of the repealing provisions in sections 653e, 653i, see comments in note to section 653a.

§ 2360-b. Chief of supply, bond and duties of. The chief of supply shall give a bond to the state in the sum of ten thousand dollars with two sureties to be approved by the commander in chief, conditioned for the faithful discharge of his duties. He shall keep a just and true account of all expenses necessarily incurred in the military service of the state and such account shall be paid on the order and approval of the commander in chief. He shall purchase and distribute to the national guard all military stores and supplies authorized by law, shall pay all incidental expenses of the service, including transportation, freight, express, postage and telegrams on public business, pay the officers and members of the national guard, furnish clothing, rations, tools, camp and garrison equipage, make contracts for and pay the rent for offices, armories, storehouses, camp grounds and such other duties authorized by law, as he may be directed to perform by the orders of the commander in chief. [R. C. 1905, § 1740; 1891, ch. 86, § 23; R. C. 1899, § 1378.]

This was R. C. 1905, § 1740, which was not expressly repealed in the Military Code of 1909. See note immediately preceding section 2347 herein. The chief of supply is mentioned in section 2352. But see the duties of the adjutant-general specified in section 2360, par. 10.

§ 2361. Paymaster-general. The paymaster-general shall, before entering upon the discharge of his duties, file in the office of the adjutant-general a good and sufficient bond payable to the state of North Dakota in a penal sum of not less than ten thousand dollars, approved by the governor, conditioned for the faithful discharge of his duties.

1. He shall file at least quarterly with the state auditor receipts for all state funds paid out by him signed by the parties to whom payment was made.

2. His books and vouchers shall be at all proper times subject to inspection by the adjutant-general, or any representatives of the commander in chief.

3. The paymaster-general shall from time to time file with the state auditor a written requisition, approved by the adjutant-general, for such amount of money standing to the credit of the national guard on the books of the state auditor or state treasurer as he may deem necessary to draw to pay indebtedness incurred or about to be incurred.

4. Immediately upon the filing in his office of said requisition, the state auditor shall draw a warrant on the state treasurer for the amount named in said requisition and forward same to the paymaster-general.

5. It is hereby made the duty of the public examiner to examine said books and accounts at least once each year, and upon said examination to deliver to the paymaster-general a certificate as to the correctness of the same.

6. The paymaster-general shall make all purchases of commissary stores and supplies as may be necessary, under such rules and regulations as may be prescribed by the commander in chief.

7. No funds appropriated by the legislature for the maintenance of the militia shall be drawn except upon the requisition of the paymaster-general. He shall file with the adjutant-general an annual financial report showing all receipts and disbursements. [1909, ch. 165, § 15.]

§ 2362. Armory commission. Whenever any arsenal, armory or other quarters of the militia, camp ground or rifle range is owned or leased by the state, the same shall be under the charge of the armory commission, which shall consist of the governor, the adjutant-general and the commanding officer of the regiment. From the time this act [chapter] takes effect a commission

so constituted shall take charge of the erection and completion of all such property, as may hereafter be authorized to be erected and of all such property, the erection or completion of which is in progress at the time this act takes effect under any general or special law, and as to such work as is in progress, such commission is hereby invested with all the powers conferred by law on any officers, boards or commissions heretofore charged with such work or any part thereof. It shall keep in good repair the arsenals, armories, quarters, camp grounds and rifle ranges in its charge, and all moneys appropriated heretofore or which may be appropriated hereafter for the erection or repair of such buildings, grounds or ranges shall be expended by said commission in the same manner as other moneys appropriated for military purposes are authorized to be expended, except as herein otherwise provided. Every such commission is hereby authorized to appoint, and at its pleasure discharge, its own architects and inspectors. When ordinary repairs not exceeding one hundred dollars in cost are necessary, the officer in charge of the building or grounds shall report to the adjutant-general what is required to be done, submitting estimates from at least two responsible parties, and the adjutant-general may authorize the officer to cause the repairs to be made, designating the party who shall do the work. When repairs, the cost of which will amount to over one hundred dollars, but not more than five hundred dollars, are required, a full statement of the necessity thereof must be made by the officer in charge to the adjutant-general, who shall cause estimates of the cost thereof to be prepared by two or more parties, and then cause the work to be done under a contract entered into by him for that purpose. When repairs are to be made, the expenditures for which will exceed the sum of five hundred dollars, the commission shall advertise for proposals, bids shall be received and contracts regularly entered into. During and upon completion of the work, the expenditure for which will exceed five hundred dollars, it shall be inspected from time to time by an inspector selected by the commission, and payment shall not be made until it appears by the certificate of such inspector that such work has been properly performed and according to the contract. Payment for repairs, the expenditure for which does not exceed five hundred dollars, shall only be made upon a like certificate of the officer in charge of the building or grounds where the same were made. All bills for work done on any of the arsenals, armories, quarters, camp grounds or rifle ranges of the state exceeding one hundred dollars, must be verified by a certificate setting forth that the work has been properly performed, and that the amount charged is reasonable and just. Copies of all contracts and agreements made for the repair or alteration of arsenals, armories, quarters, camp grounds or rifle ranges of the state shall be immediately filed in the office of the adjutant-general. Whenever any real property is taken for the purpose of erecting a state armory thereon, the building on such property, or the old materials in the same, may be sold at public or private sale, for the best price that can be obtained, and if the property is taken by the state, the net sum realized therefrom shall be paid into the state treasury, and if taken by a county, to the county treasurer of such county, or it may be used for the improvement of the property taken by the authorities authorized to erect such armory. When real property shall be required for the purpose of a state camping ground, or for rifle practice or other military purposes in connection with any state arsenal or armory, which is deemed necessary by the armory commission, and such armory commission is unable to agree with the owners for the purchase thereof, title thereto shall be acquired by the attorney-general in the name of the people of the state by condemnation, on the written application of the armory commission. The cost of all real property so taken and damages and expenses incurred by and awarded in any proceedings for the condemnation of any such property, shall be paid by the state. The words "armory com-

mission " when used in this chapter shall be construed to refer to the commission provided for by this section. [1909, ch. 165, § 16.]

§ 2363. **Legal adviser of the commander in chief, etc.** The attorney-general of the state shall be the legal adviser of the governor, of the adjutant-general and of the armory commission. [1909, ch. 165, § 17.]

§ 2364. **Audit and payment of accounts.** No officer of the militia shall incur any expense whatsoever to be paid by the state, except such as are authorized in this chapter, without first obtaining the authority of the governor. In extreme emergencies, however, the commanding officer of any organization or detachment of the active militia may make purchases of such necessities as are absolutely required for the immediate use and care of his command. A report of such action, containing a statement of the articles purchased and the price thereof, must be made forthwith through the channel to the adjutant-general. The commander in chief of the state shall be the auditor of all accounts for property purchased by the adjutant-general, and the copies of the orders or contracts under which such purchases are made shall be filed in the office of the paymaster-general. All other military accounts payable by the state shall be audited by the adjutant-general. Military accounts thus audited shall be paid by the paymaster-general of the state from the proper appropriation made by the legislature, upon the warrant of the auditor. [1909, ch. 165, § 18.]

§ 2365. **The national guard, how composed.** The national guard of the state shall consist of one brigadier-general, an adjutant-general's department, a judge-advocate-general's department, a pay department, a corps of engineers, a hospital corps, the commissioned officers heretofore or hereafter retired or rendered supernumerary, the organization now forming the national guard at this date, and such others as may be organized hereafter and such persons as are enlisted and commissioned therein. The governor shall have power to alter, divide, annex, consolidate, disband or reorganize any organization or corps and create new organizations or corps when required by the provisions of this chapter, and he shall have power to change the organization of any organization or corps so as to conform to any organization, system of drill or instruction now or hereafter adopted by the army of the United States, or prescribed by the laws of the United States, for the government of the militia, and for that purpose the number of officers and noncommissioned officers of any grade in any organization or corps may be increased to the extent made necessary by the new positions thus created. The governor shall have power to fix, from time to time, and to alter the maximum number of enlisted men which shall form part of any organization, irrespective of but not exceeding the maximum prescribed therefor in this chapter. The governor shall have power, in case of war, insurrection, invasion or imminent danger thereof, to increase the maximum now established by law, and to organize the same, with the proper officers, as the exigencies of the service may require. [1909, ch. 165, § 19; R. C. 1905, § 1718; 1891, ch. 86, § 4; R. C. 1899, § 1359.]

As not including personal staff officers of governor. *State ex rel. Poole v. Peake*, 18 N. D. 101, 120 N. W. 47.

§ 2365a. **Commander-in-chief may discharge or consolidate, when.** Whenever any troop, battery or company shall have less than the minimum number of privates fixed for each organization, the commander-in-chief may at his discretion discharge or consolidate such organizations, and all officers and men honorably discharged under the provisions of this section shall be entitled to receive a certificate of discharge, showing length of service, which time shall be credited to them in case of re-entering the service. [R. C. 1905, § 1731; 1891, ch. 86, § 14; R. C. 1895, § 1369.]

This was R. C. 1905, § 1731, which was not expressly repealed by the Military Code of 1909. See note immediately preceding section 2347.

There is no "troop" in the national guard as now composed. See the following two sections.

§ 2366. Organization. The military units of the national guard shall be composed and organized as follows:

Infantry — The minimum strength of a company shall be as follows:

- One captain,
- One first lieutenant,
- One second lieutenant,
- One first sergeant,
- One Q. M. sergeant,
- Four sergeants,
- Six corporals,
- Two cooks,
- Two musicians,
- Forty-two privates.

Total enlisted (minimum), fifty-eight.

The minimum strength of a battalion shall be as follows:

- One major,
- One adjutant (first lieutenant),
- One Q. M. and commissary (second lieutenant),
- One sergeant major,
- Four companies.

The minimum strength of a regiment shall be as follows:

- One colonel,
- One lieutenant-colonel,
- One adjutant (captain),
- One quartermaster (captain),
- One commissary (captain),
- One assistant inspector of small arms practice (captain),
- One chaplain (captain),
- One regimental surgeon (major),
- Two assistant surgeons (captains),
- One sergeant major,
- One Q. M. sergeant,
- One commissary sergeant,
- Two color sergeants,
- Band, twenty-eight enlisted —
- One chief musician,
- One principal musician,
- One drum major,
- Four sergeants,
- Eight corporals,
- One cook,
- Twelve privates,
- Three battalions.

Total enlisted (minimum), seven hundred thirty-two. [1909, ch. 165, § 20; R. C. 1905, §§ 1729, 1730; 1891, ch. 86, §§ 12, 13; R. C. 1899, §§ 1367, 1368.]

§ 2367. Field artillery. The minimum strength of a battery shall be as follows:

- One captain,
- Two first lieutenants,
- Two second lieutenants,
- One first sergeant,
- One Q. M. sergeant,
- One stable sergeant,
- Six sergeants,
- Twelve corporals,
- Three cooks,

One chief mechanic,
Four mechanics,
Two musicians,
One hundred and two privates.

Total enlisted men (minimum), one hundred thirty-three. [1909, ch. 165, § 21; R. C. 1905, §§ 1725, 1726; 1891, ch. 86, §§ 9, 10; R. C. 1899, §§ 1364, 1365.]

§ 2368. **Hospital corps.** The hospital corps shall consist of sergeants of the first class, sergeants, corporals, privates of the first class and privates, in such number that there shall be enlisted not to exceed one sergeant of the first class, four sergeants, five corporals, twenty privates of the first class, and privates for each regiment of infantry; and for each separate battalion not to exceed one sergeant of the first class, two sergeants and six privates, first class, and privates; for each separate battery of field artillery, one corporal and two privates, first class, and privates. [1909, ch. 165, § 22.]

§ 2369. **Commissions.** All officers shall be commissioned by the governor, but no one shall be commissioned unless the conditions set forth in the next two sections have been complied with, and no one shall be recognized as an officer unless he shall have been duly commissioned and shall have taken the oath of office. The acceptance of a commission in the militia of this state shall be deemed a resignation by the person accepting the same of all other commissions held by him in such militia. Nothing herein shall apply to or affect the acceptance and holding of brevet commissions or appointments as aides-de-camp to the governor. [1909, ch. 165, § 23; R. C. 1905, §§ 1720, 1749; 1891, ch. 86, §§ 6, 32; R. C. 1899, §§ 1361, 1387.]

§ 2370. **Eligibility required to receive a commission.** Commissioned officers must be citizens of the United States and of the age of twenty-one years and upward. No person who has been expelled or dishonorably discharged from any military organization of the state shall be commissioned unless he has re-enlisted and subsequently served as provided in this chapter. No person shall be commissioned unless he shall possess the additional requirements herein prescribed for the particular office to which he is to be commissioned. A brigadier-general at the time of his appointment must be an officer in active service in the national guard of this state of the grade of field officer, and for five successive years immediately preceding his appointment he must have been in active service in said national guard as a commissioned officer. A colonel of a regiment, at the time of his appointment, must either be an officer in active service in the national guard of this state, and for three successive years immediately preceding his appointment must have been in active service in said national guard as a commissioned officer, or, if not in active service at the time of his appointment, must have had prior service of at least six years in the national guard of this state, or in the army of the United States, or in both combined, as a commissioned officer. A lieutenant-colonel and major of the line, at the time of his appointment, must either be an officer in active service, and for two successive years immediately preceding his appointment must have been in active service in the national guard of this state, as a commissioned officer, or, if not in active service at the time of appointment, must have had prior service of at least six years in the national guard of this state, or in the army of the United States, or in both combined, as a commissioned officer. Staff officers or officers below the rank of brigadier-general, except medical officers and chaplains, must have served one year immediately preceding their appointments in the national guard of this state. Staff officers of the brigadier-general, except judge-advocates, surgeons and engineers, must be selected from the commissioned officers in active service in the national guard of this state, who, for one year immediately preceding their appointments, have been in active service in such national guard as commanding officers. A judge-advocate

must be a counsellor at law of the supreme court of this state of at least ten years' standing if of the grade of lieutenant-colonel; of at least five years' standing if of the grade of major. Surgeons and assistant surgeons must be graduates of an incorporated school of medicine, and of at least fifteen years' practice if of the grade of colonel; of at least ten years' practice if of the grade of lieutenant-colonel; of at least five years' practice if of the grade of major; of at least three years' practice if of the grade of captain; and of at least two years' practice if of the grade of first lieutenant. An engineer officer of the national guard must have been educated as a military or civil engineer. A signal officer must have a knowledge of signaling, telegraphy, topography and map making. A chaplain must be a regularly ordained minister of some religious denomination. [1909, ch. 165, § 24.]

§ 2371. Examination. Before receiving a commission consequent upon an original appointment or election, or before being commissioned to a higher grade as a result of promotion, every officer above the rank of first lieutenant must have passed a satisfactory examination before a board as to his knowledge of military affairs, and general knowledge and physical and other fitness for the service, and any one failing to pass such examination shall not be eligible for an office in the militia of the state, or for promotion for the period of one year from the date of such failure. Judge-advocates and medical officers shall be examined as to their general and professional knowledge and fitness for the service only. The following are exempt from examination: General officers, chaplains and those enlisted men who may be commissioned by brevet, and upon the completion of twenty-five years of good and faithful service as hereinafter provided. First and second lieutenants shall be examined by the judge-advocate-general. [1909, ch. 165, § 25.]

§ 2372. Examining board. Boards of examination under the preceding section shall be appointed by the governor or caused by him to be appointed for the national guard by the commanding officer. Such boards shall consist of not less than four officers, one of whom shall be a medical officer, who shall take part only in the physical examination of the officer, and such boards shall have the same power to take evidence and administer oaths and compel witnesses to attend and testify and produce books and papers, and punish their failure to do so, as is possessed by a general court-martial. [1909, ch. 165, § 26.]

§ 2373. Elected officers. The adjutant-general shall have personal charge of his office at the state capitol, and shall be appointed by the commander in chief from the commissioned officers of the national guard of this state, and such adjutant-general shall have been a commissioned officer of the field or line in active service in the guard of this state for a period of at least three years immediately preceding his appointment, and such appointee shall be the officer highest in rank who will accept such appointment, and the judge-advocate and paymaster-general shall be appointed from the commissioned officers of the national guard of this state, each of whom shall have been a commissioned officer in the national guard of this state for a period or at least three years immediately preceding such appointment; provided, that on the expiration of the term of office of the adjutant-general he shall not be eligible for reappointment, but shall be placed on the retired list. Colonels and majors of battalions shall be appointed according to seniority, and captains and lieutenants of batteries or companies shall be elected by members of these organizations who shall have performed during the period of not more than twelve months immediately preceding the election (if such organization has been in existence for such period), at least sixty per cent of the duty required of them; provided, that if an organization shall not have been in the service for a period of twelve months immediately preceding the date of election, then those voting shall be required to have performed sixty per cent of duty for the time organized. [1909, ch. 165, § 27.]

§ 2374. **Appointed officers.** The brigadier-general shall be appointed by the governor according to seniority. The officers on the staff of the brigadier-general, the field officers of the line, officers of the signal corps, the extra officers allowed to regiments and battalions for staff duty, surgeons and assistant surgeons of regiments, assistant surgeons of separate batteries or companies and chaplains shall be appointed by the governor upon the recommendation of their immediate commanding officers. In case of original appointments from civil life the selection shall be made by the governor upon the recommendation of their immediate commanding officers. [1909, ch. 165, § 28.]

§ 2375. **Elections.** The adjutant-general shall issue orders for the election of all elective officers and shall detail an officer to preside thereat who shall give or cause to be given at least five days' notice to all the qualified voters when and where and for what office the election is to take place. Such notice shall be served on the persons entitled to vote at such election in the same manner as warnings for duty are given. The person or persons serving such notice shall make returns of the persons notified and of the manner of service. The return, if made by a commissioned officer, shall be authenticated by his certificate on honor; if by a noncommissioned officer, by the oath of the person making such service. The oath may be administered by any person authorized to take the acknowledgment of deeds or by any commissioned officer, and such return shall be presented to the officer directed to preside at such election before the polls for such election shall be opened. The commanding officer of the organization in which such election is held shall, before the polls are opened, present to the officer directed to preside, a list of the persons qualified to vote thereat and a list of persons disqualified, with a statement of the facts constituting such disqualification. At the time fixed for the election, the officer ordered to preside thereat, or, in his absence, an officer authorized by him to act for him, or in the absence of such an officer, the commissioned officer highest in rank of those present, shall announce the purpose in hand and open the polls. If it shall happen at any election that legal notice has not been given to all the persons entitled to vote thereat, the presiding officer shall adjourn the meeting and cause such notice to be given; but the presence of a person entitled to vote at any election shall be deemed a waiver of his right to take exception to the want of legal notice to him. If any person offering to vote at any election shall be challenged as unqualified by any person entitled to vote thereat, the presiding officer shall declare to the person so challenged the qualifications of an elector, and if he shall state himself duly qualified, and the challenge shall not be withdrawn, the presiding officer shall examine him under oath and determine as to his qualifications as such elector. As soon as all the electors have cast their votes, or at the expiration of one hour from the opening of the polls, the presiding officer shall declare the polls closed, and at once publicly canvass the votes and declare the result of the election. A majority of the votes of all persons present voting at an election shall be necessary to a choice. The presiding officer shall forthwith make return thereof to the adjutant-general. If a person elected at any such election shall not, within ten days after being notified of his election, signify his acceptance to the adjutant-general, he shall be considered as declining the office to which he has been chosen, and a new election be held; provided, that in the event of an election, on the first ballot, failing to secure a majority of those present and entitled to vote, in favor of any one candidate, then the presiding officer is empowered to proceed with the taking of further ballots whenever, in the judgment of said officer, there is a reasonable expectation of a majority being obtained. Should there be no choice, the presiding officer shall adjourn the meeting to a reasonable date, and at that meeting open the polls for another election, and if such second meeting shall result in no choice, the governor shall be notified and may then fill the vacancy

by appointment. The presiding officer shall forward the proceedings of an election in such manner as is provided in the regulations issued under this chapter. [1909, ch. 165, § 29.]

§ 2376. Appeal from election. Every person thinking himself aggrieved by the proceedings at an election may appeal to the governor, by filing at the time of an election with the presiding officer thereof notice of such intended appeal and forwarding a full statement of the grounds of such appeal within ten days from the date on which the election took place. The governor may direct upon such appeal, an officer to take testimony in the case and to report his findings, and such officer shall have the same power to take evidence, administer oaths, issue subpoenas and compel witnesses to attend and testify and produce books and papers, and punish their failure to do so, as is possessed by a general court-martial. [1909, ch. 165, § 30; R. C. 1905, § 1745; 1891, ch. 86, § 28; R. C. 1899, § 1383.]

§ 2377. Oath of office. Every officer duly commissioned shall within ten days after his commission is tendered to him, or within ten days after he shall have been notified personally or by mail that the same is held in readiness for him by a superior officer, take and subscribe the constitutional oath of office. Such oath shall be taken and subscribed before an officer authorized by law to administer an oath, or some general or field officer, or an officer who shall hold the assimilated grade of a field officer, who has taken the oath himself and who is hereby authorized to administer the same. In case of neglect or refusal to take and subscribe such oath within the time mentioned, such commission shall be cancelled by the governor, and a new appointment shall be made or a new election shall be ordered to fill the vacancy. [1909, ch. 165, § 31; R. C. 1905, § 1749; 1891, ch. 86, § 32; R. C. 1899, § 1387.]

§ 2378. Supernumerary officers. Commissioned officers who shall be rendered surplus by reduction or disbandment of organization or in any manner provided by this chapter now or hereafter, shall be withdrawn from active service and placed upon the supernumerary list. The governor may, upon the recommendation of the commanding officer of the national guard, detail supernumerary officers for active duty, in which case they shall rank in their grade from the date of such detail, and he may relieve them from such duty and return them to the supernumerary list at his discretion. [1909, ch. 165, § 32.]

§ 2379. Resignations. A commissioned officer tendering his resignation, if the governor accept it, shall receive an honorable discharge; provided, he shall not be under arrest or returned to a military court for any deficiency or delinquency; and provided, further, that he be not indebted to the state in any manner, and that all his accounts for money or for public property be correct. In computing the time served, service as an enlisted man shall be allowed, and the service is not required to be continuous. If the governor accept the resignation of an officer who at the time shall be under arrest, under charges or returned to a military court for any offense, delinquency or deficiency such officer shall then cease to be an officer of the militia, and shall receive a discharge in such form as the governor shall direct, nor shall he be again eligible to receive a commission, unless he first re-enlist, as provided in this chapter in the case of enlisted men dishonorably discharged, and until he shall have performed at least sixty per cent of duty in each year under such enlistment for two successive years. [1909, ch. 165, § 33.]

§ 2380. Retirement and discharge. Any officer of the active militia who has reached the age of sixty-four years shall be placed upon the retired list by the governor. Any commissioned officer who shall have served for the continuous period of eight years in the military service of the state as a commissioned officer, may, at his own request, be placed upon the retired list with an advance in grade, and withdrawn from active service and com-

mand by the governor. Any commissioned officer who has become or shall hereafter become disabled, and incapable of performing the duties of his office, shall be withdrawn from active service and command and placed upon the retired list. Any commissioned officer who has become or who shall hereafter become unfit or incompetent, and thereby incapable of performing the duties of his office, shall be placed upon the retired list upon the recommendation of his commanding officer or the recommendation of an inspecting officer. Such retirement shall be by the order of the governor, and shall be subject to the provisions of this chapter. Before making such order, a board of not less than five commissioned officers, one of whom shall be a surgeon, shall be appointed, whose duty it shall be to determine the facts as to the nature and cause of the incapacity of such officer as appears disabled, or unfit, or incompetent from any cause to perform military service, and whose case shall be referred to it. No officer whose grade or promotion would be affected by the decision of such board, in any case that may come before it, shall participate in the examination or decision of the board in such case. Such board is hereby invested with the powers of courts of inquiry and courts-martial, and whenever it finds an officer incapacitated for actual service shall report such fact to the governor, stating cause of incapacity, whether from disability, unfitness or incompetency, and if he approves such finding, such officer shall be placed upon the retired list as provided in this article. The members of the board shall, before entering upon the discharge of their duties, be sworn to an honest and impartial performance of their duties as members of such board. No officer shall be placed upon the retired list by the action of such board without having had a full and fair hearing before the board if upon due notice he shall demand it. It shall not be necessary to refer any case for the action of the board arising under this section unless the officer designated to be placed upon the retired list shall, within twenty days after being notified that he will be so retired, serve on the adjutant-general a notice in writing that he demands a hearing and examination before such board. Boards for the national guard shall be appointed by the governor. Vacancies created by the operation of this section shall be filled in the same manner as other vacancies. [1909, ch. 165, § 34; R. C. 1905, § 1751; 1891, ch. 86, § 34; R. C. 1899, § 1389.]

§ 2380a. Retired officers subject to orders of commander in chief only. The officers on the retired list shall only be subject to detail for duty by orders from the commander in chief, and he shall cause to be issued such orders as he may deem necessary detailing them for duty upon boards of officers for military purposes, courts-martial, and courts of inquiry, and for such other military duties as in his judgment may be advisable. When, however, officers on the retired list are detailed for active duty, other than upon boards of officers, courts-martial, and courts of inquiry, they shall only be entitled to the rank which properly belongs to the office the duties of which they are detailed to perform. When the duty ends, or the detail is canceled, the officer shall again return to the retired list, with his former retired rank. A roster of all officers on the retired list shall be kept in the adjutant-general's office. [R. C. 1905, § 1797; 1905, ch. 135, § 4.]

This was R. C. 1905, § 1797, which was not expressly repealed by the Military Code of 1909. See note immediately preceding section 2347.

§ 2381. Examination and discharge of officer. The governor may, whenever he may deem that the good of the service requires it, order any commissioned officer before a board of examination, to consist of not more than five nor less than three general or field officers, which is hereby invested with the powers of courts of inquiry and courts-martial, and such boards shall examine into the moral character, capacity and general fitness for the service of such commissioned officer, and record and return the testimony taken and a record of its proceedings. If the findings of such board be unfavorable

to such officer and be approved by the governor, he shall be placed on the retired list. No officer whose grade or promotion would in any way be affected by the decision of the board, in any case that may come before it, shall participate in the examination or decision of the board in such case. Failure to appear when ordered before a board constituted under this section shall be sufficient ground for a finding by such board that the officer ordered to appear be retired. [1909, ch. 165, § 35.]

§ 2382. Commissioned officer, how removed. A commissioned officer cannot be removed from office without his consent, except by the sentence of a general court-martial, or as provided in this chapter. [1909, ch. 165, § 36; R. C. 1905, § 1720; 1891, ch. 86, § 6; R. C. 1899, § 1361.]

§ 2382a. Rank determined by date of election or appointment. The respective rank of all officers shall be determined by the date of their election or appointment and the length of time of service in the North Dakota national guard as a commissioned officer of such rank; provided, that in case of re-election or reappointment his rank shall be determined by the date of the first commission. [R. C. 1905, § 1746; 1891, ch. 86, § 29; R. C. 1899, § 1384.]

This was R. C. 1905, § 1746, which was not expressly repealed by the Military Code of 1909. See note immediately preceding section 2347.

§ 2383. Enlistments. Any man who is a citizen of the United States or has declared his intention to become a citizen, if more than eighteen and less than forty-five years of age, able-bodied, free from disease, of good character and temperate habits, may be originally enlisted in the national guard of this state, under the restrictions of this article [chapter], for a term of not less than three years; except that men may be enlisted as musicians if more than sixteen years of age. No minor shall be enlisted without the written consent of the parent or guardian. A man who has been expelled or dishonorably discharged from any military organization of the state or United States shall not be eligible for enlistment or re-enlistment unless he produces the written consent to such enlistment of the commanding officer of the organization from which he was expelled or dishonorably discharged and of the commanding officer who approved such expulsion or issued such dishonorable discharge. Men who have been discharged by reason of disbandment may be enlisted and shall then receive credit for the period served at the time of such disbandment. A man discharged for physical disability shall, if such disability cease, and he again enlists, or a man discharged upon his own request shall, if he again enlists, receive credit for the period served prior to such discharge. Bandmasters, drum majors, chief trumpeters, member of the hospital corps and musicians may be enlisted as such. [1909, ch. 165, § 37; R. C. 1905, § 1732; 1891, ch. 86, § 15; R. C. 1899, § 1370.]

§ 2384. Re-enlistments. Any man who has served the period of his original enlistment may be re-enlisted for a term of one year or more. [1909, ch. 165, § 38; R. C. 1905, § 1732; 1891, ch. 86, § 15; R. C. 1899, § 1370.]

§ 2385. Enlistment papers. Every person who enlists or re-enlists shall sign and make oath to an enlistment paper which shall contain an oath of allegiance to the state and the United States and be in such form as may be prescribed in the regulations issued under this chapter. Such oath shall be taken and subscribed before a field officer, or the commanding officer of a signal corps, battery or company, who are hereby authorized to administer such oath; but no enlistment shall be valid until it be approved by the commanding officer of the organization to which the signal corps, battery or company is attached or of which it forms a part. A person making a false oath as to any statement contained in such enlistment paper shall, upon conviction, be deemed guilty of perjury. [1909, ch. 165, § 39; R. C. 1905, § 1750; 1891, ch. 86, § 33; R. C. 1899, § 1388.]

§ 2386. Transfers. Enlisted men may be transferred upon their own application in the same regiment or battalion not part of a regiment, from

one company to another, by the commanding officer of such regiment or battalion; from one regiment or battalion not part of a regiment, signal corps, battery or separate company, to another in the same brigade, by the commanding officer of the brigade. Noncommissioned officers must be returned to the ranks before they can be transferred. [1909, ch. 165, § 40; R. C. 1905, § 1734; 1891, ch. 86, § 17; R. C. 1899, § 1372.]

§ 2387. **Noncommissioned officers.** Commanding officers of regiments and of battalions not part of regiments shall appoint and warrant the noncommissioned staff officers of their respective regiments or battalions, and they shall in their discretion, warrant the noncommissioned officers of the batteries and companies of their respective regiments and battalions from the members thereof, upon the written nomination of the commanding officers of the batteries and companies respectively. In batteries and companies not part of a regiment or battalion and in signal corps, the noncommissioned officers shall be warranted by the commanding officer of the brigade, in his discretion, from the members thereof, upon the written nomination of the commanding officer of the battery, company or signal corps. To be eligible for appointment as sergeant, first class, of the hospital corps, a candidate must be a registered pharmacist. A sergeant of the hospital corps must be appointed from the hospital corps. The officer warranting a noncommissioned officer shall have power to reduce to the ranks, for good and sufficient reasons, the noncommissioned officers named in this section, but such as were enlisted as noncommissioned officers shall be discharged. Noncommissioned officers who shall be dropped vacate their positions. [1909, ch. 165, § 41.]

§ 2388. **Dropping from the rolls.** An enlisted man who shall remove his residence to such distance from the armory of his organization as to render it impracticable for him to perform his duties properly, or who, after due diligence, cannot be found, or who shall be expelled from his organization in accordance with by-laws lawfully adopted, may be dropped from the rolls of his company, battery or signal corps by order of the commanding officer of the brigade, regiment or battalion not part of a regiment. [1909, ch. 165, § 42; R. C. 1905, § 1734; 1891, ch. 86, § 17; R. C. 1899, § 1372.]

§ 2388a. **Officers and men may be transferred or discharged, when.** Officers and men removing from one location to another in the state may be transferred from one organization to another on application to the adjutant-general, approved by their respective commanding officers. Any member of the guard moving permanently out of the state or the vicinity of the station of the organization to which he belongs, may be discharged and a certificate of service furnished upon his own application, but any member of the national guard who moves away from the vicinity of his company or other permanent headquarters, or absents himself from all duty for six months, shall unless proper explanation is accepted by his immediate commanding officer, be dropped from the rolls without discharge or certificate of service. [R. C. 1905, § 1734; 1891, ch. 86, § 17; R. C. 1899, § 1372.]

This was R. C. 1905, § 1734, which was not expressly repealed by the Military Code of 1909. See note immediately preceding section 2347.

§ 2389. **Taking up from dropped.** An enlisted man dropped by reason of removal may be taken up at any time within three years after such removal, in his former or any other organization, obtaining in the latter case first the written permission of his former commanding officer approved by the officer upon whose order he was dropped. An enlisted man dropped for removal may be taken up at any time after three years after such removal, upon his own application, approved by the officer upon whose order he was dropped, or his successor, after passing a physical examination. The taking up shall be done under the orders of any officer who is authorized to order the dropping of men, and men thus taken up shall receive credit for the time served before having been dropped. [1909, ch. 165, § 43.]

§ 2390. Retirement. The governor may appoint enlisted men and commission them, without examination, second lieutenants by brevet, upon the recommendation of their respective commanding officers, and place them upon the retired list at the same time, provided they have well and faithfully served the state in the national guard for a period of twenty-five years. [1909, ch. 165, § 44.]

§ 2391. Discharges. An enlisted man who has not returned all the public property for which he is responsible shall, under no circumstances, receive a full and honorable discharge. A discharge, or an honorable discharge, at the discretion of the officer discharging him, shall be granted to the following: A noncommissioned staff officer or a noncommissioned officer, who, had he not been enlisted as such, would be reduced to the ranks; an enlisted man at his own request, provided he assign sufficient and valid reason for such request; an enlisted man who by reason of disability is no longer able to perform his military duties properly; an enlisted man who by the reduction of his regiment or battalion has become surplus, or whose signal corps, battery or company shall be disbanded, provided he is not entitled at the time to a full and honorable discharge; an enlisted man who has served the time for which he enlisted or re-enlisted and is not entitled to a full and honorable discharge. A full and honorable discharge shall be granted to the following: An enlisted man who shall have performed in each year at least sixty per cent of the duty of his signal corps, battery company, company or battalion not part of a regiment, or regiment has been required by law and orders to perform during the term of his enlistment or re-enlistment, or during his total service in case the same has been extended beyond the term for which he enlisted. An enlisted man who fails to perform sixty per cent of duty during any year of his service may continue in service at the option of his commanding officer and make up such deficiency. An enlisted man who continues in service after the expiration of his term of enlistment or re-enlistment shall, in case he desires a discharge, give fifteen days' notice of application therefor to the officer authorized to grant the same, and such officer may, in his discretion, grant such discharge forthwith or hold the same until the expiration of said fifteen days. An enlisted man shall be held for service until his discharge is granted and issued. Dishonorable discharges shall be given to the following: An enlisted man whose immediate commander applies to have him discharged for the good of the service, after giving him ten days' notice of such application and an opportunity to be heard in defense of his conduct. The discharges mentioned above shall be granted to the commanding officer of the regiment or battalion not part of a regiment in case of signal corps, separate batteries and separate companies, by the commanding officer of the brigade to which they are attached. Enlisted men may be dishonorably discharged pursuant to the sentence of a general court-martial. [1909, ch. 165, § 45.]

§ 2392. War service. For all purposes under this act, officers and enlisted men of the active militia who entered the United States service in the Spanish-American war, or other war, shall, on re-entering the active militia, be entitled to credit for time served in the forces of the United States in that war, as if this service had been rendered in the active militia. [1909, ch. 165, § 46.]

§ 2393. Responsibility for efficiency. The officer commanding the national guard may cause those under his command to perform any military duty and shall be responsible to the governor for the general efficiency of the national guard and for the drill, instruction, small arms and artillery practice, movements, operations and care of the troops. Commanding officers of organizations shall be responsible to their immediate commanders for the equipment, drill, instruction, movements and efficiency of their respective commands. All commissioned officers and enlisted men shall be responsible to

their immediate commanding officers for prompt and unhesitating obedience, proper drill and the preservation and proper use of the property of the state or organization in their possession. [1909, ch. 165, § 47.]

§ 2394. **Drills and parades.** Officers and enlisted men of each battery and company shall assemble for and undergo drill and instruction at company, battalion or regimental armories, or battery armories or rendezvous, or for target practice not less than twenty-four times during each calendar year preceding the annual allotment of funds under section 1661, revised statutes of the United States, as amended. During the same period there shall be at least one inspection of each battery and company by an officer of the national guard, or by an officer of the regular army of the United States, at such time as the governor may direct. In addition to such drill and parades, the commanding officer of any organization may require the officers and enlisted men of his command to meet for parade, drill or instruction at such times and places as he may appoint. [1909, ch. 165, § 48.]

§ 2395. **Practice marches required.** Every battery or company not especially excused by the governor will be required to participate for at least five consecutive days annually in practice marches or camps of instruction, under such regulations as the governor may prescribe, and under such instructors as he may appoint. [1909, ch. 165, § 49.]

§ 2396. **Small arms practice.** To encourage marksmanship, the adjutant-general is authorized to offer annually a state decoration to those who shall excel in small arms practice; a brigade prize, not exceeding one hundred dollars in value for competition among the organizations of a brigade, armed with rifle or carbine; a state prize and three prizes of the value of one hundred dollars, seventy-five dollars and fifty dollars respectively, to be awarded to the three companies having the highest general figure of merit. The adjutant-general may also, in his discretion, provide suitable decorations and prizes for proficiency in practice with light and heavy guns. All such prizes to be competed for under regulations prescribed by the adjutant-general. [1909, ch. 165, § 50; R. C. 1905, § 1758; 1891, ch. 86, § 40; R. C. 1899, § 1396.]

§ 2397. **Conduct of commanding officer in aid of civil authorities.** In case of any breach of the peace, tumult, riot or resistance to process of this state, or imminent danger thereof, a sheriff of a county, or mayor of a city, may call for aid upon the commanding officer of the national guard stationed therein or adjacent thereto. Such call shall be in writing. The commanding officer upon whom the call is made shall order out, in aid of the civil authorities, the military force or any part thereof under his command, and shall immediately report what he has done and all the circumstances of the case to the governor and the commanding officer of the national guard. If it appears to the governor that the power of the county is not sufficient to enable the sheriff to preserve the peace and protect the lives and property of the peaceful residents of this county, or to overcome the resistance to process of this state, the governor must, on the application of the sheriff, order out such military force from any other county or counties as is necessary. When an armed force is called out for the purpose of suppressing an unlawful or riotous assembly, it must obey the orders in relation thereto of the civil officer calling it out and render the required aid. The orders of the civil officer may extend to a direction of the general specific object to be accomplished and the duration of service by the active militia, but the tactical direction of the troops, the kind and extent of force to be used and the particular means to be employed to accomplish the object specified by the civil authorities are left solely to the officers of the active militia. [1909, ch. 165, § 51; R. C. 1905, §§ 1761, 1762; 1891, ch. 86, §§ 43, 44; R. C. 1899, §§ 1399, 1400.]

Terms "actual service" and "active service" in earlier provisions meant service in time of war or public danger. *State ex rel. Poole v. Peake*, 23 N. D. 457, 40 L.R.A. (N.S.) 354, 135 N. W. 197.

Civil liability of military and naval officers for acts done under color of military authority. 43 Am. Dec. 54.

Liability of commanding officer for acts done by militia. 66 Am. Dec. 366.

§ 2398. Case of insurrection or invasion. In case of insurrection or invasion or imminent danger thereof within the limits of any command, the senior commanding officer of such command shall order out for the defense of the state the forces under his command, or any part thereof, and immediately report his action and the circumstances of the case to the governor and the commanding officer of the national guard. [1909, ch. 165, § 52.]

§ 2399. Warning for duty. Orders for duty may be oral or written. Officers and enlisted men may be warned for duty as follows: Either by stating the substance of the order, or reading the order to the person warned, or by delivering a copy of such order to such person or by leaving a copy of such order at the last known place of abode or business of such person with some one of suitable age and discretion, or by sending a copy of such order or a notice containing the substance thereof to such person by mail, directed to him at his last known place of abode or business, or to the post office nearest thereto. Such warning may be given by any officer or noncommissioned officer. The officer or noncommissioned officer giving such warning shall make a return thereof containing the names of the persons warned, and the time, place and manner of warning. Such return shall be verified by oath, which may be administered by any commanding officer; such verified return shall be as good evidence, on the trial of any person returned as a delinquent, of the facts therein stated, as if such officer or noncommissioned officer had testified to the same before the delinquency court on such trial. Every commanding officer shall make the like return on honor and with like effect, of every delinquency and neglect of duty of his officers and noncommissioned officers, and also of every enlisted man who shall refuse or neglect to perform such military duty as may be required. [1909, ch. 165, § 53; R. C. 1905, § 1759; 1891, ch. 86, § 41; R. C. 1899, § 1397.]

§ 2400. Excuses from duty. The officer ordering any military duty shall have the power to excuse any officer or enlisted man for absence therefrom upon good and sufficient grounds. [1909, ch. 165, § 54; R. C. 1905, § 1760; 1891, ch. 86, § 42; R. C. 1899, § 1398.]

§ 2401. Discipline and exercise. The system of discipline and exercise of the national guard of this state shall conform generally to that of the army of the United States as it is now or may hereafter be prescribed by the president, and to the provisions of the laws of the United States, except as otherwise provided in this chapter. [1909, ch. 165, § 55; R. C. 1905, § 1752; 1891, ch. 86, § 35; R. C. 1899, § 1390.]

Articles of War of United States do not govern militia of national guard in times of peace. *State ex rel. Poole v. Peake*, 22 N. D. 457, 40 L.R.A. (N.S.) 354, 135 N. W. 197.

§ 2402. Military courts. The military courts of this state shall be:

1. General courts-martial.
2. Garrison courts-martial.
3. The summary court.
4. Courts of inquiry.
5. Delinquency courts, which are of two kinds: (1) For officers; (2) for enlisted men.

The constitution and jurisdiction of courts-martial, the form and manner in which the proceedings of military courts shall be conducted and recorded and the forms of oath and affirmations taken in the administration of military law by such courts, the limits of punishment and the proceedings in revision shall be governed by the articles of war and the law and procedure of the courts-martial of the United States, except as hereinafter provided. [1909, ch. 165, § 56; R. C. 1905, § 1764; 1891, ch. 86, § 46; R. C. 1899, § 1402.]

Enforcement of discipline in organized militia by fine and imprisonment, imposed by court-martial, was not exercised until enactment of Military Code. *State ex rel. Poole v. Peake*, 22 N. D. 457, 40 L.R.A. (N.S.) 354, 135 N. W. 197.

Martial law, distinction between and military law. 92 Am. Dec. 181.

Martial law, other than in time of war. 98 Am. St. Rep. 772.

Right to convict for offense against both military and civil authorities. 31 L.R.A. (N.S.) 710.

§ 2403. Indemnity for action of military courts. No action or proceeding shall be prosecuted or maintained against a member of a military court or officer or person acting under its authority or reviewing its proceedings on account of the approval or imposition or execution of any sentence, or the imposition or collection of a fine or penalty, or the execution of any warrant, writ, executions, process or mandate of a military court. [1909, ch. 165, § 57; R. C. 1905, § 1772; 1891, ch. 86, § 54; R. C. 1899, § 1410.]

Army and navy, civil liability of military and naval officers for acts done under color of military authority. 42 Am. Dec. 54.

§ 2404. Presumption of jurisdiction. The jurisdiction of the courts and boards established by this chapter shall be presumed and the burden of proof shall rest on any person seeking to oust such courts or boards of jurisdiction in any action or proceeding. [1909, ch. 165, § 58.]

§ 2405. Fines. All fines imposed by sentence of the aforementioned courts shall be collected by the presiding officer and remitted without delay to the adjutant-general, who will remit them to the state auditor on the last days of February, April, June, August, October and December of each year, with a statement of the source from which collected. All sums thus collected as fines shall be credited to the general fund for maintenance of the militia and expended as authorized therefor; provided, further, that such portion of the sentence imposed by the aforementioned courts as prescribes confinement shall be executed in such county jails as the reviewing authority may direct, and the expenses of such confinement shall be borne by the commonwealth. A commitment in writing shall be executed by the presiding officer of the court to the sheriff or jailer where temporary restraint is deemed necessary, but where the confinement is the result of the confirmed action of the reviewing authority an official copy of the order publishing the sentence of the court shall be furnished the sheriff or jailer. The presiding officer is empowered to accept a bond for the delivery of the accused upon demand after the final action of the court, and pending the action of the reviewing authority, when his jurisdiction terminates. This bond will not be accepted in capital cases, nor for a less sum than twice the amount involved; provided, further, that the sentence of any courts-martial shall not, in time of peace, exceed that prescribed by the president for like offenses and that these substitutes obtain: two days' confinement for one dollar forfeiture or the reverse. [1909, ch. 165, § 59; R. C. 1905, § 1765; 1891, ch. 86, § 47; R. C. 1899, § 1403.]

§ 2406. Courts-martial, governor institutes. Number to constitute. The governor is empowered to institute general courts-martial, garrison courts-martial, summary courts-martial, courts of inquiry and delinquent courts, and to review the proceedings of each of these courts. A general court-martial shall consist of not less than three nor more than seven commissioned officers and a judge advocate. The garrison court-martial shall consist of not less than one nor more than three commissioned officers and a judge advocate. The summary court-martial shall consist of one commissioned officer. Courts of inquiry may be instituted by the commander-in-chief of not more than three commissioned officers, whose duties will be defined with the order convening such court. Delinquent courts shall consist of not more than three nor less than one commissioned officer. [1909, ch. 165, § 60; R. C. 1905, § 1764; 1891, ch. 86, § 46; R. C. 1899, § 1402.]

§ 2407. Organizations. All organizations shall be provided by the state with such arms, equipments, colors, camp and garrison equipage, books of instruction and of record, and other supplies as may be necessary for the proper performance of the duty required of them by this chapter; and each

organization shall keep such property in proper repair and in good condition. [1909, ch. 165, § 61.]

§ 2408. Commissioned officers. Every commissioned officer shall provide himself with the arms, uniforms and equipments prescribed and approved by the governor. [1909, ch. 165, § 62.]

§ 2409. Enlisted men. Every enlisted man who enters the service of the state for three years shall be furnished by the state with a service uniform corresponding in make and general appearance to the service uniform of the United States army. [1909, ch. 165, § 63.]

§ 2410. Responsibility for public property. Every officer and enlisted man to whom public property of the state has been issued shall be personally responsible to the state for such property, and no one shall be relieved from such responsibility, except it be shown to the satisfaction of the governor that the loss or destruction of such property was unavoidable and in no way the fault of the person responsible for the same; in all other cases the value of the property lost or destroyed shall be charged against the person at fault or to the organization to which it had been issued, and such person or organization, if not relieved from such charge by the governor, shall pay the value of such property to the adjutant-general within two years after such loss or destruction. The value of lost or destroyed property and the person or organization to be charged therewith shall be determined by a board to consist of an inspector on the staff of the commanding officer of the national guard and the commanding officer of the organization in which such property is lost. In case of disagreement, such value shall be fixed by the commanding officer of the national guard. [1909, ch. 165, § 64.]

§ 2411. Purchase of uniforms and equipments. All uniforms and equipments used by the national guard of this state shall be procured by the adjutant-general from the United States government, or other source, and shall conform to those in use by the regular army of the United States. [1909, ch. 165, § 65.]

§ 2412. Board of armory supervisors created. The governor, adjutant-general and colonel commanding the regiment are hereby constituted a board of armory supervisors, whose duty it shall be to approve the selection of all armory sites and the purchase of buildings thereon; to approve the plans and specifications for the erection of all armories, and to audit and approve all bills, claims and accounts in connection with the construction or purchase of all armories before such bills, claims and accounts shall be paid, and to perform such other duties as the provisions of this act require. [1909, ch. 165, § 66; 1907, ch. 174, § 1; R. C. 1905, § 1789; 1903, ch. 48, §§ 1, 2.]

Section 71 of the Military Code, Laws 1909, ch. 165, expressly repeals "sections 1789, 1790, 1791, 1792 and 1793 of the Revised Codes of 1905." The same sections had already been expressly repealed in Laws 1907, ch. 174, § 6, which chapter, though nowhere expressly repealed in the Military Code of 1909, is evidently superseded in toto by the foregoing section 2412 and the following sections 2413-2416 inclusive.

But sections 2 and 4 of Laws 1907, ch. 174, above cited, seem to have been treated as still in force for purposes of amendment. See veto in Laws 1911, ch. 325, p. 518.

§ 2413. Appropriation. To every company, battery or regimental band of the North Dakota national guard who shall have first deposited with the state treasurer the sum of two thousand dollars as an evidence of good faith, and shall have conveyed to the state of North Dakota by a good and sufficient deed of warranty the title to a site for an armory, which site shall have first been approved by the board of armory supervisors, or shall have conveyed to the state an armory site with armory buildings thereon, such buildings to be of the value of not less than seven thousand dollars, and to be first approved by the board of armory supervisors, there is hereby appropriated the sum of five thousand dollars; provided, that only one such appropriation shall be made for armory purpose in any one city or town; and provided, further, that no more than thirteen state military organizations shall receive the benefit of this act; and provided, further, that no more than

three state military organizations shall receive appropriations in the amount specified in the year A. D. 1908, and two in each year thereafter, until the thirteen state military organizations shall each have received an appropriation of five thousand dollars; and provided, further, that the board of armory supervisors shall designate which state military organizations shall receive aid in any one year and in determining which shall receive aid first, they shall take into consideration the proficiency of the military organization asking for aid and its needs; and provided, further, there is hereby appropriated out of the state treasury in the year A. D. 1908 the sum of fifteen thousand dollars, and the sum of ten thousand dollars annually thereafter for five years. [1909, ch. 165, § 67; 1907, ch. 174, § 2.]

See note to section 2412.

§ 2414. **Duty of state treasurer.** The state treasurer shall keep a separate account with each company, battery or regimental band that shall avail itself of the provision of this act, crediting the same with two thousand dollars deposited by the company, battery or regimental band with the state treasurer, together with the appropriation made under the provisions of this act [chapter] and all bills for the construction or purchase of armories, or the paying of debts or mortgages against armories shall, after being approved, be paid out of the said account or fund upon the warrant of the state auditor. [1909, ch. 165, § 68; 1907, ch. 174, § 3; R. C. 1905, § 1790; 1903, ch. 48, § 3.]

See note to section 2412.

§ 2415. **Transfer of armories when company, battery or regimental band is mustered out of service.** Whenever any company, battery or regimental band which has availed itself of the provisions of this act [chapter] and has received the appropriation provided herein shall be mustered out of service of the state and it shall appear that there is no probability of a new company, battery or regimental band being organized in the city or town in which the armory is located, then and in that case the board of armory supervisors shall have the authority, and are hereby empowered to transfer the said property to the municipality in which the same is located for public purposes upon the repayment to the state of the said appropriation provided in this act [chapter] without interest. [1909, ch. 165, § 69; 1907, ch. 174, § 4.]

See note to section 2412.

§ 2416. **Providing for mortgaging armories to the state when owned by any company, battery or regimental band.** Whenever any such company, battery or regimental band shall own any site with armory buildings thereon of the value of ten thousand dollars, exclusive of the value of the land, and such buildings and site have been approved by the board of armory supervisors as sufficient and desirable for armory purposes, then, such company, battery or regimental band may, with the approval of the board of armory supervisors, obtain the benefits of the appropriation hereinbefore provided by executing to the state of North Dakota a mortgage on such property for the sum of five thousand dollars, payable on demand, and during the life of said mortgage said building and site shall be under the control and supervision of such company, battery or regimental band. [1909, ch. 165, § 70; 1907, ch. 174, § 5.]

See note to section 2412.

§ 2417. **Pay and allowances. Duty pay.** Each officer and enlisted man ordered for duty by the governor, or under his authority, by the commanding officer of the national guard, shall receive the duty pay herein specified for every day actually on duty, except when so ordered for inspection, muster or small arms practice, or parade or review or field service not extending beyond one day: A musician or private, seventy-five cents; a corporal, ninety cents; an assistant hospital steward, color bearer or sergeant, one dollar; a first sergeant, guidon sergeant, veterinary sergeant, drum major, band master, hospital steward, ordnance sergeant, commissary sergeant, quartermaster

sergeant, sergeant major, signal sergeant or a signal sergeant of a battalion of light artillery, one dollar and twenty cents; a first class sergeant of a signal company, one dollar and twenty-five cents; a sergeant of a signal company, one dollar and twenty-five cents; a corporal of a signal company, ninety cents; a first class private of a signal company, seventy-five cents; a noncommissioned officer performing the duties of a grade higher than his own shall receive the pay of such higher grade; a private acting as a non-commissioned officer shall receive the pay of the grade in which he is acting; a lieutenant, one dollar and seventy-five cents; a captain or company commander, two dollars; a major and a lieutenant colonel, two dollars and twenty-five cents; a colonel or commanding officer of a regiment or of a battalion not part of a regiment, three dollars; a brigadier-general, four dollars; staff officers, of the [officers] of the line of equal grade; chaplains, the pay of captains. When on duty assembled therefor in case of riot, tumult, breach of peace, insurrection, invasion, war, whenever called in aid of the civil authorities or when engaged in actual field or camp service for instruction as contemplated in section fourteen of the act of congress approved January twenty-first, 1903, commissioned officers shall be entitled to and shall receive at least the same pay as commissioned officers of the army of the United States of equal grade. Each officer and enlisted man, mounted and equipped, shall be paid a reasonable compensation per day for each horse actually used by him. [1909, ch. 165, § 72; R. C. 1905, § 1774; 1891, ch. 86, § 56; R. C. 1899, § 1412.]

As to meaning of "staff officer." State ex rel. Poole v. Peake, 18 N. D. 101, 120 N. W. 47.

Terms "actual service" and "active service" mean service in time of war or public danger. State ex rel. Poole v. Peake, 22 N. D. 457, 40 L.R.A.(N.S.) 354, 135 N. W. 197.

§ 2418. Pay when aiding the civil authority. All officers and enlisted men, while on duty or assembled therefor, pursuant to the orders of the governor of the state, sheriff of a county, or mayor of a city, or any other civil officer authorized by law to make such a demand on the military forces of the state in case of riot, tumult, breach of the peace, resistance to process or whenever called upon in aid of civil authorities, shall receive the pay set forth in section seventy-two of this chapter [section 2417]; and such compensation and the necessary expenses incurred in quartering, caring for, warning for duty, and transporting and subsisting troops, as well as expenses incurred for pay, care and subsistence of officers and enlisted men temporarily disabled in the line of duty, while on such duty, as set forth in section eighty-three of this chapter [section 2428] shall be paid by the county where such service is rendered. The county treasurer of such county shall, upon presentation to him of vouchers and pay rolls for such expenses and compensation, certified by the officers commanding such forces, and approved by the commanding officer of the brigade, forthwith execute, in behalf of and in the name of such county, a certificate or certificates of indebtedness for the money required to pay such vouchers and pay rolls; such certificates shall bear interest at the rate of not to exceed six per cent per annum and shall be made payable on the first day of February following the expiration of two months from their issue, and the amount thereof shall be raised in the next tax budget of said county succeeding their issue, and applied to the payment of such certificates. Said county treasurer shall sell such certificates at public or private sale, and apply the proceeds thereof to the payment of such expenses and compensation. Any county treasurer or public officer who shall neglect or refuse to perform any of the duties required by this section shall be personally charged with the cost and all necessary disbursements of any action or proceeding brought to compel such performance, together with a reasonable additional allowance to the plaintiff or relator in such action or proceeding, to be fixed by the court. [1909, ch. 165, § 73; R. C. 1905, § 1777; 1891, ch. 86, § 59; R. C. 1899, § 1415.]

§ 2419. Pay of officers serving on boards, commissions and courts. All officers detailed to serve on any board or commission ordered by the governor, or under his authority by the commanding officer of the national guard, or on any court of inquiry, or delinquency court, ordered by proper authority in pursuance of any provision of this chapter, shall be paid a sum equal to one day's duty pay for each day actually employed in such board or court, or engaged in the business thereof, or in traveling to and from the same. The sum shall in no case exceed ten days' pay and actual traveling expenses and subsistence, unless, upon application of the judge advocate of a court-martial or the presiding officer of a delinquency court, or the presiding officer of the board, the officer appointing the court or board has authorized such court or board to sit for a longer period, or in case of such delinquency court, the governor or the officer ordering such court has authorized such court to sit for a longer period than ten days. An officer detailed to serve on a delinquency court for the trial of enlisted men shall be paid for each day actually employed therein, engaged in the business thereof, or in traveling to and from the same and traveling expenses and subsistence when such court shall be held at a place other than the city or town of his residence. An officer whom a warrant for the collection of fines, dues or penalties under the sentence of a military court is delivered shall be paid, by retaining to his own use twenty-five per cent of the fines, dues or penalties collected by him. Said percentage shall be taxed by the officer issuing the warrant and indorsed thereon and added to the amount collected by him. Said percentage shall be taxed by the officer issuing the warrant and indorsed thereon and added to the amount collectible to satisfy the sentence of the court. In addition to this percentage a marshal of a military court shall be paid two dollars for each day actually employed in the execution of the duties required of him, and mileage or actual necessary traveling expenses while engaged in executing any process or mandate of a military court. Mileage shall be computed at the rate of ten cents for each mile necessarily traveled going and returning to serve any process or mandate of a military court, the distance to be computed from the place where it is served to the place where it is returnable. [1909, ch. 165, § 74; R. C. 1905, § 1776; 1891, ch. 86, § 58; R. C. 1899, § 1414.]

§ 2420. Payment of expenses of delinquency courts for enlisted men. The compensation and necessary expenses of the officer holding a delinquency court for enlisted men, and of the clerk and marshal thereof, and the actual expenses of the court for the time engaged in the trial of enlisted delinquents, and the necessary business connected therewith, shall be paid by the organizations of which the delinquents are members, and to whose military funds fines collected from such delinquents are paid, from the military fund of such organization, in the same manner as other accounts are paid from such fund. [1909, ch. 165, § 75.]

§ 2421. Pay of officers and enlisted men assigned to special duty. Any commissioned officer assigned to special duty by the governor or under his authority shall be paid duty pay for the time actually employed, and his necessary traveling expenses and subsistence, when such payment is authorized by the governor. Judge advocates shall be paid for services in bringing any suits provided for in this chapter, and for services in actions or proceedings by habeas corpus, certiorari or otherwise, such compensation as shall be approved by the governor. All staff officers shall be paid duty pay for special service ordered by competent authority with the approval of the governor. Enlisted men, on duty under the orders of the governor, but not at the time serving with troops, shall receive duty pay, their actual traveling expenses and subsistence. [1909, ch. 165, § 76.]

§ 2422. Allowances for officers. Commissioned officers shall receive annually the sum of twenty dollars, mounted officers the sum of twenty-five dollars to assist in uniforming and equipping themselves, but not until they have

performed eighty per centum of all ordered duty, and been in active service as such a calendar year of twelve months, beginning with the first day of January. [1909, ch. 165, § 77.]

§ 2423. Pensions. Every member of the militia who shall be wounded or disabled while in the service of the state in case of riot, tumult, breach of the peace, resistance to process, invasion, insurrection or imminent danger thereof, or whenever called upon in aid of the civil authorities, shall be taken care of and provided for at the expense of the state, and every such member who shall be wounded or disabled or has been so disabled in the performance of any actual service of this state within ten years preceding the application for a pension under this act [chapter] in cases of riots, tumults, breach of the peace, resistance to process, invasion, insurrection or imminent danger thereof, or whenever called upon in aid of the civil authorities, or while engaged in any lawfully ordered parade, drill, encampment or inspection, shall upon proof of the fact, as hereinafter provided, be placed on the roll of invalid pensioners of the state, and shall receive out of any moneys in the treasury of the state not otherwise appropriated, upon the audit of the adjutant-general and approval of the governor, the like pension or reward that persons under similar circumstances receive from the United States; and in case of any wound, injury or disease causing death, then the widow or minor children of such member of the militia shall receive such pension and reward from the time of receiving the injuries on account of which such pension or reward is allowed. [1909, ch. 165, § 78.]

§ 2424. Proof required. Striking from roll. Before the name of any person is placed upon the roll under this article [chapter] proof shall be made, under such regulations as the adjutant-general may from time to time prescribe, that the applicant is entitled to such pension. The adjutant-general, with the approval of the governor, shall cause to be stricken from the pension roll the name of any person whenever it appears by satisfactory proof that such name was put upon such roll through false or fraudulent representations. The adjutant-general, with the approval of the governor, may increase or reduce or withdraw any pension, according to right and justice and the practice in the United States pension office. [1909, ch. 165, § 79.]

§ 2425. Pension examiners and examining boards. The adjutant-general is authorized to appoint pension examiners, whose duty it shall be to inquire into the merits of any claim for pay and care and pension, whether pending or adjudicated, and any person so appointed shall have power to administer oaths, to orally examine witnesses, to issue subpoenas and to take affidavits and depositions in the course of such examinations. The adjutant-general shall further appoint examining boards, consisting of not more than three medical officers of the national guard, who shall under his direction make such examination of claimant as he shall require, and certify the result in such form as he shall prescribe, and any person adversely affected by the report of one medical officer shall be entitled to an examination upon his request before a board consisting of three medical officers. [1909, ch. 165, § 80.]

§ 2426. Pay and care when injured or disabled in service. A member of the national guard who shall, when on duty or assembled therefor, in case of riot, tumult, breach of the peace, insurrection or invasion, or whenever ordered by the governor, commanding officer of the national guard, or called in aid of the civil authorities, receive an injury or incur or contract any disability or disease by reason of such duty or assembly therefor, or who shall without fault or neglect on his part be wounded or disabled while performing any lawfully ordered duty which shall temporarily incapacitate him from pursuing his usual business or occupation shall, during the period of such incapacity, receive the pay provided by this chapter and actual necessary expenses for care and medical attendance. All claims arising under this section shall be inquired into by a board of three officers, at least one being a medical

officer, to be appointed upon the application of the member claiming to be so incapacitated by the commanding officer of the brigade to which such member is attached. Such board shall have the same power to take evidence, administer oaths, issue subpoenas and compel witnesses to attend and testify and produce books and papers and punish their failure to do so, as is possessed by a general court-martial. The findings of the board shall be subject to the approval of the officer convening it when the claim is payable by a county, and in all other cases to the approval of the commanding officer of the national guard. The reviewing officer may return the proceeding of the board for revision and for taking further testimony. The amount found due such member by said board to the extent that its findings are approved by the reviewing officer thereof, shall be a charge against and be paid in the manner provided in this chapter, by the county in which such duty was rendered, in every case where a county is by this chapter made liable to pay for the performance of military duty. In all other cases such sums shall be paid by this state, in like manner as other military accounts are paid. [1909, ch. 165, § 81.]

§ 2426a. Medals for service. Appropriation. The commander in chief of the national guard of the state of North Dakota may issue an order providing suitable mark of distinction for all officers and enlisted men who have served in the national guard for an aggregate period of ten, fifteen and twenty years, respectively, and for a like service hereafter. There is hereby appropriated out of the funds in the state treasury, not otherwise appropriated, the sum of one hundred dollars for the purpose of carrying out the provisions of this section, the same to be paid out on the order of the commander in chief, who shall file vouchers with the state auditor. [R. C. 1905, § 1799; 1905, ch. 36.]

This was R. C. 1905, § 1799, which was not expressly repealed by the Military Code of 1909. See note immediately preceding section 2347.

§ 2427. Exemption from civil process. No person belonging to the active militia of the state shall be arrested on any civil process while going to, remaining at, or returning from any place at which he may be required to attend for military duty. [1909, ch. 165, § 82; R. C. 1905, § 1783; 1891, ch. 86, § 65; R. C. 1899, § 1421.]

§ 2428. Right of way. Freedom from interference. Commanding officers of any portion of the active militia parading or performing any military duty in any street or highway may require any or all persons in such street or highway to yield the right of way to such militia; provided, the carriage of the United States mail, the legitimate functions of the police and the progress and operations of the hospital ambulance and fire departments and apparatus of the insurance patrol shall not be interfered with thereby. All others who shall hinder, delay or obstruct any portion of the active militia wherever parading or performing any military duty, or who shall attempt so to do, shall be guilty of a misdemeanor. [1909, ch. 165, § 83.]

§ 2429. Free passage through toll gates, etc. Any person belonging to the military forces of the state, going to or returning from any parade, encampment, drill or meeting which he may be required by law to attend shall together with his conveyance and military property of the state in his charge be allowed to pass free through all toll gates and over all toll bridges and ferries, if he is in uniform or presents an order for duty or certificate of membership in the active militia. [1909, ch. 165, § 84.]

§ 2430. Exemption from jury duty. Every member of the active militia shall be exempt from all jury duty, provided, he shall furnish the certificate of his immediate commanding officer that he has performed the duties required of him for the year immediately preceding a summons to act as a jurymen, and every such member who shall have received a full and honorable discharge shall be exempt forever after from all jury duty. [1909, ch. 165, § 85; R. C. 1905, § 1782; 1891, ch. 86, § 64; R. C. 1899, § 1420.]

§ 2431. Unlawful conversion of military property. Unlawful wearing of uniforms and devices indicating rank. Any person who shall secrete, sell, dispose of, offer for sale, purchase, retain after demand made by a commissioned officer of the national guard, or in any manner pawn or pledge any arms, uniforms, equipments or other military property issued under the provisions of this chapter, and any person who shall wear any uniform or any device, strap, knot or insignia of any design or character used as a designation of grade, rank of office, such as are by law or by general regulation duly promulgated, prescribed for the use of the active militia or similar thereto, except members of the army and navy of the United States and the national guard of this or any other state, officers of the independent military organizations so designated in section eighty-two of this chapter [section 2427]; members of associations wholly composed of soldiers honorably discharged from the service of the United States and members of the order of Sons of Veterans, shall be guilty of a misdemeanor and in addition thereto shall forfeit to the people of this state one hundred dollars for each offense, to be sued for in the name of the people by a judge-advocate. All moneys recovered by an action or proceeding under this section shall be paid to the adjutant-general, who shall apply the same to the use of the active militia. [1909, ch. 165, § 86; R. C. 1905, § 1785; 1891, ch. 86, § 67; R. C. 1899, § 1423.]

§ 2432. Trespassers and disturbers to be placed in arrest. Liquors and huckster sales prohibited. The commanding officer upon any occasion of duty may place in arrest during continuance thereof any person who shall trespass upon the camp ground, parade ground, armory or other place devoted to such duty, or shall in any way or manner interrupt or molest the orderly discharge of duty by those under arms, or shall disturb or prevent the passage of troops going to or returning from any duty. [1909, ch. 165, § 87; R. C. 1905, § 1757; 1891, ch. 86, § 39; R. C. 1899, § 1395.]

§ 2432a. The governor controls encampment ground and appoints military board. The governor as commander in chief shall have full control of the state encampment grounds on Rock Island, Ramsey county, North Dakota, and may from time to time appoint an advisory board of three officers to manage the same under such rules and regulations as he may prescribe; provided, that all moneys received from the sale of timber, stone or other material taken from the grounds shall be paid into the state treasury and be kept as a separate fund for the improvement of the property for military uses, and shall be paid out upon proper vouchers approved by the governor. [R. C. 1905, § 1754; 1895, ch. 80, § 4; R. C. 1899, § 1392; 1901, ch. 32.]

This was R. C. 1905, § 1754, which was not expressly repealed by the Military Code of 1909. See note immediately preceding section 2347.

§ 2432b. Compensation of members of the board. The compensation of the members of such military board when in actual attendance at meetings of the board, shall be such as prescribed by law for field duty and their actual traveling expenses in going to and returning from the place of meeting. [R. C. 1905, § 1755; 1895, ch. 80, § 5; R. C. 1899, § 1393; 1901, ch. 32.]

This was R. C. 1905, § 1755, which was not expressly repealed by the Military Code of 1909. See note immediately preceding section 2347.

§ 2433. Military parades by unauthorized bodies prohibited. No body of men, other than the regularly organized corps of the national guard and militia and the troops of the United States, shall associate themselves together as a military company or organization, or parade in public with firearms in any city or town of this state. No city or town shall raise or appropriate any money toward arming or equipping, uniforming or in any other way supporting, sustaining or providing drill rooms or armories for any such body of men; but associations wholly composed of soldiers honorably discharged from the service of the United States or members of the order of Sons of Veterans may parade in public with firearms on Decoration Day or upon the reception of any regiments or companies of soldiers returning from such

service, and for the purpose of escort duty at the burial of deceased soldiers; and students in educational institutions where military science is a prescribed part of the course of instruction may, with the consent of the governor, drill and parade with firearms in public under the superintendence of their teachers. This section shall not be construed to prevent any organization authorized to do so by law from parading with firearms, nor to prevent parades by the national guard of other states. Any person violating any provision of this section shall be deemed guilty of a misdemeanor. [1909, ch. 165, § 88.]

§ 2434. **Separate companies.** The words "separate company," wherever used in this act [chapter] shall be construed to apply to and mean separate companies existing, organized and reorganized by the governor as such, irrespective of their being now or hereafter part of a regiment or battalion and to such similar organizations as may have been since or may be hereafter created, and as may be certified by the adjutant-general to be separate companies within the meaning of this section, irrespective of their being or becoming parts of a regiment or battalion. [1909, ch. 165, § 89.]

§ 2435. **Provision as amendatory and repealing statutes.** No section or provision of this chapter or any part thereof shall be deemed to be repealed, altered or amended by any statute passed by the legislature unless such statute explicitly refers to this chapter as the military code, or by its other titles as part of the general laws or annual legislation and explicitly repeals, alters or amends the same or some part thereof. [1909, ch. 165, § 90.]

See note to section 653c.

§ 2436. **Duties by title of office.** The duties assigned to an officer by title in this chapter shall devolve, in case of absence or disability to command of the officer named, upon the line officer next in rank, except as otherwise provided in this chapter. [1909, ch. 165, § 91.]

§ 2437. **Formation of association. By-laws.** The officers of any regiment or battalion not part of a regiment, and members of any regiment, company, signal corps, hospital corps or field music may organize themselves into an association, of which the commanding officer shall be president, and by a vote of two-thirds of all their members, form by-laws, rules and regulations not inconsistent with this chapter, and which shall conform to the system prescribed in general regulation and be submitted to the commanding officer of the national guard for his approval, and when approved by him, such by-laws, rules and regulations shall be binding upon all commissioned officers and enlisted men therein, but they may be altered in the manner provided for their adoption, from time to time, as may be found necessary. [1909, ch. 165, § 92.]

§ 2438. **Violation of by-laws. Expulsion.** For violation of by-laws, rules and regulations of associations organized pursuant to this chapter, enlisted men, in addition to trials by a military court, may also be expelled from the organizations to which they belong by a vote of the majority of all its members and upon such action being confirmed in orders by the commanding officer of the regiment, or battalion not part of a regiment, and in case of an organization not part of a regiment or battalion by the officer to whose command it is attached, the name of such person shall be stricken from the roll of the organization not part of a regiment or battalion by the officer in whose command it is attached, the same of such person shall be stricken from the roll of the organization of which he is a member, his certificate of membership shall be surrendered and canceled, and he shall cease to be a member thereof, and his time of service in the same shall not be allowed. [1909, ch. 165, § 93.]

§ 2439. **Rules and regulations.** The governor is hereby authorized to make such rules and regulations as he may deem expedient, but such rules and regulations shall conform to this act [chapter], and, as nearly as practicable, to those governing the United States army, and when promulgated shall have the same force and effect as the provisions of this chapter. Such rules and

regulations shall not be repealed, altered, amended or added to, except by the commanding officer of the national guard with the approval of the governor. The rules and regulations in force at the time of the passage of this chapter shall remain in force until new rules and regulations are approved and promulgated. [1909, ch. 165, § 94.]

§ 2440. **Custom and usage of the United States army.** All matters relating to the organization, discipline and government of the national guard, not otherwise provided for in this act [chapter] or in the general regulations, shall be decided by the custom and usage of the United States army or navy, respectively. [1909, ch. 165, § 95.]

§ 2441. **Organization not attached to a brigade.** Organizations not part of or attached to any brigade shall be under the commanding officer of the national guard for all purposes. [1909, ch. 165, § 96.]

§ 2442. **Appropriations.** For the purpose of paying the expenses of the maintenance of the national guard, there is hereby appropriated annually the sum of thirty thousand dollars (\$30,000) out of any moneys in the state treasury not otherwise appropriated, and all warrants against such appropriation shall be drawn by the state auditor upon the state treasurer, upon the voucher of the chief of supply or the paymaster-general, certified to by the adjutant-general and approved by the governor, said sum of thirty thousand dollars (\$30,000) per annum to remain subject to warrants drawn as herein provided, until expended. [1913, ch. 33; 1909, ch. 166; R. C. 1905, § 1787; 1891, ch. 87, § 1; R. C. 1899, § 1425; 1903, ch. 32.]

This section was an amendment of R. C. 1905, § 1787, which latter was not expressly repealed in the Military Code of 1909. See note immediately preceding section 2347.

CHAPTER 36.

MINES AND MINING.

ARTICLE 1. LOCATION AND SIZE OF CLAIMS, §§ 2443-2458.

2. DISPUTED MINING PROPERTY, §§ 2459, 2460.

ARTICLE 1.—LOCATION AND SIZE OF CLAIMS.

§ 2443. **Length of lode claim fifteen hundred feet.** The length of any lode claim hereafter located within this state may equal but shall not exceed fifteen hundred feet along the vein or lode. [R. C. 1905, § 1800; R. C. 1899, § 1426.]

Statutory authority for locating mining claim. 7 L.R.A. (N.S.) 775.

Mining claim and location defined. 7 L.R.A. (N.S.) 765.

Right to locate lode claim before application for placer patent. 50 L.R.A. 295.

§ 2444. **Width of lode one hundred and fifty feet.** The width of lode claims shall be one hundred and fifty feet on each side of the center of the vein or crevice; provided, that any county may at any general election determine upon a greater width not exceeding three hundred feet on each side of the center of the vein or lode, by a majority of the legal votes cast at such election, and any county by such vote at such election may determine upon a less width than specified; provided, that less than twenty-five feet on each side of the vein or lode shall be prohibited. [R. C. 1905, § 1801; R. C. 1899, § 1427.]

§ 2445. **Discoverer must record his claim.** The discoverer of a lode shall within sixty days from the date of discovery record his claim in the office of the register of deeds of the county in which such lode is situated by a location certificate, which shall contain:

1. The name of the lode.
2. The name of the locator.
3. The date of location.
4. The number of feet in length claimed on each side of the discovery shaft.

5. The number of feet in width claimed on each side of the vein or lode.
 6. The general course of the lode as near as may be. [R. C. 1905, § 1802; 1881, ch. 96, §§ 1, 2; R. C. 1899, § 1428.]

Property right that can be transferred or inherited may be acquired prior to issuance of patent. *Suessenbach v. Bank*, 5 D. 477, 41 N. W. 663.

Essentials of title to claim are: Discovery, notice, location, marking boundaries, record. *Marshall v. Harney Peak Co.*, 1 S. D. 350, 47 N. W. 290.

Discovery of mineral in mining claims and rights of locators prior thereto. 139 Am. St. Rep. 154.

Abandonment and forfeiture of mining claims. 87 Am. St. Rep. 403.

§ 2446. Certificate void, when. Any location certificate of a lode claim which shall not contain the name of the lode, the name of the locator, the date of location, the number of lineal feet claimed on each side of the discovery shaft, the number of feet in width claimed, the general course of the lode and such descriptions as shall identify the claim with reasonable certainty shall be void. [R. C. 1905, § 1803; R. C. 1899, § 1429.]

Certificate of location void when boundaries not marked as prescribed, and no minerals of required classes are within the boundaries. *Regan v. Whittaker*, 14 S. D. 373, 85 N. W. 863.

§ 2447. Manner of locating claim. Before filing such location certificate the discoverer shall:

1. Locate his claim by first sinking a discovery shaft thereon sufficient to show a well-defined mineral vein or lode.

2. By posting at the point of discovery on the surface, a plain sign or notice containing the name of the lode, the name of the locator and the date of discovery, the number of feet claimed in length on either side of the discovery and the number of feet in width claimed on each side of the lode.

3. By marking the surface boundaries of the same. [R. C. 1905, § 1804; 1881, ch. 96, § 3; R. C. 1899, § 1430.]

In suit to determine adverse claims, where defendant's location rests on alleged lode location prior to plaintiff's burden is on defendant to establish actual discovery prior to initiation of plaintiff's location. *Sands v. Cruikshank*, 15 S. D. 142, 87 N. W. 589.

In absence of fraud, decision of United States Land Department as to boundaries is conclusive. *Golden Reward Min. Co. v. Buxton Min. Co.*, 79 Fed. 868.

Notice of location of mining claim. 7 L.R.A.(N.S.) 832.

§ 2448. Marking surface boundaries. Such surface boundaries shall be marked by eight substantial posts hewed or blazed on the side facing the claim and plainly marked with the name of the lode and the corner, end or side of the claim that they respectively represent and sunk in the ground as follows: One at the corner and one at the center of each side line and one at each end of the lode. When it is impracticable on account of rock or precipitous ground to sink such posts, they may be placed in a monument of stone. [R. C. 1905, § 1805; 1881, ch. 96, § 4; R. C. 1899, § 1431.]

Marking location of mining claim upon the ground. 7 L.R.A.(N.S.) 856.

§ 2449. Requisites of location. Any open cut, cross-cut or tunnel at a depth sufficient to disclose the mineral vein or lode, or an adit of at least ten feet in along the lode, from the point where the lode may be in any manner discovered, shall be equivalent to a discovery shaft. [R. C. 1905, § 1806; R. C. 1899, § 1432.]

§ 2450. Time within which labor must be performed. The discoverer shall have sixty days from the time of uncovering or disclosing a lode in which to sink a discovery shaft thereon. [R. C. 1905, § 1807; 1881, ch. 96, § 5; R. C. 1899, § 1433.]

§ 2451. Certificate construed to contain what. The location or location certificate of any lode claim shall be so construed as to include all surface ground within the surface lines thereof, and all lodes and ledges throughout their entire depth, the top or apex of which lies inside of such lines extended vertically, with such parts of all lodes or ledges as continue by dip beyond the side lines of the claim, but shall not include any portion of such lodes or ledges beyond the end lines of the claim or the end lines continued, whether

by dip or otherwise, or beyond the side lines in any other manner than by the dip of the lode. [R. C. 1905, § 1808; R. C. 1899, § 1434.]

§ 2452. Claim not extended beyond the exterior line. If the top or apex of the lode in its longitudinal course extends beyond the exterior lines of the claim at any point on the surface, or as extended vertically downward, such lode may not be followed in its longitudinal course beyond the point where it is intersected by the exterior. [R. C. 1905, § 1809; R. C. 1899, § 1435.]

§ 2453. Owner of land may demand security of miner. When the right to mine is in any case separate from the ownership or right of occupancy to the surface, the owner or rightful occupant of the surface may demand satisfactory security from the miner and if it is refused may enjoin such miner from working until such security is given. The injunctional order shall fix the amount of bond. [R. C. 1905, § 1810; R. C. 1899, § 1436.]

Rights of owner of surface as against owner of minerals thereunder. 135 Am. St. Rep. 131.

§ 2454. Amended certificate may be filed. If at any time the locator of any mining claim heretofore or hereafter located, or his assigns, shall apprehend that his original certificate was defective, erroneous, or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries, or of taking in any part of an overlapping claim which has been abandoned, or in case the original certificate was made prior to the passage of this law, and he shall be desirous of securing the benefit of this chapter, such locator or his assigns may file an additional certificate subject to the provisions of this chapter; provided, that such relocation does not interfere with the existing rights of others at the time of such relocation; and no such relocation nor the record thereof shall preclude the claimant from proving any such title as he may have held under previous locations. [R. C. 1905, § 1811; R. C. 1899, § 1437.]

§ 2455. Amount of work that must be done annually. The amount of work to be done or improvements made during each year to hold possession of a mining claim shall be that prescribed by the laws of the United States; provided, that the period within which the work required to be done annually on all unpatented claims so located shall commence on the first day of January succeeding the date of the location of such claim. [R. C. 1905, § 1812; 1881, ch. 96, § 6; R. C. 1899, § 1438.]

Burden of proving forfeiture or intention to abandon is on adverse claimant. Axiom Min. Co. v. White, 10 S. D. 198, 72 N. W. 462.

§ 2456. Relocating abandoned claims. The relocation of abandoned lode claims shall be made by sinking a new discovery shaft and fixing new boundaries in the same manner as if it were the location of a new claim, or the relocater may sink the original shaft, cut or adit to a sufficient depth to comply with sections 2447 and 2451, and erect new or adopt the old boundaries, renewing the posts if removed or destroyed. In either case a new location stake shall be erected. In any case, whether the whole or part of an abandoned claim is taken, the location certificate must state that the whole or any part of the new location is located as abandoned property. [R. C. 1905, § 1813; R. C. 1899, § 1439.]

Co-owner by attempting to exclude another by a relocation does not abandon land. Hulst v. Doerstler, 11 S. D. 14, 75 N. W. 270.

Cotenant relocating claim holds as trustee for all cotenants. McCarthy v. Speed, 11 S. D. 362, 77 N. W. 590, 50 L.R.A. 184.

Right of cotenant, agent, or person standing in other fiduciary relation, to relocate a mining claim for his own benefit to the exclusion of other party. 50 L.R.A. 184.

Respective rights of one who relocates mining ground before, and one who relocates it after, the abandonment or forfeiture of a senior location. 16 L.R.A. (N.S.) 162.

When mining claim becomes segregated from public domain so as to be no longer subject to requirements for assessment work or liable to relocation. 38 L.R.A. (N.S.) 1121.

Relocation of mining claim as abandoned or forfeited. 68 L.R.A. 833.

§ 2457. Certificate can contain but one location. No location certificate shall claim more than one location, whether the location is made by one or

several locators; and if it purports to claim more than one location it shall be absolutely void, except as to the first location therein described; and if they are described together, or so that it cannot be told which location is first described, the certificate shall be void as to all. [R. C. 1905, § 1814; R. C. 1899, § 1440.]

§ 2458. **Fee for recording.** The register of deeds shall be entitled to receive the sum of one dollar for each location certificate recorded and certified by him and shall furnish the locator with a certified copy of such certificate when demanded, for which he shall be entitled to receive fifty cents. [R. C. 1905, § 1815; R. C. 1899, § 1441.]

ARTICLE 2.—DISPUTED MINING PROPERTY.

§ 2459. **Judge may order survey of mines in cases of disputed property.** In all actions in any district court of this state wherein the title or right of possession to any mining claim shall be in dispute, the court or judge thereof may, upon application of any of the parties to such suit, enter an order for the underground as well as surface survey of such part of the property in dispute as may be necessary to a just determination of the question involved. Such order shall designate some competent surveyor not related to any of the parties to such suit or in anywise interested in the result of the same and upon the application of the party adverse to such application, the court may also appoint some competent surveyor, to be selected by such adverse applicant, whose duty it shall be to attend upon such survey and observe the method of making the same; such second survey shall be at the cost of the party asking the same. It shall also be lawful in such order to specify the names of witnesses named by either party not exceeding three on each side, to examine such property, who shall be allowed to enter into such property and examine the same; such court or the judge thereof may also cause the removal of any rock, debris or other obstacle in any of the drifts or shafts of such property, when such removal is shown to be necessary to a just determination of the question involved; provided, however, that no such order shall be made for survey and inspection except upon notice of the application for such order of at least six days, and not then except by agreement of parties or upon the affidavit of two or more persons that such survey and inspection is necessary to the just determination of the suit, which affidavit shall state the facts in such case and wherein the necessity for survey exists; nor shall such order be made unless it appears that the party asking therefor had been refused the privilege of survey and inspection by the adverse party. [R. C. 1905, § 1816; R. C. 1899, § 1442.]

Power of court of equity to order survey not abridged. *Duggan v. Davey*, 4 *Oak.* 110, 26 *N. W.* 887.

§ 2460. **Writs of injunction may be issued for affirmative relief.** The district court or the judge thereof in vacation shall have, in addition to the powers already possessed, power to issue writs of injunction for affirmative relief, having the force and effect of a writ of restitution, restoring any person to the possession of any mining property from which he may have been ousted by force and violence or by fraud or from which he is kept out of possession by threats or whenever such possession was taken from him by entry of the adverse party on a Sunday or legal holiday or while the party in possession was temporarily absent therefrom. The granting of such writ shall extend only to the right of possession under the facts of the case in respect to the manner in which the possession was obtained, leaving the parties to their legal rights on all other questions as though no such writ had issued. [R. C. 1905, § 1817; R. C. 1899, § 1443.]

CHAPTER 37.

DRAINS.

§ 2461. When drains may be constructed. Water courses, ditches and drains for the drainage of sloughs and other low lands may be established, constructed and maintained in the several counties of this state whenever the same shall be conducive to the public health, convenience or welfare under the provisions of this chapter. The word "drain" when used in this chapter shall be deemed to include any natural water course opened, or proposed to be opened, and improved for the purpose of drainage and any artificial drains constructed for such purpose. [R. C. 1905, § 1818; 1895, ch. 51, § 1; R. C. 1899, § 1444.]

Drainage warrants no county liability created thereby. Constitutionality of the law. *Redmond v. Chacy*, 7 N. D. 231, 73 N. W. 1081; *Erickson v. Cass County*, 11 N. D. 494, 92 N. W. 841.

Not unconstitutional as depriving property owners of property without due process of law. *Erickson v. Cass County*, 11 N. D. 494, 92 N. W. 841.

Not unconstitutional as delegating legislative powers to board of drain commissioners. *Soliah v. Cormack*, 17 N. D. 393, 117 N. W. 125; affirmed 222 U. S. 522, 56 L. ed. 294, 32 Sup. Ct. Rep. 103.

Courts will not determine constitutionality of statutory provisions at instance of persons not beneficially interested or damaged. *Turnquist v. Drain Com'rs*, 11 N. D. 514, 92 N. W. 852; *Ely v. Rosholt*, 11 N. D. 559, 93 N. W. 864; *State v. McNulty*, 7 N. D. 169, 73 N. W. 87; *State ex rel. McClory v. Donovan*, 10 N. D. 203, 86 N. W. 709; *State v. Becker*, 3 S. D. 29, 51 N. W. 1018.

Improving water course after it passes beyond drainage district, into foreign territory, for purpose of making improvement of water course in this state efficacious, is not unreasonable exercise of power of securing outlet for drain purposes. *Freeman v. Trimble*, 21 N. D. 4, 129 N. W. 83.

Findings of drainage commissioners of essential facts cures defects in their omission from petition. *Hackney v. Elliott*, 23 N. D. 373, 137 N. W. 433.

Drainage of private lands as public purpose authorizing exercise of power of eminent domain. 49 L.R.A. 781; 1 L.R.A. (N.S.) 208; 22 L.R.A. (N.S.) 163.

§ 2462. Board of drain commissioners, how appointed. The board of county commissioners of any organized county in this state shall have power and is authorized at any meeting of the board by a majority vote of all the members, upon its own motion or on the petition of any person interested, to appoint three freeholders of the county as a board of drain commissioners of such county, who shall hold office for two years and until their successors are appointed and qualified. The board of county commissioners may remove any or all of such drain commissioners, and in case of a vacancy may fill the same by appointment. The board of county commissioners shall provide an office for said board of drain commissioners at the county seat, suitable for its use and the keeping of its records, and shall provide suitable record books for its use. [1907, ch. 93; R. C. 1905, § 1819; 1895, ch. 51, § 2; R. C. 1899, § 1445.]

§ 2463. Oath. Bond. Organization. Legal advice. Any person appointed as a member of the board of drain commissioners shall within ten days after his appointment take, subscribe and file in the office of the county auditor an oath faithfully to perform the duties of a drain commissioner under the law, and within the same time make, execute and file in the auditor's office a bond to the county with sureties to be approved by the auditor in such sum as shall be ordered by the board of county commissioners, conditioned for the faithful discharge of his duties as drain commissioner. The members of the drainage board shall organize by electing from their number a chairman and a secretary; they shall keep an office at the county seat and shall keep a record of its acts and proceedings and a separate record of the proceedings relating to each separate drain, all of which shall be open for public inspection and such records shall have the same force and effect as other public records. Two members of said board shall at all times constitute a quorum

for the transaction of business. Said board may, when it is necessary, employ a clerk and fix his compensation; it may also employ and call to its assistance a competent surveyor. The state's attorney of each county shall, so far as his other duties will permit, act as the legal advisor of the board. The board may, however, by and with the consent of the county commissioners, employ other counsel to advise and represent it in its proceedings. [1911, ch. 124; 1907, ch. 93; R. C. 1905, § 1820; 1895, ch. 51, § 3; R. C. 1899, § 1446.]

§ 2464. How established. A petition for the construction of a drain may be made in writing to the board of drain commissioners, which petition shall designate the starting point and terminus and general course of the proposed drain. If among the leading purposes of the proposed drain are benefits to the health, convenience or welfare of the people of any city or other municipality, the petition shall be signed by a sufficient number of the citizens of such municipality or municipalities to satisfy the board of drain commissioners that there is a public demand for such drain. If the chief purpose of such drain is the drainage of agricultural, meadow, grazing or other lands, the petition shall be signed by at least six or more freeholders whose property shall be affected by the proposed drain. Upon the presentation of a petition as hereinbefore provided and filing of the same, the board of drain commissioners shall, personally, as soon as practicable, proceed to examine the line of the proposed drain, and if in its opinion it is necessary for the public good, it shall enter a resolution to that effect, and shall also enter a resolution designating a competent surveyor who shall survey the line thereof and establish the commencement and terminus and determine the route, width, length and depth thereof.

Provided, that the board of drain commissioners shall require a bond from the petitioners in a sum sufficient to pay all expenses of the surveys and of the drainage commissioners if it should appear after the surveyor's report is filed, that the proposed drain would cost more than the amount of the benefit to be derived therefrom. For the purpose of making examinations or surveys the board of drain commissioners, surveyors and their employes may enter upon any land traversed by any such proposed drain or upon other lands when necessary. Such surveyor shall prepare profiles, plans and specifications of the proposed drain, an estimate of the cost thereof and a map or plat of the lands to be drained in duplicate, showing the regular subdivisions thereof, one copy of which shall be filed in the office of the county auditor in the county in which the drain is proposed to be constructed and the other with the board of drain commissioners, subject to inspection. In locating a drain a board of drain commissioners may, under the advice of the surveyor, vary from the lines described in the petition as it seems best. When the line proposed is along highways already established the drain shall be located at a sufficient distance from the center of such highway to permit a good road along the central line thereof. When the length of the line described in the petition does not give sufficient fall to drain the land sought to be drained, the board of drain commissioners may extend the drain below the outlet named in the petition far enough to obtain a sufficient fall and outlet. Drains shall as far as practicable be located on dividing lines between sections or regular subdivisions thereof, but the general utility of the drain must not be sacrificed to avoid crossing any tract of land in such direction as the board of drain commissioners find advisable. Upon the filing of the surveyor's report the board of drain commissioners shall fix a date and public place for hearing objections to the petitions, and such place for hearing shall be located at some point in the vicinity of the land which will be affected by such drain and that will be the most convenient point for the majority of the land owners affected by the proposed drain to attend. At least ten days' notice of such hearing shall be given by causing five notices to be posted along the line of the proposed drain at such points as will be

likely, in the opinion of the board, to secure the greatest publicity, and in addition a notice shall be sent by registered mail to the last known address of each and every owner of land which may be affected by the proposed drain. Notices of this hearing shall contain a copy of the petition and a statement of the date of filing of the surveyor's report and the date when the board will act upon the petition, and must be signed by the members of the board or a majority thereof. All persons, whose land may be affected by any such drain, may appear before the board of drain commissioners and fully express their opinion and offer evidence upon the matters pertaining thereto. Should two-thirds of the land owners, whose land is subject to assessment for the construction of the proposed drain, believe that the benefits to be derived are not equal to the expense of the construction, they may petition the board of drain commissioners to have further proceedings discontinued, whereupon the said board shall by resolution order further proceedings discontinued. [1911, ch. 125, § 1; 1907, ch. 93; R. C. 1905, § 1821; 1899, ch. 79; R. C. 1899, § 1447; 1903, ch. 80.]

See also section 2480.

Petition under drainage act need not contain any more facts than is prescribed by express terms of statute. *Hackney v. Elliott*, 23 N. D. 373, 137 N. W. 433.

Findings of drainage commissioners of essential facts, cures defects in their omission from petition. *Hackney v. Elliott*, 23 N. D. 373, 137 N. W. 433.

Joint board of drain commissioners have power to secure outlet to drains established within their district, in foreign territory. *Freeman v. Trimble*, 21 N. D. 9, 129 N. W. 83.

Duplicate copy of reports must be filed with drainage board before hearing afforded interested parties. *Edwards v. Cass County*, 23 N. D. 555, 137 N. W. 580.

Jurisdiction of drain commissioners cannot be divested by withdrawal of names from petition. *Sim v. Rosholt*, 16 N. D. 77, 11 L.R.A.(N.S.) 372, 112 N. W. 50.

General observations as to right to establish drains and sewers. 60 L.R.A. 161.

§ 2465. Showing required to establish drain. If upon the examination by the board of drain commissioners before the survey has been made, or if upon the hearing upon the petition or upon the trial in the district court it shall appear that there was not sufficient cause for making such petition, or that the proposed drain would cost more than the amount of benefit to be derived therefrom, the board of drain commissioners shall deny the petition, and the petitioners shall be jointly and severally liable to such board for all costs and expenses incurred in the proceedings, to be recovered by such board by action. If it shall appear that there was sufficient cause for the making of such petition and that the proposed drain will not cost more than the amount of the benefits to be derived therefrom the board of drain commissioners shall thereupon make an order establishing the drain, accurately describing it, and give the same a name by which it shall be recorded and indexed. [1907, ch. 93; R. C. 1905, § 1822; 1899, ch. 79; R. C. 1899, § 1448.]

§ 2466. Right of way. The right of way for the construction of any proposed drain, if not conveyed to the county by the owner, may be acquired in such manner as may now or hereafter be prescribed by law. Such right of way, when acquired, shall be the property of the county. [1907, ch. 93; R. C. 1905, § 1823; 1895, ch. 51, § 6; R. C. 1899, § 1449.]

Improvement of water courses for drainage purposes may be made without securing right of way through land as for drains. *Freeman v. Trimble*, 21 N. D. 1, 129 N. W. 83.

§ 2467. Assessment of damages, how made. Upon the assessment by the jury, court or referee, of the amount of damages to which the respective owners of the right of way to be used for the construction of any proposed drain are entitled, the board of drain commissioners may issue warrants in a sum sufficient to pay the damages assessed for right of way, drawn upon the proper county treasurer, and payable out of any funds in the hands of the treasurer, for the construction of the drain for which such right of way is sought to be obtained, and shall negotiate the same at not less than the par value thereof, and pay into court for the benefit of the owners of the right of way the amount to which each is entitled according to the assessment of damages, paying the surplus, if any, to the county treasurer, who

shall place the same to the credit of the proper drain fund. If warrants cannot be negotiated, the board of drain commissioners shall assess the per cent of the cost of acquiring the right of way in the manner provided in section 2469, making return to the county auditor containing all that is required in section 2470, and make, serve and file the list provided for in section 2474, and no further proceedings shall be taken until the special tax levied to pay for the right of way is collected and paid into court for the benefit of the owners of the right of way. [R. C. 1905, § 1824; 1899, ch. 79; R. C. 1899, § 1450.]

§ 2468. Assessment of benefits subject to review. The assessments of benefits provided for in this chapter shall be subject to review, and ten days' notice of the time and place, when and where such assessment will be reviewed by the board of drain commissioners, shall be given by publishing in some newspaper of general circulation in the county, and printed notices, not less than five in all and at least one in each township or municipality interested in such drain, shall be posted in such township and municipality at such points as may be likely, in the opinion of the board, to secure the greatest publicity for each notice. Printed notices shall also be sent by registered mail to the last known address of each and every land owner whose land shall be affected by construction of the proposed drain. The place appointed for such hearing shall be located at some point in the vicinity of the land which shall be affected by such drain and that will be the most convenient point for the majority of the land owners affected by the proposed drain to attend. At the time and place appointed such board shall proceed to hear all complaints relative to such assessment and correct or confirm the same. Should two-thirds of the land owners, subject to assessment for the construction of the proposed ditch, believe that the assessment had not been fairly or equitably made, or that the drain is not properly located or designed, they may appeal to the state engineer by petition to make a review of such benefits and assessments and to examine the location and design of the proposed drain. Upon the receipt of such petition the state engineer shall proceed to examine the lands assessed and the location and design of the proposed drain, and should it appear to him that such assessments have not been equitably made, he may proceed to correct the same and his correction and adjustment of said assessments shall be final. Should it appear that, in the judgment of the state engineer, the drain has been improperly located or designed, he may order a relocation and design, which location and design shall be followed in the construction of the proposed drain. For his services in making such review of assessments and examination of location and design, the state engineer shall be allowed ten dollars per day and actual and necessary expenses during the time he is engaged upon this work. All moneys received by the state engineer for this work shall be paid into the state treasurer and credited to the general fund. [1911, ch. 125, § 2; R. C. 1905, § 1825; 1895, ch. 51, § 8; R. C. 1899, § 1451.]

Failure to post notices of time and place of review of special percentage assessment, is noncompliance with statute, rendering proceedings to review invalid. *Edwards v. Cass County*, 23 N. D. 555, 137 N. W. 580.

§ 2469. Accruing benefits. Upon acquiring the right of way, if the assessment of benefits has not already been made under the provisions of section 2467, the board of drain commissioners shall assess the per cent of the cost of constructing and maintaining such drain, and of providing the right of way therefor, which any county, township, city, village or town shall be liable to pay by reason of the benefits of such drain to the public health, convenience or welfare, and which any railroad company shall be liable to pay by reason of benefits to accrue to its property, and which any lot, piece or parcel of land shall be liable to pay by reason of benefits to accrue thereto, either directly or indirectly, by reason of the construction of such drain, whether such lands are immediately drained thereby, or can be drained only

by the construction of other and connecting drains, but such assessment shall be subject to review by the commissioners as hereinafter provided. [R. C. 1905, § 1826; 1899, ch. 79; R. C. 1899, § 1452.]

Assessments are special to land assessed and not "conjectural" or "speculative." *Erickson v. Cass County*, 11 N. D. 494, 92 N. W. 841.

As to action of board of drainage commissioners in assessing benefits of land being final. *State ex rel. Dorgan v. Fisk*, 15 N. D. 219, 107 N. W. 191.

Board of drain commissioners has no authority to make assessment for establishment of drain lying in one township, against another township, in absence of signatures to petition of citizens of such other township. *State ex rel. Bale v. Morrison*, 24 N. D. 568, 140 N. W. 707.

Jury is not authorized to consider benefits to tract of land about to be condemned in determining full compensation. *Heakin v. Herbrandson*, 21 N. D. 232, 130 N. W. 836.

Question of benefits under drainage law need not be submitted to jury. *Ross v. Prante*, 17 N. D. 266, 115 N. W. 833.

Assessments for drainage ditches. 69 L.R.A. 810.

Acquiring funds to establish drains and sewers by assessments. 60 L.R.A. 227.

Persons and property liable for drainage assessments. 58 L.R.A.353.

Property liable for assessment for construction of drains or sewers. 26 L.R.A.(N.S.) 973.

§ 2470. Return of assessment of benefits. After the assessment of benefits has been made, as provided in the last section, and has been confirmed upon the hearing, and the specific amounts of each assessment has been extended as hereinafter provided, the board of drain commissioners shall make return thereof to the county auditor, who shall record the same in a book to be provided by the county for that purpose. Such return shall contain the petition for the drain, the minutes of the survey signed by the surveyor, a copy of the order establishing the drain, conveyance of the right of way, if any, and the assessment of benefits. [1907, ch. 93; R. C. 1905, § 1827; 1899, ch. 79; R. C. 1899, § 1453.]

Failure to make record of filing of return of proceeding had concerning assessment of benefits does not make assessment invalid. *Hackney v. Elliott*, 23 N. D. 373, 197 N. W. 433.

§ 2471. Notice of construction. After completing the percentage assessment as hereinbefore provided, the board of drain commissioners shall without delay divide the line thereof into convenient divisions for construction, make diagrams of the same with specifications of the width of excavation at the bottom, the slope of the sides, and such other matters as may be necessary for the proper construction of the drain, and set suitable stakes in such places as may be necessary. Such board shall give at least ten days' notice of the time when and the place where they will meet parties for the purpose of letting contracts for such construction. Such notice shall be published in some newspaper of general circulation in the county and printed notices not less than five in all and at least one in each township or municipality interested in such drain shall be posted in such township or municipalities at such points as will be likely, in the opinion of the board, to secure the greatest publicity for such notice. At least ten days' time shall intervene between the hearing upon the review of the assessments before the contracts shall be let. [1911, ch. 125, § 1; 1907, ch. 93; R. C. 1905, § 1828; 1899, ch. 79; R. C. 1899, § 1454.]

Alleged defects in right of way deeds do not invalidate proceedings of board. *Erickson v. Cass County*, 11 N. D. 494, 92 N. W. 841.

Failure to post notices of time and place of review of special assessment in one township of three comprising drainage district, renders review in such township invalid. *Edwards v. Cass County*, 23 N. D. 555, 137 N. W. 580.

§ 2472. Commissioners may defer letting of contract. At the time and place appointed the board of drain commissioners shall proceed to hear all complaints relative to such assessments, unless a hearing has already been had under the provisions of section 2468, and correct and confirm the same. Such board shall then proceed to let contracts for the construction of the drain by divisions as it shall have divided the same, to the persons who will do the work according to the specifications, for the lowest price and give

adequate security for the performance of the same within such time as the contract shall specify. Such board may adjourn such letting in whole or in part and from time to time to such other time and place, to be by it at the time of such adjournment publicly announced, as shall to it seem proper and it may reserve the right to reject any and all bids. The parties who are to be assessed for the construction of such drain and who may be bidders for contracts thereon shall, if equal bidders with other parties, be preferred in the awarding of such contracts; provided, that contracts for the building of bridges and culverts mentioned in section 2482 may be deferred, until the construction of the drain has reached such a stage of completion that the character of the bridges and culverts which will be needed can be determined. As soon as the character of such bridges and culverts can be determined such board shall cause plans and specifications of the bridges and culverts to be constructed in connection with such drain to be prepared and shall give at least ten days' notice of the time and place when and where it will meet parties for the purpose of letting contracts for such construction. Such notice shall be published in some newspaper of general circulation in the county. Such contracts shall be let to the lowest bidder as hereinbefore in this section provided. [R. C. 1905, § 1829; 1895, ch. 51, § 12; R. C. 1899, § 1455.]

Necessity of county commissioners letting contract to lowest bidder. Alstad v. Sim, 15 N. D. 629, 109 N. W. 66.

§ 2473. General duties of commissioners. After the letting of such contracts or a major portion thereof such board shall make a computation of the cost of such drain which shall include all the expenses of locating and establishing the same, including the cost of right of way, the drain commissioners' fees, cost of survey, cost of building bridges and culverts, interest on all warrants issued or to be issued by the board of drain commissioners on account of the drain, accumulated or to accumulate prior to the time when the tax levied or to be levied to pay for the right of way or construction of the drain is collectible by law and all other expenses and the amount of the contracts and in case contracts shall not have been let for the construction of the whole of the drain or of the bridges and culverts, the board of drain commissioners shall estimate the cost of such unlet portion and of the bridges and culverts, predicated its estimate so far as may be upon the cost of those portions that have been let or upon similar work. The sum of all the costs and expenses incurred or to be incurred shall be the cost of the construction of the drain. [R. C. 1905, § 1830; 1895, ch. 51, § 13; R. C. 1899, § 1456.]

§ 2474. Apportionment and taxation of costs. After fixing the cost of the construction of the drain, as provided in the preceding section, the board of drain commissioners shall carry out upon the assessment list the specific amount which each municipality and lot or tract of land benefited by the drain for which the tax is levied is liable to pay on account of procuring the right-of-way or the construction of any drain, or both, according to the per cent which by section 2469 it is required to fix and determine, a copy of which shall be served on the clerk or auditor of each municipality against which taxes are to be assessed. Such list shall thereupon be filed in the office of the county auditor of the county in which the municipalities and lands benefited by the drain are situated, and the auditor shall thereupon extend upon the tax lists as a special tax as provided by law the several amounts shown by the drain commissioners' list, specifying in such tax lists the particular drain for the construction or procurement of the right-of-way of which the special tax is assessed, which special tax shall be collected and enforced in the same manner as other taxes. When such special tax is for the right-of-way, the same shall when collected be paid by the county treasurer into court for the benefit of the owners of the right-of-way, and the common council or other proper taxing authorities of each city or other municipality against which such assessment is made as aforesaid, shall include in the first

general tax levy thereafter made in said city or municipality the amount so assessed against it by the board of drain commissioners, and the same shall be extended upon the tax lists of the county for the current year by the county auditor against all the taxable property in such city or municipality in the same manner and with the same effect as other taxes are extended. [1907, ch. 93; R. C. 1905, § 1831; 1899, ch. 79; R. C. 1899, § 1457.]

Apportionment of special benefits when made, not being based upon estimated or actual costs of project, fact that actual costs may exceed estimated costs cannot affect validity of apportionment. *Hackney v. Elliott*, 23 N. D. 373, 137 N. W. 433.

Jury is not authorized to consider benefits to tract of land about to be condemned in determining full compensation. *Heskin v. Herbrandson*, 21 N. D. 232, 130 N. W. 836.

Special assessments bear simple interest at 7 per cent only from time that they must be paid. *Hackney v. Elliott*, 23 N. D. 408, 137 N. W. 433.

§ 2475. Collection of drain taxes. Payment of expenses. The drain taxes shall be collected by the county treasurer, and all moneys so collected shall be credited to the drain fund to which they belong, and the county treasurer shall be the treasurer of such drain funds. Payment of all expenses and costs of locating and constructing any drain shall be made by the board of drain commissioners issuing warrants in such amounts and to such persons as by such board may be found due, which warrants shall be signed by the chairman and secretary. All warrants drawn by such board in payment for the right-of-way or construction of any drain shall be payable from the proper drain fund and shall be receivable for the taxes levied for the right-of-way or construction of such drain by the treasurer. All such warrants after presentation to the county treasurer for payment, if not paid for want of funds, shall be registered by the county treasurer and shall thereafter bear interest at the rate of seven per cent per annum. [1907, ch. 93; R. C. 1905, § 1832; 1895, ch. 51, § 15; R. C. 1899, § 1458.]

Penalty paid as part of drain assessment into particular drain fund must remain in hands of county treasurer until disbursed for drainage purposes. *State ex rel. Viking Twp. v. Mikkelsen*, 24 N. D. 175, 139 N. W. 525.

§ 2476. Additional assessment. When necessary. In case the amount realized from the assessment made for right-of-way or for the construction of any drain shall not be sufficient to pay for such right-of-way or to complete such drain, and to pay fees and all incidental expenses, or to pay and retire any bonds issued in connection with the construction of such drain, or in case an enlargement or deepening of such drain or an extension of the line thereof becomes necessary, a further assessment shall be made to meet the deficit or additional expense and the amount thereof shall be levied and collected in the manner hereinbefore provided. [1911, ch. 124, § 1; R. C. 1905, § 1833; 1895, ch. 51, § 16; R. C. 1899, § 1459.]

§ 2477. Extension of time to contractors. The board of drain commissioners shall have power to grant a reasonable extension of time for the completion of any contract. When any contract shall not be finished within the time specified, or to which it may be extended, the board of drain commissioners may in its discretion at any time thereafter, relet such unfinished portion or any part thereof, after not less than five days' notice thereof to the lowest responsible bidder and shall take security as before. The cost of completing such parts over and above the contract price, and the expense of notices and reletting shall be collected by the board of drain commissioners of the parties at first contracting; provided, that in no case shall the board of drain commissioners forfeit and annul a contract without five days' notice to the contractor, if found, and if not found, then by written notice left at his last place of residence, if known to be within the county. [R. C. 1905, § 1834; 1895, ch. 51, § 17; R. C. 1899, § 1460.]

§ 2478. Extension of powers when necessary. The powers conferred by this chapter for establishing and constructing drains shall also extend to and include the deepening and widening of any drains which have heretofore been or may hereafter be constructed; also to straightening, clearing out and

deepening the channels of creeks and streams and the construction, maintaining, remodeling and repairing of levees, dykes and barriers for the purpose of drainage, and the board of drain commissioners may locate or extend the line of any drain if the same is necessary to provide a suitable outlet, and shall cause a survey thereof to be made, and may establish a drain upon the line of an abandoned drain, and complete the same, or in whole or in part upon the line of an invalid drain. It may also establish and construct lateral drains with outlets in drains heretofore constructed; provided, however, that all proceedings under this section affecting the rights of persons and property shall only be taken upon the petition and in accordance with the procedure governing the establishment and construction of drains in the first instance. Whenever the widening, extending or deepening of a main drain is made necessary by the construction of a lateral drain, the petition for the lateral drain shall contain a request for such widening, deepening or extension, and the cost of such widening, deepening or extension shall be charged as a part of the cost of construction of the drain petitioned for and assessed against the property benefited thereby as a part of the cost of the construction. [1907, ch. 93; R. C. 1905, § 1835; 1895, ch. 51, § 18; R. C. 1899, § 1461.]

§ 2479. Joint powers of drain commissioners in two or more counties. Apportionment of cost. Whenever it shall be deemed necessary by the boards of drain commissioners of two or more counties in this state, to construct or extend a drain through or into two or more counties in this state, it shall be lawful and the several boards of drain commissioners in the counties into or through which such proposed drain may extend when completed, are empowered to establish, construct and maintain such drain through or into two or more counties in manner following, to wit: There shall first be presented to the several boards of drain commissioners in each of such counties a petition for the establishment of such drain in their several counties as provided by law and such commissioners of such several counties shall determine upon the necessity or expediency of the establishment of such drain as provided by law. The several boards of drain commissioners of all counties through or into which such proposed drain may run shall then meet and agree upon the proportion of damages and benefits to accrue to the lands affected in each county affected and for this purpose they shall consider the entire course of said drain through all said counties as one drain. They may apportion the cost of establishing and constructing such entire drain ratably and equitably upon the lands in each county in proportion to the benefits to accrue to such lands, and when they have so apportioned the same they shall make written reports of such apportionment to the auditors of the several counties affected, which reports shall show the portion of cost of such entire drain to be paid by tax upon the lands in each of such counties and such reports shall be signed by the boards of drain commissioners of all counties affected. Upon the filing of such reports, the several boards of drain commissioners shall meet and assess against the lands in each of such counties ratably and equitably as provided by law an amount sufficient to pay the proportion of cost of such drain in each of such counties so fixed by all said commissioners. [R. C. 1905, § 1836; 1905, ch. 97.]

Joint boards of drain commissioners have power to secure outlet to drain established in their district, in foreign territory by deepening or widening stream. *Freeman v. Trimble*, 21 N. D. 1, 129 N. W. 83.

Tri-county board does not deal with individual tracts as such, but with county apportionment of benefits, considering collectively each county's lands benefited. *Hackney v. Elliott*, 23 N. D. 373, 137 N. W. 433.

§ 2480. Condemning right of way under certain conditions. Any person, firm or corporation, either alone or in company with others, may petition the drainage board for a drain, and deposit with the chairman of the drainage board a good and sufficient bond to be approved by the drainage board,

conditioned that the petitioner will pay all costs of the proposed drain. Then the drainage board shall, within ten days, commence proceedings for the construction of said drain according to the provisions of chapter 23 of the Code of North Dakota of 1905. No person, firm or corporation, except the petitioners above mentioned, shall dig or construct any lateral ditch or drain that will conduct the flow of water from any land or lands into any drain constructed under the provisions of this section, provided, that any person or persons, firm or corporation, may petition the drainage board for the privilege of digging ditches or lateral drains into the original ditch; and thereupon the drainage board shall estimate and determine the proportionate share of the cost of the main or original drain and the exact amount which should be paid by such petitioners. The said petitioners may pay into the county treasury the amount so determined, and they shall then be allowed to connect their lateral ditches or drains with the main drain under the direction and superintendence of the drainage board, but at their own cost and expense. The money paid into the county treasury, as aforesaid, shall be divided among those persons, their heirs or assigns, who paid for the original or main drain, in proportion to the amount paid by each.

The preceding sections 2461-2479 and the following sections 2481-2495 constitute chapter 23 of the Code of 1905 to which reference is made in section 2480.

See note to section 2490.

§ 2481. Duty of railroad companies. Drains may be laid along, within the limits of or across any public road, and when so laid out and constructed or when any road shall thereafter be constructed along or across any drain it shall be the duty of the board of county commissioners, or township supervisors, as the case may be, to keep the same open and free from all obstructions. A drain may be laid along any railroad when necessary, but not to the injury of such road, and when it shall be necessary to run a drain across a railroad it shall be the duty of such railroad company, when notified by the board of drain commissioners to do so, to make the necessary opening through said road and to build and keep in repair suitable culverts or bridges. [R. C. 1905, § 1837; 1895, ch. 51, § 19; R. C. 1899, § 1462.]

Construction of drains in streets as additional burden on easement. 17 L.R.A. 479.

§ 2482. Construction of bridges and culverts. When any drain crosses a highway the cost of constructing the necessary bridge or culvert shall be charged in the first instance as part of the cost of constructing such drain, after which such bridge or culvert shall be maintained as part of the highway. The board of drain commissioners shall construct such bridges or culverts over or in connection with each drain as may in its judgment be necessary to furnish a passage from one part to another of any farm or tract of land intersected by such drain and the cost of the construction thereof shall be charged as part of the cost of constructing such drain and such bridge or passageway shall be maintained under the authority of the board of county commissioners or township supervisors, as the case may be, and the necessary expense thereof shall be deemed a part of the cost of keeping such drain open and in repair. [R. C. 1905, § 1838; 1895, ch. 51, § 20; R. C. 1899, § 1463.]

§ 2483. Blind drains, how constructed. Blind drains may be constructed by the use of drain tile or sewer pipe, when the nature of the ground will admit of so doing. When blind drains are constructed the entrance shall be protected from drift wood and other debris. [R. C. 1905, § 1839; 1895, ch. 51, § 21; R. C. 1899, § 1464.]

§ 2484. Legal drains defined. Record. All drains regularly established, opened or constructed under the provisions of any law shall be deemed legal drains and shall be under the control and charge of the county commissioners, and it shall be the duty of all boards of county commissioners in cases where the records of any drain may not have been preserved, to see that such record

is made in the best manner practicable in the office of the county auditor, and whenever necessary it shall be their duty to complete the records of such drain so as to show their legal character. Said board shall provide a book to be known as "record of drains," in which such records shall be recorded. [1907, ch. 93; B. C. 1905, § 1840; 1895, ch. 51, § 22; R. C. 1899, § 1465.]

§ 2485. Tax or assessment void, when. New proceedings. The collection of no tax or assessment levied or ordered to be levied to pay for the location and construction of any drain laid out and constructed under this chapter, shall be perpetually enjoined or declared absolutely void in consequence of any error of any officer or board in the location and establishment thereof, nor by reason of any error or informality appearing in the record of the proceedings by which any drain shall have been located or established, nor for want of proper conveyance or condemnation of the right of way, but the court in which any proceeding may hereafter be brought to reverse or to declare void the proceedings by which any drain has been located or established or to enjoin the tax levied to pay the labor and cost and expenses shall on application of either party appoint such person or persons to examine the premises, or to survey the same, or both, as may be deemed necessary and the court shall on a final hearing make such order in the premises as shall be just and equitable, and may order such tax to remain on the tax list for collection, or any part thereof, or if the same shall have been paid under protest shall order the whole or such part thereof as may be just and equitable to be refunded, the costs of said proceedings to be apportioned among the parties as justice may require. If any proceeding for the location, establishment or construction of any drain under the provisions of this chapter, have been heretofore, or shall be hereafter enjoined, vacated, set aside, declared void or voluntarily abandoned by the board of drain commissioners, in consequence of any error, irregularity or want of jurisdiction affecting the validity of such proceedings, and if any drainage warrants have been or shall hereafter be issued in connection with such aforesaid invalid or abandoned proceedings, the board of drain commissioners may nevertheless proceed under the provisions of this chapter to locate, establish and construct drains under the same or different names, and in the same or different locations from those described in the invalid or abandoned proceedings; provided, however, such new proceedings shall be in accordance with the general provisions of this chapter. In case new proceedings shall be had, resulting in the location and establishment of a drain in the same or substantially the same location as that described in the invalid or abandoned proceedings, then the board of drain commissioners shall proceed to ascertain and determine the real value of services rendered, moneys expended and work done under such invalid or abandoned proceedings, and the extent to which the same have contributed or will contribute to the construction and completion of such drain, as subsequently established and constructed. A meeting of said board of drain commissioners shall be held for the purpose of determining and fixing the value aforesaid, at which meeting all persons interested, whether as holders of warrants issued under invalid or abandoned proceedings, or as owners of land benefited or to be benefited by such drain, may appear and be heard. Ten days' notice of such meeting shall be given, in the manner, at the time and as a part of the notice provided for in sections 2468 or 2471, and the notice as published shall state briefly the purpose of such meeting, and that all persons interested may appear and be heard. The board shall thereupon, and after such hearing, by an order made and entered in their minutes, find and determine: (1) the real value of all work done, money expended and services rendered under such invalid or abandoned proceedings, to the extent only to which they contribute to the drain as subsequently located and established; (2) the names of all persons or corporations owning or holding drain warrants issued under such invalid or abandoned proceedings, and the

dates and several amounts of such warrants. The board shall then proceed to issue warrants to an amount not exceeding the value of the work done, moneys expended and services rendered under such invalid or abandoned proceedings, and deliver such new warrants to the owners or holders of the old warrants upon surrender and return of the latter; provided, however, that the value of any service rendered, or money expended, or work done, shall in no case be declared to be greater than the warrant issued therefor, under the invalid or abandoned proceedings, and if found to be less, the new warrant shall not be issued or delivered except upon the surrender and return of the old warrant, in lieu of which it is issued. The real purpose and intent of this section is to afford compensation for services rendered, work done and moneys expended, under invalid or abandoned proceedings, to the extent only to which the same contributes to the completion of a drain located and established in pursuance of the provisions of this chapter. [R. C. 1905, § 1841; 1899, ch. 79; R. C. 1899, § 1466.]

Amendatory act constitutional. Title does not violate section 61, constitution. *Erickson v. Cass County*, 11 N. D. 494, 92 N. W. 841.

Board is a tribunal to determine benefits. Determination not open to collateral attack. Courts will not inquire into correctness of their judgment in assessment of benefits. *Erickson v. Cass County*, 11 N. D. 494, 92 N. W. 841; *Turnquist v. Drain Com'rs*, 11 N. D. 514, 92 N. W. 852.

Invalidity of special assessment cannot be attacked five years after it is made where complainant had actual notice of construction of drain at great expense. *Hackney v. Elliott*, 23 N. D. 373, 137 N. W. 433.

Delay in procurement of deed to portion of right of way contracted for, and obtained after hearing and review, does not invalidate such special assessment. *Edwards v. Cass County*, 23 N. D. 555, 137 N. W. 580.

§ 2486. Drain kept open and in repair. Cost of. All drains that may have been constructed under any law of this state, or that may be constructed under the provisions of this chapter and situated in this state, shall, except as otherwise provided, be under the charge of the board of county commissioners and their successors in office and be by them kept open and in repair. In all cases when any completed drain is or may be situated in more than one county the care of the portion thereof lying within any county is hereby assigned to the board of county commissioners of such county to be by it kept open and in repair. The cost of such keeping open and in repair shall in all cases be assessed, levied and collected in the same manner as is provided in this chapter for the construction of drains in the first instance, and in cases when no assessments of benefits shall have been made, the board of commissioners having charge of or to whose care such drain may be assigned shall make such assessment. [R. C. 1905, § 1842; 1895, ch. 51, § 24; 1899, § 1467.]

Joint boards of drain commissioners have power to secure outlet to drain established in their district, in foreign territory. *Freeman v. Trimble*, 21 N. D. 1, 129 N. W. 83.

Maintenance of drainage ditches. 69 L.R.A. 806.

§ 2487. Rules and regulations. The board of county commissioners of any county may make rules and regulations on the subject of drainage within such county, as it may deem proper, not inconsistent with the provisions of this chapter and especially with regard to clearing out and keeping clear the channels of streams and the construction and maintenance of dams thereupon, with reference to their capacity for drainage and may require of the owners of such dams reasonable service in cleaning and keeping such streams clear as a consideration for the right to erect dams thereupon. [R. C. 1905, § 1843; 1895, ch. 51, § 25; R. C. 1899, § 1468.]

§ 2488. Liability of drain commissioner. Each board of drain commissioners shall make a report to the board of county commissioners of all drains begun, in process of construction or finished and shall also render a full account of all moneys which shall come into its hands; and every drain commissioner shall be liable on his bond for any misapplication of money coming into his hands as such commissioner. The report required by this section

shall include an itemized statement of all expenses and warrants drawn on account of each and every drain. [R. C. 1905, § 1844; 1895, ch. 51, § 26; R. C. 1899, § 1469.]

§ 2489. Compensation of commissioners and publishers. [Drain commissioners shall receive for their services such amount not less than three nor exceeding four dollars per day for the time spent by them in the performance of the duties of their office, such per diem to be fixed by the board of county commissioners.] Publishers of newspapers shall receive for publishing legal notices and furnishing evidence of such publication the fees prescribed by law for legal advertisements. [1907, ch. 94; R. C. 1905, § 1845; 1895, ch. 51, § 27; R. C. 1899, § 1470.]

The foregoing section was substituted by amendment for R. C. 1905, § 1845, which fixed the rate of compensation "at not less than two nor exceeding three dollars per day." The words in brackets are re-enacted in the following section 2490. The latter purports to be independent legislation; it seems, therefore, that the provision as to compensation of publishers in section 2489 is existing law.

§ 2490. Compensation. The drain commissioners shall receive for their services such amount not less than three nor exceeding four dollars per day for the time actually spent by them in the performance of the duties of their office, such per diem to be fixed by the board of county commissioners; provided, the said drain commissioners shall render an itemized and verified statement showing the date or dates when their services were rendered, and not more than the compensation for one day shall be allowed to them for services rendered in any one calendar day of twenty-four hours. [1911, ch. 125, § 4; 1907, ch. 94; R. C. 1905, § 1845; 1895, ch. 51, § 27; R. C. 1899, § 1470.]

See note to section 2489.

The foregoing section 4 in Laws 1907, ch. 125, was preceded by a section which constitutes section 2480 herein.

§ 2491. Penalty. If any person shall willfully and maliciously remove any surveyor's stake set along the line of any drain laid out under the provisions of this chapter, or obstruct or injure any such drain, he shall for each and every such offense be subject to a penalty not exceeding ten dollars together with such sum as will be required to repair such damage and costs of suit, which penalty may be recovered in an action by the board of drain commissioners or county commissioners as the case may be. Whenever the amount of any recovery shall be collected it shall be deposited with the county treasurer to the credit of the proper drain fund. [R. C. 1905, § 1846; 1895, ch. 51, § 28; R. C. 1899, § 1471.]

§ 2492. State and county officers not eligible. No person holding any state or county office shall be eligible to the office of drain commissioner, and any drain commissioner accepting any state or county office shall thereupon be considered as having vacated the office of drain commissioner. [R. C. 1905, § 1847; 1895, ch. 51, § 29; R. C. 1899, § 1472.]

§ 2493. Power to administer oath. Drain commissioners shall have power to administer any oath required in any proceeding had before them or in which they may be called to act officially. [R. C. 1905, § 1848; 1895, ch. 51, § 30; R. C. 1899, § 1473.]

§ 2494. Bonds, when and how authorized. The board of county commissioners of any county in which any such drain is proposed to be located and constructed is authorized to issue bonds which shall be known as drainage bonds, in such sums as may be necessary for the purpose of defraying the expenses incurred or to be incurred in obtaining the right of way or in locating or constructing any such drain, said word "expenses" to be construed to mean and to cover every item of cost of such drain from its inception to its completion as hereinbefore provided, which bonds shall be paid out of the revenues to be derived from taxes levied, or to be levied, and collected from that portion of the county found by the board of drain com-

missioners to be benefited thereby. Such bonds shall bear interest at a rate not exceeding seven per cent and shall be divided in such amounts and payable at such periods not exceeding fifteen years, as the board of county commissioners may determine; provided, that any land owner who may desire to pay the entire amount assessed against his land for the entire cost of such drain, including warrants and interest thereon, may, prior to the sale of such bonds, pay into the county treasury the amount of said assessments for which the treasurer shall give his receipt in full, and such lands shall not be included in the list of the lands assessed. The county auditor shall give notice of the determination of the board of county commissioners to issue bonds by publishing a notice in the official newspaper of the county at least fifteen days before the date of selling said bonds. Said notice shall designate the drain proposed to be bonded, and in general terms notify all persons interested of their right to pay their total assessment prior to the date of the sale of said bonds, as provided in this section. The money paid in shall be used to take up warrants, and the bonds issued shall be for such an amount as will pay the remainder of the cost of construction; and the said board shall provide sinking funds for the payment at maturity of each series of bonds issued and for the payment of the annual interest on the same. The bonds issued under the provisions of this chapter shall be signed by the chairman of the board of county commissioners of such county and countersigned by the county auditor, who shall keep a record of the bonds issued under the provisions of this chapter. Such board shall have the power to negotiate such bonds at not less than the par value thereof as it may deem for the best interest of all persons interested in such drain. Such bonds shall contain a recital that the same are issued in accordance with the provisions and pursuant to the authority of this chapter and that they are to be paid out of sinking funds to be created as in this chapter provided. Whenever such bonds shall be issued the tax hereinbefore provided for shall not be collected all in one year, but shall be divided into parts corresponding with the amounts and maturities of the bonds, and such parts shall be extended year by year upon the tax lists by the county auditor against the proper parcels of land and property liable to taxation for that purpose and collected in such year, and such fund shall constitute the sinking fund provided by this section. [1907, ch. 93; R. C. 1905, § 1849; 1895, ch. 51, § 31; R. C. 1899, § 1474; 1901, ch. 39.]

Twenty year bonds bid in and accepted in Oct., 1900, are valid although not signed and delivered until Nov., 1901. *May v. Cass County*, 12 N. D. 137, 96 N. W. 292.

Issuance of bonds for cost of construction. Postponement of assessments and division thereof not taking property without "due process of law." *Erickson v. Cass County*, 11 N. D. 494, 92 N. W. 841.

Accrued interest as part of par value within prohibition against sale of bonds at less than par. 35 L.R.A. (N.S.) 789.

§ 2495. Levy of tax for interest. Sinking fund. The board of county commissioners shall in each year at the time of levying the taxes, levy upon the property liable to taxation on account of the location and construction of any drain a tax sufficient to pay the annual interest on any bonds which may have been issued for the purpose of locating and constructing the drain. Separate sinking funds shall be provided for each separate drain for the construction of which bonds shall have been issued, and no funds in any such sinking fund shall be applied to any other purpose than the payment of the bonds for the payment of which such fund was created. No county shall be liable for the payment of any bonds issued under the provisions of this chapter, but such bonds shall be paid only out of the sinking funds created as in this chapter provided. [R. C. 1905, § 1850; 1895, ch. 51, § 31; R. C. 1899, § 1474; 1901, ch. 39.]

CHAPTER 38.

POLICE OF THE STATE.

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ARTICLE 1.—SUPPORT OF THE POOR.

§ 2496. **Duty of supervisors.** That the supervisors of the several townships of this state shall be ex-officio the overseers of the poor within their respective townships, and shall perform all duties with reference to the poor of their respective townships, that may be prescribed by law. [1913, ch. 121, § 1; R. C. 1905, § 1851; R. C. 1899, § 1475.]

§ 2497. **Overseers of the poor.** Every township supervisor shall, in discharging the duties prescribed by this article, be designated an overseer of the poor. [1913, ch. 121, § 2; R. C. 1905, § 1851; R. C. 1899, § 1475.]

§ 2498. **Suits.** In all suits and proceedings in favor or against any such overseer connected with or pertaining to the poor of his township, the same shall be conducted in favor of or against such township, in its corporate name. [1913, ch. 121, § 3; R. C. 1905, § 1852; R. C. 1895, § 1476.]

§ 2499. **Application for relief.** Any application for poor relief must be made to an overseer of the poor and the county commissioners shall not entertain original jurisdiction in the case of an application for poor relief, except in counties without township organization and as hereinafter provided. [1913, ch. 121, § 4; R. C. 1905, § 1853; R. C. 1899, § 1477.]

Acceptance of service by one removed to pest house by order of commissioners makes patient liable for medicine and service of physician. *Ostland v. Porter*, 4 Dak. 98, 25 N. W. 731.

County not bound for unauthorized relief furnished. *St. Luke's Hospital Ass'n v. Grand Forks County*, 8 N. D. 241, 77 N. W. 598.

No legal duty imposed upon a county to provide relief or support to one who has a legal settlement therein while without the county. *Hamlin County v. Clark County*, 1 S. D. 131, 45 N. W. 329.

Liability of relatives for support of paupers. 64 Am. Dec. 279.

Settlement as affecting liability for support during epidemic. 26 L.R.A.(N.S.) 729.
 Effect on liability for support of pauper of division of territory of municipality, town or county. 39 L.R.A.(N.S.) 290.
 Right to compensation from public for relief furnished poor person, in cases not provided for by law, or where there has been no compliance with statutory prerequisites. 39 L.R.A.(N.S.) 161.
 Liability of public for medical services to indigent person in absence of notice or request. 9 L.R.A.(N.S.) 1234.
 Right to use public funds to relieve persons not entirely without means of their own. 27 L.R.A.(N.S.) 1079.
 Liability of alleged pauper, or his estate, to pay for support or gifts obtained on the ground of poverty. 55 L.R.A. 570.
 Right of counsel, assigned to defend indigent person, to compensation from public, in absence of statute. 36 L.R.A.(N.S.) 377.

§ 2500. Legal residence. The question of whether an applicant for poor relief has legal residence in the township, so as to entitle him to relief, shall be determined by the overseers of the poor according to the provisions of chapter 183 of the Laws of 1907, subject to appeal to the county commissioners who may bring action in the district court to determine the legal residence of applicants for poor relief, when the question is an issue between the overseer of the poor in two or more townships and when an agreement cannot be effected. When an action is brought for the purpose herein provided, the county commissioners may direct the overseers of the poor of the township where the application for relief was first filed, to contribute to the support of such poor during the pendency of such action, subject to reimbursement by the township where it is finally determined that such applicant has legal residence, if such action is decided favorably to the township contributing to the maintenance of such poor person. [1913, ch. 121, § 5.]

"Chapter 183 of the Laws of 1907" referred to in the foregoing section now constitutes the following section 2501.

§ 2501. Residence acquired. Married women and children. Residence may be acquired in any county so as to oblige such county to relieve and support the persons acquiring such residence in case they are in need of relief, as follows:

1. The residence of a married woman follows that of her husband if he has any within the state, otherwise her own at the time of her marriage, and if she then had any residence it shall not be lost or suspended by the marriage; and in case the wife shall be removed to the place of her residence, and the husband shall need relief, he shall receive it in the place where his wife shall have her residence.

2. Legitimate children shall follow and have the residence of their father if he has any within the state, until they gain a residence of their own, but if the father has no residence they shall in like manner follow and have the residence of their mother if she has any.

3. Illegitimate children shall follow and have the residence of their mother at the time of their birth, if she then has any within the state; but neither legitimate nor illegitimate children shall gain a residence by birth in the place where they were born, unless their parent or parents had a residence therein at the time.

4. Each male person and each unmarried female over the age of twenty-one years, who shall have resided one year continuously in any county in this state, shall thereby gain a residence in such county. Each minor whose parents, and each married woman whose husband has no residence in this state, who shall have resided one year continuously in any county in this state, shall thereby gain a residence in such county. Every person who has resided one year continuously in the state, but not in any one county, shall have a settlement in the county in which he has longest resided within such year. The time during which a person has been an inmate of a hospital, poorhouse, jail, prison or other public institution and each month during which he has received relief from the poor fund of any county, shall be excluded in determining the time of residence hereunder. Every minor not emancipated and settled in his own

right shall have the same settlement as the parent with whom he has last resided.

5. Each minor who shall be bound as an apprentice to any person shall immediately upon such binding, if done in good faith, thereby gain a residence where his master has a residence.

6. Each residence when once legally acquired shall continue until it is lost or defeated by acquiring a new one in this state, or by voluntary absence from the county in which such residence had obtained for one year or more; and upon acquiring a new residence, or upon the happening of such voluntary absence, all former residence shall be defeated and lost, and the provisions of this section shall apply to cases of residence begun to be acquired or lost or defeated, as well heretofore as hereafter. [1907, ch. 183; R. C. 1905, § 1854; R. C. 1895, § 1478.]

Settlement of servants. 4 L.R.A.(N.S.) 698 and particularly 704, 708, 709, 712, 715, 720, 721, 723.

§ 2502. **Oversight and care of poor.** The overseer of the poor in each township shall have the oversight and care of all poor persons in his township so long as they remain a public charge, and shall see that they are properly relieved and taken care of in the manner required by law. He shall, in cases of necessity, promptly provide medical and surgical attention for all of the poor in his township, who are not provided for in public institutions and shall also see that such medicines as are prescribed by the physician or surgeon in attendance upon the poor are properly furnished, provided, that in counties where county physician or physicians have been appointed on an annual salary, the overseer of the poor shall call upon the nearest county physician to attend such poor person in need of medical or surgical attention. [1913, ch. 121, § 6; R. C. 1905, § 1855; R. C. 1899, § 1479.]

Liability to poor person for failure to furnish, or negligence in furnishing, relief. 39 L.R.A.(N.S.) 168.

§ 2503. **Complaint in behalf of the poor. Duty of overseers.** It shall be the duty of the overseers of the poor, on any complaint made to them in behalf of the poor, to examine into the ground of such complaint, and if in their judgment the poor have not been sufficiently provided with the common necessities of life, or have in any respect been illtreated by the person under whose charge they have been placed, to withhold any part of the compensation allowed to the person keeping them, as such overseers may deem reasonable and proper, and remove such poor and place them in the care of some other person. [R. C. 1905, § 1857; R. C. 1899, § 1481.]

§ 2504. **Overseer to make investigation.** Whenever a claim for poor relief shall be made upon an overseer of the poor for the benefit of any person or families of persons claiming to be poor and in distress, it shall be the duty of the overseer of the poor to carefully investigate the circumstances of such poor persons, so as to ascertain their legal residence, their physical condition of health, their present and previous occupation, their ability and capacity for labor, their ages and nationality, and the names and ages and ability and capacity for labor of all members of their family, the names and addresses and occupation of their parents, brothers, sisters, sons or daughters, and if such claimants for relief are found to be in distress the cause of their condition, if the same may be ascertained; the overseer of the poor shall also require and ascertain if the relatives of such claimants are able and willing to assist them. [1913, ch. 121, § 7.]

§ 2505. **Temporary aid.** Whenever an overseer shall ascertain by investigation that any poor person or family require assistance, he shall furnish to them such temporary aid as may be necessary for the relief of immediate and pressing suffering; before any further final or permanent relief in any case be given, the overseer shall consider whether distress can be relieved by other means, than by expenditure of township funds. [1913, ch. 121, § 8; R. C. 1905, § 1861; R. C. 1895, § 1485.]

§ 2506. Persons must work. If the poor persons applying are in good health, or if any members of their family are so, the overseers shall insist that those able to labor shall seek employment and he shall refuse to furnish any aid until he is satisfied that the persons claiming help are endeavoring to find work for themselves. The overseer in such cases shall make all possible effort to secure employment for the able bodied in the township where they reside and may call upon residents of the townships to aid him in finding work for such persons as are able to labor. [1913, ch. 121, § 9.]

§ 2507. Help by relatives. If the poor persons applying for township aid have relatives to assist them who are living in the township, it shall be the duty of the overseer before giving aid a second time, to call on such relatives of the poor persons and ask them to help their poor relatives either with material relief or by furnishing them with employment. If any poor person applying for relief is able to labor and refuses to work when given the opportunity then the overseer shall refuse any further aid to such person, except admission to the county poor asylum or farm, if there be one, where he shall be compelled to labor, and if there be no poor farm in the county, such person shall be considered a vagrant and on complaint made by an overseer of the poor or by any other person, the person so refusing to work shall be prosecuted and punished in the manner prescribed in cases of vagrancy. [1913, ch. 121, § 10.]

§ 2508. Schedule to county commissioners. County pays seventy-five per cent. Whenever an overseer of the poor shall give aid to any poor person or family to the amount of the value of fifteen dollars, it shall be unlawful for him to furnish any further aid to such poor person or family until he shall have presented a statement of the case to the board of county commissioners with a report or schedule of said case containing the facts and information indicated in section 2504. The board of county commissioners shall have the power and authority to refuse to appropriate county funds for the aid and maintenance of any poor person who has received aid from the overseer of the poor, if it shall appear to the board after examining the report of the said overseer, that aid is necessary. The board of county commissioners shall also have the authority to reduce or increase any allowance for aid and maintenance of the poor made by the overseer of the poor, where justice seems to require it; and the board, by a majority vote of all the members, shall also have the power to grant relief to poor persons who have been refused aid by the overseer of the poor if justice and humanity require such relief, and the township where such poor person has a legal residence shall pay a sum equal to twenty-five per cent of the amount allowed by the board of county commissioners and the county shall pay seventy-five per cent thereof. If, after the report herein required to be made to the board of county commissioners, it appears to said board that relief should be granted to such poor person, the board shall appropriate an amount equal to seventy-five per cent of the total amount granted for the aid and maintenance of such poor person by the overseer of the poor, and the amount so appropriated shall be paid by the county treasurer to the treasurer of the township. When the board of county commissioners shall reduce or increase the amount allowed for the support and maintenance of a poor person by the overseer of the poor, the said board shall appropriate a sum equal to seventy-five per cent of the amount finally allowed and the balance shall be paid by the township as hereinbefore provided, and no credit shall be given, the township by the board of county commissioners for any amounts allowed for the aid and maintenance of the poor persons under the provisions of this act in excess of twenty-five per cent of the total amount finally allowed by said board after examining the reports submitted by the overseer of the poor, as hereinafter required. [1913, ch. 121, § 11.]

"This act," to which the section refers, is Laws 1913, ch. 121, constituting in this compilation sections 2496-2500, 2502, 2504-2516, 2519-2528.

§ 2509. Aid for able bodied nonresidents unlawful. It shall be unlawful for any overseer of the poor to aid any person who is not a resident of the township where he is found otherwise than by some form of labor, unless such person shall be sick, aged, injured or crippled and unable to travel; and all overseers of the poor shall endeavor to provide some form of manual labor at which they shall set any able bodied nonresident who may apply for relief to them. It shall be unlawful for any overseer of the poor to furnish any able bodied nonresident with transportation at the cost of the township. [1913, ch. 121, § 12.]

§ 2510. Legal residence must be ascertained. It shall be unlawful to furnish any nonresident who may be sick, aged, injured or crippled, with transportation at the cost of the township until after the overseer shall, by correspondence or otherwise, have ascertained beyond a reasonable doubt the legal residence of the person applying, and any transportation furnished to such person or persons shall be in direction of their legal residence, unless it be shown beyond reasonable doubt that the person in distress has some valid claim for support or some means of support in some other place towards which he or she shall ask to be sent. [1913, ch. 121, § 13.]

§ 2511. Records must be kept. Every overseer of the poor and every person who administers relief from the public funds to the poor, sick and needy who are not inmates of any public institutions, shall keep a record in which shall be entered the full name, age, sex, color, whether married or single, and nationality of every person to whom such officer or disburser of public funds gives relief, the date of giving relief in each instance, and the amount, if the relief be in form of money, or the value and kind, if such relief be in the form of articles of use or value. In the instance that relief is given to the person for the use of others, the records shall show the number of such recipients of relief, with the age and sex of each, if the relief be restricted to a single family, and the name, age, sex, color and nationality of each person partaking of such relief who is not a member of the family of the person into whose hands relief is given by the overseer of the poor or other disburser of public funds. That said record also be made to show the reason for the giving of relief in each instance. [1913, ch. 121, § 14; R. C. 1905, § 1858; R. C. 1899, § 1482.]

§ 2512. Copies of record filed with auditor. Two copies of the record so kept shall be filed in the office of the auditor of the county wherein such relief is given by every person keeping such a record, at least once every three months; and it is hereby made unlawful for the board of county commissioners of any county to approve or allow the payments from the county treasury of the expense of relief to any person until two copies of such records, fully conforming to that described in the last preceding section, shall have been filed in the office of the auditor of the county in which such relief is given. [1913, ch. 121, § 15.]

§ 2513. Application to the board of county commissioners. If any poor person shall feel that he or she is entitled to the benefit of the laws for the relief of the poor, and the overseer of the poor of the township in which he or she resides shall refuse to give such person the benefit thereof, upon application of such person the board of county commissioners, or a majority thereof, may, if it shall think proper, direct the overseer to relieve him or her, on his or her application therefor. [1913, ch. 121, § 16; R. C. 1905, § 1859; R. C. 1899, § 1483.]

§ 2514. When residence is uncertain. If any one within the description of the poor persons specified in this act shall be found in any township and the overseer of the poor of such township shall be unable to ascertain and establish the place of legal residence of such person, he shall proceed to provide for such poor person in the same manner as other persons are hereby directed to be provided for. [1913, ch. 121, § 17; R. C. 1905, § 1860; R. C. 1899, § 1484.]

§ 2515. Poor person may be conveyed to place of residence. Upon com-

plaint of any overseer of the poor, any justice of the peace may, by his warrant directed to and to be executed by any constable or by any other person therein designated, cause any poor person found in the township of such overseer likely to become a public charge, and having no legal residence therein, to be sent and conveyed at the expense of the county, to the place where such person belongs, if the same can be conveniently done; but if he or she cannot be so removed, such persons shall be relieved by such overseer whenever such relief is needed. [1913, ch. 121, § 18; R. C. 1905, § 1862; R. C. 1899, § 1486.]

§ 2516. Appeal to the district court. If any overseer of the poor of any township in any county in North Dakota, to which any pauper shall have been removed, as above provided, shall feel himself aggrieved by such order of removal, he may at any time within twenty days after such removal shall be known to him, appeal from the decision of the justice of the peace ordering such removal, to the district court of the county from which the removal was ordered to be made; such appeal to be taken, tried and determined and costs adjudged as in other cases of appeals from judgment of the justice of the peace, and the order of removal may be vacated or affirmed according to law and the right of the cause. [1913, ch. 121, § 19; R. C. 1905, § 1863; R. C. 1899, § 1487.]

§ 2517. Appeal heard, how. Such appeal shall be heard at the term of court next after the same is filed therein, if in the opinion of the court reasonable notice of the appeal has been given to the opposite party; but if not thus given, the cause shall stand continued until the next term of the court. [R. C. 1905, § 1864; R. C. 1895, § 1488.]

§ 2518. When order of removal defective. If the order of removal is defective, the court shall permit the same to be amended without costs, and after such amendment is made the appeal shall be heard and determined as in other cases. [R. C. 1905, § 1865; R. C. 1895, § 1489.]

§ 2519. Overseer must receive person having legal residence. If any person be removed by virtue of the provisions of this act from any county, township or place to any other place within the state, by warrant or order under the hand and seal of any justice of the peace, as hereinbefore provided, the overseer of the poor of the township or place to which said person shall be removed is required to receive such person if he have a legal residence in his township. [1913, ch. 121, § 20; R. C. 1905, § 1866; R. C. 1899, § 1490.]

As to what constitutes "this act" to which the section refers, see note to section 2508.

§ 2520. In case of death, resignation or removal of trustee [overseer]. If any overseer shall remove out of his proper township, or be removed from his office or resign, or in any other way vacate his office, he shall immediately deliver all books, papers and other things concerning his office to his successor, upon his appointment; and in the event of the death of any overseer, his executors or administrators shall, within forty days after his death, deliver over all things belonging to his office, to his successor in office. [1913, ch. 121, § 21.]

§ 2521. Settlement. The overseer of the poor shall make settlement with the board of county commissioners, quarterly, at the regular meetings or oftener as said board of county commissioners shall direct, of all poor relief of the past quarter, and file all vouchers therefor as required by this or any other law; and the board of county commissioners are hereby directed to settle with the overseer of the poor in the several townships of their respective townships at least once every quarter and oftener if they shall deem the same necessary, and the said board shall pay the township treasurer, quarterly, seventy-five per cent of all money advanced for the aid and maintenance of the poor in such township for the preceding quarter. [1913, ch. 121, § 22; R. C. 1905, § 1867; R. C. 1895, § 1491.]

§ 2522. Providing for care of nonresidents. It shall be the duty of the overseer of the poor on complaint made to him that any person not an in-

habitant of his township is lying sick therein or in distress, without friends or money so that he or she is likely to suffer, to examine into the case of said person, and grant such temporary relief as may be required. And if any person shall die in any township who shall not leave money or other means necessary to defray his or her funeral expenses, it shall be the duty of the overseer of the poor of such township to provide some person to provide for and superintend the burial of such deceased person, the necessary and reasonable expenses whereof shall be paid by the township, and upon the order of such overseer, provided that the expenses of such funeral to be borne by the township shall not exceed twenty-five dollars. [1913, ch. 121, § 23; R. C. 1905, § 1870; R. C. 1899, § 1494.]

§ 2523. Compensation of overseers. Overseers of the poor shall receive two dollars per day each for every day during which they shall be necessarily employed in the discharge of their duties as such overseers, to be allowed by the supervisors of the township and paid out of the township treasury, and each overseer of the poor shall have power and authority to grant temporary relief, and no special meetings shall be called by said overseer of the poor for the consideration of poor relief, but the question of relief shall be acted upon at the regular quarterly meetings of the board of township supervisors. [1913, ch. 121, § 24; R. C. 1905, § 1868; R. C. 1899, § 1492.]

§ 2524. Overseers shall submit accounts, when. The overseers of the poor shall annually at the first session of the board of county commissioners in each year, submit their annual report of proceedings for the year past which report shall be presented to the county auditor at least one day before the session of such board. [1913, ch. 121, § 25; R. C. 1905, § 1869; R. C. 1899, § 1493.]

§ 2525. Blanks. All blanks for reports, schedules and information required under this act shall be prepared and printed by the county and the expense thereof shall be paid out of funds of the county. The county auditor shall distribute said blanks among the overseers of the poor in each township. The board of control of state institutions shall prepare all the forms for blanks to be used by the overseers of the poor under this act, and such forms shall be sent to the county auditors promptly after the passage and approval of this act, who shall thereupon print and distribute the said blanks hereinbefore required. [1913, ch. 121, § 26.]

As to what constitutes "this act" to which the section refers, see note to section 2508.

§ 2526. County commissioners. Overseers of the poor. In counties where township organization has not been effected, the county commissioners shall be ex-officio overseers of the poor and shall perform all duties with reference to the poor within their jurisdiction that are by the provisions of this act imposed upon township supervisors and the provisions of this act relative to legal residence, method and conditions of granting relief to the poor, filing of records, and salaries of the overseers of the poor, shall apply and the expense of such relief shall be paid by the county. [1913, ch. 121, § 27.]

As to what constitutes "this act," see note to section 2508.

§ 2527. Application of certain provisions herein. The provisions of this act relative to the duties of township supervisors as ex-officio overseers of the poor shall apply to the city council or city commissioners, as the case may be, in cities, and to the village trustees in villages of this state; and the method of making application for relief, the percentage paid by such city or village and the county, the report or schedule required to be submitted to the county commissioners shall be the same as is provided herein in the case of the overseers of the poor in the townships of this state; and the seventy-five per cent of such relief paid by the county shall be paid to the city or village treasurer, as the case may be; and the provisions of this act relative to legal residence, appeals, settlement with the county commissioners, records to be kept, and investigations to be made, shall apply in the case of relief or applications for

relief to the city council or city commissioners in cities, and to village trustees in villages in this state. [1913, ch. 121, § 28.]

As to what constitutes "this act," see note to section 2508.

§ 2528. Independent poor relief districts in cities. The council or the city commissioners, as the case may be, of any city of five thousand or more inhabitants, may, or upon being petitioned by not less than ten per cent of the legal voters residing therein, shall at the next regular election held in such city, submit to the qualified electors thereof, the question of whether such city shall become an independent poor relief district, and if a majority of the electors voting thereon at such regular election are in favor of the proposition the city shall become an independent poor relief district. [1913, ch. 121, § 29.]

ARTICLE 2.—ASYLUM AND POOR FARM.

§ 2529. Election. Management. It shall be lawful for the board of county commissioners in the several counties in the state after having submitted the question to the legal voters of the county at any special, county or general election whenever the commissioners may deem it advisable, and if at such election a majority of the legal voters shall vote in favor of the proposition, to purchase a tract of land in the name of the county and build, establish and organize thereon an asylum for the poor and to employ some humane and responsible person, a resident of the county, to take charge of the same upon such terms and under such restrictions as the board shall consider most advantageous for the interest of the county, who shall be called superintendent of the county asylum; and it shall be lawful for the county commissioners of two or more counties, after having been so authorized, by a majority of the legal voters of their respective counties, in the manner prescribed in this section, jointly to purchase lands and erect asylums and to continue such joint ownership during their pleasure; and to do such other things necessary and proper for the relief of the poor within such counties as might be done by a county acting alone. [R. C. 1905, § 1871; 1899, ch. 6; R. C. 1899, § 1495.]

§ 2530. Duty of superintendent of asylum. The superintendent shall receive into his care and custody all persons who may become a county charge as paupers, and take such measures for the employment and support of such paupers, and perform such other duties as the board of county commissioners shall from time to time order and direct, consistent with the laws of this state; provided, that the superintendent shall not admit a patient or pauper without first obtaining an order from the commissioner of the district where such patient or pauper resides or belongs, except in cases where immediate attention is required, the superintendent may admit such paupers or patients but shall immediately thereafter notify such commissioner. [1907, ch. 65; R. C. 1905, § 1872; R. C. 1899, § 1496.]

§ 2531. Shall appoint a physician. The board of county commissioners shall annually appoint a well qualified physician to attend the county asylum, and allow him a reasonable compensation for his services. [R. C. 1905, § 1873; R. C. 1899, § 1497.]

§ 2532. May bind out poor children. The overseers of the poor shall bind out such poor children as fall under their care and charge from time to time; and the overseer shall see that the children so bound out are properly treated by the persons to whom they are bound, and take legal means of redress in case of maltreatment. [R. C. 1905, § 1874; R. C. 1899, § 1498.]

§ 2533. Assessment of tax for purchase of poor farm. To raise the sum necessary for the purchase of land and the erection and furnishing of buildings for such asylum, the board of county commissioners in the several counties shall have power to assess a tax on property liable to taxation for raising a county revenue, not exceeding five hundred dollars unless the amount of taxes to be assessed shall be submitted to a vote of the people at the special election held pursuant to section 2529, and a majority of all the votes cast at

such election is in favor of such assessment. [R. C. 1905, § 1875; R. C. 1895, § 1499.]

§ 2534. All poor shall go to the asylum, when. As soon as the necessary provisions are made by the erection of suitable buildings, the board shall order and direct that all persons who have become permanent charges as paupers in the county be removed to such asylum, and shall take such measures for the employment and support of such paupers as they may deem advisable, and thereafter the overseers of the poor shall from time to time, as persons may become permanent charges as paupers, have such persons removed to such asylum. [R. C. 1905, § 1876; R. C. 1899, § 1500.]

§ 2535. Superintendent to give bond. The superintendent shall execute a bond to the state in the sum of five hundred dollars, with two or more sureties to be approved by the board, conditioned for the faithful discharge of his duties, and he shall make to such board at the first and third session in each year a detailed report in writing of the time and manner of the admission of each pauper, his health and fitness to labor, the results of his industry, and the expenses incurred; provided, that such statement shall show the total number of paupers and the commissioner district from which such paupers were taken and the total number of patients who pay for their care and the amount so paid. The members of such board shall in person annually inspect such asylum with regard to its fitness in all respects for the objects of its establishment. [1907, ch. 65; R. C. 1905, § 1877; R. C. 1899, § 1501.]

§ 2536. Children shall be educated, when. Whenever it shall be necessary and practicable, poor children of the asylum who cannot be bound out or whom it may not be expedient to bind out as apprentices, shall be educated thereat. [R. C. 1905, § 1878; R. C. 1899, § 1502.]

§ 2537. Superintendence of the education of children. The superintendent shall superintend and direct the education of such poor children and send them to any common school within the county, during the continuance of its session. [R. C. 1905, § 1879; R. C. 1895, § 1503.]

§ 2538. Discontinuance of asylum. Such asylum or poor farm may be discontinued by such board, and the property real and personal sold, leased or otherwise disposed of or applied in such manner as may be best for the interests of the county. [R. C. 1905, § 1880; R. C. 1895, § 1504.]

§ 2539. Board of county commissioners may levy poor tax. The board of county commissioners may, if it deems it expedient, annually, at its session at which the county tax is ordered to be levied and assessed, levy and assess a tax for the support of the poor of its county. Such tax shall be collected by the county treasurer. [R. C. 1905, § 1881; R. C. 1899, § 1505.]

§ 2540. Board of asylum and poor farm commissioners. Duties. Report. The board of county commissioners shall annually appoint a board of visitors consisting of three residents of the county, one of whom shall be a minister of the gospel, whose duty it shall be to visit at least quarterly each year the asylum in such county and who shall report to the commissioners at least quarterly the condition of such asylum and poor farm and the treatment, management and the condition of the inmates, and make such recommendations in connection with the government of such asylum and the care, treatment and management of the same as they shall deem beneficial to the interests of the inmates thereof; which report shall be considered by the board of county commissioners and shall be published in the official newspapers of the county within two weeks after the regular meetings of the board. [1907, ch. 64; R. C. 1905, § 1882; R. C. 1899, § 1507.]

§ 2541. Compensation. Such visitors shall receive such compensation as the board shall adjudge reasonable. [R. C. 1905, § 1883; R. C. 1899, § 1507.]

§ 2542. Sending pauper out of county is unlawful. No person shall either directly or indirectly send or be instrumental in sending or causing to be sent out of the county where such person properly belongs, any pauper or

person who is or is likely to become an object of public charity, into any other county of this state, except in the manner provided for in this article. [R. C. 1905, § 1884; R. C. 1899, § 1508.]

§ 2543. Penalty for violation of last section. Any person who shall violate the provisions of the preceding section is guilty of a misdemeanor, and shall be liable to a fine of not exceeding one hundred dollars, or to imprisonment in the county jail not exceeding one year or both. [R. C. 1905, § 1885; R. C. 1899, § 1509.]

§ 2544. Penalty for bringing pauper into the county. Every person who shall bring into and leave any pauper in any county wherein such pauper has not a lawful residence, knowing such person to be a pauper, shall forfeit and pay the sum of one hundred dollars for each offense, to be sued for and recovered by and for the use of such county, by an action in the name of the county, and no property shall be exempt from seizure and sale in such cases; and it shall be the duty of the board of county commissioners to institute suits for all violations of this section; and any such sum when collected shall be paid into the county treasury for the use of the county. [R. C. 1905, § 1886; R. C. 1899, § 1510.]

ARTICLE 3.—FOR RELIEF OF NEEDY SETTLERS.

§ 2545. Appropriation for. There is hereby appropriated annually out of any funds in the state treasury not otherwise appropriated, the sum of seven thousand dollars, or so much thereof as may be necessary, to be expended by the commissioner of agriculture and labor by and with the advice and consent of the governor, for the relief of the needy settlers in such counties, as by reason of their having reached their constitutional limit of indebtedness, may be unable to provide the necessities of life needed by destitute residents of such county. [R. C. 1905, § 1887; 1891, ch. 24, § 1; R. C. 1899, § 1511.]

§ 2546. Accounts, how audited. The state auditor is authorized and directed to audit and allow the accounts of such commissioner of agriculture and labor when approved by the governor, secretary of state and attorney-general, and he shall issue his warrants on the state treasurer for the amount of such accounts. [R. C. 1905, § 1888; 1891, ch. 24, § 2; R. C. 1895, § 1512.]

ARTICLE 4.—CARE OF THE INSANE.

§ 2547. Appointment of commissioners of insanity. In each organized county of this state there shall be a board of commissioners consisting of three persons, to be styled "commissioners of insanity," two of whom shall constitute a quorum. The county judge shall be a member of such board and its chairman. The other two members shall be appointed by the board of county commissioners, one of whom shall be a reputable practicing physician, and the other a reputable practicing attorney; and such appointment shall be made from persons residing as near as may be to the county seat. Such commissioners shall be appointed for the term of two years and until their successors are appointed and qualified. The appointment of successors can be made at any time within three months prior to the expiration of the term of the incumbents. In case of the temporary absence of such commissioners or their inability to act, the county judge shall call to his aid a reputable practicing physician or attorney, who, after qualifying as in other cases, may act in the same capacity. In case of the temporary absence from the county of the county judge or his inability to act, the state's attorney shall act in his place and stead, as chairman of said board, and shall have full authority to issue subpoenas and issue commitments, and do all necessary acts as said chairman. He shall take the same oath as that required of the commissioners in section 2548. The records in such cases must show the fact of all absences. [1909, ch. 143; R. C. 1905, § 1889; 1879, ch. 23, § 16; R. C. 1895, § 1513.]

§ 2548. Oath of commissioners. Organization and meetings. Before entering upon the duties of their office the persons so appointed shall take and subscribe an oath to support the constitution of the United States and the constitution of this state, and faithfully to discharge their duties as such commissioners according to law, which oath shall be filed with the county judge, who shall enter a memorandum thereof on the records. On organizing they shall choose one of their number as clerk of such board. They shall hold their meetings at the office of the county judge unless for good reasons they shall fix some other place. If they deem it necessary or advisable, they may hold sessions at such regular times as they may fix. They shall also meet on notice from the chairman of the board. [R. C. 1905, § 1890; 1879, ch. 23, § 17; R. C. 1895, § 1514.]

§ 2549. Duties of chairman. Books to be kept. Notices. The chairman of the board shall sign and issue all notices, appointments, warrants, subpoenas and other process required to be given or issued by the commissioners, affixing thereto his official seal as county judge. He shall file and carefully preserve in his office all papers connected with any inquest by the commissioners, and properly belonging to his office, with notices, reports and other communications. He shall keep separate books in which to record the proceedings of the board, and his entries shall be sufficiently full to show, with the papers filed, a complete record of the findings, orders and transactions. The notices, reports and communications herein required to be given or made, may be sent by mail unless otherwise provided, and the fact and date of such sending and their reception must be noted on the proper record. [R. C. 1905, § 1891; 1879, ch. 23, § 18; R. C. 1899, § 1515.]

§ 2550. Duties and powers of commissioners. Such commissioners shall have cognizance of all applications for admission to the hospital or for the safe keeping otherwise of insane persons within their county, except in cases otherwise specially provided for. They shall have power to issue subpoenas and compel obedience thereto, to administer oaths, and do any act necessary and proper in the premises. [R. C. 1905, § 1892; 1879, ch. 23, § 19; R. C. 1899, § 1516.]

§ 2551. Applications for admission to hospital. Applications for admission to the hospital must be made in writing in the nature of an information verified by affidavit. Such information must allege that the person in whose behalf the application is made is believed by the informant to be insane and a fit subject for custody and treatment in the hospital for the insane; that such person is found in the county and has a legal residence therein, if such is known to be the fact; and if such residence is not in the county, where it is, if known, or where it is believed to be, if the informant is advised on the subject. [R. C. 1905, § 1893; 1879, ch. 23, § 20; R. C. 1899, § 1517.]

§ 2552. Investigation by commissioners as to the alleged insanity. On the filing of an information as above provided, the commissioners shall at once investigate the grounds of such information. For this purpose they may require that the person for whom such admission is sought be brought before them, and that the examination be had in his presence, and they may issue their warrant therefor and provide for the suitable custody of such person until their investigation is concluded. Such warrant may be executed by the sheriff or any constable of the county, or if they shall be of opinion from such preliminary inquiries as they may make, and in making which they shall take the testimony of the informant if they deem it necessary or desirable, and of other witnesses if offered, that such course would probably be injurious to such person or attended with no advantages, they may dispense with such presence. In their examination they shall hear testimony for and against such application, if offered. Any citizen of the county or any relative of the person alleged to be insane, may appear and resist the application, and the parties may appear by counsel if they elect. The commissioners.

whether they decide to dispense with the presence before them of such person or not, shall appoint some regular practicing physician of the county to visit such person and make a personal examination touching the truth of the allegations in the information, and touching the actual condition of such person, and forthwith report to them thereon. Such physician may or may not be of their own number, and the physician so appointed and acting shall certify under his hand that he has, in pursuance of his appointment, made a careful personal examination as required, and that on such examination he finds the person in question insane, if such is the fact, and if otherwise, not insane; and in connection with his examination such physician shall endeavor to obtain from the relatives of the person in question, or from others who know the facts, correct answers, as far as may be, to the interrogatories hereinafter required to be propounded in such cases, which interrogatories and answers shall be attached to his certificate. [R. C. 1905, § 1894; 1879, ch. 23, § 21; R. C. 1899, § 1518.]

§ 2553. How patient shall be sent to hospital. On the return of the physician's certificate, the commissioners shall as soon as practicable, conclude their investigations, and having done so they shall find whether the person alleged to be insane is insane; whether, if insane, a fit subject for treatment and custody in the hospital; whether the legal residence of such person is in their county, and if not in their county, where it is, if ascertained. If they find such person is not insane, they shall order his discharge, if in custody. If they find such person insane, and a fit subject for treatment and custody in the hospital, they shall forthwith issue their warrant and a duplicate thereof, stating such finding, with the residence of the person, if ascertained; and if not ascertained, their information, if any, in regard thereto, authorizing the superintendent of the hospital to receive and keep such person as a patient therein. Such warrant and duplicate with the finding and certificate of the physician shall be delivered to the sheriff of the county, who shall execute the same by conveying such person to the hospital and delivering him with such duplicate and physician's certificate and finding to the superintendent thereof. The superintendent over his official signature shall acknowledge such delivery on the original warrant, which the sheriff shall return to the county judge with his fees and expenses indorsed thereon. If neither the sheriff nor his deputy is at hand, or if both are otherwise engaged, the commissioners may appoint some other suitable person to execute the warrant in his stead, who shall take and subscribe an oath faithfully to discharge his duty, and shall be entitled to the same fees as the sheriff. The sheriff or any other person so appointed may take to his aid such assistance as he may need to execute such warrant; but no female shall thus be taken to the hospital without the attendance of some other female, or some relative of such person. The superintendent in his acknowledgment of delivery must state whether there was any such person in attendance, and give the name, if any. If any relative or intimate friend of the patient, who is a suitable person, shall so request, he shall have the privilege of taking and executing such warrant in preference to the sheriff or any other person, and without taking such oath, and for so doing he shall be entitled to his necessary expenses, but no fees. [R. C. 1905, § 1895; 1879, ch. 23, § 22; R. C. 1899, § 1519.]

"Legal settlement" acquired by residence in county for ninety days. *Bigelow v. Minnehaha County*, 17 S. D. 331, 96 N. W. 698.

§ 2554. Disposition of insane person when accommodations of hospital are insufficient. If in the case of any persons found to be insane and fit subjects for custody and treatment in the hospital as above provided, it shall be shown to the satisfaction of the commissioners that they cannot at once be admitted therein, and they cannot with safety be allowed to go at liberty, the commissioners shall require that such patients shall be suitably

provided for otherwise until such admission can be had, or until the occasion therefor no longer exists. Such patients may be cared for either as public or private patients. Those shall be treated as private patients whose relatives or friends will obligate themselves to take care of and provide for them without public charge. In the case of any one treated as a private patient, the commissioners shall appoint some suitable person a special custodian, who shall have authority and whose duty it shall be in all suitable ways to restrain, protect and care for such patient in such manner as best to secure his safety and comfort, and in such manner as best to protect the persons and property of others. In the case of public patients the commissioners shall require that they be in like manner restrained, protected and cared for by the overseers of the poor, at the expense of the county, and they may accordingly issue their warrants to such overseers of the poor, who shall forthwith comply with the same. If there is no poor house for the reception of such patients, or if no more suitable place can be found, they may be confined in the county jail in the charge of the sheriff, or such commissioners, in their discretion, may require that such persons be taken to the asylum of any state that may be designated by the governor, who is hereby authorized and empowered to make the best terms he can with the authorities of any asylum in any state for the admission of such patients. [R. C. 1905, § 1896; 1879, ch. 23, § 25; R. C. 1899, § 1520.]

§ 2555. Insane persons cared for by county. On application to the commissioners, on behalf of persons alleged to be insane and whose admission to the hospital is not sought, made substantially in the manner above prescribed and asking that provision be made for their care as insane, either public or private, within the county, and on proof of their insanity and need of care as above provided, the commissioners may provide for their care, protection and restraint as in other cases. [R. C. 1905, § 1897; 1879, ch. 23, § 26; R. C. 1899, § 1521.]

§ 2556. Commissioners to provide for insane persons. On information laid before the commissioners of any county that a certain insane person in the county is suffering for want of proper care, they shall forthwith inquire into the matter, and if they find the information well founded they shall make all needful provision for the care of such person as provided in other cases. [R. C. 1905, § 1898; 1879, ch. 23, § 27; R. C. 1899, § 1522.]

§ 2557. Insane not to be restrained of liberty except by proper authority. No person supposed to be insane shall be restrained of his liberty by any other person otherwise than in pursuance of authority obtained as herein required, excepting to such extent and for such brief period as may be necessary for the safety of persons and property until such authority can be obtained. [R. C. 1905, § 1899; 1879, ch. 23, § 28; R. C. 1899, § 1523.]

§ 2558. Penalty for cruelty to insane. Any person having the care of an insane person and restraining such person, either with or without authority, who shall treat such person with wanton severity, harshness or cruelty, or shall in any way abuse such person, shall be guilty of a misdemeanor, besides being liable to an action for damages. [R. C. 1905, § 1900; 1879, ch. 23, § 29; R. C. 1899, § 1524.]

§ 2559. Transfer of insane under county care. Insane persons who shall have been under care either as public or private patients, outside of the hospital, by authority of the commissioners of any county, may on application be transferred to the hospital whenever they can be admitted thereto, on the warrant of such commissioners. Such admission may be had without another inquest at any time within six months after the inquest already had, unless the commissioners shall deem a further inquest advisable. [R. C. 1905, § 1901; 1879, ch. 23, § 30; R. C. 1899, § 1525.]

§ 2560. Application for admission to hospital. In each case of application for admission to the hospital, full and correct answers must be given to

the following interrogatories, so far as they can be obtained by examination of the patient and other witnesses, and shall accompany the physician's certificate; and if on further examination, after the answers are stated, any of them are found to be erroneous, the commissioners shall cause them to be corrected. All questions under the heading "property statement" must be fully answered and a statement thereof and the certificate accompany the patient before the patient is entitled to admission to the hospital. A failure on the part of the county commissioners of insanity to fully inquire and report upon the property of the patients, their estate or husbands, parents, guardians or relatives, shall be a sufficient excuse for refusal to receive such patients at said hospital:

1. What is the patient's name? Married or single? If any children, how many? Age of youngest child, and age of patient.
2. Where was the patient born?
3. Where is his place of residence?
4. What has been the patient's occupation?
5. Is this the first attack? If not, when did others occur and what was their duration?
6. When were the first symptoms of this attack manifested, and in what way?
7. Does the disease appear to be increasing, decreasing or stationary?
8. Is the disease variable, and are there rational intervals? If so, do they occur at regular periods?
9. On what subject or in what way is derangement now manifested? (State fully.)
10. Has the patient shown any disposition to injure others?
11. Has suicide ever been attempted? If so, in what way? Is the propensity now active?
12. Is there a disposition to filthy habits, destruction of clothing, breaking glass, etc.?
13. What relatives, including grandparents and cousins, have been insane?
14. Did the patient manifest any peculiarities of temper, habits, disposition or pursuits, before becoming insane? Any predominant passion, religious impression, etc.?
15. Has the patient been subject to any bodily disease, epilepsy, suppressed eruptions, discharge of sores, or ever had an injury of the head?
16. Was the patient ever addicted to intemperance in any form?
17. Has restraint or confinement been employed? If so, what kind and how long?
18. What is supposed to be the cause of the disease?
19. What treatment has been pursued for the relief of the patient? (Mention particulars and the effect.)
20. State any other matters supposed to have any bearing on the case.

PROPERTY STATEMENT.

..... of, being first duly sworn, makes answer to the following questions as herein set forth:

1. What is your name, address and relation to the above insane person?
2. What is the description and value of the real estate of said insane person?
3. What, if any, mortgages are out against it? Give date, amount, rate of interest, and when due and to whom given.
4. What personal property, insurance or money has said insane person? Give full description, stating value of each.
5. What, if any, mortgages are out against said personal property? Give date, amount, when due, and rate of interest.
6. What real estate has the parents of said insane person, if..... is under twenty-one years of age?

7. Is same incumbered? If so, give date, amount, and when such incumbrance is due.

8. What personal property, money, grains, etc., have the parents of said insane person?

9. What is the rental value of said real estate of said insane person?

10. What is the salable value thereof?

11. What is the value of the personal property of said insane person?

12. What is the value of the real estate of the parents of said insane person?

13. What is the value of the personal property of the parents of said insane person?

14. If said insane person is married, give description of his wife's or her husband's real estate. Give value of same.

15. Is it mortgaged? If so, for how much, to whom, when, and when due.

16. Give description and value of personal property of the husband or wife of said insane person.

17. Who is the guardian of said insane person? What, if any, property does he hold belonging to him or her? Give its value.

(Signed).....

I hereby certify that the foregoing was by me duly sworn and that he gave the foregoing answers, and after reading (or having read) the same, made oath that the said answers were true, to the best of his knowledge and belief, and subscribed his name thereto this day of, A. D. 19...

.....
County Judge and Chairman of Commissioners of Insanity in and for.....
..... County, North Dakota.

CERTIFICATE OF VALUE OF PROPERTY.

In the matter of the insanity of

This is to certify that we and
and, the commissioners of insanity of.....
county, have made a thorough examination and faithful investigation as to the property holdings of the above insane person parents or guardian, and attach hereto a duplicate copy of our testimony and we find the property of worth dollars.

By order of the insanity board of county, North Dakota.

Dated this day of, 19...

.....
County Judge.

.....
Member.

.....
Member.

[R. C. 1905, § 1902; 1879, ch. 23, § 31; R. C. 1899, § 1526; 1903, ch. 106.]

§ 2561. **Insane nonresident, disposition of.** Whenever any person shall be found by the commissioners of insanity to be insane, and a fit subject for custody and treatment in the hospital for the insane, and such person has no legal residence within this state, such person shall be sent, at the expense of the state, to the place where such person belongs in every case where such place of residence can be ascertained. And it shall be the duty of the commissioners of insanity at the inquest, to ascertain the place where such person belongs when the same can be conveniently done. The sheriff of the county shall convey such person to the place where he belongs, and shall charge the

same fees for such services as he is now allowed by law for transporting patients to the hospital for the insane, which shall be paid out of the state treasury. [R. C. 1905, § 1903; 1903, ch. 107.]

§ 2562. Proceedings for release of persons alleged not to be insane. On a statement in writing verified by affidavit, addressed to the county judge of the county in which the hospital is situated, or of the county in which any person confined in the hospital has his residence, alleging that such person is not insane and is unjustly deprived of his liberty, such judge shall appoint a commission of not more than three persons in his discretion, to inquire into the merits of the case, one of whom shall be a physician and if two or more are appointed, one shall be an attorney. Without first summoning the person to meet them, they shall proceed to the hospital and have a personal interview with such person so managed as to prevent him, if possible, from suspecting its object; and they shall make any inquiries and examinations they may deem necessary and proper of the officers and records of the hospital, touching the merits of the case. If they shall deem it prudent and advisable they may disclose to the person the object of their visit, and in the presence of such person make further investigation of the matter. They shall forthwith report to such county judge the result of their examination and inquiries. Such report shall be accompanied by a statement of the facts and signed by the superintendent. After the receipt of such report, and before finding such patient sane or ordering his discharge, the county judge shall notify by registered letter, the nearest relative or friend of such patient, together with all persons appearing as witnesses at the hearing at which such patient was found to be insane, to appear before him not less than five (5) days after the mailing of such notice, to give testimony respecting the character of insanity of the patient, at and prior to the time such patient was committed, particularly with respect to matters affecting the question of whether the symptoms and actions of such patient at such time disclosed a character of insanity in which a recurrence would be expected, and which might render the discharge of such patient dangerous to his own or the public safety. If on such report and statement and hearing of the testimony, if any is offered, the county judge shall find the person sane, he shall order his discharge. If he shall find him insane he shall authorize his continued detention. The finding and order of such judge with the report and other papers, shall be filed in his office, and entered on his records and he shall forthwith notify the superintendent of his findings and order and the superintendent shall carry out such order. The commissioners appointed as provided in this section shall be entitled to their necessary expenses and a reasonable compensation to be allowed by such judge and paid by the state out of any funds not otherwise appropriated; provided, that the applicant shall pay the same if the judge shall find that such application was made without probable grounds, and shall so order. [1913, ch. 129; R. C. 1905, § 1904; 1879, ch. 23, § 33; R. C. 1899, §.1527.]

Provisions for proceedings in absence of person whose mental condition is involved, is not for that reason in violation of constitutional guaranty of due process of law. *McMahon v. Mead*, 30 S. D. 515, 139 N. W. 122.

§ 2563. Same. Not to be repeated oftener than once in six months. The commission so provided for shall not be appointed oftener than once in six months for the same person, nor shall such commission be appointed for any patient within six months of the time of his admission. [R. C. 1905, § 1905; 1879, ch. 23, § 34; R. C. 1899, § 1528.]

§ 2564. Insane persons entitled to habeas corpus. All persons confined as insane shall be entitled to the benefit of the writ of habeas corpus, and the question of insanity shall be decided at the hearing, and if the judge or court shall decide that the person is insane, such decision shall be no bar to the issuing of the writ a second time, whenever it shall be alleged that

such person shall have been restored to reason. [R. C. 1905, § 1906; 1879, ch. 23, § 35; R. C. 1899, § 1529.]

Order of circuit court on writ of habeas corpus is *res judicata* on subsequent application, except that where release of lunatic from asylum is sought, court may consider question of present sanity. *McMahon v. Mead*, 30 S. D. 515, 139 N. W. 122.

§ 2565. **Salaries and fees, by whom paid.** The commissioners of insanity shall each be allowed the sum of two dollars per day for the time actually employed in the duties of their office. The county judge, in addition to what he is entitled to as commissioner of insanity, shall be allowed one-half as much more for making the required record entries in all cases of inquest, and of meetings of the board for any purpose, and for the filing of any papers required to be filed. He shall also be allowed twenty-five cents for such notice or process given or issued under seal as herein required. The examining physician shall be entitled to five dollars for each case examined, and mileage at the rate of ten cents per mile each way. The sheriff shall be allowed for services, other than conveying a patient to the hospital and returning therefrom, the same fees as for like services in other cases. Witnesses shall be entitled to the same fees as witnesses in the district court. The compensation and expenses provided for above shall be allowed and paid out of the county treasury in the usual manner, except the fees and expenses of the sheriff for conveying the patient to the hospital for the insane, or to the authorities of another state, which shall be paid out of the state treasury in the usual manner. [R. C. 1905, § 1907; 1879, ch. 23, § 41; 1885, ch. 58, § 1; R. C. 1899, § 1530; 1903, ch. 58.]

§ 2566. **Penalty for neglect of duty.** Any officer required to perform any act and any person accepting an appointment under the provisions of this article who willfully refuses or neglects to perform his duty as herein prescribed shall be guilty of a misdemeanor besides being liable to an action for damages. [R. C. 1905, § 1908; 1879, ch. 23, § 42; R. C. 1899, § 1531.]

§ 2567. **Terms "insane" and "idiot" defined.** The term "insane" as used in this article includes any species of insanity or mental derangement. The term "idiot" is restricted to persons supposed to be naturally without mind. No idiot shall be admitted into the hospital for the insane. [R. C. 1905, § 1909; 1879, ch. 23, § 45; R. C. 1899, § 1532.]

Who deemed to be insane persons. 29 Am. Dec. 38.

"Insane delusions." 63 Am. St. Rep. 81.

"Kleptomania." 89 Am. St. Rep. 386.

ARTICLE 5.—COUNTIES LIABLE FOR EXPENSES OF INSANE.

See also sections 1761, 1762.

§ 2568. **Each county pays charges for its own patients.** The expense for the care, board and treatment of all patients in the state hospital for the insane shall be a charge upon each county sending such patient or patients to the state hospital for the insane, as hereinafter provided for. [1907, ch. 137, § 4.]

§ 2569. **Statements sent counties.** It shall be the duty of the superintendent to furnish to the county auditor of each county having patients in the state hospital for the insane a quarterly statement giving the number of patients and the names of each patient belonging to such county, and the cost of maintenance of same. [1907, ch. 137, § 5.]

§ 2570. **Legal residence determined.** When the superintendent of the state hospital for the insane has been duly notified that a patient sent to the state hospital for the insane from one county has a legal residence in another county, he shall thereafter hold and keep such patient at the expense of and as from the latter county, and such holding shall apply to the expense already incurred in behalf of such patient and remaining unadjusted. [1907, ch. 137, § 6.]

§ 2571. Adjustment between counties. Expense incurred by one county on account of insane persons whose legal residence is in another county shall be refunded by the county of such residence and shall be presented to the board of commissioners of the county sought to be charged, allowed and paid the same as other claims. [1907, ch. 137, § 7.]

§ 2572. Levy of tax to pay charges. The superintendent shall certify to the state auditor on the first day of January, April, July and October of each year the amount not previously certified to by him that is due the said hospital for the insane from the several counties having patients chargeable thereto, and said state auditor shall pass the same to the credit of the state hospital for the insane. The state auditor shall thereupon notify the county auditor of each county so owing, of the amount thereof, and charge the same to said county, and the board of county commissioners shall, at the time of levying the county taxes as provided in section 2148, include in the itemized statement of county expenses upon which the county taxes are required to be based by the provisions of the said section, an estimate of the total amount which will be chargeable to the county during the ensuing year for the care, board and treatment of patients for such county at the state hospital for the insane. If any county fails to levy such taxes as herein provided sufficient to pay the amount estimated to become chargeable to such county during the ensuing year at the time of levying other county taxes, it shall be the duty of the attorney-general to bring action in the name of the state against such county, to enforce the making of the estimates and the levying of taxes as provided herein. [1913, ch. 119, § 1; 1907, ch. 137, § 8.]

§ 2573. Penalty for failure to pay. Upon the failure of any county to pay into the state treasury the amount chargeable to such county for the care, board and treatment of patients at the state hospital for the insane at the times prescribed in this act, it shall be the duty of the state auditor to charge such delinquent county with a penalty of two per cent per month upon the amount of indebtedness, then thirty days overdue, for each month, until payment thereof, including the penalty, has been made. [1913, ch. 119, § 2; 1907, ch. 137, § 9.]

§ 2574. Time of payment. It shall be the duty of the county treasurer to pay into the state treasury upon the first day of January, April, July and October in each year, the amount which on each of such days is due the state and chargeable to and owing from the county for the care, board and treatment of all patients in the state hospital for the insane, and it shall be the duty of the state auditor and the state treasurer upon the first day of February, May, August and November in each year to transfer the full amount received from the counties under the provisions of this article to the account of the state hospital for the insane. [1913, ch. 119, § 10; 1907, ch. 137, § 10.]

§ 2575. Taxes not diverted. Taxes levied and collected in any county for the purpose named in this article shall be used only to defray the expenses of the insane which are chargeable to such county, and shall not be diverted to any other purpose nor be transferred to any other fund by the county authorities. [1907, ch. 137, § 11.]

§ 2576. Improper charges, how determined. Whenever the superintendent of the state hospital for the insane has held and treated a patient as from one county and the county commissioners of such county make claim that such patient is not a proper charge against the said county, and such county commissioners shall notify the state auditor that it is claimed by them that such patient is not a proper charge against their county, and shall claim that the said patient is a proper charge against some other county, or that such patient is a proper charge against the state at large on account of being a resident of some portion of the state which is not in an organized county, or having no legal residence in any county of the state, it shall be the duty of the state

auditor to give notice to the county auditor of each of said counties to file such proofs as they may have with the state auditor within thirty days from the time of such notification, and thereupon it shall be the duty of the state auditor to investigate the question of the residence of such patient and to determine of what county said patient is a proper charge, and shall thereupon notify each of said counties of such determination, and shall notify the superintendent of the state hospital for the insane of such determination, and the superintendent of the state hospital for the insane, and the state auditor and the counties as aforesaid shall thereafter treat and regard such patient as of the county, according to the determination of the state auditor; and if the state auditor shall find that such patient is not a proper charge against any county in the state, such patient shall thereafter be regarded as a proper charge against the state at large. [1907, ch. 137, § 12.]

§ 2577. Right of appeal. If any county or the state of North Dakota shall be dissatisfied with the determination of the state auditor in regard to the finding aforesaid, such county or the state of North Dakota may appeal from the determination of the state auditor to the district court of the said county by serving a notice of appeal upon the state auditor and upon one of the members of the board of county commissioners of the county adversely interested, within thirty days from the date of such finding, and thereupon it shall be the duty of the district court to determine the residence of such patient and determine to what county such patient is a proper charge, and such determination shall be conclusive unless an appeal shall be taken therefrom in the same manner as now provided for by law for appeals in civil actions. [1907, ch. 137, § 13.]

§ 2578. To whom provisions apply. The two preceding sections shall apply to all patients now or heretofore in the state hospital for the insane in reference to which a dispute may exist, as well as cases hereafter to arise, and the state auditor shall make his charges against the counties in accordance with the determination made as herein provided. [1907, ch. 137, § 14.]

§ 2579. Expenses chargeable against the estate of insane persons. The amount of expense incurred by any county in this state for treatment and maintenance of any insane person in the state hospital for the insane shall be charged against the estate of such insane person; provided, that the insane person has no heirs within the United States dependent upon said estate for support; and provided, further, that no real property shall be sold during the life of the insane person, except for the maintenance and support of the family of said insane person, when it is shown to be for the best interests of the state upon order of the proper court; and further provided that no personal property shall be sold under five years from the date of sending such insane person to the state hospital for the insane, unless by order of the proper court, where such property is liable to deteriorate in value during the time above specified, and when sold as above the county court shall order the proceeds thereof to be safely invested for the benefit of such insane person, or be used for the support and maintenance of the family of such insane person. [1913, ch. 187; 1907, ch. 137, § 15.]

ARTICLE 6.—POSTAL RIGHTS OF INSANE PERSONS.

§ 2580. Postal rights, how secured. Each inmate of the hospital for the insane shall be allowed to choose one individual to whom he may write when or whatever he desires, and over letters to or from such individual no censorship shall be exercised or allowed by any person and each inmate shall have the right to make a new choice of such individual every three months if he so desires; and it is the duty of the superintendent to furnish each inmate with suitable material for writing letters, sufficient for the writing at least of one letter a week if the same is requested, unless he is otherwise furnished

with such materials; and all such letters shall be dropped by the writers thereof, accompanied by an attendant when necessary, into a post office box provided by the state at the hospital, and kept in some place of easy access to all patients. The attendant is required in all cases to see that each letter is directed to the patient's correspondent, and if it is not so directed it must be held subject to the superintendent's disposal; and the contents of these boxes shall be collected once every week by an authorized person from the post office department and by him placed in the hands of the United States mail for delivery. [R. C. 1905, § 1913; 1887, ch. 122, § 1; R. C. 1895, § 1533.]

§ 2581. Duty of superintendent of hospital. It is the duty of the superintendent to keep registered and posted in some public place at the hospital a true copy of the names of each individual chosen as the inmates' correspondent, and by whom chosen; and to inform each of the individuals so chosen of the name of the person choosing him. The superintendent shall request each person so chosen to write his name on the outside of the envelope of each letter written to the inmate; and all letters bearing the individual writer's name on the outside shall be delivered, or caused to be delivered, by the superintendent to the inmate to whom directed without being opened, unless there is reason to believe the letter contains some foreign substance which might be used for medication, in which case the letter shall be opened in the presence of a competent witness and the substance, if any, shall be delivered to the superintendent. [R. C. 1905, § 1914; 1887, ch. 122, § 2; R. C. 1899, § 1534.]

§ 2582. Penalty for violation. Any person refusing or neglecting to comply with, or willfully or knowingly violating any of the provisions of this article, shall be guilty of a misdemeanor and be ineligible to any office in the hospital afterwards. A printed copy of this article shall be framed and kept posted in each ward of the hospital. [R. C. 1905, § 1915; 1887, ch. 122, §§ 3, 4; R. C. 1895, § 1535.]

ARTICLE 7.—STATE TUBERCULOSIS SANITARIUM.

§ 2583. Established and located. There is hereby established a sanitarium known as the North Dakota state tuberculosis sanitarium for the treatment of pulmonary tuberculosis, to be built upon the site secured at Dunseith in the county of Rolette in said state by the temporary board provided for in chapter 137 of the Laws of 1909. [1911, ch. 44, § 1.]

The sanitarium was first established, but not located, by Laws 1909, ch. 137, which also provided for its temporary government "for the purpose of its location, the purchase of a site for the same," etc., and made an appropriation for carrying out the provisions of the act.

§ 2584. Board of trustees. The general supervision and government of this sanitarium shall be vested in a board of trustees which shall consist of five members appointed by the governor, one of whom shall be a member of the state board of health, and at least two other members shall be licensed physicians, graduates of a reputable medical college, and who shall hold their offices for the term of one, two, three, four and five years, respectively, beginning with the first day of April, 1911, and continuing until their respective successors are appointed and qualified. Previous to the first day of April in each year thereafter the governor shall appoint one member to hold office for the term of five years beginning with the first day of April of the year of his appointment and continuing until his successor is appointed and qualified. Any member of the board of trustees may be removed by the governor for such cause as he may deem sufficient and any vacancy occurring from any cause in said board shall be filled as hereinbefore provided for the unexpired term. No member of the board of trustees shall receive any compensation for his services, but all expense incurred in the discharge of his

official duties shall be paid from the current expense fund of the institution upon the presentation of vouchers properly certified. [1911, ch. 44, § 2.]

The board of trustees no longer exists, and all its powers are vested in the state board of control. See sections 243, 244.

§ 2585. Financial management. All matters pertaining to the financial management of the sanitarium, including the erection and equipment of buildings and the maintenance of the institution shall be under the immediate direction of the board of trustees. [1911, ch. 44, § 3.]

But see note to section 2584.

§ 2586. Superintendent, assistants and employees. Report. The appointment and removal of the superintendent of the sanitarium and his compensation shall be fixed by the board of trustees. The superintendent of the sanitarium shall appoint subject to the approval of the board of trustees such medical assistance as the board of trustees may consider necessary. All other employes necessary for the sufficient management of the institution shall be selected by the superintendent. The number of employes and compensation for such medical assistance and employes shall be determined by the board. The superintendent shall have general charge of the sanitarium and grounds, and the direction, control and discipline of all persons, employes and patients. He shall maintain salutary discipline among all employes and patients of the sanitarium and enforce strict obedience to all rules and regulations of the institution. All rules and regulations relating to the conduct of patients and employes shall be formulated by the superintendent subject to the approval by the board of trustees. The superintendent shall cause complete records to be kept of all persons admitted as patients, which record shall show the period of treatment of each patient, and shall submit to the board reports of the institution in such form as the board may require. The superintendent shall also submit a biennial report to the board giving in detail the methods of treatment of patients, results accomplished and a general account of conditions existing at the institution. Such report shall be included in and made a part of the biennial report of the board, and such board may authorize the printing of a number of copies of the separate report of such institution, which number shall not exceed one thousand and charges for the printing of said separate copies to be paid in the same manner as the reports of the various departments of the state are paid. [1911, ch. 44, § 4.]

But see section 258, and note to section 2584.

§ 2587. Admission to the sanitarium. All persons affected with pulmonary tuberculosis may be admitted to said hospital, but incurable patients must be kept separate and apart from the curable under rules and regulations to be prescribed by the superintendent. Applicants for admission to the sanitarium shall be examined at various places throughout the state designated by the board. Such examinations shall be made by the regular authorized medical examiner, or examiners, of such institution, who shall be a citizen or citizens of the state of North Dakota, and whose duty it shall be to examine all persons applying for admission to the sanitarium. The fee of the examining physician shall not exceed four dollars in any case, said amount to be paid by the applicant. If the applicant is unable to pay such fee, then such fee shall be a charge against the county in which the patient resides. Said examining physician shall be appointed by the board of trustees. [1911, ch. 44, § 5.]

But see note to section 2584.

Admission to cottages, see sections 2592, 2593.

§ 2588. Cost of maintenance of patients. How paid. All patients admitted as patients to the sanitarium shall pay to said institution the cost of their maintenance. The charges for any patient or patients may, however, be paid by any person or persons or society. The determination of each sum shall be made by the superintendent with the approval of the board of trustees. Any person who is unable to pay the charges for his or her support may be

admitted to the sanitarium if it has been determined by the examining physician that such person is suffering from pulmonary tuberculosis, provided, however, that before such person shall be admitted to the sanitarium, he or she shall have a statement from the judge of the county court of the county within which he or she resides setting forth the fact that he or she is unable to pay the regular charges. Said judge, upon the presentation of the report of the duly authorized examining physician that such person is afflicted with pulmonary tuberculosis, shall make an investigation and if he finds that such applicant or his legal representatives are actually unable to pay such charges, shall approve in writing the application of such person. Said judge shall immediately forward to the superintendent of the sanitarium a certificate in writing that such patient is unable to pay said charges and that he or she is a resident of the county in which such application has been so approved, the county from which such patient has been so certified shall be charged with the maintenance of such patient at the rate of five dollars per week during the time that he or she remains in said institution as an inmate. Such charge shall be collected in the manner provided in chapter 137 of the Session Laws of 1907, provided, however, the admission of every patient shall be subject to the final approval of the superintendent and the board of trustees. And any person who may be unable to pay the full charge for maintenance may be received upon paying the amount charged for county patients, if the board of trustees shall first find that the patient has truly represented the circumstances and is really unable to pay more than the amount charged for county patients. [1911, ch. 44, § 6.]

But see as to the board of trustees, section 2584.

For chapter 137 of the Session Laws of 1907, to which section 2588 refers, see sections 2568-2579, 1761, 1762.

§ 2589. Board of trustees may accept gifts, donations, etc. The board of trustees is empowered to accept as a trustee any gift, donation or funds from any other source, whether subject to the special provisions of the donors or not, and such gifts, donations or funds shall be placed to the credit of the tuberculosis sanitarium fund and expended by the board of trustees in accordance with the terms of the gift or donation if any, and if no terms are imposed, then for the general maintenance of the institution. [1911, ch. 44, § 7.]

But see as to the board of trustees the note to section 2584.

§ 2590. Fraternal society cottages. Any fraternal corporation or society organized under the laws of this state or authorized to transact business in this state, is hereby empowered and authorized to build upon the site of the state tuberculosis sanitarium at Dunseith in the county of Rolette, a cottage or cottages for the treatment of members of such corporations or societies and their families affected with pulmonary tuberculosis. [1913, ch. 286, § 1.]

§ 2591. Application and permit for cottages. Any such fraternal corporation or society desiring to construct a cottage or cottages as provided in section 2590, may make an application in writing to the board of trustees of the state tuberculosis sanitarium at Dunseith, or other governing board, setting forth in such application a description of the cottage or cottages desired by such corporation or society to be erected on such site, and the said board of trustees or other governing board, and the superintendent of the state tuberculosis sanitarium may permit such corporation or society to erect any cottage or cottages, as they may deem proper, and to construct any necessary sewerage, water mains, electric light connections, telephone lines necessary for the use of such cottage or cottages so erected by such fraternal corporation or society; and the board of trustees or other governing board of the state tuberculosis sanitarium is hereby authorized to make a contract with such fraternal corporation or society for the furnishing of such cottage or cottages with heat, light, water, sewerage, as may be necessary to maintain said cottage or cottages, and may contract to furnish medical

attendants, medicines, nurses, food and anything else necessary for the care and maintenance of the patients in such cottage or cottages so erected as hereinbefore stated. [1913, ch. 286, § 2.]

But see as to the board of trustees the note to section 2584.

§ 2592. Use of cottages. All members of such corporation or society mentioned in section 2590, and all members (or) in their families affected with pulmonary tuberculosis, may be admitted to said cottage or cottages under rules prescribed by the governing body of such corporation or society, except as otherwise provided in this act [sections 2590-2593]; provided, however, that all incurable patients must be kept separate and apart from the curable patients under rules and regulations to be prescribed by the board of trustees of the state tuberculosis sanitarium, or other governing board. [1913, ch. 286, § 3.]

But see as to the board of trustees the note to section 2584.

§ 2593. Terms of admission to cottages. Such corporation or society may admit to such cottage or cottages all patients eligible to admission to the state sanitarium, under section 5 of chapter 44 of the Session Laws of 1911 [section 2587 herein], upon such terms as may be agreed upon by the trustees of the state sanitarium and the governing body of such corporation or society. [1913, ch. 286, § 4.]

But see as to the board of trustees the note to section 2584.

ARTICLE 8.— MARKS AND BRANDS.

§ 2594. Office for recording brands. A general office for recording marks and brands shall be maintained at the seat of government, and the duties thereof shall be performed by the commissioner of agriculture and labor. [R. C. 1905, § 1916; 1891, ch. 40, § 1; R. C. 1899, § 1536; 1901, ch. 124, § 1.]

§ 2595. Brands, how obtained and recorded. Whenever any person desires the exclusive use of any mark or brand, he may make application therefor to the commissioner of agriculture and labor, setting forth a description of the mark or brand of which he desires the exclusive use, accompanying the same with a facsimile thereof and stating for what the same is to be used and the place or position it is to occupy, and it shall be the duty of the commissioner to record such mark or brand with a description of the place or position such mark or brand shall occupy on the animal, consulting always the choice and convenience of the applicant therefor, so far as may be, without conflicting or interfering with any previous mark or brand. [R. C. 1905, § 1917; 1891, ch. 40, § 2; R. C. 1895, § 1537; 1901, ch. 124, § 1.]

Cancellation and re-recording of all brands, see section 2602.

§ 2596. Commissioner of agriculture and labor records brands. The commissioner of agriculture and labor shall keep a record of all marks and brands, showing the names and residences of the persons owning the same, together with a description and facsimile of such mark or brand, and in case of live stock the range occupied by such stock, as near as may be, which record shall be open to the inspection of any person interested, and he shall deliver to the owner of such mark or brand a certificate thereof, which certificate shall be deemed evidence of ownership, for which he shall charge and collect a fee of two dollars. [R. C. 1905, § 1918; 1899, ch. 108; R. C. 1899, § 1538; 1901, ch. 124, § 1.]

§ 2597. Brands must be vented. It shall be the duty of all persons who sell live stock of any kind to another to vent their brand on the part of the animal which the purchaser may determine; provided, that such vent brand shall be upon the same side of the animal as the original, either by inverting the original brand, or by a vent brand prepared for that purpose. Such vent brand shall be not less than one-half the size of the original brand, and shall be of the type of the original brand, and such venting as above provided shall be prima facie evidence of the sale or transfer of such stock. [R. C. 1905, § 1919; 1891, ch. 40, § 6; R. C. 1899, § 1540.]

§ 2598. When similar brands may be recorded. The commissioner of agriculture and labor shall refuse to receive for record any brand, which, being the same as any previously recorded, shall have added thereto any or either of the following: A bar, a circle, a half circle, a quarter circle, a diamond or a half diamond; provided, that a similar device, figure or letter, but placed on a different part of the animal, may be so received and recorded. [R. C. 1905, § 1920; 1891, ch. 40, § 7; R. C. 1899, § 1541.]

§ 2599. Shall cancel brand. The commissioner of agriculture and labor shall cancel a legally registered brand only when he receives for file a bill of sale therefor, properly executed by the record owner, as shown by the registers in his office. [1909, ch. 51.]

§ 2600. Who have a right to record brands. All persons who have heretofore recorded any mark or brand in any county of this state, shall have the prior right to the exclusive use of such mark or brand; provided, that where two or more of such marks or brands conflict with each other, the one first recorded shall have priority; provided, further, that all stock brands recorded in the office of the secretary of state prior to the first day of December, 1891, under the provisions of law, shall be in no wise invalidated by any of the provisions of this article. [R. C. 1905, § 1921; 1891, ch. 40, § 9; R. C. 1899, § 1542; 1901, ch. 124, § 1.]

§ 2601. Exclusive trade mark obtained, how. Any person desiring to secure within this state the exclusive use of any name, mark, brand, print, designation or description for any article of manufacture or trade or for any mill, hotel property, machine shop or other business as a trade mark, shall deliver or cause to be delivered to the secretary of state a particular description or facsimile of such mark, brand, name, print, designation or description as he desires to use, and if there is not an application already filed for the same or a similar mark, brand, name, print, designation or description, he shall immediately record the same in a book to be provided and kept for that purpose, which book shall be at all times subject to public inspection and examination, and after the same shall have been recorded as herein provided, the person causing the same to be recorded shall have the exclusive right to the use thereof; provided, that nothing herein contained shall be construed to authorize the use of figures, letters or Roman numerals. [R. C. 1905, § 1922; 1891, ch. 40, § 10; R. C. 1899, § 1543; 1901, ch. 124, § 2.]

Right to protection against use by rival of similar design, shell or pattern not protected by patent. 19 L.R.A.(N.S.) 269; 37 L.R.A.(N.S.) 259.

Relief against the infringement of trade name not used in connection with manufactured articles. 15 L.R.A.(N.S.) 625.

Right to protection against use of a particular number as a trade mark by a competitor. 8 L.R.A.(N.S.) 1153.

§ 2602. Cancellation November first, 1913; re-recording owner's preference right to re-record. On the first day of November, nineteen hundred thirteen, each and every live stock brand or mark shall be canceled, and no person, copartnership, company, firm or corporation shall use nor have any right, title or interest in or to any live stock brand or mark previously recorded in this state. Provided, however, that if a person, copartnership, company, firm or corporation may desire to continue ownership thereof, the brand or mark must be re-recorded on or before December first, nineteen hundred thirteen. Failure to re-record any previously recorded live stock brand or mark on or before the time specified, and under provisions hereof, shall be deemed an absolute abandonment to the state of North Dakota of such previously recorded live stock brand or mark. On and after January first, nineteen hundred fourteen, the commissioner of agriculture and labor shall accept regular applications for the issuance to any one of such abandoned live stock brand or mark; and the said commissioner of agriculture and labor is hereby authorized, empowered and directed to issue his certificate for the use of such abandoned brand or mark within this state. [1913, ch. 8, § 1.]

§ 2603. Commissioner to notify present record owners. How. When complete. It shall be the duty of the commissioner of agriculture and labor to notify, on or before August first, nineteen hundred thirteen, each and every record owner of live stock brands or marks of the final date set for cancellation, and also of his, her or their prior right to re-record such previously recorded live stock brand or mark. Such notice shall be given in writing, legibly written, sent by ordinary first-class mail, and addressed to the record owner at the address shown last upon the present records. [1913, ch. 8, § 2.]

§ 2604. Publication of notice of expiration of time for preference right of re-record. It shall be the duty of the commissioner of agriculture and labor to publish in each official county newspaper in every county where brands or marks are in use, a notice of the expiration of the time fixed by law for the re-recording of live stock brands or marks, and of the prior right of record owners to re-record his, her or their previously recorded brands or marks. Such publication shall begin on or about the first of September, nineteen hundred thirteen, and shall continue at least three successive times in each of such newspapers. The commissioner shall also request each newspaper publishing notices to call attention to this law in a news item in the regular columns, for which no charge shall be allowed. [1913, ch. 8, § 3.]

§ 2605. Manner of recording and re-recording; fees. Re-recording of abandoned live stock brands or marks, and the recording of new brands and marks shall conform in all respects to existing provisions of law, and not otherwise. The previously issued certificate must be surrendered to the commissioner of agriculture and labor, accompanied by an application to re-record, and also accompanied by either money order or bankable draft for twenty-five cents. In case the previously issued certificate may have been lost or destroyed the original brand records only shall be prima facie evidence of ownership, except where a fact can otherwise be established. [1913, ch. 8, § 4.]

§ 2606. Fees and running expenses. All fees collected under provisions of this act [sections 2602-2606] shall monthly be turned over to the state treasurer. All expenses for publication of notices, new books, records and files necessary for the establishment and maintenance of a complete system of brand recording and brand re-recording shall first be approved by the commissioner of agriculture and labor, and paid by the state treasurer out of the general funds. [1913, ch. 8, § 5.]

ARTICLE 9.—HERDING AND DRIVING.

§ 2607. Stock grower and drover defined. Each person who shall keep neat cattle, horses, mules, sheep, swine or goats for their growth or increase within the state, shall be deemed a stock grower. Any person who shall drive or bring live stock into or through this state shall be deemed a stock drover. [R. C. 1905, § 1923; 1881, ch. 60, § 1; R. C. 1899, § 1544.]

§ 2608. The term drover defined. For the purposes of this article every person having charge or control of any herd of neat cattle, horses or mules, numbering five or more, or any flock of sheep numbering twenty-five or more, as owner, agent or employe, while the same is being driven from one place to another not within the same range or neighborhood, is deemed a drover; and every person having charge or control of any such herd or flock while subsisting on any public or other range land to which he has no right of possession, is deemed a herder, whether personally present with such herd or not. [R. C. 1905, § 1924; 1897, ch. 69, § 1; R. C. 1899, § 1544a.]

§ 2609. Shall not entice animals away. No drover or herder of any such herd or flock, or assistant of any such drover or herder, shall drive or entice any animal of like kind, without the owner's consent, away from his premises or the range or other place usually frequented by such animal or suffer such

animal to be driven or enticed away, or to follow, join or remain with such herd; and if necessary in order to prevent any such animal belonging to another person from being so driven or enticed away or from following, joining or remaining with such herd, it is the further duty of every person aforesaid to deliver such animal without delay to the owner thereof, if known, or if unknown, to some resident of the neighborhood or peace officer of the county to be by him returned to the owner or disposed of as an estray according to law. [R. C. 1905, § 1925; 1897, ch. 69, § 2; R. C. 1899, § 1544b.]

§ 2610. Uniform brand. It is also the duty of every drover to have all animals in his charge or control branded or marked with one uniform brand or mark. All such horses, mules and cattle shall be branded on a conspicuous place on each, with one distinct ranch or road brand of the owner; and all such sheep shall be marked distinctly with a mark or device sufficient to distinguish the same readily from other sheep. Whenever any animal mentioned in this article shall be found with any herd or flock of like kind, as herein-before defined, proof of such finding, in addition to the fact that such animal was there without the owner's consent, shall be deemed presumptive evidence of a violation of the provisions of section 2609, by each drover, herder or assistant having charge or control of such herd at the time of the finding, and shall be admissible as such in any action herein contemplated. [R. C. 1905, § 1926; 1897, ch. 69, §§ 3, 4; R. C. 1899, § 1544c.]

§ 2611. Costs a lien. Every person violating any of the restrictions or requirements prescribed by section 2608 is responsible to each person injured thereby, to the extent of his damages; which shall include the reasonable expenses incurred in searching for and recovering such animal; and whenever judgment is recovered therefor such judgment and costs shall be enforceable as a lien upon the interest of the defendant in the animals constituting such herd or flock. [R. C. 1905, § 1927; 1897, ch. 69, § 5; R. C. 1899, § 1544d.]

§ 2612. Penalty. Whoever shall wrongfully violate any of the provisions of section 2609, or fail to observe and fulfill the requirements of section 2610, shall for each delinquency forfeit and pay into the court rendering judgment therefor a penalty of not less than fifty nor more than two hundred dollars, one-half of the sum collected to be paid over to the person complaining or informing of such delinquency and the remainder into the general fund of the county treasury. Such penalty may be recovered in a civil action before any justice of the peace of the proper county, and such justice shall have power to hear and determine the same and enforce the judgment in the same manner as other courts of competent jurisdiction. [R. C. 1905, § 1928; 1897, ch. 69, § 6; R. C. 1899, § 1544e.]

§ 2613. Driving stock and trespassing. Any person owning or having charge of any cattle, horses, swine or sheep, who shall drive the same into or through any county of which the owner is not a resident or land owner or stock grower, and when the land in such county is already occupied by settlers on ranches, it shall be the duty of such owner or person in charge of such horses, cattle, swine or sheep to prevent the same from mixing with the cattle, horses, swine or sheep belonging to actual settlers, and also to prevent such animals from trespassing on such land as may be the property of an actual settler or may be held by him under a homestead or leasehold right, and used by him for the grazing of animals, growing hay or timber, or other agricultural purposes, or doing injury to the ditches made for irrigation of crops. If any owner or person in charge of any such animals shall willfully, carelessly or negligently injure any resident of the state by driving such animals from the public highways and herding the same on the lands occupied and improved by settlers in possession of the same, it shall constitute a misdemeanor and shall be punished by a fine of not less than five dollars nor more than twenty-five dollars, at the discretion of the court, and render the owner or person in charge of such animals liable for such damages as may be done

to the property of such settler. [R. C. 1905, § 1929; 1881, ch. 60, § 5; R. C. 1895, § 1545.]

§ 2614. Wrongful driving of stock. Penalty. When the stock of any person shall be driven off its range within the state, against his will, by the owners of any drove, and the same shall be found among such drove, every person engaged as drover of such drove shall be liable for damages to the person injured to the amount of the value of the animal for each head so driven off, together with all costs accruing in the trial of such cause, and the owner of the animals so driven off shall have a lien on such herd for the amount of all such damages and costs. [R. C. 1905, § 1930; 1881, ch. 60, § 6; R. C. 1895, § 1546.]

§ 2615. Duty of drover when stock of resident mixes with drove. When the stock of any resident of the state shall mix with any drove of animals, it shall be the duty of any drover or person in charge of such drove to cut out and separate such stock from such drove immediately. Each person, either owner or drover or otherwise connected with such drove, who neglects to comply with the provisions of this section shall be fined in a sum not exceeding one hundred dollars. [R. C. 1905, § 1931; 1881, ch. 60, § 7; R. C. 1895, § 1547.]

§ 2616. Concerning skinned dead animals. It shall be unlawful for any person other than the owner, his agent or employe, to skin or remove from the carcass, the skin, hide or pelt of any neat cattle, swine or sheep found dead, except when such stock is killed by railroad trains, in which case the employes of such railroad may remove the hides from stock so killed. [R. C. 1905, § 1932; 1881, ch. 60, § 8; R. C. 1899, § 1548.]

ARTICLE 10.—HERD LAW.

§ 2617. Unlawful for stock to run at large. It shall be unlawful for cattle, horses, mules, swine, goats and sheep to run at large at any time, except as hereinafter provided. [1913, ch. 178; R. C. 1905, § 1933; 1890, ch. 90, § 1; R. C. 1895, § 1549; 1901, ch. 123, § 1.]

As abrogating provisions of section 8500 in relation to trespass by live stock between December and April. *Johnson v. Rickford*, 18 N. D. 268, 122 N. W. 386.

Live stock may roam at large; exception. *Ely v. Rosholt*, 11 N. D. 559, 93 N. W. 864.

Owners of premises are not required to use greater degree of care to protect premises from trespassing cattle, during period cattle may feed on commons, than at any other time. *Corbett v. Great Northern R. Co.*, 19 N. D. 450, 125 N. W. 1054.

Liability for vicious animals. 16 Am. St. Rep. 631.

Liability of owners for damages resulting from animals. 36 Am. St. Rep. 831.

Liability of owners for injuries inflicted by vicious animals. 50 Am. Rep. 605.

§ 2618. Herd law. How and when suspended. The board of county commissioners of each county in the state shall establish stock districts including all of the territory within the county for the purposes hereinafter provided. The boundaries of districts so established shall follow township lines. A stock district may consist of one or more congressional townships, or the entire county may be made to comprise one district, and all districts shall be subject to the jurisdiction of the board of county commissioners for the purposes of this act. If one-fourth of the electors of any such district, as determined by the whole number of votes polled at the general election last held therein, shall file a petition in the office of the county auditor asking that stock be permitted to run at large between certain dates specified in such petition, and that the question of permitting stock to run at large in such district between such dates be submitted to the voters of said district at the next general election, it shall be the duty of the board, within ten days thereafter, at a regular or special meeting, to declare by resolution that stock may run at large within the limits of said district between the dates named in said petition except within the corporate limits of any city or village; but no stallion, jack, boar, ram, bull or other animals known to be vicious, shall be

permitted to run at large at any time. Said resolution shall state the date of its taking effect, and shall be effective to permit stock to run at large between said dates from and after the date specified in said resolution until said proposition shall have been voted upon by the electors of said district. Provided, that the board of county commissioners may, at any regular or special meeting, when it is deemed advisable, adopt the resolution herein authorized without being first petitioned so to do. [1913, ch. 178; R. C. 1905, § 1934; 1895, ch. 69, § 1; R. C. 1899, § 1550; 1901, ch. 123, § 2.]

Live stock is permitted to run at large between November first and April first, only, except in counties where chap. 45, Code Civ. Proc. has been abolished. *Ely v. Rosholt*, 11 N. D. 559, 93 N. W. 864.

§ 2619. When submitted to vote. Whenever it shall have been declared lawful for stock to run at large within a certain district between specified dates, then, at the next general election, but at no other time, said question shall be submitted to a vote of the electors of such district. The law governing the giving of notices of general elections shall govern the giving of notice for such election. [1913, ch. 178; R. C. 1905, § 1935; 1901, ch. 123, § 3.]

§ 2620. Form of ballots. Effect of vote. The ballots used at such election shall be in the following form, the dates named in the resolution to be inserted therein:

For stock to run at large between..... ———

Against stock to run at large between..... ———

In voting on the question each voter must place at the right of the proposition he favors the mark "X." If a majority of the ballots cast is in favor of letting stock run at large between said dates, the provisions of chapter 44 of the Code of Civil Procedure [sections 8400-8406 herein] shall not apply during such period, but shall apply at all other times of the year. If a majority of the ballots is against letting stock run at large, the resolution of the board of county commissioners declaring it unlawful for stock to run at large between said dates shall be nullified from and after the canvass of such vote, and said board shall not have authority again to declare a change in the law for a period of two years. [1913, ch. 178; R. C. 1905, § 1936; 1895, ch. 69, §§ 2, 3; R. C. 1899, § 1551; 1901, ch. 123, § 4.]

§ 2621. When proposition may again be submitted. After the electors of any stock district shall have voted to permit stock to run at large as hereinbefore provided, such vote may be nullified and stock prohibited from running at large at any time by resolution of the board of county commissioners and vote of the people upon the proceedings provided for the suspension of the provisions of this article. The result of any election held hereunder shall remain in force until changed at some subsequent election, except as herein otherwise provided. [1913, ch. 178; R. C. 1905, § 1937; 1895, ch. 69, § 4; R. C. 1899, § 1552; 1901, ch. 123, §§ 5, 6.]

§ 2622. When fences shall be sufficient and lawful. In any stock district in which an election has been held under the provisions hereof and in which the result of such election shall have been declared to be in favor of permitting stock to run at large between certain dates a fence constructed as hereinafter described shall be sufficient and lawful. [1913, ch. 178; R. C. 1905, § 1938; 1895, ch. 69, § 5; R. C. 1899, § 1553.]

§ 2623. How fences shall be constructed. The posts or other uprights of reasonable strength and firmness in position shall be not more than thirty-two feet distant from each other, with two suitable stays between posts, nearly equally dividing such space in three parts. Three strands of ordinary barbed fence wire shall be well stretched and firmly fastened to such posts, uprights and stays, with the upper strand not more than forty-eight nor less than forty-two inches above the general surface of the ground thereunder, and the lower strand not more than eighteen nor less than twelve inches above the general surface of the ground, and the middle strand nearly equally dividing the space

between the upper and lower strands; provided, that all corral fence exclusively for the purpose of inclosing stacks, if outside of any lawful inclosure, shall not be less than sixteen feet distant from such stack so inclosed, shall be substantially built with posts not more than eight feet distant from each other, and with not less than five strands of barbed fence wire, and shall be not less than five feet high. Any other kind of a fence or barrier which is as effective for the purpose of a fence as that above prescribed is hereby declared sufficient and lawful. [R. C. 1905, § 1939; 1895, ch. 69, §§ 6, 7; R. C. 1899, § 1554.]

Legislative description of sufficient and lawful corral fence. *Johnson v. Rickford*, 18 N. D. 268, 122 N. W. 386.

Applicable during "open season" to counties in which provisions of section 1933 have not been abolished. *Johnson v. Rickford*, 18 N. D. 268, 122 N. W. 386.

§ 2624. Liability of owners of stock. Any person owning or having in charge any horses, mules, cattle, sheep or goats, or any such animals, which shall breach or break through, over or under any lawful fence, not the property of the owner of such offending animal, shall be liable to the party having sustained injury by reason of such breaching or breaking, to be recovered in a civil action before any court of competent jurisdiction, and it shall be sufficient in any such action, that it was a lawful fence where the breach was made, and the proceedings shall be the same as in other civil actions, except as herein modified. [R. C. 1905, § 1940; 1895, ch. 69, § 8; R. C. 1899, § 1555.]

As to proof necessary to maintain action for damage occasioned by breach of lawful fence. *Johnson v. Rickford*, 18 N. D. 268, 122 N. W. 386.

Liability of owner for trespass of cattle. 22 L.R.A. 55.

Liability for trespass on unfenced land by live stock being driven along the highway. 12 L.R.A. (N.S.) 912.

Civil liability of nonresident for damage done by his stock while straying in district where allowing animals to run at large is forbidden. 22 L.R.A. (N.S.) 1098.

Liability of owner for injury to person or property on highway by animal at large thereon in violation of statute. 16 L.R.A. (N.S.) 647.

§ 2625. Trespass of swine. Any person owning or having in charge in any county, adopting the provisions hereof as herein provided, any swine which shall trespass upon the lands or premises of another, including premises in towns, villages and cities, whether such lands or premises are fenced or not fenced, shall be liable to any party sustaining such injury for all damages he may sustain by reason of such trespassing. [R. C. 1905, § 1941; 1895, ch. 69, § 9; R. C. 1899, § 1555.]

§ 2626. Damages by trespassing animals. The persons sustaining damages as aforesaid shall, before commencing an action therefor, notify the owner or person having in charge such offending animals of such damages, and the probable amount thereof if known, and a resident of and within the county, and he may retain and keep in custody such offending animals until the damages so sustained and costs are paid, or until sufficient security is given for the same; provided, that the person so restraining such offending animals shall, without unnecessary delay, notify the owner or person in whose custody the same were at the time the trespass was committed of the seizure of such animals, if such owner or person is known to him to be within or to reside within the county. [R. C. 1905, § 1942; 1895, ch. 69, § 10; R. C. 1899, § 1556.]

Liability of owners of trespassing animals. 28 Am. Rep. 569.

Liability for trespasses of animals. 49 Am. Dec. 248.

§ 2627. Fees. For serving such notice the person making the same shall be entitled to the same fees and mileage as are allowed a sheriff in serving a summons. [R. C. 1905, § 1943; 1895, ch. 69, § 11; R. C. 1899, § 1556.]

§ 2628. Damages a lien upon the animals. Upon the trial of an action under the provisions hereof, the plaintiff shall prove the amount of damages sustained and the amount of expense incurred for restraining and keeping the offending animals, if such have been by him restrained, and any judgment rendered for damages against the defendant shall be a lien upon the animals

committing the damages, and they may be sold and the proceeds applied to the satisfaction of the judgment. [R. C. 1905, § 1944; 1895, ch. 69, § 12; R. C. 1899, § 1557.]

§ 2629. Service in case of unknown defendant. If upon the trial it shall appear that the defendant is not the owner or person in charge of such offending animals, he shall be discharged, and the action may proceed against a defendant, whose name is unknown, and, if at the commencement of the action the plaintiff does not know the name of the owner or keeper of such offending animals, he may bring an action against a defendant unknown. In such case service shall be made by publishing a copy of the summons, with a notice stating the nature of the action, in a newspaper, if there is one published in the county, and if not, by posting copies of the summons and notice in three public places in the county, in either case at least ten days previous to the day of trial. [R. C. 1905, § 1945; 1895, ch. 69, § 13; R. C. 1899, § 1558.]

§ 2630. Judgment and costs collected, how. After judgment shall have been rendered against the defendant, unknown as aforesaid, the offending animals, or so many of them as may be necessary, shall be sold as in other civil actions, and after said judgment and costs have been satisfied, if there is any surplus of money, it shall be placed in the hands of the county treasurer, and if the defendant does not appear and call for the same within six months from the day of sale, it shall be paid into the school fund for the use of the public schools of the county. [R. C. 1905, § 1946; 1895, ch. 69, § 14; R. C. 1899, § 1559.]

§ 2631. Misdemeanor, when. Taking or attempting to take, or advising or assisting in the taking from the possession of the person having them in charge, without the consent of such person, except by due course of law, any animals restrained and held by virtue of the provisions hereof, is declared to be a misdemeanor, and upon conviction thereof shall be punished by a fine not to exceed fifty dollars, or by imprisonment in the county jail not to exceed thirty days, or by both, at the discretion of the court. [R. C. 1905, § 1947; 1895, ch. 69, § 15; R. C. 1899, § 1560.]

§ 2632. Judgment of court final, when. Jury trial. In all actions under and by virtue of the provisions hereof wherein the amount of damages claimed does not exceed twenty-five dollars, the judgment of the court having original jurisdiction thereof shall be final; provided, that either party to such action shall be entitled, upon demand therefor, to a jury trial. [R. C. 1905, § 1948; 1895, ch. 69, § 16; R. C. 1899, § 1561.]

§ 2633. Actions commenced. When barred. No property shall be exempt from seizure and sale under execution upon a judgment obtained under and by virtue of the provisions hereof. No action shall be commenced under the provisions hereof after the expiration of six months from the date of the alleged damages. [R. C. 1905, § 1949; 1895, ch. 69, § 17; R. C. 1899, § 1562.]

§ 2634. Stock must be branded. All droves of horses, mules, cattle or sheep which may hereafter be driven from any other state or territory of the United States, or any foreign country, into or through any county of this state, shall be plainly branded or marked with one uniform brand or mark. All such horses, mules and cattle shall be branded with one distinct ranch or road brand of the owner so as to show distinctly in such place as the owner may adopt. All such sheep shall be marked distinctly with such mark or device as may be sufficient to distinguish the same readily should they become intermingled with other flocks of sheep in this state. [R. C. 1905, § 1950; 1895, ch. 50, §§ 1, 2, 3; R. C. 1899, § 1563.]

§ 2635. Fine. Any owner or person in charge of such drove of stock which may be driven into or through this state, who shall fail to comply with the provisions of the last section shall be fined in a sum not less than fifty nor more than three hundred dollars, together with costs of suit. [R. C. 1905, § 1951; 1895, ch. 50, § 4; R. C. 1899, § 1564.]

§ 2636. Duties of county auditor and sheriff. It shall be the special duty of the county auditor, sheriff and any constable of each and every county of this state to enforce the provisions of the last two sections. [R. C. 1905, § 1952; 1895, ch. 50, § 5; R. C. 1899, § 1565.]

ARTICLE 11.—SHEEP HUSBANDRY.

§ 2637. Bounty for killing wolves. The county commissioners of each county shall offer a bounty of two dollars for each wolf or coyote killed within the limits of their county. [R. C. 1905, § 1953; 1890, ch. 157, § 1; 1891, ch. 71; § 1; R. C. 1899, § 1566; 1901, ch. 215.]

§ 2638. Claimant to make affidavit before auditor. Before payment of such bounty the applicant therefor must subscribe and make oath before the county auditor of the county in which the wolf or coyote was killed, setting forth that the wolf or coyote was killed in such county, giving the date thereof, and by whom, and that the two ears of the scalp thereof which are produced before such county auditor are the ears of such wolf or coyote. [R. C. 1905, § 1954; 1890, ch. 157, § 2; R. C. 1895, § 1567.]

§ 2639. Must produce scalp. No claim shall be allowed unless the applicant exhibits and furnishes to such county auditor at the time of making such affidavit, the two ears of the wolf or coyote killed, attached to such skin, which shall then and there in the presence of such county auditor be detached from such wolf or coyote skin. [R. C. 1905, § 1955; 1890, ch. 157, § 2; R. C. 1895, § 1567.]

§ 2640. Auditor to retain affidavit. Destruction of scalp. The county auditor shall retain such affidavit until the next regular meeting of the board of county commissioners, when the board shall audit the claim and order a warrant drawn upon the county treasurer for the bounty in favor of the person killing such wolf or coyote. The county treasurer is further required forthwith to destroy such ears by burning the same. [R. C. 1905, § 1956; 1890, ch. 157, § 3; R. C. 1895, § 1568.]

§ 2641. When dog may be killed. If any person shall discover any dog in the act of killing, wounding or chasing sheep in this state, or shall discover any dog under such circumstances as satisfactorily to show that it has been recently engaged in killing or chasing sheep, such person is authorized immediately to pursue and kill such dog. [R. C. 1905, § 1957; 1890, ch. 155, § 9; R. C. 1895, § 1569.]

Right to kill dogs that worry, attack or injure sheep or other animals. 15 L.R.A. 251; 40 L.R.A. 511; 19 L.R.A. (N.S.) 837, 838.

§ 2642. Owner of dog liable. The owner of any dog shall be liable in a civil action for all damages that may accrue to any person by reason of such dog's killing, wounding or chasing any sheep or other domestic animal belonging to such person. [R. C. 1905, § 1958; 1890, ch. 155, § 8; R. C. 1895, § 1570.]

§ 2643. No exemption. No exemption shall be allowed in favor of any person against whom a judgment has been recovered under the provisions of section 2642. [R. C. 1905, § 1959; 1890, ch. 155, § 8; R. C. 1895, § 1570.]

ARTICLE 12.—STATE WOLF BOUNTIES.

§ 2644. County reward for buffalo or timber wolf. The board of county commissioners of any county within the state may offer a reward of a sum, not to exceed twenty dollars, nor less than five dollars, for the destruction of each buffalo or timber wolf killed within their respective counties, and the provisions of sections 2646, 2647, 2648 and 2649 shall apply in every case where the reward is called for under the provisions of this section. [R. C. 1905, § 1960; 1901, ch. 216.]

§ 2645. State bounty for wolves and coyotes. For the purpose of encouraging the destruction of wolves and coyotes, a bounty shall be paid by the state

of North Dakota, for each wolf or coyote killed, the sum of two dollars and fifty cents. [R. C. 1905, § 1961; 1903, ch. 207, § 1.]

§ 2646. Skins to be exhibited. Any person killing any of the aforesaid animals, to obtain the bounty thereon, shall, within ninety days from the date of the killing, exhibit or cause to be exhibited the skins and skulls of said animal or animals, including the tail and the skin from the forehead, including both ears, to the county auditor in the county in which said animal or animals were killed, and shall at the same time file with the auditor an affidavit setting forth that he killed or caused to be killed the animal or animals from which the skin or skins were taken; that the same were killed within the bounds of the county to whose auditor the same are presented. [R. C. 1905, § 1962; 1901, ch. 207, § 2.]

§ 2647. Verification. The county auditor shall, before issuing the certificate hereinafter provided for, require statements of two resident taxpayers of the county that they are acquainted with the person presenting the skin or skins and that to the best of their knowledge and belief the animal or animals from which said skin or skins were taken were killed within the limits of said county. [R. C. 1905, § 1963; 1903, ch. 207, § 2.]

§ 2648. Fraud prevented. The county auditor shall thereupon call to his assistance either the county treasurer, or, in his absence, the clerk of the district court, who being present, both shall, in order to prevent fraud, minutely examine each skin presented; and should examination disclose that the scalps and ears belonging to such skins have not been severed, patched or punched, the county auditor shall there, in the presence of the other officer above named, mark each ear by punching a hole one inch in diameter in the same, and then redeliver the skin or skins to the person presenting the same, and shall at the same time make out and deliver to the said person a certificate showing the number and kind of the skins so punched and the name of the person presenting, the fact of the filing of the affidavits herein provided for, and the examination made as required, said certificate to be duly signed by him in his official capacity, and attested by the officer acting with him; said county auditor shall keep a record in a bound book of all skins so punched, showing the date, number and kinds, the names of the persons presenting them and the names of the witnesses, which book shall be an official record. The holders of the certificates issued under the provisions of this article to be deposited with the county auditor of the county wherein issued, who shall on the first business day of each month forward all such certificates in his possession to the state auditor for registration and payment as hereinafter provided. All services rendered by officials under this article to be without fee. [R. C. 1905, § 1964; 1903, ch. 207, § 3.]

§ 2649. Duty of county auditor. Should any county auditor or officer acting with him have reason to believe that any person presenting a skin or skins as above provided, has evaded the provisions of this article to obtain the bounty unlawfully, such officer shall require satisfactory evidence of the time, place and manner of the killing of said animal or animals. [R. C. 1905, § 1965; 1903, ch. 207, § 4.]

§ 2650. Duty of state auditor. It shall be the duty of the state auditor, upon the written order of the county auditor, to give the person presenting said order a warrant upon the state wolf bounty fund, hereinafter provided for, in the amount required to compensate at the bounty prices by this article provided, for the number of animals mentioned in the order, taking the receipt on the back of the order of the person presenting, for the full amount received; and the state auditor and the state treasurer shall keep an account of all warrants so issued and paid, and list them in their annual report to the governor. [R. C. 1905, § 1966; 1903, ch. 207, § 5.]

§ 2651. Wolf bounty fund created. For the purpose of providing for the payment of said bounty and the warrants thereon drawn, there is hereby

created a fund to be known as the state wolf bounty fund. [R. C. 1905, § 1967; 1903, ch. 207, § 6.]

§ 2652. Duties of state board of equalization. It shall be the duty of the state board of equalization, at the time of the levy of the annual tax, to levy a special tax of one-half of one-tenth of one mill on the dollar upon the assessed valuation of all property, and when collected paid into the hands of the state treasurer, who shall at once enter the same into state wolf bounty fund.

Said fund shall be preserved inviolate for the payment of the state bounties provided for herein. [1911, ch. 281; R. C. 1905, § 1968; 1901, ch. 207, § 7.]

§ 2653. Transfer of wolf bounty fund. There is hereby transferred from the state wolf bounty fund of this state, to the general fund of the state, the sum of fifty thousand dollars; provided, that said transfer shall be made by the state auditing board from time to time as a surplus may accumulate in said wolf bounty fund. [1911, ch. 328.]

§ 2654. Animals killed in unorganized counties. Any person claiming the bounties provided for in this article for any of the animals specified herein, killed or caused to be killed in any unorganized county of this state, shall make application to the county auditor of the organized county to which such unorganized county is attached for judicial purposes. [R. C. 1905, § 1969; 1903, ch. 207, § 8.]

§ 2655. Secretary of state to supply blanks. The secretary of state shall provide each county auditor with the necessary blanks for the purpose of carrying into effect the provisions of this article. [R. C. 1905, § 1970; 1903, ch. 207, § 9.]

§ 2656. Penalty for forgery. Any person who shall falsely make, alter, forge or counterfeit any of said certificates or orders shall be deemed guilty of forgery, and any person who shall swear falsely to any affidavit provided herein, or procure the same to be done by another, with the intent of obtaining any one of the said certificates or orders, shall be guilty of perjury; and any person convicted of any of the offenses declared in this section shall be punished by imprisonment in the state penitentiary for a term of not less than one year nor more than five years. Any person or persons who shall patch up any skin or scalp, or who shall present any punched skin or scalp with intent to defraud the state, or any officer who shall sign any certificate herein provided for without first counting the skins, or shall intentionally evade any of the provisions of this article, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than five hundred dollars, or by imprisonment in the county jail for a period of not exceeding three months, or by both such fine and imprisonment. [R. C. 1905, § 1971; 1903, ch. 207, § 10.]

ARTICLE 13.—ESTRAYS.

§ 2657. By whom and when taken up. No person shall take up an stray animal except in the county wherein he resides and is a householder, nor unless such stray is found in the vicinity of his place of residence, nor take up an stray animal mentioned in the next section during the period when it shall be lawful for stock to run at large in said county, unless the same is found trespassing upon the premises or within the inclosure of the person taking up the same. [1913, ch. 160, § 1; R. C. 1905, § 1972; 1890, ch. 66, §§ 1, 2; R. C. 1899, § 1571.]

General features and constitutionality of statutes respecting estrays. 8 Am. St. Rep. 271.

§ 2658. Notice of taking up estrays. Each person taking up an stray, horse, mare, colt, ass, mule or neat cattle, sheep, hog or goat shall, within ten days thereafter, give notice of the finding and taking up of said animal, in the nearest weekly newspaper published in the county where such animal is found.

Such notice shall truly describe the animal found by giving its color, sex, probable age and weight, and all the marks and brands thereon. Immediately after the first publication of said notice the publisher thereof shall send by registered mail to the commissioner of agriculture and labor and to the county auditor of the county in which said animal was found, a newspaper clipping containing the same. Unless such animal is earlier claimed the notice shall be published in said paper for three successive weeks, and immediately after the third publication a printed copy thereof shall be forwarded by registered mail to the state estray paper. The registry receipts for the notices sent out of the said state estray paper to the commissioner of agriculture and labor and to the county auditor, as provided for herein, together with proof of publication of such notice for three successive weeks, shall be filed in the office of the county auditor of the county where the estray was found before it can be appraised, or before appraisers can be appointed. Unless such receipts and proof of publication are so filed the publisher of said paper shall forfeit all right to his publication fees, and shall be liable to civil damages for any loss or damage caused by his neglect, and the person taking up said estray, unless he shall cause the same to be filed, shall forfeit all right to reimbursement for charges, costs and damages. Any person taking up an estray who fails to advertise the same, or otherwise comply with the provisions of this section, shall be liable to the owner for all damages caused by such negligence or failure, and shall be guilty of a misdemeanor; provided, if any person shall take up an estray which is apparently worthless, such estray may be at once appraised, and if found worthless may be destroyed. The person taking up the same shall notify some justice of the peace of the county, and such justice shall immediately choose one disinterested freeholder as one appraiser; the party taking up the estray shall choose another disinterested freeholder, and the two so chosen shall appoint a third person living in the vicinity where the estray was taken up, and the three persons so chosen shall constitute a board of appraisers who shall act without compensation. If such appraisers shall appraise the estray as worthless it shall be destroyed by the party taking it up. [1913, ch. 160, § 2; 1907, ch. 117; R. C. 1905, § 1973; 1890, ch. 66, § 3; R. C. 1899, § 1572; 1903, ch. 96; 1905, ch. 112.]

§ 2659. Official estray paper. Payment of fees. A weekly newspaper published in the state shall be designated by the governor as the official newspaper in which all estray notices of the state received by said paper shall be published once. It shall be the duty of the publisher of said paper to transmit one copy, weekly, to the county auditor of each county in the state and to the commissioner of agriculture and labor at his office at the state capitol. If such publisher shall fail to transmit copies thereof as herein provided he shall forfeit all right to his fees for publication of estray notices, and shall be liable in civil damages for any loss or damage caused by his neglect. The board of county commissioners of each county shall, on the first Monday of January each year, appropriate the sum of five dollars to pay the official estray paper for such publications. [1913, ch. 160, § 3; R. C. 1905, § 1974; 1890, ch. 66, §§ 4-6; R. C. 1899, §§ 1573, 1574.]

§ 2660. Owner may take estray, when. Arbitration. Whenever any person shall appear and make claim to any estray so taken up, such claimant and the person taking up such estray may go before a justice of the peace in the county and such claimant shall make affidavit in writing setting forth his name and place of residence and that he is the actual owner of such estray, describing it, and thereupon the person taking up such estray shall be authorized to deliver the same to such claimant on payment of all fees advanced by him and the actual cost of caring for and keeping such estray. If the persons cannot agree as to the amount of such charges the owner of the animal and person taking up such estray shall each choose one disinterested freeholder as arbitrator, and the two so chosen shall choose a third person living in the

vicinity where the estray was taken up. The amount assessed by such arbitrators shall be final. [R. C. 1905, § 1975; 1890, ch. 66, §§ 7, 8; R. C. 1895, § 1575.]

§ 2661. Advertiser becomes owner, when. Exception. Appraisal. If such estray shall not be claimed and taken away within one year after advertisement thereof in such official newspaper, and if the person taking up such estray shall have caused the same to be duly advertised as herein provided, and shall not in any respect have violated the provisions of this article, the property therein shall immediately vest in the person taking up the same, provided, the appraised value of such estray does not exceed twenty-five dollars. The person taking up such estray shall notify the board of county commissioners to appraise or appoint some suitable person whose duty it shall be to appraise the value of such estray. [R. C. 1905, § 1976; 1890, ch. 66, §§ 9, 10; R. C. 1899, §§ 1576, 1577; 1903, ch. 97, § 1.]

§ 2662. Charges allowed. Any person taking up estrays may charge for actual time employed and for actual damage done to his crops or premises. He shall also be allowed his actual cost of feeding and caring for such estrays; provided, however, that if any person taking up an estray shall have caused the same while so in his possession to perform any labor for his own benefit, no compensation whatever shall be allowed him for feeding or caring for such estray for any portion of the time after such animal shall have been taken up by him. [R. C. 1905, § 1977; 1890, ch. 66, § 11; R. C. 1899, § 1578; 1903, ch. 97, § 2.]

§ 2663. In case of two or more animals. If two or more animals are taken up at the same time by the same person, they shall be enumerated in the same advertisement, and the same fees are allowed as for the advertisement or appraisement of one estray. [R. C. 1905, § 1978; 1890, ch. 66, § 12; R. C. 1895, § 1579.]

§ 2664. May be sold, when. If the appraised value of any estray exceeds twenty-five dollars, and the same is not called for within one year after the advertisement in the official estray paper, the person taking up such estrays shall notify some justice of the peace of the county, and such justice shall designate a place where such sale shall be held, and shall name the day, and the time of day for such sale, and cause notice of such sale to be published three times in a weekly newspaper, if there is one published in the county; in case no paper is published in the county, this notice shall be posted in three public places in the county at least twenty-two days before such sale, and on the appointed day the person taking up such estray shall have the same present at the place, and the justice shall proceed to sell such estray at public auction for cash, and after paying the proper fees and charges for taking up such estray and feeding and caring for same, to be fixed by such justice, and the fees advanced for the advertisement and appraisement of such estray as herein provided, and after deducting the fees allowed such justice for such sale and advertisement thereof, the residue of the proceeds of such sale shall be paid to the county treasurer, who shall receipt to the justice therefor. All moneys so deposited with the county treasurer shall by him be retained in the treasury for six months thereafter, separate and apart from all other moneys, and if the owner of any such estray shall within such period appear before the board of county commissioners and establish his title to such estray, such board shall order the amount so paid into the treasury to be paid to such owner. If no such person appear within six months after the deposit of such money as herein provided, the same shall be passed to the school fund of the county and shall be accounted for and expended as other school money. [R. C. 1905, § 1979; 1890, ch. 66, §§ 13, 14; R. C. 1899, § 1580; 1903, ch. 97, § 3.]

§ 2665. Record of sold estray. Whenever any sum of money is paid into the county treasury under the provisions of the last section the justice paying the same shall deliver to the county treasurer a certificate setting forth the

description of the estray from the sale of which the same was obtained and the marks and brands of such estray and the name of the person by whom such animal was delivered to him to be sold; and such certificate shall be filed by the county treasurer and preserved in his office. [R. C. 1905, § 1980; 1890, ch. 66, § 15; R. C. 1895, § 1581.]

§ 2666. **Fees, how paid and collected.** The fees of the justice, and for advertising and appraising, shall be paid by the person taking up the estray, and the same shall constitute a first lien upon the estray and shall be paid by the owner before he shall be entitled to take away such estray. [R. C. 1905, § 1981; 1890, ch. 66, § 16; R. C. 1899, § 1582.]

§ 2667. **Penalty for violation.** If any person not authorized so to do shall take up any estray or lost goods or if any person taking up such estray or lost goods shall willfully neglect to cause the same to be advertised as herein provided, or shall fail to feed sufficiently or properly care for the same, such person shall be liable to the owner thereof for all damages. [R. C. 1905, § 1982; 1890, ch. 66, § 17; R. C. 1895, § 1583.]

§ 2668. **Liability in case of death of estray.** If any estray after being duly advertised as herein provided, shall, without fault of the person taking up the same, die or be stolen or escape and wander away, the person taking up the same shall not be responsible therefor. [R. C. 1905, § 1983; 1890, ch. 66, § 18; R. C. 1899, § 1584.]

§ 2669. **Other personal property governed by this article.** The manner of taking up, appraising, advertising and disposing of any lost goods or personal property which may be found upon the highways or in any other place shall be the same as herein provided for estrays. [R. C. 1905, § 1984; 1890, ch. 66, § 19; R. C. 1899, § 1585.]

ARTICLE 14.—CRUELTY TO ANIMALS.

§ 2670. **Agent to investigate. Appointment and duties of.** The governor shall appoint a discreet and suitable person whose duty it shall be to investigate all cases of violation of the laws against cruelty to animals of which information can be obtained and bring the facts relating thereto before the proper authorities and it shall be the duty of such persons to organize humane societies in different places in the state, where it can be done, whose members shall pledge themselves to the use of all reasonable means for the enforcement of the laws relating to cruelty to animals. It shall be the duty of the state's attorneys in this state to aid and co-operate with such person in the enforcement of such laws. [R. C. 1905, § 1985; 1893, ch. 47, §§ 1, 2; R. C. 1899, § 1586.]

§ 2671. **Expenses. Appropriation.** The person so appointed shall act without compensation further than the payment of his actual expenses incurred. The state auditor shall issue warrants for such expenses upon presentation of itemized and verified accounts therefor, and there is hereby appropriated out of any money in the state treasury not otherwise appropriated the sum of five hundred dollars annually for the payment of such expenses. [R. C. 1905, § 1986; 1893, ch. 47, § 3; R. C. 1899, § 1587.]

ARTICLE 15.—TEXAS OR CHEROKEE CATTLE.

§ 2672. **When unlawful to import or own.** It shall be unlawful for any person, railroad company or other corporation or association:

1. To bring into this state any Texas or Cherokee cattle, except between the first day of November of each year and the first day of February following; or,

2. To own or have in possession or control within this state any Texas or Cherokee cattle at any time, which may have been brought into this state at any time except between the first day of November of each year and the first

day of February following. [R. C. 1905, § 1987; 1883, ch. 111, §§ 1, 2; R. C. 1899, § 1588.]

Power of the states to provide for the inspection and to regulate the importation of animals. 93 Am. St. Rep. 77.

State legislation for protection of health of live stock as interference with interstate commerce. 26 L.R.A. (N.S.) 279.

Validity and construction of statutory regulations as to infected animals. 26 L.R.A. 638.

§ 2673. Penalty for violation. Any person who brings into this state or causes to be brought therein, any Texas or Cherokee cattle, except at the time prescribed in section 2672 or who shall own, possess or control any such cattle except as allowed in the preceding section, shall be guilty of a misdemeanor and upon conviction shall be fined in any sum not exceeding ten thousand dollars nor less than two hundred dollars, and in addition thereto may be imprisoned in the penitentiary for a period not exceeding three years. Any railroad conductor or employe, agent or officer of any railroad company who brings any such cattle into this state upon any railroad or vessel connected with such railroad, or who carries any such cattle upon any railroad or vessel connecting therewith from one point to another within this state shall be deemed to have possession of such cattle within the meaning of this section. [R. C. 1905, § 1988; 1883, ch. 111, § 3; R. C. 1895, § 1589.]

§ 2674. Who liable for damage caused by such cattle. Whenever in any case any damage is occasioned to any person, resulting in any manner from any such Texas or Cherokee cattle having been brought into this state at any time by any person, railroad company or other corporation or association, then such person so bringing into, or owning, possessing or controlling such cattle in this state shall be liable jointly and severally to any person who may suffer loss or damage by reason of such bringing into or conveying through, possessing, owning or controlling within the state any such cattle; and in any action for the recovery of damages for any loss or damage which may be sustained by any person from any such cattle, it shall be sufficient for the plaintiff to show that the injury of which he complains arose from any such Texas or Cherokee cattle which may have been owned or had in possession or brought into this state at any time within the year by any such defendant, or that such cattle so brought in, owned or possessed had been where such loss or damage had been sustained. And it shall not be necessary for the plaintiff to show that the injury of which he complains accrued while any such Texas or Cherokee cattle were in the possession or ownership or control of any such defendant, it being the intention of this section to make all persons liable in the first instance for any injury which may arise from disease spreading or communicating from such Texas or Cherokee cattle so brought into, owned, possessed or controlled by them in this state. [R. C. 1905, § 1989; 1883, ch. 111, § 5; R. C. 1895, § 1590.]

Scienter as a condition of liability for spreading contagious disease among animals. 6 L.R.A. (N.S.) 922.

§ 2675. What no defense. Proof necessary to recovery. The right to bring into this state such cattle between the first day of November and the first day of February following shall in no case be any defense for any loss or damage that may accrue from such cattle to any person; nor shall the right to own, possess or control any such cattle in any case be a defense for any injury or loss which may arise to any person by reason of such right to own, possess or control such cattle. In all actions for any loss or injury which may arise or accrue to any person by reason of any injury or loss done or caused to be done to any native or domestic cattle from or by any such Texas or Cherokee cattle, the proof of the loss of any native or domestic cattle or any damage thereto, and the amount of such loss or damage, and proof that any such defendant brought into this state or owned, possessed or controlled in this state at any time any such Texas or Cherokee cattle

which may have caused such injury or loss, shall be *prima facie* evidence of plaintiff's right to recover. And it shall be competent in the trial of such actions for witnesses to give their opinion as to whether or not any such Texas or Cherokee cattle caused the injury complained of. [R. C. 1905, § 1990; 1883, ch. 111, § 7; R. C. 1899, § 1591.]

§ 2676. Proceedings when Texas cattle are spreading disease. In case any such Texas or Cherokee cattle shall be found spreading or communicating any disease among the native domestic cattle of this state, it shall be the duty of any judge of the district court, or justice of the peace, upon oath of any householder setting forth that such cattle are spreading or communicating disease among native or domestic cattle within this state, and the name of the owner or person in whose possession or control such Texas or Cherokee cattle may be, forthwith to issue a warrant to any sheriff or constable of the county commanding him forthwith to arrest and imprison in some safe place such cattle so spreading or communicating disease and to summon the owner thereof or the person found in the possession of such cattle, to appear before such judge or justice of the peace forthwith and show cause why such cattle should not be impounded until the first day of November following, and after allowing the parties a reasonable time to be heard, such judge or justice shall proceed to hear and determine whether such cattle have so spread or communicated disease. It shall be the duty of such judge or justice of the peace to order the officer in charge of such cattle to impound them and keep them by themselves until the first day of November following, when it shall be the duty of the officer in charge of such cattle to present to the owner or person entitled to the possession thereof a sworn statement of the cost of taking, keeping and impounding such cattle, including the costs of building the pound and providing materials for the same in case the board of county commissioners or township supervisors where such cattle were impounded had ordered the pound to be built for the purpose of impounding such cattle, and demand payment of the same together with the costs of such trial aforesaid; and upon payment of the same he shall deliver such cattle to the owner or person entitled to possession thereof. [R. C. 1905, § 1991; 1883, ch. 111, § 8; R. C. 1899, § 1592.]

Regulations which the state may enforce concerning quarantine of animals. 97 Am. St. Rep. 242.

§ 2677. Texas cattle defined. Texas or Cherokee cattle as mentioned in the foregoing sections shall be taken to mean a class or kind of cattle without reference to where they may have come from; provided, that that portion of this state west of the Missouri river is exempted from the provisions hereof; but the right to bring into, own, possess or control such cattle in such exempted territory shall give no right to send, convey or cause to be sent or conveyed such cattle into that part of the state subject to the provisions hereof, or own or possess the same therein, except that such cattle may be shipped or conveyed by themselves across said river to an inclosure upon the left bank thereof upon the line of any railroad crossing this state and may be conveyed from such inclosure across and without the state by continuous passage in cars upon such railroad. [R. C. 1905, § 1992; 1883, ch. 111, § 9; R. C. 1899, § 1593.]

ARTICLE 16.—LIVE STOCK SANITARY BOARD.

The following sections 2678-2697 consist of Laws 1907, ch. 169, or of express amendments thereto, and are regarded as superseding the entire "Article 15.—District Veterinarians" of chapter 24 in the Revised Codes of 1905 (§§ 1993-2015 therein) except perhaps §§ 2001, 2002 and 2005 thereof, which are, respectively, sections 2697a, 2697b and 2698 in the present compilation.

The act of 1907 above cited expressly repealed only "all acts and parts of acts inconsistent therewith." But the emergency section (§ 22) in the act expressly contemplates the retirement from office of "the present state veterinarians." The comprehensive duties and authority of the live stock sanitary board and its executive officer expressed in sections 2679, 2684, 2686 herein, the power to appoint "officers, agents, or assistants"

(section 2690), and various other provisions herein, are evidently incompatible with the provisions in the Revised Codes of 1905 for a chief state veterinarian, district veterinarians, sheep inspectors to be appointed by the district veterinarians, and the division of the state into veterinarian districts; and since each and every section in article 15 of the Revised Codes of 1905, with exceptions mentioned at the head of this note, postulates the existence of those officers or districts, the sections are omitted in the present compilation.

§ 2678. Live stock sanitary board, how composed. Term of office. A board is hereby established to be known as the "state live stock sanitary board." This board shall consist of five members to be appointed by the governor. One shall be appointed for a term of five years, one for a term of four years, one for a term of three years, one for a term of two years and one for a term of one year, whose term of office shall commence on the first day of April, 1907, and the successor of each shall be appointed for the term of five years thereafter and until their successors are appointed and qualified. Each member of said board shall be a qualified elector of the state of North Dakota. Three members of said board shall be persons who are financially interested in the breeding and maintenance of live stock in the state of North Dakota and the other two members of said board shall be competent veterinarians who are graduates of some regularly organized and recognized veterinary college or university. [1907, ch. 169, § 1.]

§ 2679. Board establishes rules and regulations. It shall be the duty of the said state live stock sanitary board to protect the health of the domestic animals of this state; to determine and employ the most efficient and practical means for the prevention, suppression, control and eradication of dangerous, contagious and infectious diseases among the domestic animals of the state of North Dakota, and for these purposes it is hereby authorized and empowered to make all such rules and regulations for the conduct of the business of said state live stock sanitary board as it may deem expedient. [1907, ch. 169, § 2.]

§ 2680. Publication of regulations. Said state live stock sanitary board shall make the necessary regulations to carry into effect the purpose of this act [sections 2678-2697], and any regulations so made shall be published in some newspaper or in as many newspapers as said board may deem necessary, or they shall be posted in not less than five public places, and such publication shall be deemed a legal notice to all persons. [1907, ch. 169, § 3.]

§ 2681. Meetings. Compensation. The said state live stock sanitary board shall hold its meetings at the state capitol at such times as it may designate, but there shall not be to exceed four regular meetings each year; provided, that the president of the board shall have power to call special meetings whenever in his judgment it becomes necessary. The members of the board shall receive as compensation for their services the sum of three dollars per day for each day employed, and five cents per mile actually and necessarily traveled in attending the meetings of the board, which sum shall be paid out of the state treasury upon vouchers of the board duly certified by the president and secretary thereof. [1907, ch. 169, § 4.]

§ 2682. Oath of office. Qualifications. At the first meeting of the said state live stock sanitary board the members thereof shall take and subscribe the oath of office required of other civil officers and shall then proceed to elect a president, secretary and executive officer. The executive officer shall be a competent and skilled veterinarian who at the time of said election shall be a graduate in good standing of a recognized school of veterinary medicine and surgery, and who shall not be a member of this board. [1907, ch. 169, § 5.]

§ 2683. Salary of executive officer. Bond. Oath. The executive officer of said state live stock sanitary board shall receive for his services such a sum as may be deemed proper by said board. The payment of said salary shall be made from the funds appropriated for the use of this board and in order to carry into effect the purpose of this act [section 2696]. Before entering upon the discharge of these duties he shall give a bond to the state of North

Dakota with good and sufficient surety in the sum of five thousand dollars, conditioned on the proper discharge of the same. He shall furthermore receive actual expenses incurred and paid by him in the discharge of his duties, and such amounts shall be paid out of the fund appropriated for said board. Said executive officer shall, upon entering upon his duties, take an oath well and truly to perform all duties required of him under the provisions of this act [sections 2678-2697], which said oath shall be taken before any judge of a district court or notary public within the state and shall be filed with the secretary of state. [1907, ch. 169, § 6.]

§ 2684. Duties of executive officer. The executive officer of said state live stock sanitary board shall act as state veterinarian and it shall be his duty:

1. To ascertain by personal examination or through reports from other accredited representatives of said board all information which he can obtain regarding the existence of contagious, infectious and epidemic diseases of animals.

2. To execute all orders, rules and regulations made by said live stock sanitary board and to present at the quarterly meetings of said board a detailed report of all matters connected with the work done by him or his subordinates during the quarter preceding said meeting. [1907, ch. 169, § 7.]

§ 2685. Bacteriologist and consulting veterinarian. The professor of veterinary science of the state agricultural college shall act as bacteriologist and consulting veterinarian to the said state live stock sanitary board, and it shall be his duty to make bacteriologic or pathologic examination of all diseased animals or portions thereof, or of such material as may be forwarded to him by the said board or its duly authorized agents. It shall also be his duty to furnish material as far as lies in his power for the diagnosis of contagious diseases and instruction as to its use. For the services rendered said bacteriologist shall receive such compensation as the state live stock sanitary board may deem proper, which shall be paid out of the fund appropriated for the use of said board. [1907, ch. 169, § 8.]

§ 2686. Powers of board. Authority is hereby given to said state live stock sanitary board to take all steps it may deem necessary to control, suppress and eradicate any and all contagious and infectious diseases among any of the domestic animals of the state, and to that end said board is hereby empowered to quarantine any domestic animal which is infected with any such disease or which has been exposed to infection therefrom, and to kill any animal so infected; to regulate or prohibit the arrival in or departure from the state, or any portion of the state, of any such exposed or infected animal, and at the cost of the owner thereof to detain any domestic animal found in violation of any such regulation or prohibition. [1907, ch. 169, § 9.]

Quarantine, see R. C. 1905, § 1999.

Validity and construction of statutory regulations as to infected animals. 43 L.R.A. (N.S.) 1066.

Statutes providing for destruction of infected animals. 26 L.R.A. 638.

Power to require destruction of diseased domestic animals without making compensation. 18 L.R.A. (N.S.) 369.

Delegation by legislature of power as to quarantining cattle. 32 L.R.A. (N.S.) 651.

Regulations which the state may enforce concerning quarantine of animals. 97 Am. St. Rep. 242.

§ 2687. Killing of diseased stock, method of. Selection of experts. Whenever a domestic animal has been adjudged to be affected with a contagious or infectious disease and has been ordered killed by said state live stock sanitary board or by an accredited agent thereof, the owner or keeper of said animal shall be notified thereof, and within twenty-four hours thereafter its owner or keeper may file a protest against the killing thereof with said board or its accredited agent who has ordered such animal killed. Such notice shall state under oath that to the best of the knowledge and belief of the person making such protest, such animal is not infected with any contagious or infectious disease; whereupon an examination of the animal involved shall be

made by three experts, one of said experts to be appointed by said state live stock sanitary board, one to be appointed by the person making such protest and the two thus appointed to choose a third, but all experts shall be persons learned in veterinary medicine and surgery and graduates of a regularly organized and recognized veterinary college. [1907, ch. 169, § 10.]

Procedure in case of glanders, see sections 2726-2735.

§ 2688. Expense of experts, how paid. In case all three experts or any two of them declare that such animal is free from any contagious or infectious disease, then the expense of the consultation shall be paid by the state live stock sanitary board out of the funds appropriated for the carrying into effect of this act [section 2696], and in case the three experts or any two of them declare the animal to be affected with a contagious or infectious disease then the expenses incurred in the consultation shall be paid by the person making the protest, and said expenses may be collected the same as in case of appeal in civil action. [1907, ch. 169, § 11.]

§ 2689. Disposal of carcass of diseased animal. It shall be the duty of the owner or keeper of any animal killed by the order of the live stock sanitary board to dispose of the carcass of said animal in the manner prescribed by the board, and whenever the owner or keeper of an animal killed as aforesaid be unknown, the carcass shall be disposed of in the aforesaid manner at the expense of the county in which the carcass is located. [1907, ch. 169, § 12.]

§ 2690. Board may employ agents and assistants. The state live stock sanitary board is further authorized to employ such officers, agents or assistants as it may deem necessary to carry out the purposes of this act [sections 2678-2697], at a compensation to be fixed by the said board and which shall be paid from the funds appropriated for the purpose of carrying into effect the purpose of this act. Said live stock sanitary board is further empowered to grant the same authority as agents of said board to the inspectors of the United States department of agriculture, but when said inspectors are engaged in work by direction or request of the board they shall not receive compensation from the state or be required to give bond. [1907, ch. 169, § 13.]

§ 2691. Board has powers of justices of the peace. The state live stock sanitary board or any member or duly authorized agent thereof, may examine or cause to be examined under oath all persons believed to possess knowledge of material facts concerning the existence or dissemination, or danger of dissemination of disease among domestic animals, and for this purpose shall have all the powers vested in justices of the peace to take depositions and to compel witnesses to attend and testify, and to administer oaths. Witnesses shall receive the same fees for attendance and travel as witnesses before the district courts, and said fees shall be paid out of the general fund of the state. [1907, ch. 169, § 14.]

§ 2692. Power over and of peace officers. The state live stock sanitary board shall have power to call any sheriff, deputy sheriff or constable to execute its orders, and officers shall obey the orders of said board, and the officers performing such duties shall receive compensation therefor as is prescribed by law for like services and shall be paid therefor in like manner. Any officer may arrest and take before any justice of the peace of the county any person found violating any of the provisions of this act [sections 2678-2697], and such officer shall immediately notify the state's attorney of such arrest and he shall prosecute the person so offending according to law. [1907, ch. 169, § 15.]

See prior provision as to prosecutions, R. C. 1905, § 2006.

§ 2693. Annual report. The said live stock sanitary board shall make annual report to the governor of North Dakota of all its proceedings and transactions from the preceding year, on the first day of December, and said report shall be published by the state of North Dakota. [1907, ch. 169, § 16.]

See prior provision as to report R. C. § 2013, and as to time and contents of report, see sections 95, 97, 98, 633 herein.

§ 2694. Duty of owners of stock to report to board. It shall be the duty of any person who discovers, suspects or has reason to believe that any domestic animal belonging to him or any in his charge or that may come under his observation belonging to other parties is affected with any contagious or infectious disease, to immediately report such fact, belief or suspicion to the state live stock sanitary board, or to a member or representative thereof. [1907, ch. 169, § 17.]

§ 2695. Emergency fund in case of epidemic. In case of any serious outbreak of any contagious, infectious or epidemic diseases among domestic animals which can not be controlled with the funds at the disposal of said state live stock sanitary board, said board shall at once notify the governor, who thereupon shall call a meeting of the emergency commission, who may authorize money to be drawn from the state treasury to meet the emergency. [1907, ch. 169, § 18.]

§ 2696. Appropriation. There is hereby appropriated out of any money in the state treasury not otherwise appropriated, the sum of fifteen thousand dollars per annum, or so much thereof as may be necessary for the purpose of paying the expenses incurred by the state live stock sanitary board in carrying out the purposes of this act. [1913, ch. 30; 1909, ch. 37; 1907, ch. 169, § 19.]

"This act" consists of sections 2678-2697.

See appropriation and provision regulating payment of bills against the same in section 653g.

§ 2697. Penalty for violation of law. Any person violating any of the provisions of this act [sections 2678-2697] or any rule or regulation made by the state live stock sanitary board shall be guilty of a misdemeanor and be punished by a fine of not less than twenty-five dollars or more than five hundred dollars, or by imprisonment not less than thirty days or more than ninety days. [1907, ch. 169, § 20.]

§ 2697a. Manner of burial. It shall be the duty of the owner of any cattle or other domestic animals, or any person in the actual charge of such animals, within this state, that die from or on account of any contagious disease (and the death of any such animal from disease shall be presumed to be contagious until the contrary is proven, also any such animal found dead shall be presumed to have died of such disease unless other causes of death are apparent), to cause the same within twenty-four hours after receiving knowledge of the death of such animal to be buried at least four feet below the surface of the ground and covered with dirt to that depth. [R. C. 1905, § 2001; 1899, ch. 36, § 1; R. C. 1899, § 1601a.]

The foregoing section was R. C. 1905, § 2001, and is retained in this compilation because its provisions seem not to conflict with anything in the preceding sections of this article. For a similar reason the following section 2697b is retained, although it is to be observed that the "districts" therein mentioned no longer exist. See note immediately preceding section 2678.

§ 2697b. Duty of overseers and coroner. It is also hereby made the duty of all road and street overseers, under whatever name called, and of the county coroner in such districts where there are no road overseers to bury or cause to be buried all animals dying as in section 2697a, when the same have been dead for thirty-six hours and are still unburied by the owner or person in charge thereof. The said road or street overseers and the said coroner are authorized to enter upon or into any premises where such dead cattle may be for the purpose of removing the same for burial and may bury the same on such premises, but must not bury said animals within one thousand feet of any dwelling house or barn. The board of county commissioners of such county shall allow such sums for such services as they may deem reasonable and the same shall be paid as other services for said county are paid. It is further provided that the owner of such animal or animals shall be liable to the county for such expenses, to be recovered in a civil action in the same manner as other debts are collected unless the owner pays said burial

expenses within thirty days after being notified by the county auditor of the same, and no property except absolute exemptions shall be exempt from sale for the payment of any judgment that may be recovered against said owner, including costs and such attorney's fee as may be allowed by the court, not exceeding the sum of twenty-five dollars, said attorney's fee to be paid into the general fund of the county. [R. C. 1905, § 2002; 1899, ch. 36, § 2; R. C. 1899, § 1601b.]

See remarks concerning this section in note to § 2697a.

§ 2698. Duty of owners of stock. Animals in transit. Meats to be labeled. The following regulations shall be observed in all cases of disease covered by this article:

First: It shall be unlawful to sell, give away or in any manner part with any animal affected with or suspected of being affected with any contagious or infectious disease, with such exception as shall be provided for by the rules and regulations of the live stock sanitary board, and in case of any animal that may be known to have been affected with or exposed to any such disease within one year or prior to such disposal due notice of the fact shall be given in writing to the person receiving the animal.

Second: It shall be unlawful to kill for butcher purposes any such animals, or to sell, give away or use any part of it or its milk, or to remove any part of the skin, with such exceptions as shall be provided for by the rules and regulations of the live stock sanitary board. Provided that in all cases where, under the rules and regulations of the live stock sanitary board of this state, it shall be lawful to sell, barter or give away for human consumption the meat from any animal affected with contagious or infectious diseases, there shall be placed upon each quarter of the animal so affected in at least ten separate places a stamp or label, clearly showing the words "affected meat." No meat from any affected or diseased animal shall be placed upon the same block or table on which meat not so affected is handled. Failure to observe these provisions shall be a misdemeanor and on conviction shall be punished by a fine of not less than one hundred dollars, or to be imprisoned in the county jail for a term of not less than thirty days nor more than one year. It shall be the duty of the owner, agent or person having in charge any animal infected or suspected of being infected with any contagious disease, immediately to confine the same in a safe place, isolated from all other animals and with all necessary restrictions to prevent the dissemination of the disease until the arrival of an accredited agent of the live stock sanitary board. [1913, ch. 204; 1909, ch. 162; R. C. 1905, § 2005; 1891, ch. 125, § 10; 1895, ch. 35, § 11; R. C. 1899, § 1604.]

The introductory statement referring to "cases of disease covered by this article" is identical with the introduction to R. C. 1905, § 2005, which was amended in Laws 1909, ch. 162, the latter being amended and re-enacted by this section 2698. "This article," as stated in the note immediately preceding section 2678 herein, is deemed to be superseded by the present article almost entirely. It would seem, however, that the introductory statement may readily be rejected as surplusage.

Liability of vendor of diseased live stock in absence of special warranty. 29 L.R.A. (N.S.) 202.

Damages recoverable for selling diseased animals. 34 L.R.A. (N.S.) 697.

ARTICLE 17.—REIMBURSEMENT OF OWNERS OF TUBERCULAR CATTLE.

§ 2699. Notice, how served. Whenever any neat animal or animals have been adjudged to be infected with the disease known as tuberculosis by the state live stock sanitary board, it shall be the duty of said board or its duly authorized agent to serve a written notice upon its owner or keeper, of such decision before the killing of said animal or animals condemned, which notice shall contain the provisions for a protest according to section 2703, and if no protest is made by the owner or keeper, such animal or animals shall be appraised according to the provisions contained in section 2700. [1911, ch. 310, § 1.]

§ 2700. Appraisal, how made. Whenever any neat cattle has been adjudged to be infected with the disease known as tuberculosis by the state live stock sanitary board and has been ordered killed by said board and is killed in accordance therewith, the actual value of said animal or animals at the time of appraisal shall be determined by the state live stock sanitary board or its authorized agent, within twenty-four hours after the killing is ordered and before it or they are killed; provided, that if the owner or keeper is aggrieved by such appraisal he may cause a board of appraisers to be appointed according to section 2701. [1911, ch. 310, § 2.]

§ 2701. Appraisers, how appointed. In case the owner of a neat animal or animals to be killed under the provisions of this article, or his agent, is not satisfied with the appraisal made by the state live stock sanitary board or its agents, he may protest against the same, whereupon a board of three appraisers is to be formed, of which one member shall be the agent of the state live stock sanitary board, one member shall be selected by the owner of the animal or animals involved, and a third member shall be selected by the first two members as herein provided. Whereupon an appraisal of the animal or animals involved shall be made by the board of appraisers according to section 2702, and in case all three appraisers or any two of them agree upon a certain valuation, this appraisal shall be regarded as final. [1911, ch. 310, § 3.]

§ 2702. Maximum valuation. In no case shall the appraised value of a grade neat animal of two years old or more exceed twenty-five dollars, nor that of a grade neat animal below that age exceed fifteen dollars; provided in the case of pure bred neat cattle, accompanied by certificates of registration in the recognized herd book, the appraised value of said pure bred neat cattle of two years old or over shall not exceed fifty dollars, nor that of pure bred neat cattle under two years of age exceed thirty dollars. [1911, ch. 310, § 4.]

§ 2703. Protest, how made. Providing the owner or his agent is aggrieved with the diagnosis of the state live stock sanitary board, or its agents, said owner may within twenty-four hours make protest against diagnosis; and be entitled to a consultation, in accordance with the provisions of sections 10 and 11 of chapter 169 of session laws of 1907. [1911, ch. 310, § 5.]

"Sections 10 and 11 of chapter 169 of session laws of 1907" are, respectively, sections 2687 and 2688 herein.

§ 2704. Fees, how paid. The two members of this board of appraisers, not connected with the state live stock sanitary board, shall be entitled to one dollar per day for their services, to be paid out of the fund created for the purposes of carrying out this article, upon presentation of vouchers to the state auditor and duly approved by the state live stock sanitary board. [1911, ch. 310, § 6.]

§ 2705. Who may take advantage of this act. The owner of any neat cattle affected with tuberculosis, or so adjudged by the state live stock sanitary board, and appraised in accordance with this article, shall be entitled to the amount named in the appraisal providing that the owner or owners of such neat cattle has applied to the state live stock sanitary board for a tuberculin test to be made under the supervision of said board, and provided further that said owner enters into the following agreement:

In consideration of the assistance by the state live stock sanitary board in the eradication of tuberculosis from my neat cattle by means of the tuberculin test, and in order to secure the state reimbursement for animals killed on account of tuberculosis, I,, of owner of said neat cattle, comprising of do hereby agree as follows:

A. That I will abide by the decision of the state live stock sanitary board whether or not a neat animal should be killed or to be segregated on account of tuberculosis.

B. In any case in which segregation is decided upon, I will cause all animals which react to the tuberculin test to be removed from the herd and portion of

the premises or farm upon which the healthy animals of the herd are maintained, and I will cause the diseased animals to be permanently segregated from the healthy animals.

C. In all cases where the milk from such segregated reacting cows is to be used for any purpose whatsoever, I will cause the said milk to be sterilized or pasteurized.

D. In case any reacting bull is used for breeding purposes, I agree to have him held on leash and not permit him to leave the premises reserved for his use, and that the healthy cows bred to such bull will not be unduly exposed to infected premises or to other diseased cattle.

E. I will cause the young from segregated reacting animals to be removed from their mothers at birth, and will not permit the said young to suck their mothers.

F. Any part of my premises contaminated by reacting animals will be submitted by me to a thorough disinfection under the direction or supervision of the state live stock sanitary board at my own expense.

G. I will add no cattle to the said herd which have not passed a tuberculin test administered by an authorized public agent qualified to perform such test, or by an inspector of the bureau of animal husbandry.

H. In case I do not conform with any or all of the above agreements, I voluntarily relinquish any further claim upon the state of North Dakota for the reimbursement of neat cattle ordered killed on account of tuberculosis.

I. I relinquish all claims for the carcasses of animals killed and to be reimbursed for by the state. [1911, ch. 310, § 7.]

§ 2706. Claims, how paid. The return of appraisers made under this article shall be in writing, and signed by the state live stock sanitary board or its agents making the appraisalment or by the board of appraisers in case of protest, also signed by the owner of said neat cattle condemned and certified to by the executive officer of the state live stock sanitary board, to the state auditor, who shall draw a warrant on the state treasurer in favor of the owner for the amount thereof. [1911, ch. 310, § 8.]

§ 2707. Carcasses. How disposed of. All and any money realized by the state live stock sanitary board from the sale of the whole or any part of neat animals killed for tuberculosis and inspected and passed as provided for in section 2005, revised codes of 1905, as amended by chapter 162, session laws of 1909 [section 2698 herein], must be turned in to the state treasurer and by him to be credited to the fund provided for in this article, or may be paid to the owner of said condemned neat cattle, and the amount thereof deducted from the appraised value of said condemned neat cattle. [1911, ch. 310, § 9.]

§ 2708. Owner shall not be indemnified in the following cases. The right to be indemnified shall not exist, and payment shall not be made in the following cases:

First. For animals belonging to the United States, or any county, city, township or village in the state.

Second. When the owner at the time of coming into possession of the animal or animals knew it or them to be diseased or suspected of it or them being diseased.

Third. For animals found to have been diseased at the time of their arrival in this state.

Fourth. When the owner is a nonresident and not engaged in the breeding of live stock in this state.

Fifth. When the animal or animals, at the time of its or their killing, had been in the state less than six months.

Sixth. When the owner shall have been guilty of negligence by willfully exposing his animal or animals to the infection of tuberculosis or violated any of the sections of the agreement contained in section 2705. [1911, ch. 310, § 10.]

§ 2709. Fund. How created. For the purpose of creating a fund to pro-

vide for the expenses incurred in carrying out the provisions of this article, there is hereby created a fund to be known as the bovine tuberculosis fund. [1911, ch. 310, § 11.]

§ 2710. Duty of state board of equalization. It shall be the duty of the state board of equalization at the time of the levy of the annual tax, to levy a special tax of one-twentieth of a mill on the dollar upon the assessed valuation of all property, and when collected paid into the hands of the state treasurer, who shall at once enter the same into the bovine tuberculosis fund, said fund shall be preserved inviolate for the purpose of paying the expenses incurred in carrying out the provisions of this article. [1911, ch. 310, § 12.]

ARTICLE 18.—STATE BOARD OF VETERINARY MEDICAL EXAMINERS.

§ 2711. Qualifications of veterinarians. Each person practicing veterinary medicine, surgery or dentistry in any of its departments in this state, shall possess the qualifications required by this article; provided, that any person who has practiced veterinary medicine, surgery or dentistry as a profession in this state for three years immediately preceding the taking effect of this article, and who shall be a citizen of the United States, or shall have declared his intention to become such, shall be deemed eligible to registration, and shall receive a certificate upon presentation of a sworn affidavit and letters of recommendation from five reputable freeholders in his locality, or upon presentation of a diploma from a legally authorized veterinary school, college or university, if made before July first, 1895. [R. C. 1905, § 2016; 1895, ch. 113, §§ 1, 2; R. C. 1899, § 1615.]

§ 2712. Board of examiners, how appointed. Term. The governor shall appoint a board of examiners within thirty days after the taking effect of this article to be known as the state board of veterinary medical examiners. Such board shall consist of three practicing veterinarians, who shall each be the holder of a diploma granted by a legally authorized veterinary school, college or university, who shall hold office, one for one year, one for two years and one for three years, after such appointment, or until their successors are appointed. Thereafter, each year, the governor shall appoint one member of said board to fill the vacancy occasioned by the expiration of the term of office of those previously appointed and is further authorized to fill such vacancies as may occur. [R. C. 1905, § 2017; 1895, ch. 113, § 3; R. C. 1899, § 1616.]

§ 2713. Organization of board. Said board shall elect a president, secretary and treasurer. It shall have a common seal, and the president and secretary shall have power to administer oaths. Said board shall hold meetings for the examination of candidates, on the second Wednesday of April and October of each year, and such other meetings as may be deemed necessary, at such time and place as the board may appoint, no session to exceed two days. The board shall issue a certificate of qualification to all applicants who shall pass the required examination, and who shall be citizens of the United States, or shall have legally declared their intention to become such, and to all applicants who are eligible to registration under section 2711, signed by the president and secretary of the board. Such certificate or diploma shall be conclusive as to the right of the lawful holder of the same to practice veterinary medicine, surgery or dentistry in this state. Said board shall keep a record of all the proceedings thereof, and also a record or register of each applicant for a license, together with his age, name and time spent in the study and practice of veterinary medicine, surgery or dentistry; and if a graduate, the name and location of the school, college or university granting such diploma. Said books and records shall be prima facie evidence of all the matter therein recorded. [R. C. 1905, § 2018; 1895, ch. 113, §§ 4, 6; R. C. 1899, § 1617.]

§ 2714. Permit to practice. Any person wishing to practice veterinary medicine, surgery or dentistry, who is qualified under section 2717, may apply to the president of the board of examiners for a permit to practice. The president shall upon the payment of five dollars, if satisfied that the applicant is qualified and a suitable person, issue to him a permit to practice until the next meeting of the board, and such permit shall have the same force as a certificate from the board, but shall expire upon the adjournment of the next meeting of the board of examiners. [R. C. 1905, § 2019; 1895, ch. 113, § 5; R. C. 1899, § 1618.]

§ 2715. Diplomas and certificates. Persons presenting diplomas or certificates for examination and registration shall pay to the secretary of said board a fee of fifteen dollars in advance, and annually thereafter, for such time as he shall continue in practice, on such dates as the board may determine, pay a renewal registration fee of three dollars. This renewal registration fee of three dollars applies to and shall be paid by all practicing veterinarians heretofore or hereafter registered under this article. The fees received by said board shall be paid to the state treasurer within thirty days after the receipt of same; said fees shall constitute a special fund for the payment of the expense incurred by the state board of veterinary examiners in carrying out and enforcing the meaning of this act. Each member of said board shall receive from the state treasurer the sum of five dollars a day for each day actually engaged in attending meetings of said board, and all necessary traveling expenses actually incurred in attending such meeting. The secretary of said board shall also receive the sum of five dollars a day for each day actually engaged as a witness in cases of prosecution that originate under this act. The secretary shall certify to the state auditor after each meeting of the board the amount due each member for services and necessary expenses in attending such meetings and necessary expenses of said board. The state auditor shall thereupon issue his warrant on the state treasurer for such sum, providing there has been a sufficient sum paid into the treasury in fees to redeem said warrants. Nothing in this article shall be so construed as to prevent any person who has been registered and who may have forfeited his registration by nonpayment of fees from renewing his registration within two years by paying such fees without examination. [1913, ch. 276; 1911, ch. 282; R. C. 1905, § 2020; 1895, ch. 113, § 7; R. C. 1899, § 1619; 1905, ch. 192.]

§ 2716. Misdemeanor to practice, when. Any person who either:

1. Practices veterinary medicine, surgery or dentistry, in this state without compliance with the provisions of this article; or

2. Willfully and falsely claims or pretends to have or hold a certificate of registration issued by such board; or

3. Willfully and falsely, with intent to deceive the public, claims or pretends to be a graduate of, or to hold a diploma granted by a legally authorized veterinary school, college or university, is guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than fifty nor more than one hundred dollars, and in case of nonpayment of such fine, the person so offending shall be liable to imprisonment for a period not exceeding six months; provided, that the provisions of this section do not apply to persons practicing castration. All fines received under this article shall be paid into the common school fund of the county in which such conviction takes place. [R. C. 1905, § 2021; 1899, ch. 168; R. C. 1899, § 1620.]

§ 2717. Examination. All persons commencing the practice of veterinary medicine, surgery or dentistry in this state shall be graduates of a legally authorized veterinary school, college or university, and shall subject themselves to such examination as the board may require. [R. C. 1905, § 2022; 1895, ch. 113, § 10; R. C. 1899, § 1621.]

§ 2718. Certificates recorded. Every person holding a certificate from the board of examiners shall have it recorded in the office of the register of deeds

in the county in which he resides, within thirty days after the date of said certificate, and the record shall be indorsed thereon. Any person removing to another county to practice shall record within thirty days the certificate in a like manner in the county to which he removes, and the holder of the certificate shall pay to the register of deeds a fee of one dollar for making the record. [R. C. 1905, § 2023; 1895, ch. 113, § 11; R. C. 1899, § 1622.]

§ 2719. **Gratuitous services.** Gratuitous services in cases of emergency in the dehorning of cattle, or castration of animals, shall not be construed as coming within the meaning of this article. [R. C. 1905, § 2024; 1895, ch. 113, § 12; R. C. 1899, § 1623.]

§ 2720. **Witnesses. Expert fees.** Any person complying with the provisions of this article shall be entitled to expert fees as a witness in all civil actions relating to the veterinary profession. [R. C. 1905, § 2025; 1895, ch. 113, § 13; R. C. 1899, § 1624.]

ARTICLE 19.—GLANDERS.

§ 2721. **Penalty for having glandered animals in possession.** It shall be unlawful for any person to own, have in possession or in any manner keep, use or control any horse, gelding, mare, ass or mule infected with the disease commonly known as glanders; and each person who knowingly owns or possesses or in any manner keeps, uses or controls a glandered animal as aforesaid, shall be deemed guilty of a misdemeanor and shall be punished accordingly and all such diseased animals shall be summarily destroyed as herein-after provided. [R. C. 1905, § 2026; 1883, ch. 65, § 1; R. C. 1895, § 1625.]

Testimony of state veterinarian of state from which alleged glandered horses came, that he tested certain horses of seller about three months before horses were brought to this state and found them glandered, and that glanders was contagious disease, was admissible. *State v. Leavitt*, 28 S. D. 216, 133 N. W. 294.

§ 2722. **Complaint to justice of the peace. Duty of justice.** When complaint in writing is made to a justice of the peace of the proper county, verified by oath or affirmation, stating that any person owns, possesses or in any manner keeps, uses or controls any horse, gelding, mare, ass or mule infected with the disease commonly known as glanders, it shall be the duty of the justice upon filing such complaint immediately to cause notice to be served upon the person so owning, possessing, keeping, using or controlling such animal, which notice shall set forth briefly the allegations of the complaint and command such person forthwith to appear before such justice and show cause why such justice shall not issue a warrant for the destruction of such animal, and either the complainant or the person summoned may demand a trial by jury of six men to whom the hearing of the matter shall be submitted, and both parties shall be entitled to witnesses, to be summoned by subpoena as in other actions and such examination and hearing shall be conducted in all respects as civil actions in such courts, and if the jury or court desires, they may cause such person to bring such animal before them for inspection. Upon the conclusion of the trial the court, or jury, if trial is had by jury, shall forthwith render a judgment or verdict, stating that the charge in the complaint is or is not true, which judgment or verdict shall be final in the matter. [R. C. 1905, § 2027; 1883, ch. 65, § 2; R. C. 1895, § 1626.]

§ 2723. **Duty of justice after verdict.** In case the verdict of the jury shall be that the complaint is true and that such animal is infected with glanders, the justice shall forthwith direct by warrant that the owner or person having such animal in possession forthwith kill and bury or otherwise destroy the same, which warrant may be served upon such owner or person the same as a summons and in the case of a corporation, each officer thereof shall be responsible in its behalf for the acts of the corporation, and such service may be made upon any officer thereof. [R. C. 1905, § 2028; 1883, ch. 65, § 3; R. C. 1899, § 1627.]

§ 2724. **Penalty for disobeying warrant.** If the owner or person having possession of such diseased animal, after having been served with a warrant

as hereinbefore provided, shall for the period of twelve hours after such service neglect or refuse to kill and bury or otherwise destroy such animal, such animal shall be forthwith killed and buried or otherwise destroyed by order of the justice directed to the person serving such warrant, or some other competent person to be named by the justice in the order, and the officer or person executing the same shall make return thereof to the justice. The officer or person executing such order shall be entitled to a fee of ten dollars to be audited and paid as hereinafter provided. [R. C. 1905, § 2029; 1883, ch. 65, § 4; R. C. 1899, § 1628.]

§ 2725. Justice to preserve record and certify costs. The justice of the peace before whom any such proceedings shall be had shall enter in his docket a record of all such proceedings, and shall allow and tax all costs of the justice, officers, jurors and witnesses the same as in other cases, together with the fee provided herein for destroying such animal, which costs and fee shall be certified by him to the board of county commissioners, and shall be audited and paid out of the general county fund the same as costs in criminal actions before justices of the peace; but the justice may tax the costs against the complainant if he finds that the action was malicious or without probable cause, and such judgment for costs shall be enforced as judgments for costs in criminal actions, and execution may issue therefor. [R. C. 1905, § 2030; 1883, ch. 65, § 5; R. C. 1899, § 1629.]

§ 2726. Appraisal, how made. Whenever the state live stock sanitary board, or any of its authorized agents, shall deem the slaughter of a horse, gelding, mare, ass or mule necessary under the provisions of section 10, chapter 169, session laws of 1907 [section 2687 herein], the actual value of said animal at the time of appraisal shall be determined by the state live stock sanitary board or its agent within twenty-four hours after the killing or destruction is ordered; provided, that if the owner or keeper is aggrieved by such appraisal he may cause a board of appraisers to be appointed according to section 2727; provided the provisions of this section shall not prevent the owner or keeper of animals condemned and ordered destroyed by the live stock sanitary board from the right of protest and examination as provided for in section 10 of chapter 169, session laws of 1907. [1913, ch. 175, § 1; 1907, ch. 170, § 1.]

This section and the following sections 2727-2735 constitute Laws 1913, ch. 175. The heading of that chapter as printed in the session laws, is "glanders" and section 2728 indicates that the chapter is limited to that disease, although the section in Laws 1907 to which reference is made extends to any contagious or infectious disease.

§ 2727. Appraisers, how appointed. In case the owner, or his agent, of the animal or animals to be destroyed under the provisions of this act [sections 2726-2735] is not satisfied with the appraisal made by the state live stock sanitary board or its agents, he may protest against the same, whereupon a board of three appraisers is to be formed, of which one member shall be the agent of the state live stock sanitary board, one member shall be selected by the owner of the animal or animals involved, and a third member shall be selected by the first two members as herein provided. Whereupon an appraisal of the animal or animals involved shall be made by such board, according to section 2728, and in case all appraisers or any two of them agree upon a certain valuation, this appraisal shall be regarded as final. [1913, ch. 175, § 2; 1907, ch. 170.]

§ 2728. Maximum valuation. In making the appraisement the value put upon the animal or animals shall be the amount that such animal or animals would be worth had they not been affected with glanders; provided, however, that in no case shall the appraised value of any one animal exceed one hundred dollars to be paid by the state as hereinafter provided. [1913, ch. 175, § 3; 1907, ch. 170, § 3.]

§ 2729. Procedure of destruction and certification. It shall be the duty of the state live stock sanitary board or its authorized agent, who ordered

the destruction of the animal or animals involved, and who made the appraisal or took part in the same, to give notice of said facts in writing to the owner or keeper of said animal or animals, and to certify to such facts in writing to a justice of the peace of the county in which the said animal or animals are located, describing in said notice the deceased animal or animals with a reasonable degree of certainty, stating the name of the animal when known. [1913, ch. 175, § 4; 1907, ch. 170.]

§ 2730. Duty of owner. It shall be the duty of the owner or keeper of an animal or animals to be destroyed to destroy the same or cause the same to be destroyed and to dispose of the carcass or carcasses or cause the same to be disposed of before two witnesses or before the agent of the live stock sanitary board, in accordance with section 12, chapter 169, Session Laws of 1907 [section 2689 herein], and to make proper affidavit of such facts, which shall be sworn to by such witnesses or the agent of the state live stock sanitary board before the justice of peace to whom the certification provided for in section 2729 was made, within five days after the destruction notice was served upon him. [1913, ch. 175, § 5; 1907, ch. 170.]

§ 2731. Compensation for animals killed. It shall be the duty of the justice of the peace to file with the executive officer of the state live stock sanitary board the certification of the state live stock sanitary board or its authorized agent and the affidavits of the owner or keeper, sworn to according to section 2730, that the animal or animals have been killed and buried in accordance with section 12, chapter 169, Session Laws of 1907 [section 2689 herein]. The executive officer of the state live stock sanitary board, after recording the same upon his docket, shall examine the same, and, if found correct, file the same with the state auditor, who shall issue a warrant on the state treasurer for one-half of the sum named in the appraisers' return. [1913, ch. 175, § 6; 1907, ch. 170, § 2.]

Indemnity appropriations for owners of slaughtered animals afflicted with glanders were made in Laws 1909, ch. 159 and Laws 1911, ch. 42. And see section 2736 and Laws 1913, ch. 21.

§ 2732. Duties of justice of the peace. When the owner or keeper of animals ordered destroyed by the agent of the live stock sanitary board fails to comply with such order and to file with the justice of the peace the affidavit herein required, the justice of the peace to whom the notice of the destruction of an animal or animals ordered to be destroyed was made, must notify the sheriff or any constable within the county that the order of the state live stock sanitary board, or its authorized agent, has not been complied with, or that the animal or animals have not been killed and buried as provided for in section 12, chapter 169, Session Laws of 1907 [section 2689 herein], failure to make affidavit as provided for in section 2730 to be construed as noncompliance with the provisions of this act. [1913, ch. 175, § 7; 1907, ch. 170.]

"This act" consists of sections 2726-2735.

§ 2733. Duty of sheriff. It shall be the duty of the sheriff or constable of the county, immediately after receiving notice from the justice of the peace, to proceed to destroy the animal or animals ordered to be destroyed by the state live stock sanitary board or its authorized agent and the officer performing such duty shall receive compensation therefor as is prescribed by law for like services and shall be paid therefor in like manner. [1913, ch. 175, § 8; 1907, ch. 170.]

§ 2734. Proceedings, how conducted. Fees. The justice of the peace to whom certification is made shall enter upon his docket a record of all proceedings and to tax all costs of justices, officers and appraisers other than the authorized agent or agents of the state live stock sanitary board, which costs and fees shall be certified by him to the board of county commissioners, and shall be audited and paid out of the general fund of such county the same as costs in criminal actions before justices of the peace; provided,

however, that if it shall appear in any such proceeding that the animal or animals destroyed have not been kept within the county where the proceedings are had for at least sixty days immediately prior to such order of destruction, then the costs of all proceedings hereunder shall be certified by the county auditor of the county wherein the proceedings took place to the state auditor, who shall issue a warrant on the state treasurer for the amount of the costs paid by the county in favor of the county auditor of such county, such warrant to be paid out of the general fund of the state for the purpose of reimbursing said county. [1913, ch. 175, § 9; 1907, ch. 170, § 3.]

§ 2735. Payments, when not made. The right of indemnity shall not exist and payment shall not be made in the following cases:

1st. For animals belonging to the United States or the state of North Dakota, or any city, county, township or village in the state.

2d. When the owner or claimant at the time of coming into possession of the animal or animals knew such animal or animals to be diseased with glanders or exposed to such disease.

3d. When the owner, his agent or claimant failed to make affidavit of the destruction and disposal of the carcass or carcasses before the justice of the peace as provided for in section 2730.

4th. For animals found to have been diseased at the time of their arrival in this state.

5th. For animals that are brought into the state to do contract work.

6th. When the animal or animals at the time of their destruction have been in the state less than six months.

7th. When the owner or owners shall have been guilty of negligence or willfully exposing his or their animal or animals to the influence of infected or contaminated surroundings.

8th. When the owner or claimant is not a resident of the state of North Dakota. [1913, ch. 175, § 10; 1907, ch. 170, § 4.]

§ 2736. Duty of the state board of equalization. It shall be the duty of the state board of equalization, at the time of the levy of the annual tax, to levy a special tax of one-tenth of one mill on the dollar upon the assessed valuation of all property in this state and when collected, paid into the hands of the state treasurer, who shall at once enter the same into a fund known as the glandered horse fund. Said fund shall be preserved inviolate for the payment of claims allowed for the destruction of glandered horses as provided in chapter 170 of the laws of 1907. [1911, ch. 144.]

See note to section 2731.

"Chapter 170 of the Laws of 1907" is superseded by sections 2726-2735.

§ 2737. Testing for glanders. In addition to the powers now conferred by law the state live stock sanitary board is authorized and empowered to test or cause to be tested any and all horses, mules and asses which may have been exposed to glanders, and when requested to do so by the board of supervisors of any organized township or by the board of county commissioners, it shall then be the duty of the state live stock sanitary board to test or cause to be tested any of the horses, mules and asses in said organized township or any such county as shall be exposed to glanders or which such board of supervisors or county commissioners shall be (by) resolution request. [1913, ch. 206, § 1.]

§ 2738. Fees for testing. When any horses, mules and asses shall be tested as provided for in section 2737, the agent of the state live stock sanitary board shall be paid for his services in connection therewith such fees as may be determined by the state live stock sanitary board, provided that such fees shall not exceed five (\$5) dollars per day and expenses actually incurred. [1913, ch. 206, § 2.]

§ 2739. Payment of fees for testing. The itemized accounts for said testing shall be submitted by sworn vouchers and detailed reports of said testi-

mony, same to be audited and approved by the state live stock sanitary board and forwarded to the board of county commissioners in the county where said testing was performed, whereupon the board of county commissioners shall order warrants drawn by the county auditor for one-half the amount of said account and one-half of said account shall be paid out of the live stock sanitary board fund as provided for by law. [1913, ch. 206, § 3.]

§ 2740. Expenses, how paid; when appropriation insufficient. If the funds appropriated and available for the use of the live stock sanitary board have been exhausted or are insufficient to meet the expenses of carrying out the provisions of [this] act [sections 2737-2740], the owner of any exposed animals may have such animals tested under the direction of the live stock sanitary board and the expenses of such testing shall be borne jointly and in equal shares by the owner of the exposed animals and the county wherein said owner resides. The fees for such testing or examination shall not exceed the fee prescribed in section 2738. [1913, ch. 206, § 4.]

ARTICLE 20.—SHEEP INSPECTORS.

§ 2741. Appointment of sheep inspectors. Term of office. The county commissioners of any organized county shall, upon the presentation of a petition signed by ten wool growers of such county, appoint a sheep inspector who is acquainted with the diseases to which sheep are subject and who shall be a resident of the county for which he is appointed, and who shall hold his office for two years unless sooner removed. Such inspector may appoint as many deputies as he may deem necessary. [R. C. 1905, § 2031; 1891, ch. 116, § 1; R. C. 1899, § 1630.]

§ 2742. Duties of sheep inspector. It shall be the duty of the sheep inspector, whenever he has knowledge or information that any sheep within his jurisdiction have the scab or any other malignant contagious diseases, to inspect such sheep and report in writing the result of his inspection to the district veterinarian, to be filed by him for reference by the county commissioners or any person concerned, and if such disease continues he shall once every four weeks thereafter reinspect such sheep and report in writing the result and treatment, if any, in the same manner until said disease is reported cured. [R. C. 1905, § 2032; 1891, ch. 116, § 2; R. C. 1895, § 1631.]

§ 2743. Duty of owner or agent of diseased flock. The owner, or his agent, of any sheep reported by the inspector to be so diseased shall immediately herd them so that they cannot range upon or within one mile of any grounds accustomed to be ranged upon by any other sheep, or shall restrain them from passing over or traveling upon or within one mile of any public highway or road, and in case this cannot be done he shall immediately remove said sheep to a locality where they shall not be permitted to range within less than five miles of any other sheep, and such sheep shall continue to be herded under such restrictions until, upon inspection, they shall be reported free from such disease. [R. C. 1905, § 2033; 1891, ch. 116, § 3; R. C. 1899, § 1632.]

§ 2744. Oath and bond of inspector, where recorded. Each inspector before entering upon the duties of his office shall take the oath of office required of other civil officers and shall give bond to the state of North Dakota in the sum of one thousand dollars with good sureties, conditioned that he will faithfully perform the duties of his office; such bond shall be approved by the board of county commissioners, and with the oath indorsed thereon shall be recorded in the office of the county auditor of the county in which the inspector shall reside and may be sued on by any person injured on account of the unfaithful performance of said inspector's duty; provided, that no suit shall be so instituted after more than twelve months have elapsed from the time the cause of action accrued. [R. C. 1905, § 2034; 1891, ch. 116, §§ 8, 9; R. C. 1899, § 1633.]

§ 2745. When infected sheep dipped. Penalty. Every owner of sheep having scab or other malignant contagious disease shall dip or otherwise treat the same upon his own premises; provided, that when he has more than one ranch or set of ranches and the diseased sheep are not upon the ranch where the dipping works or other facilities for treating the disease are situated, he shall have the right to drive through intermediate ranges, but in so doing shall consult the owners or occupants of said range as to where he shall cross the same, and in no case shall he enter another corral or water at his troughs or accustomed watering places with his diseased sheep without the written or otherwise expressed consent of the owner, and for every violation of the provisions herein he shall be subject to a fine of not exceeding one hundred dollars. [R. C. 1905, § 2035; 1891, ch. 116, § 10; R. C. 1899, § 1634.]

§ 2746. Salary of inspector, how paid. The inspector shall receive for his services five dollars per day while necessarily employed in inspecting, which shall be paid out of the county general fund in the same manner as other claims against the county are paid; but the board of county commissioners shall require such sheep inspector to present an itemized statement duly verified of the number of sheep inspected and the number of days actually employed in the performance of his official duties. [R. C. 1905, § 2036; 1891, ch. 116, § 11; R. C. 1895, § 1635.]

§ 2747. Power of inspectors. Five days' notice shall be given to the sheep inspectors by persons intending to bring sheep into any county in this state from another state for the purpose of grazing said sheep upon lands in this state, which notice shall state the place where such sheep are located and the nearest place to the line where the said sheep may be inspected. In all cases where scab or other contagious diseases are found in a flock of sheep, the sheep inspector is hereby empowered to prescribe what dip or other remedy shall be applied and specify the manner of treatment. [R. C. 1905, § 2037; 1891, ch. 116, § 12; R. C. 1899, § 1636; 1901, ch. 182.]

§ 2748. Duty of inspectors. It is hereby made the duty of sheep inspectors of this state to cause to be dipped all sheep that come into the state for the purpose of running upon or grazing on the lands of this state, which dipping shall be done under such rules and regulations as the sheep inspector may prescribe. And after said dipping the said inspector shall cause the sheep so dipped to be quarantined for not less than twenty days, or until the said sheep inspector shall be satisfied that the said sheep are entirely free from disease; provided, that this section shall not apply to sheep while on railway cars or in railway stock yards, accompanied by proper certificates of health and which sheep are not detained in the state more than sixty hours. [R. C. 1905, § 2038; 1897, ch. 130, § 1; R. C. 1899, § 1636a; 1901, ch. 182.]

§ 2749. Compensation. For his services under the provisions of the foregoing section the inspector shall receive the same compensation as in other cases, which compensation, together with the costs of dipping, shall be a lien upon the sheep so inspected and dipped and shall be collectible as such in an action before any court of competent jurisdiction. But where the owner is a resident of this state importing such animals for breeding purposes or the ordinary purpose of husbandry and has notified the district veterinarian of the time and place where the same may be inspected, as well as the place where such animals are to be dipped, and they are found free from any infectious or contagious disease, the inspection shall be made free of fee, mileage or per diem to the owner. [R. C. 1905, § 2039; 1897, ch. 130, § 2; R. C. 1899, § 1636b.]

§ 2750. Owners must notify inspectors. In all cases where sheep are brought into any county of this state the owner or person in charge of said sheep shall notify the inspector of the date of the arrival in said county and before being allowed to mingle with other sheep shall be quarantined for a

period of not less than forty days, in a location approved of by the sheep inspector of said county; provided, however, where sheep have been ranged for not less than forty days near the county line of the county to which said sheep are to be removed and are known to be free from disease, the provisions of this section shall not apply. [R. C. 1905, § 2040; 1891, ch. 116, § 13; R. C. 1899, § 1637.]

§ 2751. Penalty for violation of. The owner, or his agent or employes, of any flock of sheep to be inspected shall afford the inspector all reasonable facilities for making such inspection, and for every violation of any of the provisions of this article such owner or his agent or employes shall be fined not less than ten dollars nor more than three hundred dollars, and every separate day's offense shall constitute a separate offense, and the written report of an offense made by an inspector under oath shall be prima facie evidence of the commission of such offense, and any justice of the peace of the county in which the offense is committed shall have jurisdiction thereof, and such inspector shall report all violations of the provisions of this article, of which he has knowledge. [R. C. 1905, § 2041; 1885, ch. 135, § 5; R. C. 1899, § 1638.]

§ 2752. Record of official acts of inspector. Every inspector shall keep a fair and correct record of all his official acts, and if required give a certified copy of any record upon payment of the fees therefor, and in case of the inspector's death, resignation or removal said record shall be deposited with the register of deeds. [R. C. 1905, § 2042; 1885, ch. 135, § 8; R. C. 1899, § 1639.]

§ 2753. Fine for false report of inspector. Whenever a sheep inspector shall willfully or falsely report any sheep subject to disease, he shall be subject to a fine of ten times the amount of the fees charged by him for the inspection, and if he shall willfully or falsely report free from disease any sheep inspected by him that are thus infected, he shall be subject to a penalty of not exceeding three hundred dollars for each offense. [R. C. 1905, § 2043; 1885, ch. 135, § 11; R. C. 1899, § 1640.]

§ 2754. Removal of inspector. Cause. If any sheep inspector shall be found guilty of either of the offenses set forth in the last section, or if on complaint in writing by any three wool growers of the county the county commissioners, after allowing the inspector a fair hearing, shall be of opinion that he is incompetent to discharge intelligently and efficiently the duties of his office, or that having sufficient knowledge or information he has for any cause willfully or negligently failed to make the required inspection, or has needlessly made inspections for the purpose of securing fees, or that his reports have been influenced by favors or prejudice, or from any cause he has failed in the proper discharge of the duties of his office, it shall be the duty of the commissioners to declare such office vacant and to make a new appointment. [R. C. 1905, § 2044; 1885, ch. 135, § 12; R. C. 1899, § 1641.]

ARTICLE 21.—LIVE STOCK INSPECTION.

§ 2755. Appointment of inspector. Whenever the board of county commissioners in any county are petitioned so to do by at least ten per cent of the voters of their county, as evidenced by the number of votes cast for congressman at the last general election, they may appoint the sheriff of their county as live stock inspector, and when so appointed, the said sheriff shall perform the duties and receive the compensation therefor as hereinafter prescribed by this article. [R. C. 1905, § 2045; 1901, ch. 121, § 1; 1903, ch. 121, § 1.]

§ 2756. Inspection before shipping. It shall be the duty of said stock inspector to inspect all horses of which he has knowledge are about to be loaded for shipment, or to be driven or shipped out of the county in which

he resides, to any other point within the state or to a point outside of the state, before the same is shipped. [R. C. 1905, § 2046; 1901, ch. 121, § 2; 1903, ch. 121, § 2.]

§ 2757. Record of inspection. Said inspector shall make and keep a record in his office in a book expressly for that purpose, which record shall be open to the public and shall contain: First, the marks and brands upon each of said animals; second, if no marks or brands appear thereon, he shall take a general description of the same; third, the owner of said horses, if ascertainable, and if not, he shall so state in his record; fourth, the person in whose name said horses are shipped; fifth, the name of the person in charge of the same; and, sixth, the point of destination, together with such other information as may assure the inspector that the person shipping or driving is the owner, or has lawful right to ship or drive the same. If the inspector shall be satisfied from his inspection that the person shipping or driving said horses is the owner or has lawful right to ship or drive the same, he shall, on payment of the fees hereinafter prescribed, give to such person a permit to ship or drive the same, which permit shall be in writing, and shall set forth the number and description of the animals. [R. C. 1905, § 2047; 1901, ch. 121, § 3; 1903, ch. 121, § 3.]

§ 2758. Unlawful to ship without permit. It shall be unlawful for any person or persons to cause to be shipped or driven, any horses from any county in this state to any other county therein, or to a point without said state, without such person or persons first notifying the said stock inspector of the proposed shipment or driving, and request that an inspection of the animals to be shipped or driven be made, and until the permit shall have been issued, as specified in this article, no railway or transportation company shall ship any such stock. But the said stock inspector may at his discretion issue a written permit to drive horses from one county to another within this state without any personal inspection or fees. [R. C. 1905, § 2048; 1901, ch. 121, § 4; 1903, ch. 121, § 4.]

§ 2759. Inspector's fees. The said stock inspector shall be entitled to demand and collect as fees for inspection, ten cents per head for each horse; and he is hereby given a lien upon said animals for such inspection fees and mileage at the rate of ten cents per mile for each mile actually traveled in going to and returning from the place of inspection. [R. C. 1905, § 2049; 1901, ch. 121, § 5; 1903, ch. 121, § 5.]

§ 2760. Penalty. Any person who shall ship any horses from any county in this state without having first procured the inspection of said stock and received a permit authorizing said shipment, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than two hundred dollars, or imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment. [R. C. 1905, § 2050; 1901, ch. 121, § 6; 1903, ch. 121, § 6.]

ARTICLE 22.—REGULATION OF HEALTH CERTIFICATES OF LIVE STOCK.

§ 2760a. Health certificate. Who may issue. That each and every person who issues a health certificate for live stock of any class in transit entering the state or within the state or before shipment out of the state, without being duly authorized to issue such health certificates by the state live stock sanitary board or by the United States department of agriculture shall be guilty of a misdemeanor. [1911, ch. 180, § 1.]

§ 2760b. Penalty. Each and every person violating the provision of this act shall be guilty of a misdemeanor and be punished by a fine of not less than twenty-five (\$25) dollars or more than one hundred (\$100) dollars or by imprisonment of not less than ten days or more than thirty days in the county jail. [1911, ch. 180, § 2.]

ARTICLE 23.—HEALTH CERTIFICATE FOR PURE-BRED CATTLE.

§ 2761. Certificate of health of pure-bred cattle required. All persons selling pure-bred cattle, or cattle represented to be pure bred, for breeding purposes shall, before delivery, make a report to the state live stock sanitary board on blanks furnished by the board on application, stating the number of cattle sold, their age and sex, and to whom sold, and before delivery thereof such cattle shall be tested with tuberculin, and if found free from disease a certificate of health shall be given by said live stock sanitary board, or some person duly authorized by the live stock sanitary board, to the seller and purchaser, provided that no such certificate shall be required in case the cattle so sold shall have been tuberculin tested and found free from disease within one year, under the direction of the live stock sanitary board and the laws of this state, and a certificate of health granted by said live stock sanitary board within that time, provided further that no certificate shall be required for animals under six months of age. [1913, ch. 205, § 1.]

§ 2762. Penalty for violation of law. Any person who shall sell or dispose of any pure-bred cow or bull for breeding purposes without furnishing a certificate of health as provided for in section 2761 shall be guilty of a misdemeanor and be punished by a fine of not less than twenty-five (\$25) dollars or more than five hundred dollars (\$500), or by imprisonment not less than thirty (30) days nor more than ninety (90) days. [1913, ch. 205, § 2.]

ARTICLE 24.—ADMISSION OF LIVE STOCK INTO THE STATE.

§ 2762a. Horses, mares, mules and asses. All horses, mares, mules and asses being imported into the state of North Dakota must be accompanied by health certificates including mallein test certificates certifying that animals have been examined and mallein tested within thirty days prior to date of shipment and found free from all contagious and infectious disease; also all stallions imported into North Dakota must also be accompanied by certificate that said animal is free from any infectious, contagious, transmissible disease or unsoundness, as specified in section 3, chapter 161, session laws of 1909. [1911, ch. 181, § 1.]

"Section 3, chapter 161, session laws of 1909," has been twice amended and re-enacted and in its present form is section 2765 herein.

§ 2762b. Cattle. All cattle imported into the state of North Dakota for dairy, breeding and feeding purposes must be accompanied by a certificate of health, and in case of cattle for dairy and breeding purposes a certificate certifying that such animals over six months of age have been tuberculin tested within thirty days prior to shipment and found free from tuberculosis and all other contagious and infectious disease. [1911, ch. 181, § 2.]

§ 2762c. Sheep. All sheep imported into the state of North Dakota must be accompanied by certificate of health specifically indicating that they are free from scabies and lip and leg ulcerations and have not been exposed thereto within thirty days prior to shipment, and also free from any indications of any contagious or infectious disease. [1911, ch. 181, § 3.]

§ 2762d. Swine. All swine imported into the state of North Dakota must be accompanied by certificate of health stating that no infectious swine disease exists or has existed in the locality from which said shipment originated within a period of six months save where swine are certified by a duly accredited federal or state veterinarian as having been immunized by the Dorset-McBride-Niles hog cholera serum; then such swine shall be admitted without hindrance and upon the above specified certificate only.

All swine imported into the state of North Dakota for exhibition purposes at state or county fairs must be accompanied by certificate stating that such swine have been immunized by the Dorset-McBride-Niles hog cholera serum, prepared or approved by the United States department of agriculture. To prospective exhibitors from the state of North Dakota the required amount

of serum will be furnished free of charge upon application to the live stock sanitary board. [1911, ch. 181, § 4.]

§ 2762e. Cattle, swine and sheep for immediate slaughter. In such cases where shipments of cattle, swine and sheep are for immediate slaughter at any point within the state of North Dakota where no inspection is maintained by federal or state authorities, then a declaration shall accompany the shipment stating such animals are for immediate slaughter. [1911, ch. 181, § 5.]

§ 2762f. Tests. All certificates of health, tuberculin and mallein tests shall be made and signed by a federal, state or deputy state veterinarian or graduate veterinarian whose inspections are endorsed by officers in charge of live stock sanitary work in state where inspection is made. All mallein and tuberculin tests shall be made by federal, state or deputy state veterinarians. Such tests shall consist of three anti-injection temperatures at intervals of not less than two and longer than three hours apart, and not less than five post-injection temperatures two hours apart commencing not to exceed ten hours after time of injection and up to the twentieth hour after injection. [1911, ch. 181, § 6.]

§ 2762g. Serums. All serums used, tuberculin, mallein and hog cholera serums, in conducting tuberculin or mallein tests and immunization for hog cholera shall be manufactured or approved by the United States bureau of animal industry. [1911, ch. 181, § 7.]

§ 2762h. Health certificates and test charts. All certificates must be made on official forms of the state in which shipment originated certifying to the aforesaid inspections and tests, said certificates to be attached to way-bill and accompany shipment to destination, and the test charts must be immediately mailed to the state veterinarian of this state. The owners of stock should also have a copy of certificate to be shown on demand of any state or federal official. [1911, ch. 181, § 8.]

§ 2762i. Penalty. Any one violating the provisions of this article or any rule or regulation made by the live stock sanitary board shall be guilty of a misdemeanor and be punished by a fine of not less than twenty-five dollars or more than five hundred dollars, or by imprisonment not less than thirty days nor more than ninety days. [1911, ch. 181, § 9.]

ARTICLE 25.—STALLION REGISTRATION.

§ 2763. Licenses. Definition. No person, firm, company or corporation, shall stand or travel for profit or gain any stallion or jack to be mated with any mare other than mares owned by the owner of such stallion or jack, or sell, offer for sale, exchange or transfer, any stallion or jack to be used for the above purposes, unless and until the owner of such stallion or jack shall have caused the name, description and pedigree of such stallion or jack to be enrolled by the stallion registration board, which board is provided for in section 2 of said chapter 161 of the Session Laws of 1909 [section 2764 herein].

The word "stallion" whenever used in this article shall be construed to include the term "jack" as well. [1913, ch. 273, § 1; 1911, ch. 279, § 1; 1909, ch. 161, § 1.]

§ 2764. Stallion registration board, how composed. Duties. Compensation. In order to carry out the provisions of this article, there shall be constituted a stallion registration board, whose duty it shall be to verify and register all pedigrees, and to provide the necessary inspection; to issue stallion license certificates; to make all necessary rules and regulations, and to perform such other duties as may be necessary to carry out the provisions of this article. Said board shall hold its meetings at the agricultural college; these meetings not to exceed four in number each year; providing that the president of the board has power to call special meetings whenever in his judgment it becomes necessary. The members of the board shall receive as compensa-

tion for their services the sum of three dollars per day for each day employed, and five cents per mile actually and necessarily traveled in attending the meetings of the board, which sum shall be paid out of the state treasury upon vouchers of the board, duly certified by the president and secretary thereof. The stallion registration board shall be composed of the professor of animal husbandry of the state agricultural college, who shall be ex-officio secretary and executive officer of this board; the professor of veterinary science of the state agricultural college; the state commissioner of agriculture and labor; the president of the state live stock sanitary board, and the president of the North Dakota live stock association. [1909, ch. 161, § 2.]

See appropriation with provision regulating payment of bills against the same in section 653g.

§ 2765. Veterinary inspection and verification of breeding, standard for verifying pedigree. In order for the owner of a stallion to secure the license herein provided for, the stallion must pass a veterinary examination as herein provided for, and be free from all infectious, contagious or transmissible disease or unsoundness. The owner of such stallion must also furnish to the stallion registration board, the stud book registry certificate or pedigree of the stallion, and all necessary papers relating to the breeding and ownership of such stallion. Upon verification of pedigree and certificate of breeding, in case of pure bred, grade and cross bred stallions, provided the stallion has passed the necessary veterinary inspection, as provided for in this article, a license certificate shall be issued by said board. The presence of any one or more of the following named diseases shall disqualify a stallion from public service and the following named diseases are hereby defined as infectious, contagious, or transmissible diseases and unsoundness for this act: cataract, amaurosis, laryngeal hemiplegia (roaring or whistling), string halt, glanders, sidebone, farcy, maladie du coit, urethral gleet, mange, bone spavin, ringbone and curb when accompanied by curby hock. The stallion registration board shall refuse certificate of enrollment to any stallion affected with any of these diseases specified, and shall revoke a previously issued license certificate of any stallion found upon examination to be so affected.

Provided, however, that in event a pure bred stallion, previously licensed, is found upon re-inspection at the stated time as provided for in section 10 of chapter 161 of the Session Laws of 1909 [section 2772 herein], to be affected with any unsoundness or disease indicated in this section, the stallion registration board may grant the owner or owners of said stallion a license on condition that the result of the veterinary examination be expressed in the license. Said unsoundness to be set in black face type of a size not smaller than the type used in the body of the license. The owner or owners of any grade, scrub or mongrel stallion found to be affected with any unsoundness or disease specified herein on the re-inspection provided for in said section 10 of chapter 161 of the Session Laws of 1909 [section 2772 herein], shall be refused a license certificate.

The stallion registration board or its authorized agents shall recognize as pure bred and registered only such stallions as have been recorded in some stud book, the standing and merit of which has been approved, passed upon and placed upon a recognized list by the stallion registration board. [1913, ch. 273, § 2; 1911, ch. 279, § 2; 1909, ch. 161, § 3.]

§ 2766. Examination of stallions, methods, etc. The veterinary examination of the stallions provided for in this article must be done by a qualified graduate veterinarian who shall be in the employ of the stallion registration board. The stallion must be brought for examination to the nearest point where the inspector will be stationed on specified dates. The stallion owner must be given at least ten days' notice of the dates when the inspector will be at specified towns of the county, in which the owner of the stallion resides. The inspector must not make known the results of the inspection of a stallion to

the owner, at the time of inspection, but report to the secretary of the stallion registration board, who will notify the owner at the time he grants or refuses to grant him a license certificate for his horse. [1909, ch. 161, § 4.]

§ 2767. Method of caring for protests. Whenever a stallion has been rejected by the stallion registration board and the owner is not satisfied with the decision of the members of said board, the owner may file with said board a protest accompanied by a deposit of twenty-five dollars, either in currency or a certified draft, against the decision of said board or its official inspector, and a sworn statement from a qualified, graduate veterinarian, stating that he has examined the stallion in question and found said stallion free from the unsoundness or disease for which said stallion was previously refused a license certificate; whereupon an examination of the stallion shall be made by three experts, one expert to be appointed by the stallion registration board, one by the owner of the stallion, and the third to be chosen by the other two experts already appointed, but all such experts shall be graduates of recognized veterinary schools. In case all three or any two of the experts declare the stallion eligible to receive a license, then the expense of the consultation shall be paid by the stallion registration board out of funds as provided for in section 12 of chapter 161 of the Session Laws of 1909 [section 2774 herein]; or if three or any two of the experts declare the stallion to be ineligible in accordance with the provisions of this article, the expense incurred shall be paid out of the deposit as herein provided for, any part remaining thereof to be returned to said owner. [1913, ch. 273, § 3; 1911, ch. 279, § 3; 1909, ch. 161, § 5.]

§ 2768. Authority to grant temporary licenses. The stallion registration board is authorized in cases of emergency to grant temporary license certificates without veterinary examination, upon receipt of an affidavit of the owner to the effect that to the best of his knowledge and belief said horse is free from infectious, contagious or transmissible disease or unsoundness. Temporary license certificates shall be valid only until veterinary examination can reasonably be made. [1909, ch. 161, § 6.]

§ 2769. Posting copies of license certificates. The owner of any stallion standing for public service in this state shall post and keep affixed during the entire breeding season copies of the license certificates of such stallion, issued under the provisions of this article, in a conspicuous place upon the main door leading into every stable or building where the said stallion stands for public service. Said copies shall be printed in bold face and conspicuous types, not smaller than pica, especially the word "pure bred," "grade," etc. [1909, ch. 161, § 7.]

§ 2770. Form of license certificates. The license certificate to be issued a pure bred stallion shall be in the following form:

STALLION REGISTRATION BOARD.

License Certificate of Pure Bred Stallion or Jack.

The pedigree of the Stallion or Jack (name), owned by, described as follows: Color, Breed Foaled in the year, has been examined at the Agricultural College, North Dakota, Division of Animal Husbandry, and it is hereby certified that the said stallion is of pure breeding and is registered in the (name of studbook). The above named stallion has been examined by, a duly licensed veterinarian, and is reported to be free from the infectious, contagious or transmissible diseases or unsoundnesses specified in the North Dakota Stallion Law, and is licensed to stand for public service in the state of North Dakota.

Signed,

Professor of Animal Husbandry and Secretary Stallion Registration Board.

The license certificate issued a stallion whose sire or dam is of pure breeding shall be in the following form:

STALLION REGISTRATION BOARD.

License Certificate of Grade Stallion or Jack.

The pedigree of the Stallion or Jack (name), owned by, described as follows: Color, Breeding, Foaled in the year, has been examined at the Agricultural College, North Dakota, Division of Animal Husbandry, and it is hereby certified that said stallion is a grade, and not of pure breeding. The above named stallion has been examined by, duly licensed veterinarian, and is reported as free from the infectious, contagious or transmissible diseases and unsoundnesses specified in the North Dakota Stallion Law, and is licensed to stand for public service in the state of North Dakota.

Signed

Professor of Animal Husbandry and Secretary Stallion Registration Board.

The license certificate issued for a stallion that has a pure bred registered sire of one breed and a pure bred registered dam of another breed, shall be in the following form:

STALLION REGISTRATION BOARD.

License Certificate of Cross Bred Stallion.

The pedigree of the Stallion (name), owned by, described as follows: Color, Foaled in the year, has been examined at the Agricultural College, North Dakota, Division of Animal Husbandry, and it is found that his sire is registered in the and his dam in the Such being the case, the said stallion is not of pure breeding. The above named stallion has been examined by, a duly licensed veterinarian, and is reported as free from the infectious, contagious or transmissible diseases or unsoundnesses specified in the North Dakota Stallion Law, and is licensed to stand for public service in the state of North Dakota.

Signed

Professor of Animal Husbandry and Secretary Stallion Registration Board.

The license certificate issued for a stallion neither of whose parents are pure bred, shall be in the following form:

STALLION REGISTRATION BOARD.

License Certificate of Mongrel or Scrub.

The pedigree of the Stallion (name), owned by, described as follows: Color, Foaled in the year, has been examined at the Agricultural College, North Dakota, Division of Animal Husbandry, and it is hereby certified that the said stallion is of Mongrel Breeding and not a pure bred. The above named stallion has been examined by, a duly licensed veterinarian, and is reported as free from the infectious, contagious or transmissible diseases or unsoundnesses specified in the North Dakota Stallion Law, and is licensed to stand for public service in the state of North Dakota.

Signed

Professor of Animal Husbandry and Secretary Stallion Registration Board.

[1911, ch. 279, § 4; 1909, ch. 161, § 8.]

§ 2771. Advertisement must contain copy of license. Every bill, poster or advertisement issued by the owner of any stallion licensed under this act, or used by him for advertising such stallion, shall contain a copy of his license

certificate and shall not contain illustrations, pedigrees or other matter that is untruthful or misleading. [1909, ch. 161, § 9.]

§ 2772. Fees for granting license and inspection. A fee not exceeding two dollars shall be paid to the secretary of the stallion registration board for the examination and enrollment of each pedigree and the issuance of a license certificate in accordance with the breeding of the stallions as above provided. A fee not exceeding one dollar shall be paid annually for the renewal of pedigree certificate and service license. A fee of five dollars shall also be paid for the veterinary examination of the stallion as provided in this article. This fee shall be collected by the inspector at the time the inspection is made. Stallions shall be examined every three years until ten years of age, and after the first examination they shall be exempt from re-examination if they are ten years of age or over. [1909, ch. 161, § 10.]

§ 2773. Fee for transfer of license. Upon a transfer of the ownership of any licensed stallion under the provisions of this article, the license certificate may be transferred by the secretary of this board to the transferee upon submittal of satisfactory proof of such transfer of ownership upon payment of fifty cents. [1909, ch. 161, § 11.]

§ 2774. How expenses are provided for. Board makes annual report to governor. The funds accruing from the above named fees shall be used by the stallion registration board to defray the expenses of enrollment of pedigrees and issuances of licenses; to pay for the services and expenses of the veterinary inspector; to publish reports or bulletins containing lists of stallions examined; to encourage the horse breeding interests of this state, to disseminate information pertaining to horse breeding, and for any other purpose as may be necessary to carry out the purposes and enforce the provisions of this article. It shall be the duty of this board to make annual report, including a financial statement, to the governor of the state, and all financial records of said board shall be subject to inspection at any time by the public examiner. [1909, ch. 161, § 12.]

As to the time and contents of the report to the governor, see sections 95, 97, 98, 633.

See appropriation for expenses of trustees or members of stallion registration board in section 653g.

§ 2775. Procedure to obtain lien, penalty and foreclosure. The owner of any stallion who shall have complied with all of the provisions of this law, shall have a lien upon the offspring and upon the mare served, upon filing at any time within twelve months after the service, in the office of the register of deeds of the county in which said mare was kept at the time of service, a statement of the account thereof, together with a description of the mare served. Such lien shall exist for a period of one year from the filing of such statement, and shall have priority over all other liens or incumbrances upon the offspring; such lien shall attach at the time of service of such stallion and shall not be lost by reason of the sale, exchange or removal from the county in which such mare was kept at the time of service, or other disposition without the consent of the person holding the lien.

Every person having in his possession or under his control any mare and offspring upon which there is known to him to be an existing lien for the service of a stallion as provided for herein, who removes from the county, conceals, sells, or in any manner disposes of, otherwise than as prescribed by law, such mare or offspring without the consent of the holder of such lien, is guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not less than twenty-five dollars and not more than fifty dollars.

At any time after the filing of such lien when the amount therein specified shall have become due, the lien may be enforced by a sale of property covered thereby, upon the notice and in the manner provided for the foreclosure of mortgages upon personal property, and costs and fees for such foreclosure shall be the same as provided for in section 8132. [1913, ch. 273, § 4; 1911, ch. 279, § 5; 1909, ch. 161, § 13.]

§ 2776. Penalty for violation of law. Violation of any of the provisions of this act shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars for each offense. [1909, ch. 161, § 14.]

"This act" consists of sections 2763-2775, and 2777, but not of sections 2778 and 2779, these latter being first enacted in 1913.

§ 2777. Power over and of peace officers. The stallion registration board shall have power to call any sheriff, deputy sheriff or constable to execute its orders, and officers shall obey the orders of said board, and the officers performing such duties shall receive compensation therefor as is prescribed by law for like services, and shall be paid therefor in like manner. Any officer may arrest or take before any justice of the peace of the county any person found violating any provision of this act, and such officers shall immediately notify the state's attorney of such arrest and he shall prosecute the person so offending according to law. [1909, ch. 161, § 15.]

As to what constitutes "this act," see note to section 2776.

§ 2778. Mongrel and scrubs not to be licensed after January first, 1916. It is hereby provided that after January first, 1916, no scrub or mongrel stallion shall be enrolled and licensed as provided in chapter 161 of the Session Laws of 1909, as amended by chapter 279 of the Session Laws of 1911 and amendments thereto. All licenses for mongrel or scrub stallions issued before that date shall be continued in force if properly renewed, however providing the said stallions meet the requirements provided for by such law. [1913, ch. 273, § 5.]

"Chapter 161 of the Session Laws of 1909, as amended by chapter 279 of the Session Laws of 1911 and amendments thereto" constitute sections 2763-2777.

§ 2779. Importation of stallions. Every person, firm or company importing any stallion into the state of North Dakota for breeding purposes shall first secure a certificate from a recognized state or federal veterinarian, certifying that said stallion is free from any or all of the diseases or unsoundness referred to in section 2767. A copy of such certificate must be mailed to the secretary of the stallion registration board at least five days before the importation of such stallions into the state. [1913, ch. 273, § 6.]

ARTICLE 26.—DIPPING TANKS.

This article constitutes article 20 of chapter 24 of the Political Code in the Revised Codes of 1905. "A district veterinarian" is mentioned in sections 2780, 2781 and 2785 herein, although it is considered that there is now no officer bearing the title. See note under the title to article 16 immediately preceding section 2678 herein. The existence of a "district veterinarian" has not been recognized in any legislation subsequent to that found in article 20 of the Revised Codes of 1905 as above cited. But as none of the sections in that article has been expressly amended or expressly repealed they are retained in this compilation.

§ 2780. Established, how. Cost, how paid. In any county of the state on the presentation of a petition signed by at least ten per cent of the free-holders of said county, to the board of county commissioners of such county, petitioning for the establishment and construction of public dipping stations for live stock within such county, the board of county commissioners of such county shall within ninety days from the presentation of such petition proceed to establish and construct under the supervision of the district veterinarian in whose district such stations may be located, public dipping stations at convenient places within such county. The cost of such stations shall be paid from the general fund, and warrants drawn on the county treasurer for such work shall be paid only when signed by the county auditor and approved by the board of county commissioners of such county. In the construction of such dipping stations it shall be the duty of the county commissioners to make the work co-operative among farmers or live stock owners as far as possible, and give to the farmers or live stock owners credit against dipping charges for necessary labor performed, it being the purpose of this article to have this work done in the most efficient manner by those most interested

in maintaining a good standard of health in the flocks and herds of the community interested, at the least expense; which cost shall be paid from the general funds of such county. [R. C. 1905, § 2051; 1905, ch. 96, § 1.]

§ 2781. **Appropriation for chemicals and materials.** The board of county commissioners of such county shall upon the establishment of such dipping station or stations appropriate the necessary amount of money under the direction of the district veterinarian for the purpose of purchasing material and chemicals used in the operation of such stations. [R. C. 1905, § 2052; 1905, ch. 96, § 2.]

§ 2782. **Commissioners shall levy dipping fee pro rata.** The board of county commissioners shall, in their discretion, levy a dipping fee pro rata, in no case to exceed the actual cost to the county, for material and labor used in constructing and operating such station. [R. C. 1905, § 2053; 1905, ch. 96, § 3.]

§ 2783. **Fees chargeable against owner of stock. Lien on animals.** The fee for dipping such animals shall be charged against the owner, agent or person in charge of such animals, and, together with the cost of seizure and the expense of holding thereof, become a lien upon such animals, and if not paid within five days from the dipping of such animals, the same shall be foreclosed by the sheriff of such county, the same as any other lien upon personal property. All fees collected under this article shall be paid in to the county treasurer and placed in the general fund. [R. C. 1905, § 2054; 1905, ch. 96, § 4.]

§ 2784. **Formula of U. S. bureau of animal industry to be used for dipping solution.** The dipping solution used in operating such station or stations shall be in accordance with the rules and formulas adopted by the United States bureau of animal industry. [R. C. 1905, § 2055; 1905, ch. 96, § 5.]

§ 2785. **Duty of district veterinarian.** The district veterinarian, acting with the board of county commissioners of such county, or the person by them designated to oversee and superintend such dipping station or stations and the dipping thereat, shall, at the completion of such dipping and the payment of the fees hereunder charged, issue a certificate to the owner, agent or person in charge of such animals, certifying to such dipping, which certificate must contain the date of such dipping, the number and kind of such animals so dipped, the formula of the solution used in such dipping thereunto attached, stating the amount of fees so charged and collected for such dipping. [R. C. 1905, § 2056; 1905, ch. 96, § 6.]

ARTICLE 27.—LIVE STOCK ASSOCIATION.

§ 2786. **Appropriation. Duty of commissioner of agriculture.** The sum of five hundred dollars is hereby appropriated annually out of any money in the state treasury not otherwise appropriated for the use and benefit of the North Dakota live stock association. Said association shall publish an annual report of its proceedings together with such information as may be of general interest to its members, keep and publish a directory of all reliable breeders of pure bred live stock who are members of said association and promote the interests of owners and breeders of live stock in general. The appropriation herein mentioned shall be expended under the direction of the commissioner of agriculture, who shall publish and distribute information furnished by the live stock association to an extent not exceeding this appropriation. [1907, ch. 171.]

ARTICLE 28.—LIVE STOCK PROTECTIVE ASSOCIATION.

§ 2787. **County live stock protective fund, how raised and expended.** In any county in this state having a regular organized live stock protective association composed of residents of the county, the county commissioners of such county may, upon being petitioned by at least five per cent of the personal

property taxpayers of said county, appropriate and set aside an amount annually not exceeding two thousand dollars out of the general fund of the county into a special fund, to be known as the county live stock protective fund, to be expended and used for the protection of live stock from theft. [R. C. 1905, § 2057; 1905, ch. 80, § 1.]

§ 2788. **Petition, contents of.** Such petition may be presented and acted upon at any regular meeting of the board of county commissioners, and must be accompanied with a roll of the membership of the county live stock protective association, together with the name and post office address of its secretary and treasurer and the name of the association, which association shall be the only one that the county commissioners shall recognize in connection with the disbursement of the appropriation herein provided for. [R. C. 1905, § 2058; 1905, ch. 80, § 2.]

§ 2789. **Annual report. Reimbursement.** Annually at the regular January meeting of the board of county commissioners, the county live stock protective association shall file with the board of county commissioners of their county an itemized report, showing the expenditures of the association for the preceding year, which report shall be verified by its secretary and treasurer, and which report shall be accompanied by the original voucher in each item of expenditure. The county commissioners shall then proceed to classify the expenditures of the association, and ascertain the amount which the association has actually expended in the apprehension of live stock thieves, and shall then reimburse the association to the extent of such expenditures, which amount, however, must not exceed the amount then in the special fund herein created for that purpose. [R. C. 1905, § 2059; 1905, ch. 80, § 3.]

§ 2790. **Appropriation made part of general tax levy.** At the time of making the annual tax levy and in estimating the amount of the expenses for general county purposes, the amount of the appropriation herein provided for may be made a part of said estimate and levy. [R. C. 1905, § 2060; 1905, ch. 80, § 4.]

ARTICLE 29.—PRAIRIE FIRES.

§ 2791. **Prairie fires forbidden.** If any person shall set or cause to be set on fire any woods, marsh or prairie, or any grass or stubble lands, except in the months of July or August, except as hereinafter provided, such person shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than ten nor more than one thousand dollars, and be imprisoned in the county jail for a period not exceeding six months, or either or both, at the discretion of the court, and shall also be liable in a civil action to any person damaged by such fire to the amount of such damage. [R. C. 1905, § 2061; Pen. C. 1877, ch. 60, § 1; R. C. 1899, § 1654.]

Not necessary to negative process in other sections of act than one under which indictment is found. *Territory v. Scott*, 2 Dak. 212, 6 N. W. 435.

Question whether one setting fire is agent of principal, who is being prosecuted, is one for the jury. *Knight v. Towles*, 6 S. D. 575, 62 N. W. 964.

The setting of fire in stubble land in month of April, May or June is negligence per se. Setting fire to a straw stack in stubble field is setting fire to the stubble. *Kelley v. Anderson*, 15 S. D. 107, 87 N. W. 579.

Setting fire to prairie land in month of March renders one who does so absolutely liable for injuries caused to others. *Seckerson v. Sinclair*, 24 N. D. 625, 140 N. W. 239.

Liability for injury by prairie fires. 21 L.R.A. 261.

Liability for setting fires which spread to property of others. 21 L.R.A. 255; 36 L.R.A. (N.S.) 194.

§ 2792. **Fire permitted, when.** For the purpose of destroying any grass or stubble that may be on any piece of land at the time any person commences to break or plow the same, it shall be lawful for such person to set the same on fire at any time in the year; provided, that at the time of setting such grass or stubble on fire there shall be a strip of land well plowed or burned over at least fifty feet in width completely encompassing the place where such fire is set. [R. C. 1905, § 2062; Pen. C. 1877, ch. 60, § 2; R. C. 1899, 1655.]

§ 2793. Accidental damages. If any fire, set as provided in the last section, shall by accident and without any fault or neglect of the person setting the same, get beyond his control, such person shall be liable as provided in section 2791, for all damages done by such fire, but not otherwise. But if such fire is carelessly, negligently or intentionally permitted to spread beyond the bounds of such strip of land mentioned in the last section, then the person setting such fire shall be liable both civilly and criminally, as provided in section 2791. [R. C. 1905, § 2063; Pen. C. 1877, ch. 60, § 3; R. C. 1895, § 1656.]

§ 2794. Grasshopper destruction. It shall be lawful for any person at any time between the twentieth day of April and the twentieth day of June, to set on fire, for the purpose of destroying grasshoppers, any marshes, prairies, grass or stubble lands, owned or occupied by him, or any marshes, prairies, grass or stubble lands adjacent thereto; provided, that the person desiring to set such fire shall give at least twenty-four hours' notice to all persons residing within one and a half miles of the place where the fire is to be set, and shall state at the time of giving such notice the time when and place where such fire will be set. Such person shall take all necessary precaution before the setting of such fire, to prevent damage by the same. [R. C. 1905, § 2064; Pen. C. 1877, ch. 60, § 4; R. C. 1895, § 1657.]

§ 2795. Fire limited. Fire set under the provisions of the last section shall not be allowed to spread beyond the control of the person setting the same, and shall be extinguished the same day on which it is set. [R. C. 1905, § 2065; Pen. C. 1877, ch. 60, § 5; R. C. 1899, § 1658.]

§ 2796. Penalty for violation. Any person violating the provisions of the last section shall be liable in a civil action to any person damaged by such fire to the amount of such damage; and in case any person shall negligently, carelessly, willfully, maliciously or intentionally violate the provisions of the last section, such person shall be liable both civilly and criminally the same as though he had violated the provisions of section 2791. [R. C. 1905, § 2066; Pen. C. 1877, ch. 60, § 6; R. C. 1899, § 1659.]

§ 2797. Penalty for setting fire to woods or prairies. If any person shall willfully, negligently or carelessly set or cause to be set on fire any woods, marsh or prairie in this state, or if any person having made any camp or other fire, shall leave such fire without having thoroughly extinguished the same, so that the fire shall spread and burn any wood, marsh or prairie, the persons guilty of setting or causing to be set such fire or leaving such camp or other fire without having thoroughly extinguished the same, so that the fire shall not spread therefrom, is guilty of a misdemeanor, and upon conviction thereof is punishable by a fine not exceeding two hundred dollars or by imprisonment in the county jail not exceeding one year, or by both in the discretion of the court, and shall also be liable in a civil action to any person damaged by such fire to the amount of such damage. [R. C. 1905, § 2067; 1881, ch. 106, § 1; 1887, ch. 123, § 1; R. C. 1899, § 1660.]

§ 2798. Responsibility for damages of person setting fire. If the ranch, building, improvements, fences, timber, marsh or other property of any person shall be injured or destroyed by any such fire, the person who causes or allows the same shall be responsible to the person injured thereby for all damage or injury caused or sustained by reason of such fire. If the cattle range or improvements of any person are injured or destroyed by any such fire, or if the hay upon any such range or the grass growing thereon shall be injured as aforesaid, the person causing or allowing the same shall be responsible to the person owning or claiming the same and injured thereby, for all the damage or injury caused or sustained by reason of any such fire. [R. C. 1905, § 2068; 1881, ch. 106, §§ 2, 3; R. C. 1895, § 1661.]

§ 2799. Proof necessary to sustain claim for damages. In any action instituted in any court to recover damages under the provisions of the foregoing section, it shall not be necessary for the person injured by such fire to allege

or prove on the trial of such action, title to the real property over which such fire has spread, but it shall be sufficient in any such action to allege and prove that the person so injured was in the occupancy or possession of such ranch, building, improvement, fencing, timber or other property, claiming the right to and occupying with cattle any such cattle range, it being the purpose and intention to protect the possession as aforesaid, whether such person has title to such land or not. [R. C. 1905, § 2069; 1881, ch. 106, § 4; R. C. 1895, § 1662.]

§ 2800. Tools and appliances. It shall be lawful for the county commissioners in any county in this state to provide from the fire break fund hereinafter provided for, such tools and appliances as may be necessary to aid and assist in making fire breaks to prevent the spread of prairie fires. [R. C. 1905, § 2070; 1899, ch. 122; R. C. 1895, § 1663.]

§ 2801. County divided into districts. Whenever a petition signed by at least ten per centum of the qualified electors of any county in this state as determined by the vote for governor at the last preceding general election is presented to the board of county commissioners of any such county, such board of county commissioners shall, at the time of levying other taxes, in each year, levy an amount not exceeding five mills on the dollar upon all taxable property in the county, for the purpose of making fire breaks in said county in each year, which sum shall constitute and be known as the fire break fund, and said board of county commissioners shall from time to time divide the county into as many districts as may in its judgment be necessary, and each district so formed shall be known and designated as fire district No.; and said board of county commissioners may, in their discretion, appoint a suitable person, residing in each of said districts, as fire warden thereof, who shall carry out all instructions of said board in said district in reference to the making of fire breaks and the prevention of the spread of prairie fires, which fire warden shall be paid such sum as may be fixed by said board, not exceeding three dollars per day for each day actually employed in the discharge of his duties. Such fire warden shall take and subscribe the official oath and shall file a bond in the sum of five hundred dollars with at least two good and sufficient sureties, to be approved by the said board, conditioned for the faithful discharge of the duties of such fire warden. All fire breaks made under the provisions hereof shall be made in each year at as early a date as possible, with a view to the most efficient protection of property from prairie fires. [R. C. 1905, § 2071; 1899, ch. 122; R. C. 1899, § 1664.]

§ 2802. Fire breaks. The fire warden shall have the right, and it shall be his duty when ordered to do so by the board of county commissioners, to give notice by public advertisement that bids will be received for the making of fire breaks in the district designated in said advertisement, and specifying where and how said fire break shall be made. It shall be the duty of said fire warden to let to the lowest bidder the making of such fire break; provided, if in the judgment of the board of county commissioners, all of the bids for the making of said fire breaks are too high to justify the making of the same, then all such bids shall be rejected and the proposal for bids again published. [R. C. 1905, § 2072; 1897, ch. 80; R. C. 1899, § 1665.]

§ 2803. When fire break to be made. All fire breaks made for the protection of ranges in this state shall be made not later than June twentieth of each year, and the grass between the strips of ground shall be burned not later than September. [R. C. 1905, § 2073; 1897, ch. 80; R. C. 1899, § 1666.]

§ 2804. Districts, how mapped out. The county commissioners may use their discretion and take advantage of any creek, river or other natural or artificial barrier to prairie fires and of broken or plowed fields and may in their judgment map out each of said fire districts in any form so that when the fire guards are made upon their instructions, as hereinbefore provided for, a prairie fire may be confined to the smallest possible area consistent with the

amount of funds available. [R. C. 1905, § 2074; 1899, ch. 122; R. C. 1899, § 1667.]

§ 2805. Legal fire break. A legal fire break shall consist of a strip of land two hundred feet wide, plowed on either side and burned out inside the plowing. Before any person who shall receive the contract to make any fire breaks in this state shall receive any compensation therefor, the work performed by him shall be inspected by a committee of three persons appointed by the board of county commissioners, whose duty it shall be to report to the county commissioners the manner in which such fire break has been constructed, and whether or not the same complies with the contract for making the same. [R. C. 1905, § 2075; 1897, ch. 80; R. C. 1899, § 1668.]

§ 2806. When prairie may be set on fire. For the purpose of making a fire guard it shall be lawful to set on fire a strip of prairie not exceeding one hundred feet in width, which shall be protected on each side by a strip of plowing or burning not less than five feet wide, and at such burning there shall not be less than four men present prepared with water and suitable appliances to keep such fire under control. [R. C. 1905, § 2076; 1891, ch. 93, § 7; R. C. 1899, § 1669.]

§ 2807. Railroad companies to burn weeds. It is the duty of each railroad company within this state whose railroad is operated by steam power, as soon as possible in each year to burn or otherwise destroy all grass, weeds or other combustible matter upon the right of way of such company. [R. C. 1905, § 2077; 1891, ch. 93, § 11; R. C. 1899, § 1673.]

Duty of abutting owner to prevent accumulation of combustible materials near right of way. 12 L.R.A.(N.S.) 624.

Duty of owner of property adjoining a railroad right of way to protect it from fires set out by passing locomotives. 12 L.R.A.(N.S.) 526.

Liability of railroad for setting fires which spread to property of others. 21 L.R.A. 262.

Liability of railroad companies for fires. 38 Am. Dec. 70; 78 Am. Dec. 185; 6 Am. Rep. 597.

§ 2808. Liability for carelessly setting fires. Each person who willfully, negligently or carelessly sets or causes to be set on fire any woods, hay, weeds or prairie grass shall be guilty of a misdemeanor, and upon conviction is punishable by a fine of not less than five hundred dollars or by imprisonment in the county jail not more than one year, or by both in the discretion of the court, and shall also be liable to any person damaged by such fire to the amount of such damage. [R. C. 1905, § 2078; 1891, ch. 93, § 12; R. C. 1895, § 1674.]

Negligence is a question for the jury. *Owen v. Cook*, 9 N. D. 134, 81 N. W. 285.

Effect of concurring negligence of third person in spreading fire. 17 L.R.A. 36.

May one who destroys property defeat an action by the owner upon the ground that the right of action is in the insurer. 23 L.R.A.(N.S.) 870.

Spreading by wind of fires negligently set. 20 L.R.A.(N.S.) 92.

Duty of one not responsible for kindling of fire to prevent its spread from his premises. 6 L.R.A.(N.S.) 882.

Negligence with respect to spark arresters on threshing machine or similar stationary engines. 1 L.R.A.(N.S.) 530.

Employer's liability for injury resulting from independent contractor's allowing fire to escape. 65 L.R.A. 853.

Liability of employer for acts of independent contractor in setting out fire. 65 L.R.A. 654; 17 L.R.A.(N.S.) 788; 38 L.R.A.(N.S.) 175.

Liability of private persons for fires. 30 Am. St. Rep. 501.

What is loss by fires within the meaning of insurance against. 23 Am. St. Rep. 915.

Proximate and remote causes of injury by fires. 36 Am. St. Rep. 823.

ARTICLE 30.—PROMOTION OF ANATOMICAL SCIENCE.

§ 2809. Bodies of deceased persons buried at public expense given to physicians and surgeons, when. Superintendents of penitentiaries, hospitals, insane asylums and poor houses, coroners, sheriffs, jailers, city and county undertakers and all other state, county, town and city officials who shall

have custody of any body of any deceased person required to be buried at public expense, shall give permission to any physician or surgeon who is a licentiate of the state board of medical examiners, or to any medical school or college, public or private, of any city, town or county within this state, upon his or their request therefor, to receive and remove free of charge or expense, after having given proper notice to the relatives or guardians of the deceased, the bodies of such deceased persons to be buried at public expense, to be by him or them used within the state for advancement of anatomical knowledge and medical science, preference being given to medical colleges or schools, public or private, such bodies to be distributed to, and among the same equitably — the number assigned to each being in proportion to the students of each college or school; provided, however, that if any person claiming to be, and satisfying the proper authorities that he is of kindred of the deceased, shall ask to have, within thirty-six hours after death, the body for burial, it shall be surrendered for interment; provided, further, that any medical college or school, public or private, or any officers of the same that shall receive the bodies of deceased persons for the purpose of scientific study under this article, shall furnish the same to students of medicine and surgery who may be under their instruction. [R. C. 1905, § 2079; 1905, ch. 134, § 1.]

§ 2810. Bonds to be given. Any physician or surgeon who is a licentiate of the state board of medical examiners, or any medical college or school, public or private, before receiving any dead body or bodies, shall give to the proper authorities, surrendering the same to him or them, a sufficient bond that said bodies shall be used only for the promotion of medical science within this state; and whoever shall use such dead body or bodies for any other purpose, or shall remove the same beyond the limits of this state, and whoever shall buy or sell any such bodies or body, or shall traffic in the same shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof, be fined in the sum of one hundred dollars, and any officer refusing to deliver the remains or body of any deceased person, when demanded under the provisions of this article, shall be guilty of a misdemeanor, and shall pay a fine of not less than fifty dollars. [R. C. 1905, § 2080; 1905, ch. 134, § 2.]

§ 2811. Bodies to be buried or burned, when. Penalty for neglect. It shall be the duty of preceptors, professors and teachers, and all officers of medical colleges and schools, public or private, and all others who shall receive any dead body or bodies in pursuance of the provisions of this article, decently to bury in some public cemetery, or to cremate the same in a furnace properly constructed for that purpose, the remains of all bodies after they shall have answered the purposes aforesaid, and for any neglect or violations of the provisions of this article the party or parties so neglecting shall be guilty of a misdemeanor, and on conviction shall pay a penalty of one hundred dollars. [R. C. 1905, § 2081; 1905, ch. 134, § 3.]

ARTICLE 31.—HOSPITALS PROHIBITED.

§ 2812. Permission to establish required. No hospital for the treatment of disease for pay shall be hereafter established in any residence block of any city in the state of North Dakota without first filing with the city auditor the written consent of the resident freeholders of such block. [1907, ch. 134.]

ARTICLE 32.—BOUNTY FOR TREE PLANTING.

§ 2813. Bounty for tree planting. Any person who shall hereafter plant, cultivate and keep in a growing, thrifty condition, one acre and not more than ten acres of prairie land with any kind of forest trees, and shall plant or have planted said trees not more than eight feet apart each way, shall be entitled

to three dollars for each acre so planted and cultivated, to be paid out of the general fund of the county wherein said trees are so planted, but such bounty shall not be so paid unless such grove be maintained upon a tract of not less than eighty acres and shall have at least four hundred living trees on each acre so maintained and kept in growing condition, and in no case shall any bounty be paid in excess of the amount of the real estate taxes levied against persons applying for said bounty, and in no case shall any bounty be paid in excess of the amount of the taxes. [1907, ch. 41; R. C. 1905, § 2082; 1905, ch. 187, § 1.]

§ 2814. Along highways. Limit of bounty. Every person planting such forest tree or trees suitable for hedge in rows as boundary lines along the public highways or on any other portion of his premises, which rows shall contain not less than two living trees to each rod and who shall in other respects comply with the provisions of this article shall annually receive a bounty at the rate of two dollars for every eighty rods of each row in length; provided, however, that no bounty shall be paid or deduction allowed under the provisions of this article for a longer period than five years upon any one tract or row of trees. [R. C. 1905, § 2083; 1905, ch. 187, § 2.]

§ 2815. Proof of planting. Any person wishing to secure the benefits of this article shall, during the month of June, next after expiration of one year after planting such grove, row or rows of trees, and annually thereafter, file with the county auditor or clerk of the county in which the same is located, a correct plat of the land, describing the section or fraction thereof on which said grove, row or rows have been planted or cultivated, and shall make due proof under oath of such planting and cultivation as well as of title to the land; setting forth the facts in relation to the growth and cultivation of the grove, row or rows of trees for which such bounty is demanded; provided, this article shall not apply to any railroad company for planting trees within two hundred feet of its track for the purpose of making a snow fence, nor to any trees planted upon land held and acquired under the timber culture laws of the United States. [1911, ch. 308; R. C. 1905, § 2084; 1905, ch. 187, § 3.]

§ 2816. Examination and report by assessor. It is hereby made the duty of the assessor of every town or county at the time of making his assessment, to ascertain whether or not trees have been planted by any land owners in his town or county and for which compensation is claimed under this article, and in case trees have been planted and such compensation is claimed the assessor shall personally examine the grove or line of trees and make report to the extent and conditions thereof according to the prescribed form, the same to be returned to the county auditor with the other returns and assessment book. [R. C. 1905, § 2085; 1905, ch. 187, § 4.]

ARTICLE 33.—NOXIOUS WEEDS.

See also as to noxious weeds, sections 623-631, 2002, 2003, 2820-2822.

§ 2817. Noxious weeds, manner of destroying. Each person shall destroy upon all lands which he shall own or occupy, all weeds of the kind known as Canada thistle, cocklebur, mustard, wild oats, French weed and Russian cactus, at such time and in such manner as shall effectually prevent their bearing seed. And it shall be a misdemeanor for such person or persons to deposit or cause to be deposited in the highway or in or along the banks of any natural water course any of the noxious weeds above described. And such misdemeanor shall be punishable by a fine of not to exceed fifty dollars nor less than ten dollars. The time and manner of destroying such weeds shall be prescribed by the board of county commissioners, and the same shall be published at least two weeks in some newspaper in the county, not less than two weeks before the time so prescribed; and if there is no newspaper published in the county, then written notice of the same shall be posted, the

same as election notices are posted, in lieu of such publications. [R. C. 1905, § 2086; 1897, ch. 103; R. C. 1899, § 1683.]

Land owner is not liable for damages for failure to destroy noxious weeds until after county commissioners have prescribed time and manner of destruction. *Langer v. Goode*, 21 N. D. 462, 131 N. W. 258, Ann. Cas. 1913D, 429, 1 N. C. C. A. 772.

Liability for permitting spread of weeds to adjoining property. 52 L.R.A. 293.

Measure of damages for allowing land to become infested with weeds. 12 L.R.A. (N.S.) 88.

§ 2818. Decision to be published. It shall be the duty of the board of county commissioners, at its regular meeting in April of each year, to determine the time and manner of destroying such noxious weeds, and to cause its determination to be published as provided for in the last section. It shall also cause to be mailed to the chairman of each board of township supervisors and to each overseer of highways and road supervisor in the county, a copy of its proceedings. [R. C. 1905, § 2087; 1891, ch. 91, § 2; R. C. 1899, § 1684.]

§ 2819. Road supervisors to destroy weeds. Obtain judgment. Whenever any individual, firm or corporation owning or occupying any lands within this state shall neglect or refuse to comply with the provisions of this article for more than ten days after the time prescribed by said board of county commissioners, then it shall be the duty of the overseer or road supervisor, as the case may be, to proceed forthwith to destroy the same in the manner provided for said destruction by the board of county commissioners; it shall also be the duty of such overseers or road supervisors to destroy all such noxious weeds that may grow on the highways and railroad right of ways and school sections and timber culture claims of his road district, and for so doing such overseers or road supervisors shall receive such compensation, payable out of the township treasury or county treasury, as the township board of supervisors or board of county commissioners, upon presentation of his account therefor, verified by oath and specifying by separate items the charges on each piece of land, shall deem reasonable; and the respective accounts, so far as correct, shall be allowed and paid by the township board or board of county commissioners, and upon being so allowed the board of supervisors or board of county commissioners shall take proper proceedings in the district court of the county in which said land is situated to obtain a judgment against the owner of each of said tracts of land for the amount expended on said lands under this article for the destruction of noxious weeds thereon, to pay the expenses of said destruction and all costs that have since accrued under this article and in obtaining judgment therefor, which judgment shall be declared a first lien on said land, to be enforced either by sale or as taxes on the lands are collected, at the option of the court. [R. C. 1905, § 2088; 1895, ch. 83, § 1; R. C. 1899, § 1685.]

Landowner is not liable for damages for failure to destroy noxious weeds until after county commissioners have prescribed time and manner of destruction. *Langer v. Goode*, 21 N. D. 462, 131 N. W. 258, Ann. Cas. 1913D, 429, 1 N. C. C. A. 772.

§ 2820. Penalty. Whenever any overseer of highways or road supervisor shall neglect or refuse to comply with the provisions of this article after having received notice as provided for herein, he shall be subject to a fine of fifty dollars, and it is the duty of the state's attorney to enforce the provisions of this article. [R. C. 1905, § 2089; 1891, ch. 91, § 4; R. C. 1899, § 1686.]

Penalties can only be recovered in civil actions by the party for whose benefit recovery can be had. *State v. Messner*, 9 N. D. 186, 82 N. W. 737.

An action for penalty can only be maintained in the name of the party beneficially interested. Not maintainable in name of state. *State v. Messner*, 9 N. D. 186, 82 N. W. 737.

ARTICLE 34.— PREVENTION OF SPREAD OF NOXIOUS WEEDS.

See also as to noxious weeds, sections 623-631, 2002, 2003, 2817-2820.

§ 2821. Care to be exercised in threshing operations. Any owner or operator of a threshing machine, and any owner or teamster employed in hauling grain,

either threshed or unthreshed, shall upon completing any threshing engagement, and before leaving the premises on which said work is done to go to the farm of another, take all reasonable care to prevent the conveying and carrying away and scattering of any noxious weeds, which may have accumulated in or on said machine or conveyance used in the said operation of threshing. [1911, ch. 195, § 1.]

§ 2822. Duty to clean threshing separator and conveyances. For the purpose of securing diligence and care in preventing the spread of noxious weeds, it shall be the duty of, and every owner or operator of a machine used for separating grain from straw shall, before leaving the premises of a person or persons and going to that of another or others, clean said machine from foul seed by operating it until all grain and seed is out of it, and in addition thereto, the surface thereof shall be thoroughly swept. Also all conveyances used for hauling grain, either threshed or unthreshed, shall likewise be cleaned by brushing or sweeping before leaving the field where said work is done and going to that of another. Provided, that this shall not affect the hauling and handling of the necessary straw to be used for the operation of the engine. Provided, further, that a printed copy of this law shall be kept posted on every threshing separator operating in the state of North Dakota during threshing seasons. [1911, ch. 195, § 2.]

§ 2823. Penalty. Any person convicted of carrying foul seed from the premises of one person to that of another by reason of failure to comply with the requirements of sections 2821 and 2822 shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than ten dollars (\$10) nor more than fifty dollars (\$50), or by imprisonment in the county jail for not less than three (3) nor more than ten (10) days or both. [1911, ch. 195, § 3.]

ARTICLE 35.—INSPECTION AND REGULATION OF NURSERIES.

§ 2824. Inspection of nurseries and nursery stock authorized. The director of the North Dakota experiment station is hereby authorized to inspect through his agent any nursery or any fruit or garden plantation or any unplanted nursery stock in this state that he has reason to suspect is infested with any injurious or fungous disease and for this purpose his agent shall have free access to the premises where the duties of carrying out this act shall call him, and any person attempting to hinder such inspection by misrepresentation or otherwise shall be liable to the payment of a penalty as hereinafter provided. [1911, ch. 196, § 1.]

Power of state to regulate nursery business. 15 L.R.A.(N.S.) 138.

§ 2825. Duties of agent. Notice. In case the agent of the said director shall find on any nursery premises injurious insects or fungous diseases, he shall notify the owner in writing to that effect and prescribe the treatment in his judgment necessary to destroy the insects or fungus. Any one shipping out stock after receiving said notice or failing to comply with the requirements of the said agent shall be subject to the payment of a penalty as hereinafter provided. [1911, ch. 196, § 2.]

§ 2826. Shipment of stock to be labeled. Whenever any trees, shrubs, plants or vines are shipped into this state from any outside point, there shall be plainly labeled or fixed on the outside of the package a certificate showing that the contents have been inspected by duly appointed state or government officer and that they are free from injurious insects and fungous diseases, any package not so labeled shall be promptly reported to the said director by the railways or express company or other persons carrying the same with a statement of the source whence such articles came and the party to whom they are addressed. Any person or company who shall receive or offer for sale any plants, trees or shrubs not labeled as provided in this section shall be subjected to payment of a penalty as hereinafter provided. [1911, ch. 196, § 3.]

§ 2827. Director may demand list of persons to whom infected stock sold. Any person growing or offering for sale in this state any nursery stock found to be infected with injurious insects or fungous diseases shall upon demand of said director furnish a list of all persons as far as to him known, to whom he has sold or delivered any such stock, together with the post office address of each of such persons, so far as to him known. Such information shall be preserved and be for the sole use of said director and his agent in carrying out the provisions of this article. Any person violating the provisions of this section shall be liable to a payment of a penalty as hereinafter provided. [1911, ch. 196, § 4.]

§ 2828. Certificate of inspection. How obtained. Fee. The said director shall cause to be issued to the owner of any nursery in this state after the nursery stock therein has been properly inspected and found to be apparently free from injurious insects and fungous disease, an official certificate to that effect, good for a period not to exceed one year. Any such owner may apply to said director for inspection of his premises for the purpose of securing such certificate and the said director shall cause such inspection to be made within three months after receiving the application. Any person requesting inspection after September fifteenth shall pay a fee of five dollars (\$5) for each ten acres of land that is wholly or in part devoted to growing nursery stock for selling purposes. [1911, ch. 196, § 5.]

§ 2829. Shipment of stock must have shipping-tag certificate. No person or corporation shall deliver or ship out from his nursery or place of business for delivery within North Dakota, nursery stock of any kind which does not have attached to the package in which it is contained the authorized shipping-tag certificate with the facsimile signature of the agent. [1911, ch. 196, § 6.]

§ 2830. License. Who must have bond. Every individual, firm or corporation who employs agents or traveling salesmen, or who solicits for the sale of nursery stock in this state, shall before being authorized to do business obtain a license from the said director, upon the payment of a sum of ten dollars (\$10) and upon filing with the said director a certificate of inspection of the nursery in which the stock was grown and a five hundred dollar (\$500) bond conditioned that the principal will faithfully obey the provisions of this article, and said license shall entitle the individual, firm or corporation obtaining the same to do business in this state during the next twelve months following the issuance thereof and upon complying with all the provisions of this article. [1911, ch. 196, § 7.]

Discrimination against nonresidents by statute or ordinance imposing license tax on agents for nursery stock. 40 L.R.A. (N.S.) 290.

§ 2831. Certified statement of sale. Every person, firm or corporation who shall by himself, his agent or salesman sell, grow, handle or deliver in this state any nursery stock which is sold, offered or exposed for sale for planting, shall give at the time of the sale or delivery of the same to the purchaser a certified and true statement of such sale, such certificate may be upon a tag attached to shipment or mailed to the purchaser with bill of lading, giving the correct English name or names of each variety sold so far as possible, or in lieu thereof the name by which such stock is known to the nursery trade. [1911, ch. 196, § 8.]

§ 2832. Penalty for violation of article. Any person or persons, corporation, transportation companies or company violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction be fined in the sum of not less than twenty dollars (\$20) nor more than two hundred dollars (\$200). [1911, ch. 196, § 9.]

§ 2833. Compensation and expenses of agent. The agent authorized by said director shall be granted a compensation not to exceed five dollars (\$5) per day and actual traveling expenses and for such purpose there is hereby assigned such portion of the license fees received as is required for carrying out the provisions of this article. [1911, ch. 196, § 10.]

2834. Report furnished to governor. Printed, when and where. Said director shall furnish a report to the governor of all transactions carried out under this article together with an account of all moneys received or expended, such report to be printed in the director's report for each biennial period. [1911, ch. 196, § 11.]

As to time and contents of reports to the governor, see sections 95, 97, 98, 633.

ARTICLE 36.—MANUFACTURE AND SALE OF DAIRY PRODUCTS.

The foregoing is the title of article 26 of the Political Code of 1903, as also of the corresponding article in the Revised Codes of 1899 and of Laws 1907, ch. 90. The latter chapter is expressly repealed by Laws 1909, ch. 92, § 29, which is entitled "dairy department of department of agriculture and labor," but manifestly covers the same ground as the Revised Codes articles and the Laws 1907 chapter above cited. The chapter in Laws 1909 with specific amendments thereto constitutes the following, sections 2835-2862.

§ 2835. Dairy department created. There is hereby created a bureau of the department of agriculture and labor to be known as the dairy department, which is hereby created for the purpose of promoting, improving and regulating the dairy products of the state and to establish and enforce proper rules and regulations pertaining thereto. [1909, ch. 92, § 1; 1907, ch. 90, § 1; R. C. 1905, § 2090; 1899, ch. 72, § 1; R. C. 1899, § 1687; 1905, ch. 95, § 1.]

§ 2836. Deputy commissioners. The commissioner of agriculture and labor is hereby authorized and directed to appoint a deputy in his department who shall be known as the dairy commissioner, and shall be the official head of the dairy department. He shall have a practical knowledge and experience in the manufacture of dairy products. There shall also be appointed by the commissioner of agriculture and labor two assistant dairy commissioners, who shall possess the same qualifications as the dairy commissioner. Said dairy commissioner and assistant dairy commissioners shall hold their office during the term of the commissioner of agriculture and labor, who shall appoint them, subject to removal for inefficiency, neglect or violation of duty. [1911, ch. 4, § 1; 1909, ch. 92, § 2; 1907, ch. 90, § 1; R. C. 1905, § 2090; 1899, ch. 72, § 1; R. C. 1899, § 1687; 1905, ch. 95, § 1.]

§ 2837. Compensation. The dairy commissioner shall receive the same salary as is paid to the assistant or chief deputy in other departments of the state government; and the assistant dairy commissioners shall be paid a salary of fifteen hundred dollars per annum, such salary to be paid on vouchers approved by the commissioner of agriculture and labor in the same manner as the salaries of the employees of other departments of the state government are paid. [1911, ch. 4, § 2; 1909, ch. 92, § 3; 1907, ch. 90, § 1; R. C. 1905, § 2090; 1899, ch. 72, § 1; R. C. 1899, § 1687; 1905, ch. 95, § 1.]

See appropriation for salary of dairy commissioner in section 653e, and see in connection therewith, section 653b.

§ 2838. Expenses of commissioners paid. In addition to the compensation in this article provided, the said dairy commissioner and assistant dairy commissioners shall be paid all actual and necessary expenses incurred in the performance of their duties, to be paid as the expenses of other departments are paid. [1911, ch. 4, § 3; 1909, ch. 92, § 4; 1907, ch. 90, § 1; R. C. 1905, § 2090; 1899, ch. 72, § 1; R. C. 1899, § 1687; 1905, ch. 95, § 1.]

§ 2839. Duties. It shall be the duty of said dairy commissioner to carry into effect the provisions of this article and all other acts which may be in force or be hereafter enacted relating to dairies and dairy products and he is hereby authorized and empowered to promulgate and enforce such rules and regulations as may be deemed proper and necessary to carry into effect the provisions of this article; and to amend, alter or abolish such regulations from time to time as changed conditions or experience shall show to be to the best interest of the dairying interests of the state, and relating to the production, manufacture and sale of dairy products, their imitations and sub-

stitutes. He shall inspect or have inspected every creamery and cream station, cheese factory and renovating or "process butter" factory in the state at least once a year; to assist the butter makers, cheese makers and managers of such factories and stations and the patrons of the same, in order to improve the quality of the dairy products sold to or manufactured in said factories and to co-operate with and instruct the dairymen in testing their dairy herds both individually and collectively. [1909, ch. 92, § 5; 1907, ch. 92, § 1; R. C. 1905, § 2090; 1899, ch. 72, § 1; R. C. 1899, § 1687; 1905, ch. 95, § 1.]

§ 2840. Publish bulletins. The said dairy commissioner under the supervision of the commissioner of agriculture and labor is hereby authorized, and it is made his duty from time to time as deemed necessary to publish and distribute bulletins containing the rules and regulations of the dairy commissioner and such other useful information as he shall deem to the advantage of the dairy interests of the state. The expenses for such publications shall be audited and paid for as other public printing. [1909, ch. 92, § 6; 1907, ch. 90, § 2; R. C. 1905, § 2091; 1899, ch. 72, § 2; R. C. 1899, § 1688; 1905, ch. 95, § 2.]

§ 2841. Additional powers and duties. In addition to the powers and duties in this article enumerated, the said dairy commissioner and such persons as shall be duly authorized for the purpose, shall have access, ingress and egress to all places of business, factories, farms, buildings, carriages, cars, vessels and cans used in the sale of any dairy product, or any imitation thereof. They shall also have power and authority to open any package, can or vessel containing such article which may be manufactured, sold or exposed for sale in violation of the provisions of this article, and may inspect the contents therein, and may take samples therefrom for analysis. They shall also have authority to prevent the sale or manufacture into any food product cream that is filthy or putrid, or milk that has been drawn from cows diseased or fed on unwholesome food, and to prohibit the shipment of the same from any railway station within the state. All clerks, bookkeepers, express agents, railroad officials, employes or common carriers shall render to them every assistance in their power, when so requested, in tracing, finding or discovering the presence of any prohibited article named in this article. The dairy commissioners and such persons as shall be duly authorized for the purpose, shall have free access to any barn or stable where any cow is kept or milked, or to any factory, building, dairy premises or creamery where any dairy products are bought, manufactured, handled or stored when the milk or cream from such cow or product is to be sold or shipped at or to any cream station, creamery, cheese factory, ice cream factory or other factory and may enforce such measures as are necessary to secure perfect cleanliness in and around the same, and of any utensils used therein. [1909, ch. 92, § 7; 1907, ch. 90, § 3; R. C. 1905, § 2092; 1899, ch. 72, § 3; R. C. 1899, § 1689; 1905, ch. 95, § 3.]

§ 2842. Penalty for obstructing commissioner. Whosoever shall refuse to allow the inspection herein provided for, or shall in any way hinder or obstruct the proper officers performing their duties hereunder shall be subject on conviction to a fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, and it shall not be necessary to have the indorsement of the state's attorney to a complaint made for violation of the provisions of this article, but when the justice of the peace or other court before whom complaint is made shall be satisfied of the truthfulness of such complaint, he shall issue a warrant thereon. [1909, ch. 92, § 8; 1907, ch. 90, § 4.]

§ 2843. Cream station defined. For the purpose of this article a "cream station" shall be any place where an individual, firm or corporation receives milk or cream from more than one herd that is weighed, tested or purchased

when such milk or cream is to be manufactured into butter, cheese or ice cream by some other individual, firm or corporation, or in some separate building or locality than that in which such milk or cream is weighed, tested or purchased; provided, however, that it is not intended by this article to include weighing on public scales by producers before shipment by themselves. [1909, ch. 92, § 9.]

§ 2844. License. Every person, firm or corporation owning or operating a creamery, cheese factory, renovating or process butter factory, or cream station in this state, shall be required before beginning business, or within thirty days thereafter, to obtain from the dairy commissioner a license for each and every creamery, cheese factory, renovating or process butter factory or cream station owned or operated by said person, firm or corporation, which shall be good for one year. The fee for such license shall be ten dollars, and no license shall be transferable. Each license shall record the name of the person, firm or corporation owning or operating the creamery, cheese factory, renovating or process butter factory, or cream station license, its place of business, the location thereof, the name of the manager thereof, and the number of the same. Each license so issued shall constitute a license to the manager or agent of the place of business named therein. [1911, ch. 4, § 4; 1909, ch. 92, § 10; 1907, ch. 90, § 5; R. C. 1905, § 2093; 1899, ch. 72, § 8; R. C. 1899, § 1694; 1905, ch. 95, § 4.]

Requiring license for sale of milk. 1 L.R.A.(N.S.) 936; 27 L.R.A.(N.S.) 1151.

§ 2845. Authority required to do business. No corporation or association shall do or transact any business in this state pertaining to the dairy interests of the state as described in this article without having first been authorized so to do under the laws of this state, and no foreign corporation shall purchase any cream in this state for shipment out of the state except through authorized agents at established and licensed cream stations, and subject to such rules and regulations as shall be prescribed by the dairy commissioner for the regulation and conduct of cream stations. No person shall act as the agent or purchaser of cream for any foreign corporation who is not a resident of this state and licensed so to do, and any person acting as such agent who fails to comply with the provisions of this article and the rules and regulations established thereunder shall on conviction be punished as for a misdemeanor. [1909, ch. 92, § 11.]

§ 2846. Annual report of cream station. Price discrimination forbidden. The agent or person in charge of any cream station at which cream is purchased for shipment out of the state shall on July first of each year or within thirty days thereafter report to the dairy commissioner: The name, location and business of his employer; amount of capital stock invested in business; property or assets; liabilities and such other information pertaining to the business and conduct of the cream station of which such agent has charge, as shall be requested in writing by the dairy commissioner. It is hereby declared to be unlawful for any person, firm, corporation or agent to discriminate in the price paid for cream at any cream station in the state by paying a higher price for cream purchased at any station above the price paid at any other station in the state, conditions of cream and rates of transportation being equalized; the questions of conditions of cream, and difference in rates of transportation from different points of shipment to be established the same as any question of fact in a civil action. Any person, firm, corporation or agent found guilty of a violation of the provisions of this section shall be deemed guilty of a misdemeanor and punished accordingly. [1909, ch. 92, § 12.]

§ 2847. Report of commissioners. The dairy commissioner shall make report to the commissioner of agriculture and labor, as directed by such commissioner, and the annual reports of the commissioner of agriculture and labor shall contain a detailed report of the work and proceedings, together

with an account of expenses and disbursements of said assistant dairy commissioners, in regard to the production, manufacture and sale of dairy products, and such suggestions as he may regard of public importance connected therewith. [1909, ch. 92, § 13; 1907, ch. 90, § 2; R. C. 1905, § 2091; 1899, ch. 72, § 2; R. C. 1899, § 1688; 1905, ch. 95, § 2.]

§ 2848. Authority of assistants. The assistant dairy commissioners shall perform such duties as may be directed by the dairy commissioner, or the commissioner of agriculture and labor; and when acting as such, the assistant dairy commissioners shall be invested with the same authority as is by this act conferred upon the dairy commissioner. [1911, ch. 4, § 5; 1909, ch. 92, § 14.]

§ 2849. Stencil or brand required. Report to commissioner. Every creamery, cheese factory, combined creamery and cheese factory or renovating or "process butter" factory shall procure a stencil or brand bearing a suitable device and words which shall clearly designate the quality of the product manufactured and the number and location of the factory, and it may contain a special or private brand or name of said factory; every brand shall be used upon the outside of the cheese and also upon the package containing the same, but in the case of butter on the package only; and shall on the first day of July, or within thirty days thereafter, of each year, report to the dairy commissioner the name, location and number of each factory using the same brand, and the name or names of the persons at each factory authorized to use the same, together with a copy of each stencil or brand, and the dairy commissioner shall keep a book in which shall be registered the same. [1909, ch. 92, § 15; 1907, ch. 90, § 6; R. C. 1905, § 2094; 1899, ch. 72, § 7; R. C. 1899, § 1693; 1905, ch. 95, § 5.]

Validity of police regulation requiring labeling of food. 1 L.R.A.(N.S.) 184; 40 L.R.A.(N.S.) 875.

§ 2850. Blanks for report. The said dairy commissioner shall provide blanks which shall be furnished to all proprietors or managers of creameries, cheese factories and renovating or "process butter" factories and cream stations, which shall be licensed under the provisions of this article, for the purpose of making a report of the amount of milk and dairy goods handled, and all owners or managers of such creameries, cheese factories and renovating or "process butter" factories, and cream stations shall send to the dairy commissioner, not later than the last day of each month, a full and accurate report of the amount of business done during the preceding month as designated under the different headings of such printed blanks. [1909, ch. 92, § 16; 1907, ch. 90, § 7; R. C. 1905, § 2095; 1899, ch. 72, § 5; R. C. 1899, § 1691; 1905, ch. 90, § 6.]

§ 2851. Penalty for selling impure, adulterated or skimmed milk. If any person shall sell or expose for sale or exchange or deliver or bring to another for domestic or potable use, to be converted into any product of human food, any unclean, impure, unhealthy, adulterated, unwholesome or skimmed milk (except pure skimmed milk to skim cheese factories), or milk from which has been held back what is commonly known as strippings, or milk taken from an animal having disease, sickness, ulcers, abscess or running sores or which has been taken from animals within fifteen days before or five days after parturition; or if any person shall purchase to be converted into any product of human food, any unclean, unhealthy, adulterated or unwholesome milk or cream, or shall manufacture any such milk or cream into any product of human food; or if any person, having cows for the purpose of producing milk and cream for sale, shall stable them in an unhealthy place, or in a crowded manner, or shall knowingly feed them food which produces impure unwholesome milk, or shall feed them on any substance in a state of putrefaction or rottenness, or of an unhealthy nature, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by

law. [1909, ch. 92, § 17; 1907, ch. 90, § 8; R. C. 1905, § 2096; 1899, ch. 72, § 10; R. C. 1899, § 1696; 1905, ch. 95, § 7.]

Police power to prohibit adulteration or addition of other substance to milk. 1 L.R.A. (N.S.) 928.

Police regulations as to food for milch cows. 1 L.R.A. (N.S.) 932.

Validity and construction of regulations as to infected milch cattle. 43 L.R.A. (N.S.) 1072.

§ 2852. Adulteration defined. For the purpose of this article, the addition of water or any so-called preservative or anything to whole milk or skimmed milk or partially skimmed milk or cream, is hereby declared an adulteration; and milk or cream which is obtained from animals fed on any substance of an unhealthy nature is hereby declared impure and unwholesome; and milk which has been proved by any reliable method of test or analysis to contain less than twelve per cent of milk solids to the hundred pounds of milk, or less than three pounds of butter fat to the hundred pounds of milk, shall be regarded as skimmed or partially skimmed milk and every article not containing fifteen per cent or more of butter fat shall not be regarded as cream. [1909, ch. 92, § 18; 1907, ch. 90, § 9; R. C. 1905, § 2097; 1899, ch. 72, § 11; R. C. 1899, § 1697; 1905, ch. 95, § 8.]

Particular test or analysis of milk prescribed by police regulations. 1 L.R.A. (N.S.) 926.

Police regulations prescribing standard of quality of milk. 1 L.R.A. (N.S.) 918.

§ 2853. Standard milk and cream measures and tests. The state standard milk measure, or pipette, shall have a capacity of seventeen and six-tenths cubic centimeters, and the standard test tubes or bottles for milk shall have a capacity of two cubic centimeters of mercury at a temperature of sixty degrees Fahrenheit between "zero" and ten on the graduated scale on the neck thereof. Cream shall be tested by weight and the standard unit for testing shall be eighteen grams, and the standard test tubes or bottles shall have a capacity for ten cubic centimeters of mercury at a temperature of sixty degrees Fahrenheit, between "zero" and fifty on the graduated scale on the neck thereof, and it is hereby made a misdemeanor to use any other means of determining the amount of butter fat in milk or cream than the Babcock test, or to use any other size of milk measure, weight, test tubes or bottles, except those described herein, where milk or cream is purchased or furnished to cheese factories, and the value of said milk or cream is determined by the per cent of butter fat contained in the same. Any manufacturer, merchant, dealer or agent in this state who shall offer for sale or sell a milk pipette or measure, test tube or bottle which is not correctly marked or graduated as herein provided, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished as provided by law. [1909, ch. 92, § 19; 1907, ch. 90, § 10; R. C. 1905, § 2098; 1905, ch. 95, § 9.]

Right to prohibit sale of milk except in bottles. 33 L.R.A. (N.S.) 401.

§ 2854. False reading unlawful. It shall be unlawful for the owner, manager, agent or employe of any creamery or cheese factory to manipulate, under-read or over-read the Babcock test, or any other contrivance used for determining the quality or value of milk. [1909, ch. 92, § 20; 1907, ch. 90, § 11; R. C. 1905, § 2099; 1905, ch. 95, § 10.]

§ 2855. Sale of adulterated products prohibited. Oleomargarine excepted. No person by himself or his agents or servants shall render or manufacture, sell, offer for sale for the future delivery of, have in his possession, keep in storage, distribute, deliver, transfer or convey with intent to sell within this state any article, product or compound made wholly or partly out of any fat, oil or oleaginous substance or compound thereof, not produced from adulterated milk or cream from the same, which shall be an imitation of yellow butter produced from pure unadulterated milk or cream of the same; provided, that nothing in this article shall be construed to prohibit the manufacture or sale of oleomargarine in a separate and distinct form, and in such a manner as will advise the consumer of its real character, free from coloration

or ingredient that causes it to look like butter. [1909, ch. 92, § 21; 1907, ch. 90, § 12; R. C. 1905, § 2100; 1899, ch. 72, § 12; R. C. 1899, § 1698; 1905, ch. 95, § 11.]

Use of coloring matter in oleomargarine as adulteration. 25 L.R.A.(N.S.) 1234.

Applicability of oleomargarine statutes where resemblance to butter results from choice of ingredients, and not from the introduction of foreign coloring matter. 14 L.R.A.(N.S.) 1062.

Constitutionality of discrimination in statutory regulations concerning food. 34 L.R.A.(N.S.) 651.

§ 2856. **Oleomargarine, butterine, etc., how marked.** No person by himself or his agents or servants shall sell or expose for sale oleomargarine, butterine or any substance made in imitation or semblance of pure butter, in tubs, firkins or other original packages not distinctly, legibly and durably branded or marked in a conspicuous place with the word "oleomargarine" or "butterine" or "imitation butter," as the case may be, in letters not less than one inch in length and one-half inch in width, or in retail packages not plainly and conspicuously labeled with said words, "oleomargarine" or "butterine" or "imitation butter," as the case may be. [1909, ch. 92, § 22; 1907, ch. 90; § 13; R. C. 1905, § 2101; 1899, ch. 72, § 13; R. C. 1899, § 1699; 1905, ch. 95, § 12.]

Validity of police regulations as to branding or labeling oleomargarine. 40 L.R.A.(N.S.) 879.

Oleomargarine, power of the states to regulate and manufacture and sale of. 1 Am. St. Rep. 644; 85 Am. St. Rep. 400.

§ 2857. **Renovated butter, how marked.** No person by himself, or his agents or servants, shall manufacture, sell, offer for sale or expose for sale butter that is produced by taking original packing stock or other butter, or both, and melting the same so that the butter fat can be drawn off, then mixing the said butter fat with skimmed milk or milk and cream, or other milk product, and rechurning the said mixture; or that is produced by any similar process, and is commonly known as boiled or process butter, unless the tub, firkin or other original package in which the same may be put up, be distinctly, legibly and durably branded, stamped or marked in a conspicuous place with the words "renovated butter," in printed letters not less than one inch in length and one-half inch in width; or be in prints, boxes or rolls not plainly and conspicuously labeled on the wrapper thereof with said words "renovated butter," in printed letters not less than one-half inch in length and one-quarter inch in width. [1909, ch. 92, § 23; 1907, ch. 90, § 14; R. C. 1905, § 2102; 1899, ch. 72, § 14; R. C. 1899, § 1700; 1905, ch. 95, § 13.]

Validity of police regulations as to branding articles of food. 1 L.R.A.(N.S.) 184; 40 L.R.A.(N.S.) 875.

§ 2858. **Skimmed milk cheese, how marked.** No person by himself or his agents or servants shall sell or offer for sale any cheese manufactured from skim milk, or from milk that is partially skimmed, without the same being plainly branded, stamped, or marked on the side or top of both cheese and package in a durable manner, in the English language, the words "skimmed milk cheese," the letters of the words to be not less than one inch in height and one-half inch in width. [1909, ch. 92, § 24; 1907, ch. 90, § 15; R. C. 1905, § 2103; 1899, ch. 72, § 16; R. C. 1899, § 1702; 1905, ch. 95, § 14.]

Validity of police regulations as to branding articles of food. 1 L.R.A.(N.S.) 184; 40 L.R.A.(N.S.) 875.

§ 2859. **Filled cheese, how marked.** No [any] person [who] by himself or his agents or servants shall sell or offer for sale or make, manufacture out of any oleaginous substance or substances or any compound of the same or any other compound than that produced from unadulterated milk, or any article to take the place of cheese produced from pure milk, or any article termed "filled cheese," shall stamp each package of the same on the top and side with lampblack and oil the words "filled cheese," or words that shall designate the exact character and quality of the product, in printed

letters at least one inch long and one-half inch wide. [1909, ch. 92, § 25; 1907, ch. 90, § 16; R. C. 1905, § 2104; 1899, ch. 72, § 16; R. C. 1899, § 1702; 1905, ch. 95, § 15.]

Validity of police regulations as to branding articles of food. 1 L.R.A. (N.S.) 184; 40 L.R.A. (N.S.) 875.

§ 2860. **City council provide for inspection of milk and dairy herds.** The council of any city or incorporated town may by ordinance provide for the inspection of milk and of dairies and dairy herds kept for the production of milk within its limits, and issue licenses for the sale of milk within its limits, and regulate the same, and may authorize and empower the board of health to enforce all laws and ordinances relating to the production and sale of milk and the inspection of dairies and dairy herds producing milk for sale within such city. [1909, ch. 92, § 26; 1907, ch. 90, § 17; R. C. 1905, § 2106; 1905, ch. 95, § 17.]

§ 2861. **Violation constitutes misdemeanor. Penalty.** Whoever violates any of the provisions of this article, the punishment of which is not herein otherwise provided, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished for each offense by a fine of not less than fifteen dollars nor more than one hundred dollars, or by imprisonment of not less than ten days nor more than ninety days, or both. [1909, ch. 92, § 27; 1907, ch. 90, § 18.]

§ 2862. **Appropriation.** There is hereby appropriated out of any money in the state treasury not otherwise appropriated, the sum of five thousand dollars annually, and in addition thereto such sum or sums as shall be collected for licenses, under the provisions hereof, for the purpose of carrying into effect the provisions of this article. [1911, ch. 19; 1909, ch. 92, § 28.]

§ 2863. **Guests apprised of use of oleomargarine, butterine, etc.** Whoever furnishes or causes to be furnished in any hotel, restaurant, boarding house or at any lunch counter, oleomargarine or butterine to any guest or patron of such hotel, restaurant, boarding house or lunch counter in the place or stead of butter shall notify said guest or patron that the substance so furnished is not butter, and any party so furnishing without such notice shall be punished by a fine of not less than five dollars nor more than ten dollars for each and every offense. [R. C. 1905, § 2107; 1899, ch. 72, § 15; R. C. 1899, § 1701.]

This is R. C. 1905, § 2107. It has not been expressly repealed nor has any apparent substitute been enacted. It was not in the list of repealed sections in the title to Laws 1907, ch. 90, which chapter was expressly repealed in Laws 1909, ch. 92, § 29.

Ignorance that article furnished as butter is oleomargarine as a defense. 32 L.R.A. (N.S.) 746.

ARTICLE 37.—DESTRUCTION OF GRASSHOPPERS.

§ 2864. **Duty of county commissioners.** The board of county commissioners shall have power, and it shall be their duty to order the plowing of land and such other means as they deem expedient wherever and whenever they deem it necessary to cause the destruction of grasshoppers and Rocky Mountain locusts and grasshopper and Rocky Mountain locusts' eggs, and said plowing and other means shall be done at the time and in the manner directed by said board of county commissioners by the owner or incumbrancer, if any, of said land immediately after receiving notice thereof from said board of county commissioners. [R. C. 1905, § 2108; 1899, ch. 95, § 1; R. C. 1899, § 1704.]

§ 2865. **Notice, how and when served.** Where the owner of the land on which said board shall have decided plowing must be done for the purposes herein specified, cannot with reasonable diligence be served with notice within the state, it shall be sufficient to serve the said notice by publication thereof for two successive issues in the official newspaper nearest said tract. [R. C. 1905, § 2109; 1899, ch. 95, § 2; R. C. 1899, § 1705.]

§ 2866. **Must plow in five days.** If the owner or incumbrancer, if any, shall fail to plow said tract or tracts as ordered and directed by said board

of county commissioners within five days after notice as herein provided, then, in that event said board of county commissioners shall cause said tract or tracts to be plowed, or so much thereof as may be by them deemed necessary, and audit and pay for said work out of the general fund of said county, upon warrant as in other cases made and provided. [R. C. 1905, § 2110; 1899, ch. 95, § 3; R. C. 1899, § 1706.]

§ 2867. **Expense a lien upon land.** Immediately after the said accounts are audited and paid by said county commissioners it shall be the duty of the county auditor to certify to the county treasurer the amount so expended upon each piece and parcel of land, which certificate shall contain the name of the record owner or incumbrancer of said tract, a true description of said land, the amount paid by the county for plowing done thereon, and the county treasurer shall thereupon enter said amount against said land as taxes are entered against land, and the said amount shall constitute a lien upon said land prior to all other incumbrances, and shall bear interest at the rate of seven per cent per annum from date of entry by the county treasurer and collection thereof may thereafter be made and enforced in the same manner as delinquent taxes are enforced and collected against real property. [R. C. 1905, § 2111; 1899, ch. 95, § 4; R. C. 1899, § 1707.]

§ 2868. **Payment out of general fund.** When the board of county commissioners shall deem the plowing of state land necessary for the purposes herein specified they shall order the same done, and payment therefor may be made out of the general fund of the county upon warrant as in other cases provided; provided, however, that no growing crops shall be destroyed under the provisions of this article; provided, further, that where the board of county commissioners shall deem it necessary to cause plowing upon government land held by resident claimants, or other means to cause the destruction of grasshoppers and Rocky Mountain locusts, said claimant shall be liable to the county in a civil action for all moneys necessarily expended in carrying out the directions of the board of county commissioners for the purposes herein specified. [R. C. 1905, § 2112; 1899, ch. 95, § 5; R. C. 1899, § 1708.]

ARTICLE 38.—EXTERMINATION OF GOPHERS.

§ 2869. **Extermination of gophers.** When the county commissioners of any county in this state, where there are gophers, does not offer a bounty for the destruction of the same, then the township supervisors of any township within such county, upon a petition of ten resident land owners therein, are hereby authorized and empowered to appoint some suitable person or persons, whose duty it shall be to poison, kill and exterminate the gophers within such township, and any person so appointed is hereby empowered and directed to, between April first and July first, enter upon any farm, a railroad right of way, grounds or premises where there are gophers and poison, kill and exterminate the gophers thereon when the owner or occupant thereof shall neglect or refuse to do so. [1913, ch. 174, § 1.]

§ 2870. **Notice, how served.** It shall be the duty of the person so appointed to give any one on whose premises are found gophers ten days' notice in writing to poison, kill or exterminate the same; and if upon the land or right of way of any railroad company such notice may be served upon its agent at the station nearest to such land or right of way; or if such land is unoccupied and owned by a nonresident such notice shall be mailed to its owner's address, or if address is unknown, posted upon the land or premises where such gophers are to be exterminated, and if the work of exterminating same is not done within such time the person so appointed by the township supervisors shall proceed to poison, kill and exterminate the gophers on such land or premises, provided, that any person authorized to exterminate gophers according to the provisions of this article shall, when poison is laid out, use every pre-

caution to prevent the destruction of domestic fowls or animals, and of game birds, by such poison, and no person shall lay out poison in any pasture where there are stock, or within forty rods of any occupied dwelling or farm house, without the knowledge and consent of the owner or occupant thereof. [1913, ch. 174, § 2.]

§ 2871. Compensation, statement and voucher to be charged against land as taxes, after due notice. Any person so appointed under the provisions of this article shall receive as compensation the sum of two dollars and fifty cents per day for ten hours' labor performed in poisoning and exterminating gophers. He shall also be reimbursed for all poison and grain used in the performance of such work. Such person shall make a sworn statement to the township of the time put in and the poison and grain used on each tract of land, provided, that the maximum charge against any parcel of land containing twenty acres or more shall not be greater in any one year than at the rate of ten dollars per one hundred and sixty acres, and the minimum charge shall not be less than one dollar against any parcel of land, which amount shall be paid by such township out of its general fund and charged as taxes against each parcel of land on which the expenses were incurred. Provided, further, that before the township supervisors shall charge such amounts to the taxes of such person or corporation, the township supervisors shall give such person or corporation at least twenty days' notice by mail, of the time when, and the place at which such amount will be charged against them; and such person or corporation shall have the right to appear and show cause why such amount shall not be charged against their taxes. Provided, further, that if such person or corporation shall feel aggrieved by the decision of the township supervisors, such person or corporation may appeal to the district court, and such appeal shall be perfected and prosecuted in the same manner as appeal in justice courts, and the county auditor shall enter such amounts upon the tax roll of the county against the land on which such work has been done, and expenses incurred, except the expenses of exterminating gophers on state lands, which shall be paid by the township; and the county treasurer of such county shall collect such amounts the same as taxes, and place the same to the credit of the respective townships from which collected. [1913, ch. 174, § 3.]

§ 2872. County commissioners to appoint in unorganized townships. The county commissioners of any county in this state not offering bounty on gophers shall, upon a petition of ten resident land owners of any unorganized township within such county, appoint suitable person or persons to destroy and exterminate the gophers within such township, in the same manner as if appointed by the township supervisors of any organized township according to the provisions of the preceding sections of this article, and such person shall proceed to poison, kill and exterminate the gophers according to the provisions of the preceding sections, and make sworn statements in like manner to the county; and the expense so incurred shall be paid out of the general fund of such county; and the county commissioners, before entering such amounts as taxes against the land on which the expenses were incurred, shall issue notices as provided for in the preceding section, which hearing shall also be subject to appeal in like manner; such amounts shall be charged upon the tax roll of the county against the land on which the expenses were incurred, and the county treasurer shall collect such amounts the same as taxes and place the same in the general fund of the county. [1913, ch. 174, § 4.]

§ 2873. Gophers defined. The word "gopher" as used in this article shall mean to include striped gopher, flicker tail gopher, pocket gopher and prairie dogs. [1913, ch. 174, § 5.]

ARTICLE 39.—ADULTERATION OF OILS.

§ 2874. Boiled linseed oil. No person, firm or corporation or agent or employe of any person, firm or corporation shall manufacture for sale or offer

or expose for sale in this state any flaxseed or linseed oil unless the same answers a chemical test for purity recognized in the United States Pharmacopoeia or any flaxseed or linseed oil as "boiled linseed oil" unless the same shall have been put in its manufacture to a temperature of two hundred and twenty-five degrees Fahrenheit. [R. C. 1905, § 2113; 1899, ch. 106, § 1; R. C. 1899, § 1709.]

Right to require that articles offered for sale shall answer a designated standard of purity. 41 L.R.A.(N.S.) 149.

§ 2875. **Painted, stamped or stenciled.** No person, firm or corporation or agent or employe of any person, firm or corporation shall sell, expose or offer for sale any flaxseed or linseed oil unless it is done under its true name and each tank car, tank, barrel, keg or any vessel of such oil has distinctly and durably painted, stamped, stenciled or labeled thereon the true name of such oil and in ordinary bold face capital letters the words "pure linseed oil raw" or "pure linseed oil boiled" and the name and address of the manufacturer thereof and sold only under the brand of such manufacturer. [R. C. 1905, § 2114; 1899, ch. 106, § 2; R. C. 1899, § 1710.]

Police regulations as to branding or labeling articles of commerce. 1 L.R.A.(N.S.) 184; 17 L.R.A.(N.S.) 684.

§ 2876. **Misdemeanor. Penalty.** Any person, firm or corporation or agent or employe of any person, firm or corporation who shall sell without stamp as required by this article or who shall falsely stamp or label such tank cars, tanks, barrels, kegs or other vessels as containing flaxseed or linseed oil or knowingly permit such stamping or labeling or whoever shall violate any provision of this article shall be deemed guilty of a misdemeanor and upon conviction shall be punished with a fine of not less than twenty-five dollars nor more than fifty dollars and in default of the payment of such fine shall be committed to the county jail until the same is paid. [R. C. 1905, § 2115; 1899, ch. 106, § 3; R. C. 1899, § 1711.]

§ 2877. **Commissioner of agriculture must enforce law.** It shall be the duty of the state commissioner of agriculture and labor and the state's attorneys of the different counties of this state to enforce the provisions of this article; and for that purpose the said commissioner is hereby authorized and empowered to appoint such assistants, experts and chemists as he shall deem necessary or expedient from the state university or the state agricultural college, and the said commissioner and said assistants, experts and chemists so appointed shall have access, ingress and egress to and from all places of business and buildings where flaxseed or linseed oil so called, whether pure or adulterated, is believed by them to be kept or stored; and they shall also have power and authority to open any tank car, tank, barrel, keg or other vessel of such oil and inspect the contents thereof and take samples thereof therefrom sufficient in quantity only for analysis; and all clerks, bookkeepers, express agents, railroad agents or officials, employes, common carriers and all other persons shall render them all the assistance in their power when so requested in tracing, finding or discovering the presence of any such adulterated oil. [R. C. 1905, § 2116; 1899, ch. 106, § 4; R. C. 1899, § 1712.]

§ 2878. **Experts and chemists.** In all prosecutions under this article the costs thereof shall be paid in the manner provided by law and the said assistants, experts and chemists appointed by the commissioner of agriculture and labor shall be entitled when testifying on such prosecutions to the same witness fees as are now provided by law for expert witnesses. [R. C. 1905, § 2117; 1899, ch. 106, § 5; R. C. 1899, § 1713.]

ARTICLE 40.—PURE FOOD LAW.

This article clearly supersedes Political Code 1905, chapter 40, article 29, entitled "Adulteration of Food."

§ 2879. **Adulterating and misbranding foods and beverages.** It shall be unlawful for any person, either himself or while acting as agent or servant

of any other person or corporation, to manufacture for sale, sell, offer or to have for sale, to solicit orders for, to store, or to deliver within the state any article of food or beverage which is unwholesome, misbranded, adulterated or insufficiently labeled within the meaning of this article. The having in possession of such adulterated, unwholesome, misbranded or insufficiently labeled article or articles shall be deemed as prima facie evidence of the violation thereof. For the purpose of this article all condiments, extracts, vinegars, or other substances used in the preparation or compounding of foods or food products and beverages shall be deemed as articles of food. [1907, ch. 195, § 1; R. C. 1905, § 2118; 1901, ch. 4, § 1; 1903, ch. 6, § 1; 1905, ch. 11, § 1.]

Constitutionality of statute making possession of adulterated food criminal. 51 Am. Rep. 347.

Power of the state to regulate or prohibit the manufacture or sale of adulterated food. 10 Am. St. Rep. 423.

Power of the states to prevent importation and sale of adulterated food. 98 Am. St. Rep. 607.

Right to require that articles offered for sale shall answer a designated standard of purity. 41 L.R.A.(N.S.) 149.

Prohibition of adulteration of milk. 1 L.R.A.(N.S.) 928.

Validity of police regulations as to branding articles of food. 1 L.R.A.(N.S.) 184; 40 L.R.A.(N.S.) 875.

Does requirement of pure food laws as to labeling apply to small retail packages taken from original package of the manufacturer. 25 L.R.A.(N.S.) 616.

State regulations as to adulteration or branding of food as affected by federal pure food law. 47 L.R.A.(N.S.) 985.

§ 2280. What constitutes adulteration. Any article of food or beverage shall be considered as misbranded, unwholesome, adulterated or insufficiently labeled within the meaning of this article:

First. If it contains any form of aniline dye or other coal tar dye, or if colored (and not in violation of clause six of this section) with a harmless vegetable dye and the name thereof is not given on the label.

Second. If it contains formaldehyde, benzoic acid, sulphurous acid, boric acid, salicylic acid, hydrofluoric acid, saccharin, benaphthol or any salt or antiseptic compound derived from these products, or other deleterious ingredient.

Third. If any substance or substances have been mixed with it so as to reduce or lower or injuriously affect its quality or strength or food value so that such article of food or beverage when offered for sale shall deceive or tend to deceive the purchaser.

Fourth. If any inferior or cheaper substance or substances have been substituted wholly or in part for the articles so that the product when sold shall deceive or tend to deceive the purchaser.

Fifth. If any necessary or valuable constituent of the article has been in whole or part abstracted.

Sixth. If it be an imitation of or offered for sale under the specific name of another article.

Seventh. If it be labeled, branded, colored, coated or stained, whereby damage or inferiority is concealed, so as to deceive or mislead the purchaser, or if it be falsely labeled in any respect.

Eighth. If it consists wholly or in part of a diseased, decomposed, filthy or putrid animal or vegetable substance, or if such substance or substances be used in the preparation thereof, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter.

Ninth. If every package, bottle or container does not bear the true net weight, the name of the real manufacturer or jobbers, and the true grade or class of the product, the same to be expressed on the face of the principal label in clear and distinct English words in black type on a white background, said type to be in size uniform with that used to name the brand or producer.

Provided, that an article of food or beverage shall not be deemed adulterated in the following cases:

First. If it be a compound or mixture of recognized food products not included in definitions sixth and eighth of this section, and if it be properly labeled or tagged to comply with the other provisions of section 2880.

Second. In the case of candies and chocolates if they contain no terra alba, barytes, talc, chrome yellow or other mineral substances or aniline dyes or other coal tar dyes or other poisonous colors, flavors or products detrimental to health.

Third. If in the case of baking powders or any mixture or compound intended for use as a baking powder they have affixed to each and every box, can or package containing such powder or like mixture or compound, a light colored label upon the outside and on the face of which there is distinctly printed with black ink and in clear legible type the name and address of the manufacturers, the true and correct analysis, and in a form to be prescribed by the North Dakota government agricultural experiment station of each and all the constituents or ingredients contained in or contributing a part of such baking powders or mixture or compound intended for use as a baking powder. The label shall bear no advertising or descriptive matters other than the name of the manufacturer, composition as prescribed for above, and directions for use.

Fourth. In the case of perishable goods put up in bulk, sodium benzoate or other less harmful preservatives may be used in proportion not to exceed one part in two thousand in such products and under such regulations as may be determined upon and proclaimed by the North Dakota government agricultural experiment station at Fargo. This clause shall not be applicable to any case at any time where products can be commercially produced without the use of chemical preservatives. Where the use of preservatives is permitted the fact shall be clearly set forth on the face label in a form and manner to be prescribed by the North Dakota government agricultural experiment station at Fargo. [1907, ch. 195, § 2; R. C. 1905, § 2119; 1901, ch. 4, § 2; 1903, ch. 6, § 2; 1905, ch. 11, § 2.]

Use of coloring matter in food stuffs, oils, etc., as adulteration. 25 L.R.A. (N.S.) 1234.

Requiring label to show ingredients, name and residence of manufacturer, etc. 40 L.R.A. (N.S.) 876.

§ 2881. Penalty for so doing. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and shall for each offense be punished by a fine of not less than twenty-five dollars or more than one hundred dollars, and all necessary costs, including the expense of analyzing such adulterated articles when said person has been found guilty under this article. Products found to be adulterated within the meaning of this article may by order of the court be seized and ordered destroyed. [1907, ch. 195, § 3; R. C. 1905, § 2120; 1901, ch. 4, § 3; 1903, ch. 6, § 3; 1905, ch. 11, § 3.]

Validity of statute or ordinance for destruction of food products below prescribed standard or unfit for use. 29 L.R.A. (N.S.) 260.

Instigation of offense of misbranding food as a defense to prosecution. 30 L.R.A. (N.S.) 953.

Liability for serving unfit food. 40 L.R.A. (N.S.) 480.

Criminal liability for adulteration of food by servant, agent or partner. 41 L.R.A. 656.

Liability for selling noxious and unsound food. 73 Am. Dec. 165; 21 L.R.A. 139.

Liability of packer or vendor to person not in privity for injury from defects in articles of food. 19 L.R.A. (N.S.) 923.

§ 2882. Duty of state's attorney. It shall be the duty of the attorney-general and the state's attorney to prosecute all persons violating any of the provisions of this article when the evidence thereof has been presented by the North Dakota government agricultural experiment station as provided for in sections 2885 and 2886. [1907, ch. 195, § 4; R. C. 1905, § 2121; 1903, ch. 6, § 4.]

Attorney-general has right to appear before grand jury and examine witnesses in regard to matters relating to prohibition law. *State ex rel. Miller v. District Ct.*, 19 N. D. 819, 124 N. W. 417, Ann. Cas. 1912D, 935.

§ 2883. The North Dakota experiment station to inspect and analyze foods and beverages. The North Dakota government agricultural experiment station shall make analysis of food products and beverages on sale in North Dakota suspected of being adulterated, at such times and places and to such extent as it may determine and may appoint for the enforcement of the terms of this article a commissioner and such other agent or agents as it may deem necessary, and the sheriffs of the respective counties of the state are hereby appointed and constituted agents for the enforcement of this act, and such commissioner, agent or agents and sheriffs shall have free access at all reasonable hours, for the purpose of examining into any place wherein it is suspected any article of food or beverage adulterated with any deleterious or foreign ingredient or ingredients exists, and such commissioner, agents or sheriff, upon tendering the market price of said article, may take from any person, firm or corporation samples of any articles suspected of being adulterated as aforesaid, and the station may adopt or affix standards of purity, quality or strength when such standards are not specified or fixed by statute. [1907, ch. 195, § 5; R. C. 1905, § 2122; 1903, ch. 6, § 5.]

Right to require that articles offered for sale shall answer a designated standard of purity. 41 L.R.A.(N.S.) 149.

§ 2884. Citizen may send sample of food or beverage for analysis. Any citizen of the state may, by prepaying the transportation charges, send any article of manufactured food or food product, or beverage in the original package to said station to be analyzed, and such article, if not before analyzed, shall be analyzed and included in the next bulletin or report of the station as provided for in section 2887. [1907, ch. 195, § 6; R. C. 1905, § 2123; 1903, ch. 6, § 6.]

§ 2885. Facts, how transmitted. Whenever said station shall find by its analysis that adulterated, misbranded or insufficiently labeled food products or beverages have been on sale in this state, it shall forthwith transmit the facts so found to the attorney-general and to the state's attorney of the county in which said food product was found. [1907, ch. 195, § 7; R. C. 1905, § 2124; 1903, ch. 6, § 7.]

§ 2886. Certificates as evidence. Every certificate duly signed and acknowledged by the chemist of the North Dakota government agricultural experiment station at Fargo relating to the analysis of any food, food products or beverage, shall be presumptive evidence of the facts therein stated. [1907, ch. 195, § 8; R. C. 1905, § 2125; 1903, ch. 6, § 8.]

§ 2887. Station to make annual report. The said station shall make an annual report to the governor upon adulterated food products, and said report may be included in the report which the said station is already authorized by law to make to the governor and the said station is further authorized to publish or cause to be printed from time to time such bulletins as are found necessary for setting forth the results of analysis and investigations made under this article, and in June and December of each year the said station shall furnish to the auditor of each county in the state a certified list of all adulterated foods, food products and beverages as found by such analysis, showing the name and brand of the article, the manufacturer and the reason for classing the same as illegal. The county auditor of each county shall cause the said list to be printed in the official papers of such county. Said publication shall be made in July and January of each year and shall continue for two successive issues, to be paid for by such county at the rate allowed by law for publishing the proceedings of the board of county commissioners. [1907, ch. 195, § 9; R. C. 1905, § 2126; 1903, ch. 6, § 9.]

§ 2888. Duty of sheriff on presentation of complaint of violation of this act. Compensation. It is hereby made the duty of the sheriff of any county of this state, on presentation to him of a verified complaint of the violation of any provision of this article, to at once proceed to obtain by purchase a sample

of the adulterated food, food products or beverage complained of, and forward the same to the said station for analysis, marking the package or wrapper containing the same for identification with the name of the person from whom procured, the date on which the same was procured and the substance therein contained. For his services hereunder the said sheriff shall be allowed the same fees for travel as are now allowed by law to sheriffs on service of criminal process, together with such compensation as may be by the county commissioners of his county deemed reasonable, and all amounts expended by him in procuring and transmitting the said samples, which fees and amount expended shall be audited and allowed by the said commissioners and paid by his said county as other bills of said sheriff. [1907, ch. 195, § 10; R. C. 1905, §§ 2127, 2128; 1903, ch. 6, § 10.]

§ 2889. No action in court. No action shall be maintained in any court in this state on account of any sale or other contract made in violation of this article. [1907, ch. 195, § 11; R. C. 1905, § 2129; 1903, ch. 6, § 12.]

Validity of sale of food in violation of law. 13 L.R.A.(N.S.) 597.

ARTICLE 41.— FERTILIZERS.

§ 2890. Dealers must affix certificates on packages. Contents. Every person who shall sell, offer or expose for sale in this state any commercial fertilizer or any material to be used as a fertilizer, the selling price of which exceeds five dollars per ton, shall stamp on or affix to each package of such fertilizer, in a conspicuous place on the outside thereof, a plainly printed statement which shall certify as follows:

1. The number of net pounds of fertilizer in the package sold or offered for sale.
2. The name, brand or trade mark under which the fertilizer is sold.
3. The name and address of the manufacturer of the fertilizer.
4. The chemical composition of the fertilizer expressed in the following form and order:

.....Per cent phosphoric acid soluble in water.
Per cent phosphoric acid reverted.
Per cent phosphoric acid insoluble.
Per cent phosphoric acid total.
Per cent nitrogen in nitrates.
Per cent nitrogen as ammonia.
Per cent nitrogen total.
Per cent potash soluble in water.
Per cent chlorin.

If any fertilizer be sold, offered or exposed for sale in bulk, such printed statement shall accompany every lot and parcel so sold, offered or exposed for sale. [R. C. 1905, § 2130; 1903, ch. 101, § 1.]

Validity of contract for sale of fertilizers, where statutory regulations had not been complied with. 43 L.R.A.(N.S.) 1109.

Requiring label to show ingredients, name and residence of manufacturer, etc. 40 L.R.A.(N.S.) 876.

Police regulations as to labeling articles of commerce. 1 L.R.A.(N.S.) 184; 17 L.R.A.(N.S.) 684; 40 L.R.A.(N.S.) 875.

§ 2891. What deemed violation. It shall be a violation of the provisions of this article if the statement required by section 2890 shall be false in regard to the number of net pounds of fertilizer in the package sold, offered or exposed for sale, or in the name, brand or trade mark under which the fertilizer is sold or in the name and address of the manufacturer of the fertilizer. It shall also be a violation of the provisions of this article if any commercial fertilizer or material to be used as a fertilizer shall contain a smaller percentage of nitrogen, phosphoric acid or potash than is certified therein, when such deficiency shall be greater than one-third of one per centum of nitrogen, or one-half of one per centum of available phosphoric acid (or one per

centum of total phosphoric acid in the case of undissolved bone,) or one-half of one per centum of potash soluble in distilled water. [R. C. 1905, § 2131; 1903, ch. 101, § 2.]

§ 2892. Conditions to be complied with before sale. Before any commercial fertilizer or any material to be used as a fertilizer is sold, offered or exposed for sale in this state, the manufacturer, importer or person who causes the same to be sold, offered or exposed for sale, shall file with the North Dakota government agricultural experiment station a certified copy of the statement prescribed in section 2890, and, in addition, such statement shall be filed thereafter annually during the month of December. Each manufacturer, importer or person, before selling, offering or exposing for sale in this state any brand of commercial fertilizer, shall annually, during the month of December, pay to the director of the North Dakota government agricultural experiment station a license fee of twenty dollars for each and every brand of fertilizer, bearing a distinctive name, brand or trade mark, which said manufacturer, importer or person is to sell, offer or expose for sale in this state during the calendar year next succeeding said payment; provided, always, that the placing of any new brand upon the market at any time during said calendar year shall be preceded by such payment. Each manufacturer, importer or person who has complied with the provisions of this article relative to filing the aforesaid certified statement and to the payment of the aforesaid license fee shall be entitled to receive a certificate from the director of said station setting forth said facts. Said director shall pay all money received as aforesaid to the treasurer of the North Dakota government agricultural experiment station, which treasurer, when said money is so appropriated by the board of trustees of said station, shall pay the money so received, or so much of it as may be necessary, in maintaining the expenses of enforcing the provisions of this article. Said board of trustees shall report annually the expenditures so incurred for salaries, laboratory expenses, chemical supplies, traveling expenses and printing. [R. C. 1905, § 2132; 1903, ch. 101, § 3.]

§ 2893. What prohibited. No person shall sell, offer or expose for sale in this state leather or its products or other inert nitrogenous material in any form, as a fertilizer or as an ingredient of any fertilizer, unless an explicit printed statement of the fact shall be conspicuously affixed to every package of such fertilizer, and shall accompany every parcel or lot of the same. [R. C. 1905, § 2133; 1903, ch. 101, § 4.]

§ 2894. Penalty for violation. Every person violating any of the provisions of this article shall forfeit and pay to the people of the state of North Dakota the sum of one hundred dollars for every such violation. [R. C. 1905, § 2134; 1903, ch. 101, § 5.]

§ 2895. Certificate of chemist presumptive evidence. Every certificate duly signed and acknowledged by the chemist of the North Dakota government agricultural experiment station at Fargo, relating to the analysis of any commercial fertilizer, shall be presumptive evidence of the facts therein stated. [R. C. 1905, § 2135; 1903, ch. 101, § 6.]

§ 2896. What constitutes violation. The doing of anything prohibited by this article shall be evidence of the violation of the provisions of this article relating to the things so prohibited and the omission to do anything directed to be done shall be evidence of a violation of the provisions of this article relative to the things so directed to be done. [R. C. 1905, § 2136; 1901, ch. 101, § 7.]

§ 2897. Director of experiment station to enforce. The director of the North Dakota government agricultural experiment station is charged with the enforcement of the provisions of this article, and for this purpose, may employ agents, chemists and experts, and whenever he shall know or have reason to believe that any penalty has been incurred by any person for the violation of any of the provisions of this article, or that any sum has been forfeited by reason of

any such violation he shall report the said violation with a statement of the facts to the state's attorney for the district wherein the offense is committed, who shall begin proceedings according to the state law. [R. C. 1905, § 2137; 1901, ch. 101, § 8.]

ARTICLE 42.—PURE SEED LAW.

§ 2898. **Seeds, how labeled or branded.** Each and every package or lot of seeds, excepting only garden seeds in a packet or a package of one pound or less, whether in package or in bulk, which is sold, offered or exposed for sale by any person, firm or corporation in the state of North Dakota, shall be plainly, legibly and indelibly labeled in English upon the exterior of the container with a written or printed label. Such label shall show:

First: The commonly accepted name of the kind and variety of seed.

Second: The full name and address of the person or persons, firm or corporation selling, offering or exposing the seeds for sale. [1909, ch. 209, § 1.]

§ 2899. **Mixed seeds, how sold.** In case of sale, offering or exposure for sale of mixed seeds, the packages or containers shall be plainly labeled upon the exterior of the container with the correct common names of the kinds or varieties of seeds composing the mixture. [1909, ch. 209, § 2.]

§ 2900. **Seeds, feeds and forage stuffs, the sale of which are forbidden or unlawful.** (1) **Seeds prohibited.** No person, firm or corporation shall sell, offer or expose for sale or for distribution in the state any agricultural or garden seeds, excepting only garden seeds in a packet or package of one pound or less, which contain any of the seeds of couch or quack grass, Canada thistle, sow thistle or dodder.

(2) **Seeds, unlawful.** The sale of agricultural or garden seeds under special or written guarantee, as pure seeds for sowing or planting purposes, containing seeds of any kind or kinds, in greater numbers than a total of twenty (20) per pound in flax, cereals or other seeds of like size, or a total of one hundred (100) such foreign seeds per ounce in seeds of smaller type such as alfalfa, grasses or clovers is unlawful.

(3) **Seeds which must be labeled "uncleaned."** The sale or exposure for sale of agricultural or garden seeds containing more than a reasonable trace of any foreign seeds whether of other cultivated varieties or of noxious weeds such as greater ragweed, corn flower, marsh elder, russian pigweed, dandelion, chicory, russian thistles, plantain, buck plantain, bracted plantain, white cockle, night-flowering catchfly, pink cockle, corn cockle, cow cockle, curled dock, sorrel, sheep-sorrel, purslane, bindweed, wild buckwheat, wild onion, wild oats, holy grass, cress, mustard, tumbling mustard, hare's ear mustard, pennyress, pepper grass, shepherd's purse, false flax, bird's foot trefoil, yellow trefoil, bur clover, ergot or of the seeds of any other noxious weeds is unlawful, except such seeds be plainly labeled in English "uncleaned seeds" as further provided in section 2903.

(4) **Minimum germination.** The minimum germination of agricultural and garden seeds except only the seeds of parsnip, salsify, spinach, lettuce, parsley, medicinal herbs and the seeds of plants grown for flowers only, which may be sold and distributed in the state of North Dakota as seed for sowing or planting purposes shall be sixty per cent (60%) of actual viability. All seeds of lower viability than the minimum hereby established shall be classed as seeds for "food, forage or manufacturing purposes" as provided in section 2903. Any grower or seedsmen may guarantee the approximate viability of any brand, bulk, bag or package of seed that he may place upon the market.

(5) **Seeds, certified.** On and after July first, 1913, the state seed commissioner shall cause to be examined the crop of stock of seed of all persons within the state of North Dakota who claim to be growers of pedigreed or improved seeds of any variety of agricultural or garden seeds. There shall

also be kept in the office of the state seed commissioner a record of all growers of standard pedigreed seed and on or before March first of each year the state seed commissioner shall publish a list of all such growers and dealers who may have acquired by purchase any such properly certified seeds, which list shall be sent to any resident of the state of North Dakota upon application. He shall also, under such rules and regulations as he may prescribe, issue to each grower a certificate of the grade of purity and viability of the crops or seeds examined, and each certificate shall show the amount of seed which may be sold under said certificate. All such certified, pedigreed or improved seed if sold as seed for sowing or planting purposes shall be labelled so as to show the certificate number and conform to the requirements of the other sections of the pure seed law. The state seed commissioner may, for cause, upon due notification, revoke any certificate so issued and no new certificate shall be issued to said holder during the period of one full year following the date of the cancellation of his certificate. For each certificate so issued there shall be paid to the treasurer of the agricultural college the sum of two (2) dollars, and at the end of each month shall be paid into the state treasury. All funds so collected shall be expended under requisition by the state seed commissioner for the aid and furtherance of the work of inspection and analysis necessary to the issuing of these certificates and keeping of the records specified in this clause.

"Pedigreed seed" is hereby defined as seed of only one variety dating in history to a selected individual parent plant. "Improved seed" is hereby defined as seed of only one variety of sufficient purity and viability to meet the requirements of the state seed laws as seed for sowing or planting purposes. [1913, ch. 229, § 3; 1909, ch. 209, § 3.]

This section concluded with the following paragraph, which was vetoed by the governor for the reason that the revenues of the state had been largely exceeded by the appropriations:

"There is hereby annually appropriated out of any moneys in the state treasury, not otherwise appropriated, the sum of two thousand five hundred dollars in addition to that already annually appropriated to the pure seed laboratory for the furtherance of the work authorized in the pure seed law and for the further equipment of the pure seed laboratory for field inspection, germination tests and analysis of seed and forage stuffs as specified in this act, and for aid in publishing such reports and information as shall best further the culture and distribution of seeds of high grade and quality within the state, said payments to be made in four quarterly installments to the treasurer of the North Dakota agricultural college experiment station at Fargo, on the first days of July, October, January and April, and the state auditor is hereby authorized and directed to draw his orders for such payments."

§ 2901. Mislabelling or misbranding seeds. It shall be unlawful for any person, either for himself or while acting as agent or servant of any other person, firm or corporation, to sell, offer or expose for sale, or to deliver within the state of North Dakota any seeds which are misbranded within the meaning of this article. Seed or seeds shall be deemed to be misbranded if the contents of any sack or lot of seeds, whether in package or in bulk containers, is not labeled in accordance with the requirements of sections 2898, 2899 and 2903, or if such seed or seeds be falsely labeled in any respect. [1909, ch. 209, § 4.]

§ 2902. Penalty for violation of article. Whoever sells, offers or exposes for sale or for distribution in the state any seeds without complying with the requirements of sections 2898 and 2899, or in violation of sections 2900 and 2903, shall be deemed guilty of a misdemeanor and on conviction shall be fined not less than ten dollars and costs, nor more than one hundred dollars and the costs of the prosecution for the first offense, and not less than one hundred dollars and costs nor more than five hundred dollars and costs of prosecution for the second or any subsequent offense. [1909, ch. 209, § 5.]

§ 2903. Sale of seeds for manufacture, food or forage. Uncleaned seed and seeds in transit. The provisions of this article shall not apply to any person, firm or corporation growing or selling or exposing for sale cereals or other

seeds for manufacturing purposes, for food or forage; provided, that the provisions of this article shall not apply to the sale or exposure for sale of uncleaned seed, provided each package, lot or bulk of such uncleaned seed sold, exposed or offered for sale be plainly labeled with the words, "uncleaned seed;" and provided, further, that in case of large quantities of such unclean seeds stored in an elevator, granary or warehouse, they shall be labeled the bins or subdivisions, "uncleaned seeds," and no such uncleaned seed shall be sold or delivered within the state for sowing purposes without the consent of the purchaser. This article shall not apply to seeds or grains in transit. [1909, ch. 209, § 6.]

§ 2904. The North Dakota agricultural college experiment station to inspect, analyze and test seeds. The North Dakota agricultural college experiment station at Fargo shall inspect, examine and make analyses of or test seeds sold, offered or exposed for sale in the state at such time and places and to such extent as it may determine. The director of said experiment station is hereby authorized to appoint a state seed commissioner and such other agents as he may deem necessary to carry out the provisions of this article, and said commissioner or agents shall have free access at all reasonable hours upon and into any premises or structures to make examinations of any seeds, whether such seeds are upon the premises of the owner of such seeds, or on other premises, or in the possession of any warehouse, elevator or railway company; and upon tendering payment thereof at the current value, may take from any person, firm or corporation any sample or samples of such seeds. The salary of said commissioner and of other agents shall be fixed and paid by the trustees of said experiment station. [1909, ch. 209, § 7.]

§ 2905. Citizens may send samples of seed or seeds for analysis or test. Any citizen of the state of North Dakota may, in accordance with regulations prescribed by the state seed commissioner, prepaying the transportation charges, send a sample or samples of seed to said experiment station for examination, analysis or test, and such sample or samples shall be examined, analyzed or tested and reported upon free of charge. [1909, ch. 209, § 8.]

§ 2906. Certificates as evidence. The certificate of the botanist of the North Dakota agricultural college experiment station at Fargo, giving the results of any examinations, analysis or test of any seed sample made under the authority of said experiment station, shall be presumptive evidence of the facts therein stated. [1909, ch. 209, § 9.]

§ 2907. Facts, how transmitted. When said experiment station shall find by its examinations, analyses or tests that any person, firm or corporation has violated any of the provisions of this article, the state seed commissioner may transmit the facts so found to the attorney-general or to the state's attorney of the county in which the offense was committed or the misbranded seeds were found. [1909, ch. 209, § 10.]

§ 2908. Duty of attorney-general and state's attorney. It shall be the duty of the attorney-general and the state's attorney to prosecute all persons violating any of the provisions of this article when the evidence thereof has been presented by the state seed commissioner. [1909, ch. 209, § 11.]

Attorney-general has right to appear before grand jury and examine witnesses in regard to matters relating to prohibition law. *State ex rel. Miller v. District Ct.*, 19 N. D. 819, 124 N. W. 417, Ann. Cas. 1912D, 935.

§ 2909. Station to make report. The North Dakota agricultural college experiment station, through the state seed commissioner, shall make an annual report to the governor upon the work done under this article, which report shall show the results of the inspection, examinations, analyses or tests made together with the date or dates of said inspection, examination, analyses or tests, and may include the names of persons, firms or corporations having seeds under such inspection, examination, analysis or test. The said experiment station may also publish bulletins or press reports setting forth results of inspection, examinations, analyses or tests, conducted under the provisions

of this article, which bulletins or press reports may include the names of the persons, firms or corporations having seeds under such inspection, examination, analysis or test. [1909, ch. 109, § 12.]

§ 2910. Appropriation. There is hereby annually appropriated out of any money in the state treasury, not otherwise appropriated, the sum of two thousand five hundred dollars, to be paid to the treasurer of the North Dakota agricultural college experiment station at Fargo, and the same shall be expended for the equipment of a seed testing laboratory and in carrying out the provisions of this article. Said payment shall be made in four quarterly installments on the first days of July, October, January and April, and the state auditor is hereby authorized and directed to draw his orders for such payments. [1909, ch. 209, § 13.]

ARTICLE 43.—CONCENTRATED COMMERCIAL FEEDING STUFF.

§ 2911. Feeding stuffs, how labeled. Every lot or parcel of any "concentrated commercial feeding stuff," as defined in section 2913, used for feeding farm live stock, sold, offered or exposed for sale in the state, shall have affixed in a conspicuous place on the outside thereof, a legible and plainly written statement, clearly and truly certifying the number of net pounds contained therein, the name, brand or trade mark under which the article is sold, the name and address of the manufacturer or importer, and a statement of the percentage it contains of crude protein, allowing one per cent of nitrogen to equal (n. x 6.25) six and one-fourth per cent crude fat, and of crude fibre, said constituents to be determined by the methods of the association of official agricultural chemists of the United States as adopted at that time. [1907, ch. 197, § 1.]

§ 2912. Feeding stuffs exempted. The term "concentrated commercial feeding stuffs" as here used shall not include hays, straw, whole seeds, nor the unmixed meals made directly from the seed of wheat, rye, speltz, barley, oats, Indian corn, buckwheat or broom corn, and neither shall it include wheat, rye, buckwheat, brans or middlings not mixed with other substances, but sold separately as distinct articles of commerce, nor pure grains ground together. [1907, ch. 197, § 2.]

§ 2913. Feeding stuffs to be labeled. The term "concentrated commercial feeding stuffs," as here used, shall include linseed meals, cotton seed meals, cotton seed feeds, pea meals, cocoanut meals, gluten meals, gluten feeds, maize feeds, starch feeds, sugar feeds, dried brewer's grains, dried distiller's grains, malt sprouts, hominy feeds, cereline feeds, rice meals, dried beef, refuse, oat feeds, corn and oat chops, corn and oat feeds, corn bran, ground beef or fish scraps, meat and bone meal, clover meals, condimental foods, poultry foods, stock foods, patented, proprietary or trade marked stock and poultry foods (whether to be used as foods or medicines), mixed feeds, other than those composed solely of bran and middlings mixed together, or pure grains ground together, and all other materials of similar nature not included in section 2912. [1907, ch. 197, § 3.]

§ 2914. Shall file statement with station. Each and every manufacturer, importer, agent or seller of any "concentrated commercial feeding stuff" shall, during the month of December, file with the North Dakota government agricultural experiment station a certified copy of the statement named in section 2911, and upon request shall furnish a sealed glass jar or bottle containing a representative sample of at least one pint of the feeding stuff to be sold or offered for sale in this state. [1907, ch. 197, § 4.]

§ 2915. Fines for failure to comply with the law. Each and every manufacturer, importer, agent or person, selling, offering or exposing for sale in this state any "concentrated commercial feeding stuff," as defined in section 2913, without the statement required by section 2911, and stating

that said feeding stuff contains substantially a larger percentage of either of the constituents mentioned in section 2911 than is contained therein, or in relation to which the provisions of all the foregoing sections have not been fully complied with, shall be fined not exceeding one hundred dollars for the first offense, and not exceeding two hundred dollars for each subsequent offense. [1907, ch. 197, § 5.]

§ 2916. Licenses for feeding stuffs. Every manufacturer, importer, agent or seller of any "concentrated commercial feeding stuffs" shall pay annually, during the month of December, to the North Dakota government agricultural experiment station, a license fee of fifteen dollars for each and every brand sold or offered for sale in North Dakota. Whenever the manufacturer, importer or agent or seller of "concentrated commercial feeding stuffs" desires at any time to sell such material and has not paid the license fee therefor in the preceding month of December, as required by this section, he shall pay the license fee prescribed herein before making the sale. Each manufacturer, importer or person who has complied with the provisions of this article shall be entitled to receive a certificate from the director of the government agricultural experiment station at Fargo, setting forth said facts. Whenever a manufacturer, importer or shipper of "concentrated commercial feeding stuffs" shall have filed the statement required by section 2911, and paid the license fee as prescribed in this section, no other agent or seller, manufacturer, importer or shipper shall be required to file such statement or pay such fee for the same brands. [1907, ch. 197, § 6.]

§ 2917. Fines for adulterating feeds. Any person who shall adulterate any kind of meal or ground grain with milling or manufacturing offals, or any other substance whatever, for the purpose of sale, unless the true composition, mixture or adulteration thereof is plainly marked or indicated upon the package containing the same, or in which it is offered for sale, or any person who knowingly sells or offers for sale any meal or ground grain which has been so adulterated, unless the true composition of the mixture is plainly marked or indicated upon the package containing the same, or in which it is offered for sale, shall be fined not less than twenty-five dollars, nor more than one hundred dollars for each offense. [1907, ch. 197, § 7.]

§ 2918. Experiment station to enforce law. The North Dakota government agricultural experiment station at Fargo is hereby authorized to have collected a sample, not exceeding two pounds in weight, for analysis, from any lot, parcel or package of any "concentrated commercial feeding stuff" as defined by section 2913, or any kind of material which is used in the feeding of domestic animals, and which may be in the possession of any manufacturer, importer, agent or dealer, and whenever requested said sample shall be taken in the presence of said party or parties in interest, or their representatives, and taken from a number of parcels or packages, which shall not be less than five per centum of the whole lot inspected, and shall be thoroughly mixed, divided into two samples, placed in glass vessels, carefully sealed, and a label placed on each stating the name or brand of the feeding stuff or material sampled, the name of the party from whose stock the sample was taken, and the time and place of taking the same, and said label shall be signed by the collector or his deputy, and by the party or parties in interest or their representatives present at the taking and sealing of said samples; one of said samples shall be retained by the collector or his deputy, and the other by the party whose stock is sampled. The said North Dakota government agricultural experiment station shall cause at least one sample of each brand of feeding stuff collected as herein provided to be analyzed annually. Said analysis shall include determinations of crude fat, crude fibre, crude protein, and such other determinations as may at any time be deemed advisable. Said North Dakota government agricultural experiment station shall cause the analysis so made to be published in its annual report to the governor, also

said analysis may be published in station bulletins, together with such other additional information in relation to the character, composition and use thereof as may seem to be of importance, and issue the same annually, or more frequently, if deemed advisable. For the purpose of enforcement of this article the director of the experiment station, his deputy or his agents, shall have full and free access to all places of business, mills, buildings, carriages, cars, vessels and packages, of whatsoever kind used in the manufacture, importation or sale of any "concentrated commercial feeding stuff," and shall also have power and authority to open any packages containing or supposed to contain any "concentrated commercial feeding stuff," and take therefrom samples for analysis. [1907, ch. 197, § 8.]

Appropriation for the enforcement of the law, see section 1624.

§ 2919. What constitutes violation of the law. The doing of anything prohibited by this article shall be evidence of the violation of the provisions of this article relating to the things so prohibited and the omission to do anything directed to be done shall be evidence of a violation of the provisions of this article relative to the things so directed to be done. [1907, ch. 197, § 9.]

§ 2920. Duty of station. The director of the North Dakota government agricultural experiment station or his agent or deputy is charged with the enforcement of the provisions of this article, and for this purpose, may employ agents, chemists and experts, and whenever he shall know or have reason to believe that any penalty has been incurred by any person for the violation of any of the provisions of this article, or that any sum has been forfeited by reason of any such violation, he or his agent shall report the said violation with a statement of the facts to the attorney-general or to the state's attorney for the district wherein the offense is committed, who shall begin proceedings according to the state law. [1907, ch. 197, § 10.]

See appropriation in section 1624.

§ 2921. Importer defined. The term "importer," for all purposes of this act, is intended to apply to such person or persons as shall bring into, or offer for sale within this state "concentrated commercial feeding stuffs" manufactured without this state; provided, that nothing in this article shall be construed as prohibiting persons engaged within the state of North Dakota in the business of manufacturing flours, from selling at the place where made, their own manufacture of bran and middlings, without complying with the provisions of section 2911. [1907, ch. 197, § 11.]

ARTICLE 44.—PROTECTION OF MANUFACTURERS OF BEVERAGES.

§ 2922. Protection of manufacturers of soda water, etc. Registration of trade mark. It shall be the duty of the register of deeds of any county in this state, on the application of any person, firm or corporation lawfully manufacturing, selling or bottling within his county, soda water, mineral water, and other like beverages, to record in a book suitable for such purposes, a description of the names, brands, trade marks and labels, or any of them, used by such person, firm or corporation for making his or its casks, kegs, barrels, bottles, jugs, fountains, boxes or other packages, which book shall be and remain a public record in his office. The register of deeds shall collect of any such person, firm or corporation making application to have any such description of name, brand or trade mark recorded in said register of deed's office, a registration fee of fifty cents for each and every such description of name, brand, label or trade mark before the same shall be received for record and entered upon the books of the register of deeds office. [R. C. 1905, § 2138; 1901, ch. 185.]

ARTICLE 45.—ADULTERATION OF PAINTS.

§ 2923. Label must show mineral constituents of paints offered for sale. Every person, firm or corporation who manufactures for sale or exposes for

sale, or sells within this state, any white lead, paint or compound intended for use as such, shall label the same in clear and distinct open gothic letters upon a white background and show the true per cent of each mineral constituent contained in said paint, or if other than linseed oil is used in its preparation, the names of such oils or substitutes shall be shown together with the percentage thereof, and every person, firm or corporation who manufactures for sale, or exposes for sale or sells within this state any mixed paint or compound intended for use as such, which contains any ingredients other than pure linseed oil, pure carbonate of lead, oxide of zinc, turpentine, Japan dryer and pure colors shall be deemed guilty of a misdemeanor and upon conviction thereof shall, for each offense, be punished by a fine of not less than twenty-five and not more than one hundred dollars and costs, or by imprisonment in the county jail not exceeding sixty days; provided, that any such person, firm or corporation who shall manufacture for sale or expose for sale, or sell within this state any white lead, paint or mixed paint, containing ingredients other than those as above enumerated, shall not be deemed guilty of a violation of this article in case the same be properly labeled showing the quantity or amount of each and every ingredient used therein and not specified above, and the name and residence of the manufacturer or person for whom it is manufactured. [R. C. 1905, § 2139; 1905, ch. 8, § 1.]

Does not deny equal protection of laws or constitute deprivation of property without due process of law. *Heath & Milligan Mfg. Co. v. Worst*, 207 U. S. 338, 52 *Led.* 236.

Requiring label to show ingredients, name and residence of manufacturer, etc. 40 *L.R.A. (N.S.)* 876.

§ 2924. Possession prima facie evidence of violation, when. The having in possession by any person, firm or corporation dealing in said articles, any articles or substances hereinbefore described and not properly labeled, as provided by section 2923, shall be considered prima facie evidence that the same is kept by such person or firm in violation of the provisions of this article and punishable under it. [R. C. 1905, § 2140; 1905, ch. 8, § 2.]

§ 2925. Director experiment station and assistants to enforce. The director of the North Dakota government agricultural experiment station is charged with the proper enforcement of all the provisions of this article. The said director and the assistants, experts, chemists and agents shall be duly authorized for the purpose, and shall have access and ingress to all places of business, factories, stores and buildings used for the manufacture or sale of paints. They shall also have power and authority to open any package, can, jar, tub or other receptacle containing white lead paints that may be sold, manufactured or exposed for sale, in violation of the provisions of this article. This article shall take effect and be in force from and after January first, 1906. [R. C. 1905, § 2141; 1905, ch. 8, §§ 3, 4, 5.]

ARTICLE 46.—ADULTERATING FORMALDEHYDE.

The provisions in this article were expressly excepted from repeal in Laws 1913, ch. 171, § 15, which chapter constitutes sections 10,210-10,224 herein.

§ 2926. Duty of manufacturers and dealers. It shall be the duty of each and every manufacturer of formaldehyde (the aldehyde of methyl alcohol), to be used as a fungicide within the state, and of every dealer of original packages of said formaldehyde manufactured outside of this state, before the said formaldehyde is offered or exposed for sale, or sold within this state as a fungicide, or for fungicidal purposes, to submit to the director of the North Dakota government agricultural experiment station at Fargo, samples of said formaldehyde, and a written or printed statement setting forth the brand or brands of said formaldehyde to be sold, the number of pounds contained in each retainer or container in which it is put on the market for sale, the name or names of the manufacturers and the place of manufacturing the same. The statement shall set forth in per cent by weight, the amount of formaldehyde contained in the said solution of formaldehyde, and the statement so

furnished shall be considered as constituting a guaranty to the purchaser that every quantity, sold or offered for sale, shall contain not less than the amount of formaldehyde expressed in per cent as set forth in the said statement. [R. C. 1905, § 2142; 1905, ch. 7, § 1.]

§ 2927. Right to sell in the state, how obtained. Every purchaser of said formaldehyde in original packages, which is manufactured outside of this state, who intends to sell or expose the same for sale, and every manufacturer of said formaldehyde within this state shall, after filing the statement above provided for, with the director of the North Dakota government agricultural experiment station at Fargo, receive from the said director a certificate stating that he has complied with the foregoing statement, which certificate shall be furnished without charge therefor; said certificate when furnished shall authorize the party when receiving the same to deal in this state in the said formaldehyde. Any person who fails to comply with the terms of section 2926 shall not be entitled to such certificate and it shall not be construed as applying to retail dealers selling formaldehyde which has already been labeled and guaranteed. [R. C. 1905, § 2143; 1905, ch. 7, § 2.]

§ 2928. Legal strength. Formaldehyde when sold, offered or exposed for sale, as a fungicide, in this state, shall contain at least forty per cent by weight of formaldehyde, and if it falls below thirty-eight per cent it shall be deemed adulterated within the meaning of the terms of this article. [R. C. 1905, § 2144; 1905, ch. 7, § 3.]

Right to require that articles offered for sale shall answer a designated standard of purity. 41 L.R.A.(N.S.) 149.

§ 2929. Duty of director of North Dakota agricultural college experiment station. The director of the North Dakota government agricultural experiment station at Fargo shall secure different brands of formaldehyde sold, offered or exposed for sale within the state, and shall have said samples of formaldehyde analyzed, and for this purpose he may appoint such agent or agents as he may deem necessary, for the enforcement of this article, and such agent or agents shall have free access and egress at all reasonable hours, for the purpose of examining into any place wherein it is suspected any formaldehyde may be kept, and such agent or agents may take from any person, firm or corporation samples of said formaldehyde for analysis and when said goods are found on analysis to be in violation of this law the said director shall report the said fact to the state's attorney for the district wherein the offense is committed. [R. C. 1905, § 2145; 1905, ch. 7, § 4.]

§ 2930. Certificates as evidence. Every certificate duly signed and acknowledged by the chemist of the North Dakota government agricultural experiment station at Fargo relating to the analysis of any formaldehyde shall be presumptive evidence of the facts therein stated. [R. C. 1905, § 2146; 1905, ch. 7, § 5.]

§ 2931. Duty of state's attorney. It shall be the duty of the state's attorney to prosecute all persons violating any of the provisions of this article when the evidence thereof has been presented by the North Dakota government agricultural experiment station as provided for in sections 2929 and 2930. [R. C. 1905, § 2147; 1905, ch. 7, § 6.]

§ 2932. What constitutes violation. The doing of anything prohibited by this article shall be evidence of the violation of the provisions of this article relating to the things so prohibited and the omission to do anything directed to be done shall be evidence of a violation of the provisions of this article relative to the things so directed to be done, and any person who shall sell any unbroken package of formaldehyde or any part thereof which has not been labeled as herein provided, shall be guilty of a misdemeanor, and shall be fined not less than ten dollars nor more than one hundred dollars, together with the costs of the suit in an action caused to be brought by the director of the North Dakota government agricultural experiment station in the name

of the people of the state of North Dakota. [R. C. 1905, § 2148; 1905, ch. 7, § 7.]

ARTICLE 47.—ADULTERATION OF PARIS GREEN.

§ 2933. **Duty of manufacturers and dealers.** It shall be the duty of each and every manufacturer of Paris green (commercial acetoarsenite of copper) to be used as an insecticide within the state, and of every dealer in original packages of said Paris green manufactured outside of this state, before the said Paris green is offered or exposed for sale, or sold within this state as an insecticide, to submit to the director of the North Dakota government agricultural experiment station at Fargo, samples of said Paris green, and a written or printed statement setting forth: First, the brands of said Paris green, to be sold, the number of pounds contained in each package in which it is put on the market for sale, the name or names of the manufacturers and the place of manufacturing the same; second, the statement shall set forth the amount of combined arsenic which the said Paris green contains, and the statement so furnished shall be considered as constituting a guaranty to the purchaser that every package of such Paris green contains not less than the amount of combined arsenic set forth in the statement. [R. C. 1905, § 2149; 1905, ch. 9, § 1.]

§ 2934. **Regulation of sale. Legal strength.** Every purchaser of said Paris green in original packages, which is manufactured outside of this state, who intends to sell or expose the same for sale, and every manufacturer of said Paris green within this state, shall, after filing the statement above provided for, with the director of the North Dakota government agricultural experiment station at Fargo, receive from the said director a certificate stating that he has complied with the foregoing statement, which certificate shall be furnished without charge therefor; said certificate when furnished shall authorize the party when receiving the same to deal in this state in the said Paris green. Any person who fails to comply with the terms of section 2933 shall not be entitled to such certificate and it shall not be construed as applying to retail dealers selling Paris green which has already been labeled and guaranteed. Paris green, when sold, offered or exposed for sale, as an insecticide, in this state, shall contain at least fifty per cent of arsenious oxide, and shall not contain more than four per cent of the same in the uncombined state. [R. C. 1905, § 2150; 1905, ch. 9, §§ 2, 3.]

§ 2935. **Duty of the director of North Dakota agricultural college experiment station.** The director of the North Dakota government agricultural experiment station at Fargo shall examine or cause to be examined different brands of Paris green sold, offered or exposed for sale within the state, and cause samples of the same to be analyzed, and for this purpose he may appoint such agent or agents as he may deem necessary for the enforcement of this article, and such agent or agents shall have free access at all reasonable hours for the purpose of examining into any place wherein it is suspected any Paris green may be kept, and such agent or agents may take from any person, firm or corporation, samples of said Paris green for analysis and when said goods are found on analysis to be in violation of this article the said director shall report the said facts to the state's attorney for the district wherein the offense is committed. [R. C. 1905, § 2151; 1905, ch. 9, § 4.]

§ 2936. **Certificates as evidence.** Every certificate duly signed and acknowledged by the chemist of the North Dakota government agricultural experiment station at Fargo relating to the analysis of any Paris green shall be presumptive evidence of the fact therein stated. [R. C. 1905, § 2152; 1905, ch. 9, § 5.]

§ 2937. **Duty of state's attorney.** It shall be the duty of the state's attorney to prosecute all persons violating any of the provisions of this article when the evidence thereof has been presented by the North Dakota government

agricultural experiment station, as provided for in sections 2935 and 2936. [R. C. 1905, § 2153; 1905, ch. 9, § 6.]

§ 2938. What constitutes violation. The doing of anything prohibited by this article shall be evidence of the violation of the provisions of this article relating to the things so prohibited and the omission to do anything directed to be done shall be evidence of a violation of the provisions of this article relative to the things so directed to be done, and any person who shall sell or dispose of any package of Paris green or any part thereof which has not been labeled as herein provided, shall be guilty of a misdemeanor, and shall be fined not less than ten dollars nor more than one hundred dollars, together with the costs of the suit in an action caused to be brought by the director of the North Dakota government agricultural experiment station in the name of the people of the state of North Dakota. [R. C. 1905, § 2154; 1905, ch. 9, § 7.]

ARTICLE 48.—PURE DRUGS.

This article consists of Laws 1907, ch. 196, which repeals "all acts and parts of acts inconsistent" therewith, and clearly supersedes R. C. 1905, §§ 2155-2167. R. C. 1905, § 2168, provided as follows: "All goods coming into the state after July first, 1905, shall be subject to the provisions of this article while those goods within the state prior to that date shall be considered as exempt until January first, 1906. [1905, ch. 10, § 14.]"

§ 2939. Adulterating and labeling drugs. It shall be unlawful for any person, his agent or servant, or while acting as agent or servant of any other person or corporation, to manufacture for sale, offer for sale or sell within this state any drug which is adulterated within the meaning of this article. [1907, ch. 196, § 1; R. C. 1905, § 2155; 1905, ch. 10, § 1.]

§ 2940. Drugs defined. The term "drug" as used in this article shall include all medicines for internal or external use, antiseptics, disinfectants, washes, perfumes and cosmetics. [1907, ch. 196, § 2; R. C. 1905, § 2156; 1905, ch. 10, § 2.]

§ 2941. What constitutes adulteration. A drug shall be deemed to be adulterated:

1. If, when sold under or by a name recognized in the United States Pharmacopoeia or the National Formulary, official at the time, it differs from the standard of strength, quality or purity prescribed therein, unless the order therefor requires an article inferior to such standard or unless such difference is made known or so appears to the purchaser at the time of the sale.

2. If, when sold under or by a name not recognized in the United States Pharmacopoeia, or the National Formulary, but which is found in some other pharmacopoeia or other standard work on materia medica, it differs materially from the standard of strength, quality or purity prescribed in such work.

3. If its strength, quality or purity falls below the professed standard under which it is sold.

4. If it be an imitation of or offered for sale under the name of another article, or if it be falsely labeled in any respect with regard to its composition, properties, uses or place of manufacture, or if it bear any design which shall deceive or tend to deceive;

Provided, that a drug or medicine shall not be deemed adulterated in the following case:

1. If the standard of strength or purity of any drug has been raised since the issue of the last edition of the United States Pharmacopoeia or of the National Formulary, no prosecution relative to it shall be maintained until such change of standard has been published throughout the commonwealth. [1907, ch. 196, § 3; R. C. 1905, § 2157; 1905, ch. 10, § 3.]

Right to require that articles offered for sale shall answer a designated standard of purity. 41 L.R.A. (N.S.) 149.

§ 2942. Drugs and medicines to be labeled. Every proprietary product, drug, medicine or beverage containing any alcohol, morphine, opium, heroin,

alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate, bromine, iodine, acetanilid, or croton oil, or of any derivative or preparation of any such substances contained therein shall be clearly labeled in plain, open gothic letters printed on a white background, showing the name, the proportion or percentage of each of the foregoing constituents, and said facts shall all be set forth on the face or principal label and separate from other statements, and in such a way as to be clearly seen. [1907, ch. 196, § 4; R. C. 1905, § 2158; 1905, ch. 10, § 4.]

Construction and effect of statute prohibiting or regulating sale of poisons. 30 L.R.A. (N.S.) 519.

What are medicines, drugs or poisons within the meaning of statutes regulating pharmacists. 26 L.R.A. (N.S.) 1013.

Police regulations as to labeling articles of commerce. 1 L.R.A. (N.S.) 184; 17 L.R.A. (N.S.) 684; 40 L.R.A. (N.S.) 875.

§ 2943. Cocaine, how sold. No product or preparation shall be sold, offered for sale or given away which contains cocaine or any of its salts or derivatives, and no delivery of cocaine or its salts shall be made in this state except upon the written prescription of a licensed physician, dentist or veterinarian, and said prescription shall not be refilled. Any druggist violating this section of the article shall forfeit his license. [1907, ch. 196, § 5; R. C. 1905, § 2159; 1905, ch. 10, § 5.]

Constitutionality of statute prohibiting or regulating sale of poisons. 30 L.R.A. (N.S.) 519.

§ 2944. Methyl alcohol prohibited. It shall be unlawful to sell, offer or expose for sale, or to have in possession any preparation or product intended for the use of man, either for internal or external purposes, including washes and perfumes, which contain methyl alcohol or wood spirits. [1907, ch. 196, § 6; R. C. 1905, § 2160; 1905, ch. 10, § 6.]

§ 2945. Physicians' prescriptions to be filled. Nothing in this article shall be so construed as to in any way interfere with the written prescription of any regularly licensed physician or with the filling of the same by a licensed druggist. [1907, ch. 196, § 7; R. C. 1905, § 2161; 1905, ch. 10, § 7.]

§ 2946. Penalty for so doing. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor and shall for the first offense be punished by a fine of not less than five dollars or more than one hundred dollars, and all necessary costs, including the expense of analyzing such adulterated articles when said person has been found guilty under this article, and all such adulterated or misbranded articles may by order of the court be seized and destroyed. [1907, ch. 196, § 8; R. C. 1905, § 2162; 1905, ch. 10, § 8.]

Private action for violation of statutes regulating sales of drugs. 9 L.R.A. (N.S.) 382.

Wife's right of action at common law against one selling drugs to husband. 40 L.R.A. (N.S.) 360.

Master's liability for injury done by servant to third person in use of deleterious drug placed in his custody. 10 L.R.A. (N.S.) 374.

Liability of druggist for injury to stranger from drug or poison sold by him. 13 L.R.A. (N.S.) 646.

§ 2947. Duty of state's attorney. It shall be the duty of the attorney-general and state's attorney to prosecute all persons violating any of the provisions of this article when the evidence thereof has been presented by the North Dakota government agricultural experiment station as provided for in sections 2949 and 2950. [1907, ch. 196, § 9; R. C. 1905, § 2163; 1905, ch. 10, § 9.]

Attorney-general has right to appear before grand jury and examine witnesses in regard to matters relating to prohibition law. *State ex rel. Miller v. District Ct.*, 19 N. D. 819, 124 N. W. 417, Ann. Cas. 1912D, 935.

§ 2948. North Dakota experiment station to inspect and analyze drugs and medicines. The North Dakota government agricultural experiment station shall make analysis of drugs and medicines found on sale in North Dakota suspected of being adulterated, at such times and places and to such extent

as it may determine, and may appoint such agent or agents as it may deem necessary for the enforcement of the provisions of this article, and such agent or agents shall have free access and egress at all reasonable hours for the purpose of examining into any place wherein it is suspected any drug or medicine adulterated with any deleterious or foreign ingredient or which falls below the standard of purity or where such ingredients exist, and such agent or agents, upon tendering the market price of said article, may take from any person, firm or corporation samples of any articles suspected of being adulterated as aforesaid. [1907, ch. 196, § 10; R. C. 1905, § 2164; 1905, ch. 10, § 10.]

§ 2949. Facts, how transmitted. Whenever said station shall find by its analysis that adulterated drugs have been on sale in this state or that said drugs are in violation of this article, it shall forthwith transmit the facts so found to the attorney-general and state's attorney of the county in which said adulterated product was found. [1907, ch. 196, § 11; R. C. 1905, § 2165; 1905, ch. 10, § 11.]

§ 2950. Certificate as evidence. Every certificate duly signed and acknowledged by the chemist of the North Dakota government agricultural experiment station at Fargo, relating to the analysis of any drug, drug products or medicines, shall be prima facie evidence of the facts therein stated. [1907, ch. 196, § 12; R. C. 1905, § 2166; 1905, ch. 10, § 12.]

§ 2951. Station to make annual report. The said station shall make an annual report to the governor upon the work done under this article, and said report may be included in the report which said station is already authorized by law to make to the governor. Said station is further authorized to publish and distribute bulletins giving the results of such analyses and investigations as have been made under authority of this article. [1907, ch. 196, § 13; R. C. 1905, § 2167; 1905, ch. 10, § 13.]

ARTICLE 49.—PROHIBITING PUBLIC DRINKING CUPS.

§ 2952. Use of public drinking cups prohibited, where. The use of public drinking cups on railroad trains, in railroad stations, in the public, parochial or private schools and other educational institutions and other public buildings of the state of North Dakota is hereby prohibited from and after September first, 1913. [1913, ch. 228, § 1.]

§ 2953. Drinking cups for public use not to be furnished. No person or corporation in charge of any railroad train or station, no school board, board of education, town board of school directors or board of trustees of any public, parochial or private school or educational institutions and other public buildings shall furnish any drinking cups for public use, and no person or corporation shall permit upon said railroad trains or in station, or at any said public, parochial or private school or educational institution the common use of drinking cups. [1913, ch. 228, § 2.]

§ 2954. Penalty. Whosoever violates the provisions of this article shall be deemed guilty of misdemeanor and shall be liable to a fine not to exceed twenty-five dollars for each offense. [1913, ch. 228, § 3.]

ARTICLE 50.—SANITATION OF BARBER SHOPS.

§ 2955. Barbers' tools disinfected. Registered barbers or barber apprentices, and all persons engaged in hair dressing or manicuring, must disinfect all tools used in the performance of their profession before they are brought in direct contact with the person of any one of their customers. This disinfection must be carried on in a manner approved by the board of health of the state of North Dakota. [1909, ch. 46, § 1.]

Constitutionality and effect of restrictions on right to practice trade of barber. 40 L.R.A. (N.S.) 629.

§ 2956. Violation of this act, how punished. Any violation of this act shall be punished by a fine of not less than twenty-five dollars nor more than two hundred. [1909, ch. 46, § 2.]

ARTICLE 51.—DISINFECTION OF PUBLIC VEHICLES.

§ 2957. Vehicles to be disinfected, when. It shall be unlawful for any person, firm, corporation or association engaged in the business of transporting passengers in or through this state in any car, coach or boat for the purpose of carrying or transporting passengers therein unless such car, coach or boat shall have been adequately disinfected according to modern scientific rules for the prevention of the spread of contagious diseases not more than thirty days from the date of the use of such car, coach or boat in this state. [1911, ch. 247, § 1.]

§ 2958. Duty of carrier. It shall be the duty of every such person, firm, corporation or association to keep posted in each and every car, coach or boat used in this state for the transportation of passengers for hire a printed placard and notice which shall contain and show the time and place when such car, coach or boat was last disinfected. [1911, ch. 247, § 2.]

§ 2959. Penalty. Any violation of this article shall constitute a misdemeanor and subject the offending person, firm, corporation or association to not more than one hundred dollars for each violation thereof. [1911, ch. 247, § 3.]

ARTICLE 52.—DISINFECTING SECOND-HAND GOODS.

§ 2960. Dealers in second-hand household goods to disinfect same. It shall be the duty of every person, firm or corporation dealing in second-hand furniture, before selling or exchanging, or offering for sale or exchange, or intending to sell or offer for sale or exchange to the public in this state, second-hand furniture, bed clothes, wearing apparel or any articles, including kitchen equipments and utensils of every description ordinarily used in furnishing, equipping or decorating a home, to disinfect thoroughly each and every such article before the same shall be sold or exchanged, or offered for sale or exchange, or in any manner disposed of, in a manner approved or prescribed by the state board of health, and it shall be the duty of the said board to prescribe the rules and regulations necessary to secure proper disinfection, as contemplated in this article, and such other rules relative to the working or tagging of disinfected articles, as in the judgment of said board may be necessary to the proper safeguard of the public from contagious infection. [1913, ch. 134, § 1.]

Power to regulate traffic in rags, second-hand articles or junk. 38 L.R.A. 657; 5 L.R.A. (N.S.) 620; 24 L.R.A. (N.S.) 1168; 32 L.R.A. (N.S.) 116.

§ 2961. Penalty. Any persons violating any of the provisions of this article in selling or offering for sale or exchange any article or articles of furniture without first having disinfected the same as required herein shall be guilty of a misdemeanor, and shall be fined in a sum not less than twenty-five dollars and not more than one hundred dollars, or be imprisoned in the county jail for not less than thirty days nor more than ninety days, in the discretion of the court. [1913, ch. 134, § 2.]

ARTICLE 53.—SANITATION OF FOOD PRODUCING ESTABLISHMENTS.

§ 2962. To what places article applies. Every building, room, basement or cellar occupied or used as a bakery, confectionery, cannery, packing house, slaughter house, dairy, creamery, cheese factory, restaurant, hotel, grocery, meat market or other place or apartment used for the preparation for sale, manufacture, packing, storage, sale or distribution of any food, shall be properly lighted, drained, plumbed and ventilated and conducted with strict regard to the influence of such condition upon the health of the operatives,

employees, clerks or other persons therein employed and the purity and wholesomeness of the food therein produced; and for the purpose of this article the term "food," as used herein, shall include all articles used for food, drink, confectionery or condiment, whether simple, mixed or compound, and all substances or ingredients used in the preparation thereof. [1909, ch. 188, § 1.]

Power to regulate location or condition of bakeries. 26 L.R.A. (N.S.) 842; 44 L.R.A. (N.S.) 48.

Law prohibiting operation of confectionery establishment upon certain premises. 44 L.R.A. (N.S.) 48.

§ 2963. Contents of places and utensils used must be protected. The floors, sidewalks, ceilings, furniture, receptacles, implements and machinery of every establishment or place where food is manufactured, packed, stored, sold or distributed, and all cars, trucks and vehicles used in the transportation of food products, shall at no time be kept in an unclean, unhealthy and unsanitary condition, and for the purpose of this act, unclean, unhealthful and unsanitary conditions shall be deemed to exist if food in the process of manufacture, preparation, packing, storing, sale, distribution or transportation is not securely protected from flies, dust, dirt and, as far as may be necessary, by all reasonable means from all other foreign or injurious contamination; and if the refuse, dirt and the waste products subject to decomposition and fermentation, incident to the manufacture, preparation, packing, storing, selling, distributing and transporting of food, are not removed daily; and if all trucks, trays, boxes, baskets, buckets and other receptacles, chutes, platforms, racks, tables, shelves and all knives, saws, cleavers and other utensils and machinery used in moving, handling, cutting, chopping, mixing, canning and all other processes are not thoroughly cleaned daily, and if the clothing of operatives, employees, clerks or other persons therein employed is unclean. [1909, ch. 188, § 2.]

§ 2964. Further sanitary requirements. The sidewalls and ceilings of every bakery, confectionery, creamery, cheese factory, hotel and restaurant kitchen shall be well plastered, wainscoted or ceiled with metal or lumber and shall be oil painted or kept well lime washed, and all interior wood work in every bakery, confectionery, creamery, cheese factory, hotel and restaurant kitchen shall be kept well oiled or painted with oil paints and be kept washed clean with soap and water; and every building, room, basement or cellar occupied or used for the preparation, manufacture, packing, storage, sale or distribution of food shall have an impermeable floor made of cement or tile laid in cement, brick, wood or other suitable nonabsorbent material which can be flushed and washed clean with water. [1909, ch. 188, § 3.]

§ 2965. Fly screens required. The doors, windows and other openings of every food producing or distributing establishment during the fly season shall be fitted with self-closing screen doors and wire window screens of not coarser than fourteen mesh wire gauze. [1909, ch. 188, § 4.]

§ 2966. Toilet rooms provided. Every building, room, basement or cellar occupied or used for the preparation, manufacture, packing, canning, sale or distribution of food, shall have convenient toilet or toilet rooms separate and apart from the room or rooms where the process of production, manufacture, packing, canning, selling or distributing is conducted. The floors of such toilet rooms shall be of cement, tile, wood, brick or other nonabsorbent material and shall be washed and scoured daily. Such toilet or toilets shall be furnished with separate ventilating flues or pipes, discharging into soil pipes, or on outside of the building in which they are situated. Lavatories and wash rooms shall be adjacent to toilet rooms, and shall be supplied with soap, running water and towels, and shall be maintained in a sanitary condition. Operatives, employees, clerks and all other persons who handle the material from which food is prepared, or the finished product, before begin-

ning work or after visiting toilet or toilets, shall wash their hands and arms thoroughly in clean water. [1909, ch. 188, § 5.]

§ 2967. Cuspidors furnished. Cuspidors for the use of operatives, employes, clerks or other persons, shall be provided whenever necessary, and each cuspidor shall be thoroughly emptied and washed out daily with disinfectant solution, and five ounces of such a solution shall be left in each cuspidor while it is in use. No operative, employe or other person shall expectorate on the floor or sidewalls of any building, room, basement or cellar where the production, manufacture, packing, storing, preparation or sale of any food is conducted. [1909, ch. 188, § 6.]

§ 2968. Not used for sleeping purposes. No person or persons shall be allowed to live or sleep in any room of the bake shop, kitchen, dining room, confectionery, creamery, cheese factory or place where food is prepared, served or sold. [1909, ch. 188, § 7.]

§ 2969. Diseases enumerated. No employer shall require, permit or suffer any person to work, nor shall any person work, in a building, room, basement, cellar or vehicle occupied or used for the production, preparation, manufacture, packing, storage, sale, distribution and transportation of food who is affected with any venereal disease, smallpox, diphtheria, scarlet fever, yellow fever, tuberculosis or consumption, bubonic plague, Asiatic cholera, leprosy, trachoma, typhoid fever (epidemic), epidemic dysentery, measles, mumps, German measles (Rothein), whooping cough, chicken pox or any other infectious or contagious disease. [1909, ch. 188, § 8.]

§ 2970. Inspector may abate violations. The chief inspector or deputy inspector of any agent of the food commissioner, of the experiment station at Fargo, shall have full power at all reasonable times to enter and inspect every building, room, basement or cellar occupied or used for the production for sale, manufacture for sale, storage, sale, distribution or transportation of food and all utensils, fixtures, furniture and machinery used as aforesaid, and if upon inspection any food producing or distributing establishment, conveyance, employer, operative, employe, clerk, driver or other person is found to be violating any of the provisions of this article, or if the production, preparation, manufacture, packing, storing, sale, distribution or transportation of food is being conducted in a manner detrimental to the health of the employes and operatives and the character or quality of the food therein being produced, manufactured, packed, stored, sold, distributed or conveyed, the officer or inspector making the examination or inspection shall furnish evidence of said violation to the attorney-general and district attorney, who shall prosecute all persons violating any of the provisions of this article, or shall report such conditions and violations to the food commissioner, who shall issue an order to the person or persons in authority at the aforesaid establishment to abate the condition or violation or make such improvements as may be necessary to abate them, within the period of five days or such reasonable time as may be required in which to abate them. Such order shall be in writing, and the person receiving the order shall have the power of appeal from the order and instructions, and may within five days from the issuance of the order appear in person or by attorney before the food commissioner of the experiment station at Fargo to give reason why such order or instruction should not be obeyed. [1909, ch. 188, § 9.]

§ 2971. Penalty. Any person who violates any of the provisions of this article or who refuses to comply with any lawful orders or requirements of the food commissioner, duly made in writing, as provided in section 2970, shall be guilty of a misdemeanor, and on conviction shall be punished for the first offense by a fine of not less than ten dollars nor more than fifty dollars; for the second offense by a fine of not less than fifty dollars nor more than one hundred dollars and for the third and subsequent offense by a fine of two hundred dollars, and imprisonment in the county jail for not

less than thirty nor more than ninety days, and each day after the expiration of the time limit for abating unsanitary conditions and completing improvements to abate such conditions as ordered by the food commissioner of the experiment station at Fargo, shall constitute a distinct and separate offense. [1909, ch. 188, § 10.]

ARTICLE 54.—AUTOMOBILES.

R. C. 1905, § 2169, prescribing a limit of speed for automobiles and motor cycles was expressly repealed by Laws 1911, ch. 6, § 20, which, if retained in this compilation, would be section 2976t. For speed regulation, see section 2976l.

§ 2972. Must have bell or horn. Every automobile or motor cycle shall be provided with a bell or horn which, when operated outside of a city or village, shall be rung or blown by the driver or operator when approaching from behind a vehicle propelled by animals so as to give timely notice of the approach of said motor vehicle. [R. C. 1905, § 2170; 1905, ch. 49, § 2.]

The law of automobiles. 108 Am. St. Rep. 212; 1 L.R.A.(N.S.) 215.

§ 2973. Must use muffler, when. Must have lights. Every automobile or motor cycle using gasoline, steam or any other substance as a motive power, shall use a muffler, so-called, when operated, driven or moved upon the streets of any town, village or city within the state, or when meeting or passing animal propelled vehicles on any public road or highway within the state. Every such automobile or motor cycle shall also be provided with lights, the automobile to carry not less than two lights in front of such machine, one of which to be on either side, and the motor cycle to carry at least one light. [R. C. 1905, § 2171; 1905, ch. 49, § 3.]

Failure of driver of automobile encountering horse on highway, to display proper lights. 48 L.R.A.(N.S.) 964.

§ 2974. Law of the road. The driver or operator of any automobile or motor cycle shall be governed by the usual law of the road by turning to the right in meeting vehicles, teams or persons moving or headed in an opposite direction, and by turning to the left when passing vehicles, teams or persons moving or headed in the same direction. [R. C. 1905, § 2172; 1905, ch. 49, § 4.]

Reciprocal duty of operator of automobile and pedestrian to use care. 38 L.R.A.(N.S.) 487; 42 L.R.A.(N.S.) 1178.

§ 2975. Stop when signalled by driver of vehicle. The driver or operator in charge of any automobile or motor cycle on any public road or highway outside the limits of any town, village or city within the state, when signalled by the driver of any vehicle propelled by horses or other animal power, shall stop said automobile or motor cycle until the vehicle propelled by such animal power has passed; and if approaching said vehicle from behind, the driver or operator in charge of said automobile or motor cycle shall stop and give the driver of the said animal propelled vehicle a reasonable time for the passage of such automobile. [R. C. 1905, § 2173; 1905, ch. 49, § 5.]

Duty of automobile operator when horses encountered on highway. 1 L.R.A.(N.S.) 223, 224; 14 L.R.A.(N.S.) 251.

Duty of driver of automobile to stop on signal of driver of horse. 48 L.R.A.(N.S.) 954.

§ 2976. Penalty for violation. Any person, driver or operator of any such automobile or motor cycle who shall violate any provisions of this article shall be guilty of a misdemeanor, and shall be punished by a fine of not less than ten dollars and not more than fifty dollars, and if default is made in the payment of such fine such person or persons shall be committed to the county jail until such fine is paid, conditioned, however, that each day's service in jail shall be equal to two dollars of such fine, and the driver or owner of such automobile or motor cycle shall be liable for damages in a civil action to any person who shall have been injured in person or property by reason of such violation of this article. [R. C. 1905, § 2174; 1905, ch. 49, § 6.]

ARTICLE 55.—REGISTRATION OF MOTOR VEHICLES, AND OTHER REGULATIONS FOR SUCH VEHICLES.

§ 2976a. Definition of terms. The term "motor vehicle" as used in this article, except where otherwise expressly provided, shall include all vehicles propelled by any other than muscular power, except traction engines, road rollers, fire wagons and engines, police patrol wagons, ambulances and such vehicles as run only upon rails or tracks.

The term "local authorities" shall include all officials of counties, cities, towns or villages.

The term "state" as used in this article, except where otherwise provided, shall include the territories and federal districts of the United States.

The term "owner" shall also include any person, firm, association or corporation owning or renting a motor vehicle or having the exclusive use thereof, under lease or otherwise, for a period greater than thirty days.

The term "public highway" shall include any highway, town road, county road, state road, public street, avenue, alley, park, parkway or public place in any county, city, town or village except any speedway which may have been or may be expressly set apart by law for the exclusive use of horses and light carriages. [1911, ch. 6, § 1.]

Registration and numbering of automobiles. 1 L.R.A.(N.S.) 215.

§ 2976b. Application for registration. Every owner of a motor vehicle which shall be operated or driven upon the public highways of this state, for each motor vehicle owned, except as herein otherwise provided, shall cause to be filed, by mail or otherwise, in the office of the secretary of state, a verified application for registration on a blank to be furnished by the secretary of state for that purpose, containing:

1. A brief description of the motor vehicle to be registered including the name of the manufacturer, the factory number and model, if such number and model there be.

2. The name, residence and business address of the owner of such vehicle and the name of the county in which he resides. [1911, ch. 6, § 2.]

§ 2976c. Change of ownership. Upon the sale of a motor vehicle registered in accordance with this section, the vendee shall, within ten days after the date of such sale, notify the secretary of state of the same upon a blank furnished him for that purpose, stating the name and business address of the previous owner, if known, the number under which such vehicle is registered, and the name, residence and business address of such vendee. Upon filing such statement such vendee shall pay to the secretary of state a fee of one dollar and upon receipt of such statement and fee the secretary of state shall file such statement in his office and also in the registration book or index such change of ownership. [1911, ch. 6, § 3.]

§ 2976d. Registration by secretary of state. Upon receipt of an application for registration of a motor vehicle or vehicles as provided in section 2976b, the secretary of state shall file such application in his office and register such motor vehicle or vehicles, with the name and residence and business address of the owner, together with the facts stated in such application in a book or index to be kept for that purpose, under the distinctive number assigned to such motor vehicle by the secretary of state, which book or index shall be open to inspection during reasonable business hours. [1911, ch. 6, § 4.]

§ 2976e. Tags delivered on payment of license fee. Upon the filing of such application and the payment of the fee provided in section 2976g, the secretary of state shall assign to such motor vehicle a distinctive number, and without other fee, issue and deliver to the owner a set of two (2) tags at registration, upon each of which shall be displayed the distinctive number assigned in the form and size provided in section 2976j, which shall be evidence of payment of license fee of such registration.

In the event of the loss, mutilation or destruction of a certificate of registration, the owner of a registered motor vehicle may obtain from the secretary of state an affidavit showing the fact and the payment of a fee of one dollar for each set of duplicates. [1911, ch. 6, § 5.]

§ 2976f. Annual renewal of registration. Such registration shall be renewed annually, and upon the payment of the same fee as provided in this article for original registration, such renewal to take effect on the first day of January of each year. [1911, ch. 6, § 6.]

§ 2976g. License fee for registration and re-registration. A fee of three (\$3.00) dollars shall be paid to the secretary of state upon the registration or re-registration of a motor vehicle in accordance with the provisions of this article. [1911, ch. 6, § 7.]

Requiring license for operation of automobile. 1 L.R.A.(N.S.) 215; 21 L.R.A.(N.S.) 41; 37 L.R.A.(N.S.) 440.

Operating automobile without license. 23 L.R.A.(N.S.) 561; 25 L.R.A.(N.S.) 734; 35 L.R.A.(N.S.) 699; 41 L.R.A.(N.S.) 308.

§ 2976h. Registration tag to be displayed on vehicles in use. No person shall operate or drive a motor vehicle on the public highways or within the limits of any city, town or village of this state after thirty days after this article takes effect, unless such vehicle shall have been registered in accordance with this article and shall have the tag of registration assigned to it by the secretary of state conspicuously displayed on the rear of such vehicle, securely fastened. Provided, that this section shall not apply to dealers in demonstrating automobiles offered for sale.

No person shall display on such vehicle at the same time any number assigned to it under any other motor vehicle law or ordinance. [1911, ch. 6, § 8.]

§ 2976i. Color of number plates and numerals or letters. Such certificates shall be of a distinctly different color or shade each year, there being at all times a marked contrast between the color of the number plate and that of the numerals or letters thereon. [1911, ch. 6, § 9.]

§ 2976j. Size and form of registration tag. Such certificate of registration shall be substantially of the following size and form, namely: a plate or placard of metal or enamel with metal letters eight and one-half inches in length and five inches in width for one or two numerals; ten inches in length and five inches in width for three numerals; twelve inches in length and five inches in width for four or more numerals; on the left end of this plate with letters running vertically from the top, there shall be the two letters "N. D.," each letter of which shall be approximately one inch in length, and on the right end, arranged in the same manner and same size, there shall be the four numerals of the year in which the license is issued; and on the body of such plate there shall be the distinctive numbers assigned to the vehicle in numerals four inches long, each stroke of which shall be at least one-half inch in width, provided that motor cycles shall be assigned tags three inches in width and of a height to permit numerals to be placed vertically. Across the top of this tag with letters running horizontally shall be the two letters "N. D.," and across the bottom arranged in the same manner there shall be the four numerals of the year in which the license is issued, except that the last shall be in proportionate size to the small plate. Provided, further, that the owner, in lieu of such registration tag, may use a tail lamp with the registration number, the letters "N. D.," and the numerals of the year displayed in the lens, the registration numerals to be of the size displayed above. [1911, ch. 6, § 10.]

§ 2976k. Special provision for nonresidents temporarily within the state. The provisions of the foregoing sections in regard to registration shall not apply to a motor vehicle owned by a nonresident of this state, who is temporarily within the state, while passing into or through this state from an ad-

joining state, provided that such nonresident shall have displayed in a conspicuous way on the motor vehicle he is operating, a number and tag which shall make it and the place from which it comes easily identified. [1911, ch. 6, § 11.]

§ 2976l. Speed and other road regulations. No person shall operate a motor vehicle on the public highways of this state at a rate of speed greater than is reasonable and proper, having regard to the width, condition and use of the highway at the time and the general and usual rules of the road, or so as to endanger property or the life or limbs of any person. Provided, that upon approaching a dam, bridge, sharp curve or descent, and also in traversing such dam, bridge, sharp curve or descent and upon approaching a crossing or intersecting highway or in passing from a side street into a main thoroughfare where persons or vehicles are not plainly discernible, a person operating a motor vehicle shall have such vehicle under perfect control and the rate of speed shall not exceed one mile in eight minutes; provided, that within the limits of any incorporated city or village the rate of speed shall not exceed ten miles per hour, and provided, further, that on any street or highway outside of the limits of any incorporated city or village the rate of speed shall not exceed thirty miles per hour. [1911, ch. 6, § 12.]

Public regulations as to speed of automobile. 1 L.R.A.(N.S.) 219.

Speed of automobile as negligence. 25 L.R.A.(N.S.) 40; 38 L.R.A.(N.S.) 488.

Applicability of res ipsa loquitur to injury by automobile or other vehicle on highway. 32 L.R.A.(N.S.) 1177.

Evidence as to speed of automobile. 34 L.R.A.(N.S.) 778.

Private action for violation of statute not expressly conferring it. 9 L.R.A.(N.S.) 338.

§ 2976m. Penalty for molesting driver or using without leave. No person shall tamper with or drive or operate or use a motor vehicle without the permission of the owner, and no person shall, without authority of the person in charge, climb upon or in any automobile, whether the same is in motion or at rest, or hurl stones or other missiles at the same or the occupants thereof, or shall, while such motor vehicle is at rest and unattended, sound the horn or other signaling device or attempt to manipulate any of the levers, starting crank, brakes or machinery thereof, or set such vehicle in motion or otherwise damage or interfere with the same.

Any person who enters any warehouse, garage or building of any kind and takes and removes therefrom for his own use or that of others any automobile or motor vehicle, without the knowledge and consent, express or implied, of the owner thereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided in section 2976r.

The fact that such automobile or motor vehicle was voluntarily returned to its original place by the party taking the same before or after the owner discovers such removal, or the fact that the party taking the same was then and there in the employ of the owner of such property shall not be deemed a defense in the prosecution of such offender. [1911, ch. 6, § 13.]

§ 2976n. Disposition of license moneys by secretary of state. At the end of every month the secretary of state shall pay into the county treasury to the account of a special road maintenance fund as hereinafter provided all moneys received by him under this act which has been paid to him by owners of motor vehicles in such county, and shall file with the county auditor a verified statement of the amounts and sources thereof, providing that from the moneys received from such license he shall retain a sufficient amount for the purchase of tags and books of registration. [1911, ch. 6, § 14.]

§ 2976o. Claims for moneys expended on highways. All claims for money expended on the highways under the provisions of this article shall be paid by the county treasurer upon the presentation of properly prepared vouchers approved by the county superintendent of highways and the board of county commissioners. [1911, ch. 6, § 15.]

§ 2976p. License moneys to be expended for repairs and maintenance of highways. The moneys received by each county from this source shall be expended for repairs and maintenance on the main traveled roads of the county under the direction of the county superintendent of highways, and where no county superintendent of highways has been appointed then under the direction of the board of county commissioners, provided that all money so expended for repairs and maintenance shall be expended from April first to December first annually. Provided, further, that none of this money shall be expended within the limits of any incorporated city or village, nor shall it be expended on any road within any township that does not levy at least a tax of six mills for road purposes. [1911, ch. 6, § 16.]

§ 2976q. Civil suits for damages, Driver to stop in case of accident. Nothing in this article shall be construed to curtail or abridge the right of any person to prosecute a civil suit for damages by reason of injuries to persons or property resulting from the negligent use of the highways by a motor vehicle or its owner or his employe or agent, and in all actions and proceedings against the registered owner of a motor vehicle for negligence in the operation of such vehicle or for any violation of this article, the fact that such motor vehicle had upon it the registration number assigned to such owner under this article shall be prima facie evidence that such motor vehicle belonged to such registered owner.

In case of accident to any person or property on the public highway, due to the operation thereon of a motor vehicle, the person operating such motor vehicle shall stop and, upon the request of any person injured, or any person present, give such person his name and address. [1911, ch. 6, § 17.]

Power to require driver of automobile who has caused injury to identify himself. 40 L.R.A. (N.S.) 622; 46 L.R.A. (N.S.) 977.

§ 2976r. Penalty for violation of provisions. Any person who shall violate any provisions of this article shall be guilty of a misdemeanor, and shall be punished by a fine of not less than ten dollars and not more than fifty dollars, and if default is made in the payment of such fine such person or persons shall be committed to the county jail until such fine is paid; conditioned, however, that each day's service in jail shall be equal to two dollars of such fine. [1911, ch. 6, § 18.]

§ 2976s. Officials directed to enforce provisions of this article. It is the duty of the county superintendent of highways and deputy county superintendent of highways when such are appointed, and otherwise the board of county commissioners, and all police officers of incorporated cities and villages to enforce the provisions of this article. [1911, ch. 6, § 19.]

ARTICLE 56.—FIRE ESCAPES.

§ 2977. Hotel owners must provide fire escapes. The owners and proprietors of all hotels, factories, public halls, offices and other buildings in this state, over two stories in height, are required to provide safe and suitable fire escapes from all rooms above the second story of such hotel or other building, and when rooms have no outside windows there shall be affixed to the window in the hallway leading from such room at least three fire escapes in each window as herein directed. Such fire escape shall consist of at least one good cotton rope not less than one inch in diameter, to be securely and permanently fastened with iron rings or bolts at a point immediately outside or inside of at least one window in each room above the second story; and such rope shall be of sufficient length to reach to the ground; provided, that if the owner or proprietor of any such buildings shall provide good and sufficient iron ladders extending from each of the windows herein mentioned, and from points immediately adjacent to each of such windows to the ground, securely and permanently fastened to such building, or shall have the fire escape ladder in each of the rooms and hall windows aforesaid, of sufficient

length to reach from such windows to the ground, he will be deemed to have complied with the requirements of this section. [R. C. 1905, § 2175; 1883, ch. 58, § 1; R. C. 1895, § 1717.]

Liability for absence or condition of fire escape to tenant of part of premises. 23 L.R.A. 157.

Effect of lack of fire escapes on liability of tenant for rent. 39 L.R.A. (N.S.) 894.

Private action for violation of statute requiring fire escapes. 9 L.R.A. (N.S.) 379.

Violating ordinance as to fire escapes as ground for private action. 5 L.R.A. (N.S.) 261.

Liability for injuries caused by lack or insufficiency of fire escapes. 15 L.R.A. 160; 10 L.R.A. (N.S.) 177; 21 L.R.A. (N.S.) 178; 39 L.R.A. (N.S.) 744.

§ 2978. Penalty for neglect. Any person violating any of the provisions of the last section shall be punished by a fine of not less than twenty-five dollars for each room in such hotel or other building not provided with fire escapes as aforesaid. [R. C. 1905, § 2176; 1883, ch. 58, § 2; R. C. 1899, § 1718.]

Change of ordinance requiring fire escapes after compliance therewith. 2 L.R.A. (N.S.) 398.

Conclusiveness of official certificate approving fire escapes. 1 L.R.A. (N.S.) 1091.

Private action for violation of statute requiring fire escapes. 9 L.R.A. (N.S.) 379.

Private action for violation of ordinance as to fire escapes. 5 L.R.A. (N.S.) 261.

Liability for injuries caused by lack or insufficiency of fire escapes. 12 L.R.A. 160; 10 L.R.A. (N.S.) 177; 21 L.R.A. (N.S.) 178; 39 L.R.A. (N.S.) 744.

ARTICLE 57.—HOTEL INSPECTION.

§ 2979. Hotel defined. Every building or structure kept, used or maintained as, or advertised as, or held out to the public to be an inn, hotel or public lodging house, or place where sleeping accommodations are furnished for hire to transient guests whether with or without meals, shall for the purpose of this article, be deemed to be a hotel, and wherever the word "hotel" shall occur in this article, it shall be construed to mean every such structure as is described in this section. [1909, ch. 141, § 1; 1907, ch. 135, § 1.]

§ 2980. Fire escapes, how constructed. Every hotel that is more than two stories high shall be provided with a hall on each floor extending from one outside wall to the other, and at each end of such hall shall be equipped with an iron fire escape on the outside of the building, connecting on each floor above the first, with at least two openings, which shall be well fastened and secured, with landings not less than six feet in length, and three in width, guarded by an iron railing not less than three feet in height. Such landing shall be connected by iron stairs not less than two feet wide and with steps of not less than six inches tread, and protected by a well secured hand rail on both sides and reaching to within ten feet of the ground, with a drop ladder twelve inches wide reaching from the lower platform to the ground. Such fire escapes shall be sufficient if a perpendicular iron ladder shall be used instead of the stairs; provided, such iron ladder is placed at the extreme outside of the platforms and at least two feet away from the wall of the building, and provided said ladder is equipped with round iron rounds not more than fifteen inches apart. The way of egress to such fire escape shall at all times be kept free and clear of all obstruction of any and every nature. There shall be posted and maintained in a conspicuous place in each hall and in each guest's room, except the halls and rooms on the ground floor of such hotel, a printed notice in characters not less than two inches high, calling attention to and directing the way to such fire escape. A red light shall be maintained in buildings over two stories high on each floor at the end of the hall, directly in front of the fire escape. [1909, ch. 141, § 2; 1907, ch. 135, § 2.]

§ 2981. Fire extinguishers and standpipes. Each and every hotel shall be provided with at least one chemical fire extinguisher, approved by the national board of underwriters, for every twenty-five hundred square feet or less of floor area, which such extinguisher or extinguishers shall be placed in a convenient location in a public hallway outside of the sleeping rooms, and shall always be in condition for use, or in lieu thereof, such hotel shall be

equipped with not less than one and one-fourth inch standpipe with hose connections and hose of sufficient length to reach both ends of hall where standpipe is located, always attached in such hallway, which standpipe shall be supplied with a sufficient pressure of water. [1909, ch. 141, § 3; 1907, ch. 135, § 3.]

§ 2982. Provisions for buildings not over two stories high. Every hotel which is not over two stories in height and which is not provided with such fire escape as is described in section 2980 hereof, shall provide in every bedroom or sleeping apartment on the second floor a manilla rope at least five-eighths of an inch in diameter and of sufficient length to reach the ground, with knots or loops of not more than fifteen inches apart, and of sufficient strength to sustain the weight and strain of at least five hundred pounds. Such rope shall be securely fastened to the joists or studding of the building as near the window as practicable, and shall be kept coiled in plain sight at all times, nor shall such rope be covered by curtains or other obstructions. Every such hotel shall provide and maintain in a conspicuous place in every bedroom or sleeping apartment above the ground a printed notice calling attention to such rope and giving directions for its use. [1909, ch. 141, § 4; 1907, ch. 135, § 4.]

§ 2983. Elevator shafts to be protected. Every hotel which is equipped with a passenger or freight elevator shall cause the shaftway of such elevator or elevators to be inclosed with an iron sheathing as nearly airtight as is practicable and shall provide tight doors to such shaftway, or in lieu of such sheathing shall provide automatic floor traps at each floor in such shaft; either of which appliances to be built in the most approved manner for the prevention of spread of fire by means of said shaft. [1907, ch. 135, § 5.]

§ 2984. Sanitary provisions. Every hotel shall be well drained, constructed and plumbed according to established sanitary principles; shall be kept clean and in a sanitary condition, and free from effluvia arising from any sewer, drain, privy or other source within control of the owner, manager, agent or other person in charge; shall be provided with water closets or privies properly screened, for the separate use of males and females, which water closets or privies shall be disinfected as often as may be necessary to keep them at all times in a sanitary condition.

All bedrooms shall be kept free from vermin and the bedding in use shall be clean and sufficient in quantity and quality; all sheets shall be at least eight feet in length; each guest shall be furnished with two towels; in case bedrooms are carpeted the carpet or carpets thereon shall be taken up and thoroughly cleansed at least once each year; no rusted tin or iron vessel or utensil shall be used in cooking food, and all foodstuffs shall be kept in a clean and suitable place, free from dampness and contact with dirty water; the floors, closets, cupboards and walls of all kitchens shall at all times be kept free from dirt and no dust or grease shall be allowed to collect thereon; a metal container shall be provided to hold ashes where such ashes are stored in or around the hotel building. In all cases where a patient having an infectious or contagious disease has been confined in a hotel room such room shall upon the removal of such patient be closed and fumigated, and upon the completion of such fumigation the certificate of a reputable physician to that fact shall be forwarded to the hotel inspector. In all hotels or lodging houses where fifty cents or more per night is charged for lodging the sheets and pillow cases shall be changed after the departure of each guest, and within three months after the taking effect of this article it shall be unlawful to have upon a bed of any such hotel or lodging house any mattress of a lower grade than that commonly known to the trade as cotton felt combination; each mattress shall weigh at least thirty-five pounds unless it be a hair mattress, in which case it shall weigh thirty pounds or more. Each hotel, rooming house or restaurant where fifty cents or more per meal is charged shall keep

in its main public washroom individual towels or paper toweling in full view and reach of all guests at all hours. Each room shall be properly ventilated by at least one window, and by a doorway leading into the hall. [1913, ch. 184, § 1; 1909, ch. 141, § 5; 1907, ch. 135, § 6.]

§ 2985. Penalty for failure to comply with article. Every owner, manager, agent or person in charge of a hotel who, after thirty days' notice by the inspector hereinafter provided for in this article, shall fail to comply with any of the provisions of this article shall be deemed guilty of a misdemeanor, and shall be fined not less than ten dollars nor more than fifty dollars, or shall be imprisoned in the county jail for not less than ten days nor more than thirty days, or both, and every day that such hotel is carried on in violation of this article shall constitute a separate offense. [1907, ch. 135, § 7.]

§ 2986. Inspector of hotels. Appointment. Bond. For the purpose of carrying into effect the provisions of this article the governor, by and with the advice and consent of the senate, shall appoint an inspector of hotels who shall hold office until the first Monday in January of the odd numbered year next after his appointment, and until his successor qualifies, and who shall be prohibited from soliciting or selling goods or merchandise for any person, firm or corporation; but the governor may remove such inspector and appoint another in his place whenever he shall deem it necessary for the public good. Said inspector shall receive an annual salary of eighteen hundred dollars, payable monthly. He shall give bond to the state in the penal sum of five thousand dollars conditioned for the faithful performance of his official duties, to be approved by the secretary of state. [1907, ch. 135, § 8.]

§ 2987. Powers and duties of inspector. It shall be the duty of the inspector to see that all of the provisions of this article are complied with, and said inspector shall personally inspect once in each year every hotel as defined by this article. Said inspector is hereby granted police power to enter any hotel at reasonable hours to determine whether the provisions of this article are being complied with. The inspector shall keep a complete set of books for public use and inspection showing the conditions of each hotel so inspected, together with the name or names of the owners, proprietors and managers thereof, and showing its sanitary condition, the number and condition of its fire escapes and any other information for the betterment of the public service. [1907, ch. 135, § 9.]

§ 2988. Certificate of inspection to be posted. If the inspector shall find, after examination of any hotel, that this law has been fully complied with, he shall issue a certificate to that effect to the person operating the same, and said certificate shall be kept posted up in a conspicuous place in said inspected building, and provided that no certificate shall be issued in any case until the inspection fee shall have been paid. [1913, ch. 184, § 2; 1907, ch. 135, § 10.]

§ 2989. Penalty for certifying falsely. Any inspector who shall willfully certify falsely regarding any building inspected by him, and who shall issue a certificate to any person operating any hotel when such person has not complied with the provisions of this article, shall, on conviction thereof, be fined not less than fifty dollars nor to exceed five hundred dollars, and may be imprisoned not to exceed one year in the state prison, or both at the discretion of the court, and upon conviction shall be forever disqualified to hold said office. [1907, ch. 135, § 11.]

§ 2990. Penalty for interfering with inspector or failure to pay fee. Any owner, manager, agent or person in charge of a hotel who shall obstruct or hinder an inspector in the proper discharge of his duties under this article, or who shall refuse or neglect to pay the fee for inspection prescribed herein, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars nor more than fifty dollars, or shall be imprisoned in the county jail for not less than ten days nor more than thirty days, or both. [1907, ch. 135, § 12.]

§ 2991. **Inspector authorized to make arrests.** It shall be the duty of the inspector, upon ascertaining by inspection or otherwise that any hotel is being carried on contrary to the provisions of this article, to make complaint and cause the arrest of the person so violating same, and it shall be the duty of the state's attorney in such case to prepare all necessary papers and conduct such prosecutions. [1907, ch. 135, § 13.]

§ 2992. **Inspection fee.** Every hotel containing less than ten sleeping rooms for the accommodation of the public shall pay an inspection fee of two dollars and fifty cents when inspected under the provisions of this article, and every hotel containing more than ten sleeping rooms and less than twenty sleeping rooms for the accommodation of the public shall pay an inspection fee of five dollars when inspected under the provisions of this article, and every hotel containing twenty or more sleeping rooms and less than fifty sleeping rooms for the accommodation of the public shall pay an inspection fee of ten dollars, and every hotel containing fifty or more sleeping rooms shall pay an inspection fee of twenty dollars, when inspected under the terms of this article. Such fees shall be collected by the inspector annually at the time of inspection, and if not paid on demand the inspector may sue therefor in his own name for the use of the state, and in such case the court shall allow and enter as a part of the judgment against the defendant, all the costs of such action, including a fee not exceeding twenty-five dollars for any attorney necessarily employed in such action by the inspector. [1909, ch. 141, § 6; 1907, ch. 135, § 14.]

§ 2993. **Fees, less expenses, turned over to the state.** At the end of each month the inspector shall pay into the state treasury all moneys received by him as such, and file with the state auditor a verified statement of the amount and the sources thereof. Such moneys shall be credited to the "hotel inspection fund." On or before the tenth day of each month the inspector shall certify to the state auditor the amount due him as compensation and necessary traveling expenses for the preceding month, also items and amounts of all expenses necessarily incurred by him, including the cost of blanks, stationery, postage and travel, and such salaries and expenses being duly audited shall be paid by the state treasurer out of such hotel inspection fund and the state shall not be held responsible in any manner for any deficiency that may exist. [1907, ch. 135, § 15.]

§ 2994. **Pure water for guests.** It shall be the duty of every person conducting or operating a hotel, public inn or lodging house, to see that the drinking water supplied by said hotel, public inn or lodging house is pure and free from disease germ. The source of supply must be far enough removed from privy vaults or other means of contamination to prevent drainage from said vaults to the wells or other source of supply, and the water supply shall be subject to examination by the inspector, and when found unfit for drinking purposes its use must be discontinued forthwith. [1907, ch. 135, § 16.]

ARTICLE 58.—DOORWAYS IN PUBLIC BUILDINGS.

§ 2995. **Doors of public buildings, construction of.** All doors of ingress and egress in all buildings used for public assemblages of any character in this state, including school houses, churches, theaters, public halls, city halls, court houses, factories, hotels and all other public buildings, wherein numbers of persons are employed or are in the habit of meeting together for any purpose, shall be so constructed as to open and swing outward, and doorways shall not be less than four feet in width, with proper landings and stairways of at least equal width. [R. C. 1905, § 2177; 1887, ch. 54, § 1; R. C. 1899, § 1719.]

Private actions for violation of building law. 9 L.R.A.(N.S.) 376.

§ 2996. **Who shall comply with this article.** It shall be the duty of all persons owning or having charge of such buildings, including trustees, boards of directors and boards of education, to comply with the provisions of the

last section within six months after the same shall take effect; but nothing herein shall be construed to require a change in the width of existing stairways and doorways, and this article shall not apply to churches and school houses not within the limits of any city or village. [R. C. 1905, § 2178; 1887, ch. 54, § 2; R. C. 1899, § 1720.]

§ 2997. **Penalty for failure to comply.** Any person failing to comply with the provisions of this article, or who shall build, maintain or permit to be used any such building contrary to the provisions hereof shall be deemed guilty of a misdemeanor. [R. C. 1905, § 2179; 1887, ch. 54, § 3; R. C. 1899, § 1721.]

ARTICLE 59.—WEIGHTS AND MEASURES.

Laws 1907, ch. 273, entitled "Inspection of Weights and Measures," which constitutes a large part of this article, does not expressly amend or expressly repeal any designated section of the Revised Codes of 1905; its concluding section repeals "all acts and parts of acts in conflict" therewith. It is here regarded as superseding R. C. 1905, §§ 2180-2187.

§ 2998. **Sheriff inspector of weights and measures. Deputy.** The sheriff of each county within the state shall be the inspector and sealer of weights and measures. He shall have power to appoint a deputy to perform the duties hereinafter provided, who must be a person qualified by experience and training to intelligently perform the same, but he may be a regular deputy sheriff provided he has the qualifications above described. The deputy shall have the same power and perform the same duties under this article as the inspector and sealer, and shall take and subscribe the oath required by other county officers. [1907, ch. 273, § 1.]

R. C. 1905, § 2181, required "the said inspector" to give a bond. But at that time the inspector was appointed by the governor. R. C. 1905, § 2180.

§ 2999. **Tests, made when. Record.** The inspector and sealer or his deputy shall once in each year test all weights and measures, scale beams, patent balances, steelyards and other instruments used in weighing or measuring any commodity sold by weight or measure in his county by the duplicates of said weights and measures as are hereinafter provided; provided, the inspector of weights and measures or his deputy may test wagon scales oftener than once each year if he has reason to believe that the same are not weighing correctly. He shall give to the person in charge of such weights or measures a certificate of the correctness thereof, if found to be correct, and if found to be incorrect, he shall cause the same to be corrected, if he can, and if not he shall mark the same "condemned" and in case of short weights or measures that cannot be corrected he shall condemn, confiscate and keep the same for evidence. He shall keep a record of all such certificates issued by him and of all his transactions under this article, and shall file with the county auditor during the month of December of each year a statement showing the date of examination and giving the names of the persons, firms or corporations whose scales, weights and measures have been by him examined, and setting out against such names an enumeration of any scales, weights or measures by him so condemned. [1907, ch. 273, § 2.]

This section is regarded as superseding R. C. 1905, § 2182, although the latter specified as one of the duties of the inspector or his deputies "to determine the amount due any person for the doing of anything which is dependent upon the weight or measurement of the thing to be done or to be delivered within this state."

§ 3000. **Standard established.** The standard of weights and measures shall be the standard adopted by the government of the United States, and any person who knowingly uses for the purpose of purchase or sale or keeps for public use a weight, measure, scale, balance or beam, which does not conform to the standard of weights and measures adopted by the state, or who alters a weight, measure, scale, balance or beam after it has been adjusted and sealed so that it does not conform to such standard and fraudulently makes use thereof, shall be fined for each offense fifty dollars. [1907, ch. 273, § 3.]

This section clearly supersedes R. C. 1905, § 2184.

§ 3001. County commissioners purchase duplicate weights and measures. The board of county commissioners of each county shall purchase such duplicates of weights and measures enumerated in section 2191 of the code of 1905 [section 3009 herein], as are deemed necessary for the use of the inspector in the carrying out of the provisions of this article, which duplicates shall be paid for by the county and be delivered to the inspector, who shall be responsible to the county under his bond as sheriff for their delivery to his successor in office. [1907, ch. 273, § 4.]

This section evidently supersedes R. C. 1905, § 2185.

§ 3002. Fees. The inspector and sealer of weights and measures shall be entitled to demand and receive for his compensation for the inspection herein-after provided for and the furnishing to the person whose weights and measures are inspected, a certificate of such inspection, the following fees:

For inspecting and sealing railroad and track scales of capacity of twenty tons and upwards..... \$3.00

For inspecting and sealing scales of from three to twenty tons capacity, each 1.50

For inspecting and sealing dormant scales, each..... 1.00

For inspecting and sealing movable platform scales, each..... .50

For inspecting and sealing beams weighing one hundred pounds and upwards, each25

For inspecting and sealing hopper scales, each..... 1.00

For inspecting and sealing counter scales, each..... .25

For inspecting and sealing every patent balance, beam, steelyard or other instrument used for weighing other than the above enumerated, each25

Provided, that when any establishment uses more than three of such scales the fee for inspection of which is twenty-five cents each, then any further number shall be tested for fifteen cents each, and with each scale tested and sealed by him he shall inspect and seal one set of weights without any additional charge or compensation.

For inspecting and sealing any two bushel or one bushel measure, each \$.25

For inspecting and sealing any other dry measure, each..... .10

For inspecting and sealing liquid measures of a capacity of five gallons or more, each..... .25

For inspecting and sealing liquid measures of less than five gallons and not less than one gallon..... .15

For inspecting and sealing anything less than one gallon..... .10

For inspecting and sealing any board or cloth measure, each..... .10

When the inspector and sealer shall find any of the instruments or articles used in weighing or measuring to be wrongly adjusted, misconstructed, out of repair or in any other condition which can be remedied by him, it shall be his duty to correct such scale or measure and he shall receive for such service fifty cents per hour for the actual and necessary time consumed in making such corrections and shall receive just compensation for any material used in such correction. [1907, ch. 273, § 5.]

This section clearly supersedes R. C. 1905, § 2183.

§ 3003. Penalty for false weights and measures. If any person knowingly uses a false weight, measure, scale, balance or beam after such weight, measure, scale, balance or beam has been adjusted and sealed and alters it so that it does not conform to the public standard and fraudulently makes use of it, he shall forfeit for each offense fifty dollars, and every inspector and sealer who has reasonable cause to believe that a weight, measure, balance or beam has been altered since it was last adjusted and sealed shall enter the premises in which it is kept or used and shall examine the same and if found tampered with, shall have power to seal them in such a manner that they cannot be used until such disability is removed and such scale, balance or beam shall

be kept sealed until such fine is paid. The inspector or sealer shall in no case seal or mark as correct any weights, measures or balances which do not conform to the standard. If such weights, measures or balances can be readily adjusted as heretofore provided, he may adjust and seal them, but if they cannot by him be adjusted he shall affix to such weight, measure or balance a notice prohibiting their use until he is satisfied that they have been so adjusted as to conform to the standard, and whoever removes said notice without the consent of the officer affixing the same, shall for each offense forfeit a sum not exceeding fifty dollars. The sealer or deputy sealer of weights and measures may seize without warrant such weights, measures or balances as may be necessary to be used as evidence in case of violation of the law relating to the sealing of weights and measures, such weights, measures or balances to be returned to the owner or forfeited as the court may direct. [1907, ch. 273, § 6.]

This section clearly supersedes R. C. 1905, § 2186.

Validity of sale by false weights and measures. 12 L.R.A.(N.S.) 599.

§ 3004. Complaints, how lodged. Any person believing any dealer is violating the provisions of this act may make complaint, in writing, to any inspector or sealer or his deputy and deposit with him five dollars, setting forth the particular facts relating to such violation and that he has reason to believe that the same are true. Upon such complaint such sealer or his deputy shall forthwith test the scales, weights and measures respecting the matter complained of, by his duplicates, and if found to conform thereto he may convert the five dollars so deposited to his own use as his fee for such services. If he finds that any of the matters so complained of are true he shall return the five dollars to the complainant and it shall be his duty forthwith to arrest the person in charge of such scale and take him before a justice of the peace in the county for trial and upon conviction such person, whether the owner or not, shall be guilty of a misdemeanor and punished accordingly. In all such cases the sealer or deputy sealer making the test shall make and swear to the complaint and shall be entitled to the same fees as allowed officers making an arrest upon a warrant, besides the sum of one dollar for making the test. [1907, ch. 273, § 7.]

"This act," mentioned in the foregoing section, consists of sections 2998-3003, and 3005.

§ 3005. Penalty for misleading inspector. Any person who shall willfully obstruct or mislead the inspector or sealer in the execution of his duties as herein provided, shall be subject to conviction and punishment therefor in the same manner as is now provided for the conviction and punishment of persons opposing or hindering an officer, ministerial, judicial or executive, under the laws of the state and the inspector and sealer shall have full power and authority for the various purposes named to examine any weights, measures, scales, balances or beams. [1907, ch. 273, § 8.]

This section clearly supersedes R. C. 1905, § 2187.

§ 3006. Bushel consists of how many pounds. A bushel of each of the articles enumerated in this section shall consist of the number of pounds avoirdupois respectively affixed to each:

- Barley, forty-eight pounds.
- Beans, sixty pounds.
- Bran, twenty pounds.
- Buckwheat, forty-two pounds.
- Beets, sixty pounds.
- Broom corn seed, thirty pounds.
- Corn, shelled, fifty-six pounds.
- Corn, in the ear, seventy pounds.
- Clover seed, sixty pounds.
- Coal, stone, eighty pounds.
- Flax-seed, fifty-six pounds.
- Lime, eighty pounds.

Oats, thirty-two pounds.
Onions, fifty-two pounds.
Potatoes, Irish, sixty pounds.
Potatoes, sweet, forty-six pounds.
Peas, sixty pounds.
Rye, fifty-six pounds.
Salt, eighty pounds.
Turnips, sixty pounds.
Timothy seed, forty-five pounds.
Wheat, sixty pounds.
Speltz, forty pounds.
Millet, fifty pounds.
Apples, fifty pounds.
Bromus inermis, fourteen pounds.

[R. C. 1905, § 2188; R. C. 1899, § 1722; 1901, ch. 213; 1903, ch. 209.]

§ 3007. **Ton of hay, cubic measure.** A ton of hay shall consist of two thousand pounds; or by measurement, three hundred and forty-three cubic feet, after the same shall have been stacked thirty days, or such time as may be agreed upon between the parties. [R. C. 1905, § 2189; R. C. 1899, § 1723.]

§ 3008. **Perch of stone.** A perch of mason work or stone shall consist of twenty-five feet, cubic measure. [R. C. 1905, § 2190; R. C. 1899, § 1724.]

§ 3009. **Standard of weights and measures kept by state treasurer.** The state treasurer shall procure and keep in his office the following standards of weights and measures, which shall conform in every particular to the United States standards of weights and measures: One bushel, one-half bushel, one peck, one-half peck, one quart, one wine gallon, one wine half gallon, one wine quart, one wine pint, one wine gill. Such measures shall be made of copper or other suitable and substantial material; also one surveyor's chain thirty-three standard feet in length, one yard measure, one foot measure and one inch measure; also one one hundred pound weight, one fifty pound weight, one twenty-five pound weight, one ten pound weight, one one pound weight, one half pound weight, one quarter pound weight, one one-eighth of a pound, one one-sixteenth of a pound or one ounce weight, one set of apothecaries' weights from one pound to one grain, one set of troy weights from one pound to one grain; besides such other scales, beams and balances as shall be necessary to test other weights by these standards; which measures, weights, scales, beams and balances are hereby declared to be the legal standards of weights and measures for this state. Such treasurer shall be charged with the custody and be accountable to the state for the proper use and care of the same. Such standards shall be used only for testing the standards provided for in this article, and such treasurer shall keep a record of all county weights, measures, beams and balances marked and tested by him. [R. C. 1905, § 2191; 1885, ch. 151, § 1; R. C. 1899, § 1725.]

ARTICLE 60.—WEIGHT, MEASURE OR COUNT OF FOOD PRODUCTS OR BEVERAGES.

§ 3010. **Food sold by weight, measure or count.** Every article of food or beverage as defined in the statutes of this state shall be sold by weight, measure or numerical count and as now generally recognized by trade custom, and shall be labeled in accordance with the provisions of the food and beverage laws of this state. Only those products shall be sold by numerical count which cannot well be sold by weight or measure. All weights shall be net, excluding the wrapper or container, and shall be stated in terms of pounds, ounces and grains, avoirdupois weight, and all measure shall be in terms of gallons of two hundred and thirty-one (231) cubic inches or fractions thereof, as quarts, pints and ounces. Reasonable variations shall be permitted and

tolerations therefor shall be established and promulgated by the food commissioner. [1911, ch. 236, § 1.]

Power to require weight of package to be indicated upon it. 17 L.R.A.(N.S.) 684.

§ 3011. Weight of lard. Every lot of lard or of lard compound or of lard substitute, unless sold in bulk, shall be put up in pails or other containers holding one (1), three (3) or five (5) pounds net weight, or some whole multiple of these numbers, and not any fractions thereof. If the container be found deficient in weight additional lard, compound or substitute, shall be furnished to the purchaser to make up the legal weight. The face label shall show the true name and grade of the product, the true net weight together with the true name and address of the producer or jobber. If other than leaf lard is used then the label shall show the kind, as "back lard," or "intestinal lard." Every lard substitute or lard compound shall also show in a manner to be prescribed by the food commissioner, the ingredients of which it is composed, and each and every article shall be in conformity with, and further labeled in accordance with the requirements under the food laws of this state. [1911, ch. 236, § 2.]

§ 3012. Weight of bread. A loaf of bread for sale shall be two pounds in weight. Bread, unless composed in chief parts of rye or maize, shall be sold only in whole, half and quarter loaves and not otherwise. Bread, when sold, shall, upon the request of the buyer, be weighed in his presence, and if found deficient in weight additional bread shall be delivered to make up the legal weight, except that this section shall not apply to rolls or to fancy bread weighing less than one-quarter of a pound. Provided, every loaf, half loaf, quarter loaf or other loaf of bread which does not weigh the full legal weight required by this section when plainly labeled with the exact weight thereof, shall not be deemed in violation of the provisions of this article. [1911, ch. 236, § 3.]

Validity of regulations as to weight of bread. 44 L.R.A.(N.S.) 632.

§ 3013. Penalty for so doing. Any person violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and for the first offense shall be punished by a fine of not less than five dollars (\$5.00) nor more than one hundred dollars (\$100.00) and the necessary costs, and for the second and each subsequent offense he shall be fined not less than fifty dollars (\$50.00) nor more than one hundred dollars (\$100.00), or ninety (90) days in jail, or both at the discretion of the court. [1911, ch. 236, § 4.]

ARTICLE 61.—PURCHASE OF GRAIN.

§ 3014. Unlawful to buy at other than legal weight. Dockage. It shall be unlawful for any person, firm, association, copartnership or corporation doing business in the state to purchase or receive any wheat, oats, barley, flax or other grains at a different weight for the bushel measure than the number of pounds fixed by the laws of our state, and no dockage shall be taken or received on same, excepting on such grains as the grain inspection boards for the terminal markets of the states of Minnesota and Wisconsin place a dockage. [1909, ch. 211, § 1.]

§ 3015. Penalty. Any person, firm, association, copartnership or corporation found guilty of violating the provisions of this article shall be guilty of a misdemeanor and be fined not less than twenty-five nor more than one hundred dollars for each and every offense. [1909, ch. 211, § 2.]

ARTICLE 62.—PUBLIC SCALES.

§ 3016. County commissioners to establish scales. The board of county commissioners of any county is authorized in its discretion, when petitioned by fifteen or more residents and actual farmers of the county, to establish and locate public scales at suitable railway stations in its county. [R. C. 1905, § 2192; 1893, ch. 98, § 1; R. C. 1899, § 1733.]

§ 3017. **Care and capacity of scales.** Such scales shall be purchased by the county, and shall be under cover, and of not less than five tons' weighing capacity, and shall be the property of the county, and at all times under its control and subject to removal when the county commissioners shall so require. [R. C. 1905, § 2193; 1893, ch. 98, § 2; R. C. 1899, § 1734.]

§ 3018. **Appointment of weighmasters. Bond.** The board shall also appoint at each place where it establishes such scales, a public weighmaster, who shall have the custody and care of such property, and who shall give a bond in the sum of five hundred dollars, conditioned for the safe keeping of the same and for the faithful and impartial discharge of his duties. [R. C. 1905, § 2193; 1893, ch. 98, § 3; R. C. 1895, § 1735.]

§ 3019. **Weighmaster to keep record.** Each public weighmaster shall keep a stub record of all weighing, which record and the receipt of such weighmaster shall show for whom property was weighed, and shall, with such receipt, constitute prima facie evidence of the facts therein contained. [R. C. 1905, § 2195; 1893, ch. 98, § 4; R. C. 1895, § 1736.]

§ 3020. **Compensation. Removal.** Such public weighmasters shall receive such compensation and shall be governed by such rules and regulations as may be adopted by the board of county commissioners, and may be removed at any time by such board for cause. [R. C. 1905, § 2196; 1893, ch. 98, §§ 5, 6; R. C. 1899, § 1737.]

ARTICLE 63.—COMMISSION MERCHANTS.

§ 3021. **License required.** It shall be unlawful for any commission merchant or other factor to receive any wheat, flax or other grain, or butter, cheese or other dairy or creamery product, in this state, to be sold for other persons, or to have any agent or correspondent in this state receiving or soliciting any consignment or deposit of grain or creamery or dairy product to be sold or forwarded for sale here or elsewhere, without being licensed and authorized so to do as hereinafter prescribed. [R. C. 1905, § 2197; 1897, ch. 54, § 1; R. C. 1899, § 1738; 1903, ch. 56, § 1.]

§ 3022. **License, how obtained. Bond required.** To obtain such license, a statement must be filed in the office of the board of railroad commissioners, giving the name of the person, firm or corporation making application therefor, and the place at which said person, firm or corporation has its headquarters or principal place of business and post office address. There must also be filed and deposited in the office of the board of railroad commissioners, subject to the board's approval, a good and sufficient bond in a penal sum of not less than twenty thousand dollars nominally payable to the state of North Dakota, executed by the applicant and at least two sureties or a surety company having the qualification of a fidelity insurance company authorized to do business as such in this state, and containing a condition to the effect that the person, firm or corporation named as principal therein shall well and truly pay and discharge any and all liability which said principal shall incur to consignors within this state, in or [on] account of any disposition that shall be made of any and all grain, creamery or dairy products, or the proceeds thereof, or of either, received by such principal wherever the same shall be received. [1913, ch. 240; R. C. 1905, § 2198; 1897, ch. 54, § 2; R. C. 1899, § 1739; 1903, ch. 56, § 2.]

§ 3023. **Bond.** The applicant for such permit must also, by a duly executed instrument filed with such bond, constitute and appoint the secretary of state and his successors the true and lawful agent and attorney upon whom process may be served in any action or proceeding against such applicant, and agree therein that any process served on said attorney shall have the same force and validity as if served on said applicant personally in this state, and that such appointment shall continue in force irrevocable so long as an action may

be maintained on the bond therewith given. [R. C. 1905, § 2199; 1897, ch. 54, § 3; R. C. 1899, § 1740.]

§ 3024. Approval of bonds. Certificate issued. Revoked, how. When the requirements of section 3023 are complied with and the board of railroad commissioners finds the bond and the surety thereon sufficient, it shall approve the same and issue to the applicant a certificate to the effect that, having complied with the law, such applicant is duly authorized by agent or otherwise, to procure and receive consignments of grain and creamery products from owners and shippers in this state, to be sold or disposed of for the consignor in the usual course of trade. Such certificate shall continue in force until revoked by the board of railroad commissioners, or the surety on said bonds has given notice of withdrawal therefrom or become insufficient, and no new surety with the requisite qualifications has been substituted, or for other sufficient cause. [1913, ch. 240; R. C. 1905, § 2200; 1897, ch. 54, § 4; R. C. 1899, § 1741; 1903, ch. 56, § 2.]

§ 3025. Fees collected. For the examining and approving such bond and issuing a certificate as hereinbefore provided, the board of railroad commissioners shall charge and collect from the applicant a fee of five dollars, and for each duplicate or copy of such certificate a further fee of fifty cents, which fee shall be immediately paid into the general fund of the state treasury, and whenever process is served on the board of railroad commissioners in any action or proceeding, as provided in section 3026, the board of railroad commissioners shall, as a condition of valid and effectual service, require the payment of a fee of two dollars and pay the same into the state treasury. The said board shall also keep a record of such process showing the time and hour of service, and forthwith mail a copy of the same, postage paid and directed to the post office address of the defendant, and thereupon the service shall be deemed sufficient. [1913, ch. 240; R. C. 1905, § 2201; 1897, ch. 54, § 5; R. C. 1899, § 1742.]

§ 3026. Action for breach of condition. Every bond given as hereinbefore provided shall continue and remain in force until the principal or surety thereon gives notice to the contrary in writing to the board of railroad commissioners, and for thirty days thereafter, but such notice shall not affect any liability incurred by the principal for, or on account of consignments received or forwarded in this state before the expiration of said time. Successive actions may be brought on such bonds for a breach of the condition thereof by the person injured thereby, until the entire amount of the penalty is exhausted. [1913, ch. 240; R. C. 1905, § 2202; 1897, ch. 54, § 6; R. C. 1899, § 1743.]

§ 3027. Penalty. Every person who shall solicit or procure within this state any consignment or deposit of wheat, flax or other grain, or of butter, cheese or other creamery or dairy product, or any farm product, to be sold or consigned for sale or otherwise disposed of for the benefit of the consignor or depositor, without having license and authority so to do as heretofore provided, and every person who shall act as agent, solicitor or correspondent in procuring any consignment or deposit of grain, or creamery or dairy product, for consignment, to be so sold or disposed of to any person, firm or corporation not having such license and authority, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished accordingly. [R. C. 1905, § 2203; 1897, ch. 54, § 7; R. C. 1899, § 1743a; 1903, ch. 56, § 4.]

ARTICLE 64.—HAWKERS AND PEDDLERS.

§ 3028. License required. It shall be unlawful for any person to travel from place to place in any county of this state, for the purpose of carrying to sell, or exposing or offering to sell, barter or exchange any goods, wares, merchandise or any other property whatever, without first obtaining a license

therefor from the auditor of said county. [R. C. 1905, § 2204; 1903, ch. 165, § 1.]

Not unconstitutional as authorizing tax upon interstate commerce. *Re Lipschitz*, 14 N. D. 622, 95 N. W. 157.

License taxes upon hawkers and peddlers. 96 Am. St. Rep. 844; 19 L.R.A.(N.S.) 301; 28 L.R.A.(N.S.) 265.

Right to discriminate between harmless articles in legislation regulating peddlers. 21 L.R.A.(N.S.) 349; 35 L.R.A.(N.S.) 1079; 40 L.R.A.(N.S.) 1207.

Constitutionality of license taxes on drummers. 59 Am. Rep. 267.

Tax on occupations as interference with commerce. 60 L.R.A. 691.

Validity of contract by unlicensed peddler. 12 L.R.A.(N.S.) 616.

§ 3029. How obtained. Each person desiring to obtain a license as peddler shall make application to the county auditor of the county in which he desires to peddle, which application shall be signed by the applicant, and shall state in what manner the applicant desires to travel as a peddler, whether on foot, or with one or more horses, or other beasts of burden. [R. C. 1905, § 2205; 1903, ch. 165, § 2.]

§ 3030. Fee. Each applicant, before he shall be entitled to such license, shall pay into the treasury of such county where his application is made, the following sums respectively, as and for the taxes due from him on account of the pursuit of the occupation of peddling, to wit: If for a license to travel on foot, the sum of five dollars; if for a license to travel and carry his goods with a single horse or other beast, carrying or drawing a burden, the sum of twenty-five dollars; if for a license to travel and carry with a vehicle or carriage, drawn by two horses or animals, the sum of fifty dollars; if for a license to travel and carry his goods with a vehicle or carriage drawn by more than two horses or animals, or propelled in any other manner, the sum of seventy-five dollars. Such license shall authorize the holder thereof to pursue within said county the business of hawking and peddling in the manner set forth in said license, for the period of one year from the date of its issue and no longer. [R. C. 1905, § 2206; 1903, ch. 165, § 3.]

An amendment to this section was vetoed in Laws 1909, p. 351, where the amendment passed by the legislative assembly is set forth in full. It was vetoed because "that portion of this act granting to cities and towns the power to tax transient merchants by ordinance or resolution is not expressed in nor germane to any part of the title," and it was therefore in conflict with section 61 of the state constitution. The veto message discusses at considerable length the question involved, quoting from *Carrollton v. Bazette*, 31 L.R.A. 527, and other authorities.

Not unconstitutional as unequal taxation or class legislation. *Re Watson*, 17 S. D. 486, 97 N. W. 463, 2 A. & E. Ann. Cas. 321.

Validity of license tax so high as to be prohibitory in effect. 35 L.R.A.(N.S.) 1074.

Right to grade license tax according to number of animals or vehicles employed in the business. 12 L.R.A.(N.S.) 568.

Discrimination as to amount of tax or fee on different vehicles. 16 L.R.A.(N.S.) 1035; 21 L.R.A.(N.S.) 83.

§ 3031. County auditor to grant license. The county auditor upon the filing of such application, together with the treasurer's receipt for the proper license fee, shall grant such applicant a license under his official seal, authorizing said licensee to travel and pursue the business in the manner stated in his application, for the term of one year from the date of the issuance of such license. [R. C. 1905, § 2207; 1903, ch. 165, § 4.]

§ 3032. Contents. It shall be the duty of the county auditor issuing such license under this article, to make a record of the same, including the date when issued, the name of the person receiving the license, the purpose for which issued, and the amount received therefor. [R. C. 1905, § 2208; 1903, ch. 165, § 5.]

§ 3033. Revenue, how disposed of. All money paid into the county treasury under the provisions of this article shall be placed to the credit of the ordinary county revenue, including the support of the poor, to be disbursed in the same manner as the funds derived from the usual course of taxation for such account. [R. C. 1905, § 2209; 1903, ch. 165, § 6.]

Does not conflict with constitution, article 11, section 8 [N. D. Const. § 175]. *State v. Thompson*, 25 S. D. 148, 125 N. W. 567.

§ 3034. Penalty. Any person found traveling or trading in any county in this state contrary to the provisions of this article, or who shall refuse to produce a license for examination, when requested so to do by any resident or officer of the county in which said person shall be traveling as a peddler, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding fifty dollars, or by imprisonment in the county jail where the offense was committed, not exceeding thirty days, or both such fine and imprisonment. [R. C. 1905, § 2210; 1903, ch. 165, § 7.]

§ 3035. Exception. Nothing herein contained shall be so construed as to impair, interfere with or take away any existing rights or authority of incorporated cities, towns and villages to license and regulate peddlers within their incorporated limits. [R. C. 1905, § 2211; 1903, ch. 165, § 8.]

ARTICLE 65.—TAXATION OF TRANSIENT MERCHANTS.

With the exception of section 3041, which is new legislation, every section in this article, including the section headings, is identical with Laws 1907, ch. 257, the latter being entitled "Licensing Transient Merchants." See note to section 3030.

§ 3036. Transient merchant defined. Fee. A transient merchant within the meaning of this article is defined as one who engages in the vending or sale of merchandise at any place in this state temporarily, and who does not intend to become and does not become a permanent merchant of such place. No person shall engage in or follow the business or occupation of a transient merchant as hereinbefore defined at any place in this state, without first obtaining a license authorizing him to do so. Any person desiring a license as a transient merchant shall, before receiving the same, pay into the state treasury the sum of seventy-five dollars and he shall in addition to such amount, after receiving such license, also pay to the treasurer of any city or village where he may be conducting his business, a sum not to exceed twenty-five dollars per day for each day that he may be engaged in carrying on his business, such amount to be determined by ordinance or resolution of such city or village; provided, further, that if complaint be made to the mayor of any city or president of any village that any person doing business therein is a transient merchant, and that such person may claim to be a permanent merchant, he may be required as a condition of transacting business in any such city or village, without the payment of a license fee to such city or village, to give bond to such city or village to secure the payment of the state and local license, in the event that he fails to become a permanent merchant under the terms of this article, in a penal sum not to exceed five hundred dollars to be determined by resolution or ordinance of such city or village, with sureties to be approved by the auditor or clerk of the municipality, and which bond shall be enforced in case of a breach thereof, by the proper local officers of the city or village and upon its collection the amount of the state license shall be paid to the state treasurer and the remainder shall be paid into the treasury of the city or village and become a part of the license fund. The application for a license as a transient merchant shall be made in writing to the secretary of state upon the blank to be furnished by him, and upon the filing of such application with the secretary of state and the presentation to him of a receipt from the state treasurer showing the payment of the license fee hereinbefore provided for, the secretary of state shall issue such applicant a license for the period of one year from the date of its issue, and no longer. [1911, ch. 201, § 1; 1907, ch. 257, § 1.]

Person who grows his own fruit and ships it into state, and sells it at retail from car placed on side track is not transient merchant. *State v. Fleming*, 24 N. D. 593, 140 N. W. 674.

Constitutionality of discriminations in statutory regulations concerning transient dealers in food products. 34 L.R.A.(N.S.) 653.

Discrimination against nonresident transient dealers by statute or ordinance as to license. 40 L.R.A.(N.S.) 286.

§ 3037. Fire sale merchants, license of. Every person, firm or corporation which shall not have become a permanent merchant or dealer in the town, city or village in which any such person, firm or corporation sells or exposes for sale any goods, wares or merchandise and which shall advertise, represent and hold forth that the sale thereof as an insurance, bankrupt, insolvent, assignee, trustee, estate, executor, administrator, receiver, job lot or closing out sale, or a sale of goods, wares or merchandise damaged by smoke, fire, water or otherwise or that by reason of financial difficulty or other special or peculiar circumstances, such goods, wares or merchandise will be disposed of for less than their real value, shall, before commencing or advertising a sale thereof, procure a state and local license in the manner hereinafter provided; provided, that nothing in said sections shall apply to any sale made by virtue of any judgment, order or process of any court, or pursuant to any law of this state or of the United States, or in the enforcement of any contract, right or lien. [1911, ch. 201, § 2; 1907, ch. 257, § 2.]

§ 3033. Application. How made. The application for a state license under the preceding section shall be made to the secretary of state under oath, shall disclose the name and residence of the applicant, who shall before making such sale advertising so to do, state in his original or supplementary application the details concerning such sale, including all the facts relating to the insurance, bankruptcy, insolvency or other reasons for making the same with sufficient fullness as to time, place and persons to permit the verification thereof. Such statement shall be copied on the license issued by said secretary of state, and all applications shall be filed by him and a record of all licenses issued shall be made. All files and records of the secretary of state, and of the town, city and village auditors shall be in convenient form and be open for public inspection. [1911, ch. 201, § 3; 1907, ch. 257, § 3.]

§ 3039. Fee. Penalty. Upon application in the proper form, and the payment of seventy-five dollars as a fee the secretary of state shall issue to the applicant a license authorizing him to advertise and make such sales as are specified in section 3037 for the term of one year from the date of its issue. Every license shall contain a copy of the application therefor. Such license shall not be transferable nor authorize more than one person, firm or corporation to sell or advertise goods, wares or merchandise in the manner specified, either by agent or clerk or in any other way than in the proper person of the licensees, except that when the licensee is a firm or corporation the sale may be conducted by the members of the partnership or the officers of the corporation and any licensee may have the assistance of one or more persons who shall not, however, have authority to act for him in his absence. Any agent or employe who conducts or advertises a sale for his principal shall be liable to the penalty hereinafter prescribed if such principal has failed to comply with any of the provisions of law. [1911, ch. 201, § 4; 1907, ch. 257, § 4.]

§ 3040. Local license fee. Any town board, village board or city council may, by resolution, ordinance or order, require the payment by every person, firm or corporation intending to make such sale a per diem license fee not exceeding twenty-five dollars. Before making or offering to make any such sale under the state license every such person, firm or corporation shall exhibit said license to the auditor or clerk of the town, city or village where it is proposed to make such sale, and upon payment to said auditor or clerk of such fee as is required by the local authorities he shall record the state license, endorse upon it the words "local license fee paid," affix his official signature with the date of such endorsement, and issue a license authorizing sales within the limits of his town, city or village. Making sales or offering to do so without such license or endorsement shall subject such person to the same penalty as he would be liable to if no state license had been issued. [1911, ch. 201, § 5; 1907, ch. 257, § 5.]

§ 3041. Money paid into state treasury credited to general fund. All money paid into the state treasury, under the provisions of this article, shall be placed to the credit of the general fund to be disbursed in the same manner as the funds derived from the usual course of taxation for such account. [1911, ch. 201, § 6.]

§ 3042. Penalty. Every person violating any of the provisions of this article and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or be imprisoned in the county jail not less than thirty days nor more than sixty days, or by both such fine and imprisonment. [1911, ch. 201, § 7; 1907, ch. 257, § 6.]

ARTICLE 66.—TRADE DISCRIMINATION AND UNFAIR COMPETITION.

§ 3043. Unfair competition. Any person, firm or corporation, foreign or domestic, doing business in the state of North Dakota and engaged in the production, manufacture, distribution, purchase or selling of milk, cream, butter fat, grain or any commodity in general use that shall, with the intention of creating a monopoly, or of destroying the business of a competitor, or of any regular established dealer, or to prevent competition of any person who in good faith intends and attempts to become such a dealer, discriminate between different sections, communities, towns or cities, or portions thereof, in this state, by purchasing at a higher or selling at a lower rate or price in one section, community, town or city or portion thereof, in this state, than is paid or charged by such person, firm or corporation for such milk, cream, butter fat, grain or commodity in general use in another section, community, town or city, or portion thereof, in this state, after making due allowance for the difference, if any, in the actual cost of transportation of such commodities, shall be guilty of unfair discrimination. [1913, ch. 287, § 1; 1907, ch. 258, § 1.]

N. D. Laws 1907, ch. 258, §§ 1-5, superseded by this section, held unconstitutional. *State ex rel. Standard Oil Co. v. Blaisdell*, 22 N. D. 86, 132 N. W. 769, Ann. Cas. 1913E, 1089.

Combination to control price in particular locality. 16 L.R.A.(N.S.) 223.

Combination among produce buyers as monopoly. 12 L.R.A.(N.S.) 150.

Forbidding the payment of a higher price for a commodity in a particular community than elsewhere, for the purpose of stifling competition. 42 L.R.A.(N.S.) 821.

Forbidding the sale of a commodity in a particular locality at a lower rate than elsewhere, for the purpose of stifling competition. 42 L.R.A.(N.S.) 804.

§ 3044. Forfeiture of charter. If complaint shall be made to the attorney-general that any person, firm or corporation is guilty of unfair discrimination, as defined by this article, he shall investigate the matter complained of, and for that purpose may subpoena witnesses, administer oaths, take testimony and require the production of books or other documents belonging to such person, firm or corporation, and if, in his opinion, sufficient grounds exist therefor, he shall prosecute an action in the name of the state of North Dakota, in the proper court, to annul the charter or revoke the permit or license of such person, firm or corporation, as the case may be. [1913, ch. 287, § 2; 1907, ch. 258, § 2.]

§ 3045. Attorney-general brings action, when. If, after the revocation of such charter in the case of a domestic corporation, or of its permit if it be a foreign corporation, any such corporation shall continue or attempt to do business within this state, it shall be the duty of the attorney-general of this state by a proper action commenced in the name of the state, to oust such corporation from any and all business of any kind or character within the state of North Dakota. [1907, ch. 258, § 3.]

§ 3046. Penalty. Any person, firm or corporation convicted of unfair discrimination shall be fined in any sum not less than two hundred dollars nor more than three thousand dollars. [1913, ch. 287, § 3; 1907, ch. 258, § 4.]

§ 3047. Cumulative remedies. Nothing in this article contained shall in any manner be construed as repealing or in any manner altering any other

act or part of act heretofore adopted by the legislature of this state, but the remedies herein provided shall be cumulative to all other remedies now existing. [1907, ch. 258, § 5.]

ARTICLE 67.—COMMERCIAL DISCRIMINATION PROHIBITED.

§ 3048. Discrimination prohibited. Any person, firm, company, association or corporation, foreign or domestic, doing business in the state of North Dakota, and engaged in the production, manufacture or distribution of any commodity in general use, that shall intentionally, for the purpose of destroying the business of a competitor in any locality, discriminate between different sections, communities or cities of this state, by selling such commodity at a lower rate in one section, community or city, than is charged for said commodity by said party in another section, community or city, after making due allowance for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful. [1907, ch. 260, § 1.]

Forbidding the sale of a commodity in a particular locality at a lower rate than elsewhere, for the purpose of stifling competition. 42 L.R.A.(N.S.) 804.

Forbidding the payment of a higher price for a commodity in a particular community than elsewhere, for the purpose of stifling competition. 42 L.R.A.(N.S.) 821.

§ 3049. Penalty. Any person, firm, company, association or corporation violating any of the provisions of the preceding section, and any officer, agent or receiver of any firm, company, association or corporation, or any member of the same or any individual found guilty of a violation thereof, shall be fined not less than five hundred dollars, nor more than five thousand dollars, or be imprisoned in the county jail not to exceed one year, or suffer both penalties. [1907, ch. 260, § 2.]

§ 3050. Contracts void. All contracts or agreements made in violation of any of the provisions of the two preceding sections shall be void. [1907, ch. 260, § 3.]

§ 3051. Duty of county attorney and attorney-general. It shall be the duty of the county attorneys, in their counties, and the attorney-general, to enforce the provisions of the preceding sections of this article by appropriate actions in courts of competent jurisdiction. [1907, ch. 260, § 4.]

§ 3052. Duty of secretary of state. If complaint shall be made to the secretary of state that any corporation authorized to do business in this state is guilty of unfair discrimination within the terms of this article, it shall be the duty of the secretary of state to refer the matter to the attorney-general, who may, if the facts justify it in his judgment, institute proceedings in the courts against such corporation. [1907, ch. 260, § 5.]

§ 3053. Charter and rights forfeited. If any corporation, foreign or domestic, authorized to do business in this state, is found guilty of unfair discrimination, such finding shall cause a forfeiture of all the privileges and rights conferred by the laws of this state upon corporations and shall bar its right to do business in this state. [1907, ch. 260, § 6.]

§ 3054. Duty of attorney-general. If any corporation, having been found guilty of a violation of any of the provisions of this article, shall continue or attempt to do business in this state, it shall be the duty of the attorney-general by a proper action in the name of the state of North Dakota to enjoin such corporation from transacting all business of every kind and character in said state of North Dakota. [1907, ch. 260, § 7.]

§ 3055. Remedies cumulative. Nothing in this article shall be construed as repealing any other act, or part of act, but the remedies herein provided shall be cumulative to all other remedies provided by law. [1907, ch. 260, § 8.]

ARTICLE 68.—LOGS AND LUMBER.

§ 3056. **Lawful to boom logs in navigable rivers.** It shall be lawful for any person having logs or lumber in any stream navigable for water crafts in this state, to boom logs or lumber along the shore and to secure the boom by means of piles driven in the stream, or by chains, ropes, timber or traverse poles made fast at points along the shore; provided, that there shall be at all times sufficient channel left clear for the free passage of any crafts or rafts usually navigating such stream. [R. C. 1905, § 2212; R. C. 1899, § 1758.]

Right of riparian owners to use stream for floating logs. 41 L.R.A. 371.

Relative rights of those using stream for floating logs or maintaining boom and those navigating vessel thereon. 38 L.R.A.(N.S.) 144.

Relative rights and duties of those maintaining bridges across streams and those floating logs therein. 38 L.R.A.(N.S.) 114.

Relative rights and duties between those maintaining dam in floatable stream and those using stream for floating logs therein. 23 L.R.A.(N.S.) 545.

Correlative rights of log owners and riparian owners. 41 L.R.A. 377; 33 L.R.A.(N.S.) 376.

Liability for injuries to riparian owner by running logs in stream. 41 L.R.A. 494; 64 L.R.A. 983, 986; 35 L.R.A.(N.S.) 824.

Right of riparian owner to compensation for damages to his property by construction under legislative authority of dams or booms for floating or storing logs. 22 L.R.A.(N.S.) 641.

ARTICLE 69.—OIL INSPECTION.

"Oil Inspection" was the title of R. C. 1905, Pol. Code, chapter 24, article 44, which is deemed to be entirely superseded by the following article consisting solely of Laws 1913, ch. 214. The latter (in section 24) repeals "all acts and parts of acts in conflict herewith" and specifically Laws 1909, ch. 171, which had impliedly superseded the above-mentioned article in Revised Codes of 1905.

State oil inspector ex-officio inspector of coal, see section 3065.

§ 3057. **Oil inspector. Appointment of deputies. Salaries.** The governor shall, by and with the advice and consent of the senate, appoint a suitable person, a citizen of this state, who is now [not] engaged directly or indirectly in the manufacturing, dealing or vending of petroleum, illuminating oils, gasolines or other petroleum products hereinafter mentioned, whose title shall be the state inspector of oils, and whose term of office shall be two years, commencing on the first Tuesday in April succeeding his appointment, or until his successor shall be appointed and shall qualify. Said state inspector shall appoint a deputy inspector at all points designated as ports of entry, whose salary shall be as hereinafter provided. The said state inspector of oils and his deputies shall have the right, and it shall be his duty to enter into or upon the premises of any manufacturer, dealer, vender of these refined petroleum oils or gasolines at any time for the inspection of such oils and gasolines, and to inspect any books or papers of such manufacturers, dealers or transportation companies pertaining to the shipment or sale of such oils or gasoline, and all receptacles in which such oils or gasoline are or may be contained. Such state inspector of oils shall receive an annual salary of two thousand five hundred dollars, payable monthly on the first day of each calendar month, and each and all of such deputies shall receive salaries payable monthly on the first day of each calendar month, unless otherwise ordered by the state inspector of oils, as follows:

At ports of entry, where the total number of barrels inspected is in excess of eight thousand per annum, the salary shall be fifty dollars per month.

At ports of entry, where the total number of barrels is in excess of fifteen thousand per annum, the salary shall be seventy-five dollars per month.

All ports of entry where the total number of barrels is in excess of twenty-five thousand per annum the salary of deputy oil inspectors shall be one hundred dollars per month; provided, that the salary of the deputy oil inspectors at the designated points of entry shall be based upon the last

annual report of the state oil inspector as to the amount of barrels of oil inspected. All other deputies shall receive a salary of not less than ten dollars per month nor more than thirty dollars per month, as in the judgment of the state inspector of oils is just compensation for services performed. The state inspector of oils shall make and file with the state auditor on or before the fifth day of each month monthly statements, under oath, of all inspections made by himself and his deputies under the provisions of this article. [1913, ch. 214, § 1; 1909, ch. 171, § 1; R. C. 1905, § 2213; 1890, ch. 107, § 1; R. C. 1895, § 1759; 1901, ch. 128, § 1; 1903, ch. 129, § 1; 1905, ch. 141, § 1.]

As to filing monthly statements mentioned in the last sentence of the section, see note to section 3060.

Section 653e makes an appropriation for the salary of the state oil inspector, and section 653b specifies how the appropriation shall be paid.

§ 3058. State auditor's duties. It shall be the duty of the state auditor to furnish the state treasurer with a summary of inspection fees due to the state of North Dakota, designating the name and address of consignors and the amount of inspection fees, on or before the tenth day of each month. [1913, ch. 214, § 2.]

§ 3059. State treasurer's duties. It shall be the duty of the state treasurer to promptly send to the state inspector of oils the name and address of any person, firm or corporation failing to pay inspection fees as provided in this article. The said state inspector of oils or his deputies shall, on receipt of said notice from the state treasurer, hold any or all future shipments of petroleum, illuminating oils, gasolines, or other petroleum products consigned by such person, firm or corporation until all delinquent inspection fees have been paid according to the provisions of this article. [1913, ch. 214, § 3.]

§ 3060. Payment of fees. The inspection fees due to the state of North Dakota, as provided in this article, must be paid by the consignor of the said petroleum, illuminating oils, gasolines or other petroleum products, directly to the state treasurer on or before the fifteenth day of each calendar month. [1913, ch. 214, § 4.]

This is new legislation. R. C. 1905, § 2213, provided that the state inspector of oils "shall make and file with the state auditor monthly statements under oath, of all fees collected under the provisions of this article, and pay the amount so collected to the state treasurer on or before the tenth day of each month, taking the state treasurer's receipt therefor, and file such receipt with the state auditor on or before the fifteenth day of each month; the money so received by the treasurer to be kept in a separate fund to be known as the "Oil Inspection Fund." Laws 1911, ch. 198, provided as follows:

"§ 1. Any and all funds now in the hands of the state treasurer to the credit of the so-called "oil inspection fund" shall be, on the taking effect of this act, by the state treasurer turned into the general fund of the state of North Dakota and said separate fund is hereby abolished.

"§ 2. All future collections made by the state inspector of oils, when received by the state treasurer, shall be credited to the general fund of the state."

Since inspection fees are now to be paid directly to the state treasurer (see also section 3071) the foregoing provisions are obsolete.

§ 3061. Oath. Bond. The state inspector of oils and his deputies shall each, before entering upon the discharge of his duties, take oath or affirmation, according to the constitution of this state and the laws thereof, and shall file the same with the secretary of state. The said state inspector of oils shall execute a bond to the state of North Dakota in the penal sum of five thousand dollars, with such surety as shall be approved by the governor of the state, conditioned for the faithful performance of the duties herein imposed, which bond shall be for the use of the state of North Dakota, and of all persons aggrieved by the act or failure of act of the state inspector of oils, and the same shall be filed with the secretary of state. Each such deputy inspector of oils shall, before entering upon the discharge of his duties, execute a bond to the state of North Dakota in the penal sum of not less than one thousand dollars nor more than five thousand dollars, as

the state inspector of oils shall prescribe, which bond shall be approved by the governor and filed with the secretary of state; and such bond shall be conditioned for the faithful performance of the duties herein imposed and shall be for the use of the state of North Dakota, and all persons aggrieved by the act or failure of act of such deputy inspector of oils. [1913, ch. 214, § 5; 1909, ch. 171, § 2; R. C. 1905, § 2214; 1890, ch. 107, § 3; R. C. 1899, § 1761; 1901, ch. 128, § 2; 1903, ch. 129, § 2; 1905, ch. 141, § 2.]

§ 3062. Oil companies shall execute bond to guarantee payment of fees. Any person, firm or corporation shipping into the state petroleum, illuminating oils, gasolines or other petroleum products for sale, or manufacturing within the state such petroleum, illuminating oils, gasolines or other petroleum products, shall execute a bond to the state of North Dakota in the penal sum of not less than five hundred dollars. In case the inspection fees of any person, firm or corporation exceed the amount of five hundred dollars for any calendar month such person, firm or corporation shall execute a bond to the state of North Dakota for twice the amount of the maximum fees paid by such person, firm or corporation for any month of the preceding calendar year, with such surety as shall be approved by the governor of the state, conditioned for the faithful payment of inspection fees herein imposed, which bond shall be for the use of the state of North Dakota, and shall be filed with the secretary of state not later than May first, 1913. Provided, that any person, firm or corporation doing business in the state at the time of the taking effect of this article shall file such bond not more than thirty days after shipment of the first consignment into the state. [1913, ch. 214, § 6.]

§ 3063. Inspector to furnish apparatus. The state inspector of oils shall, immediately upon the appointment and qualification of the deputies named in section 3057, procure and furnish to such deputies such apparatus as may be necessary to carry out the provisions of this article. He may also purchase from time to time the apparatus for making tests of petroleum, illuminating oils, gasoline and other petroleum products as hereinafter provided, and pay the necessary travel and other expenses of the department. [1913, ch. 214, § 7; 1909, ch. 171, § 3; R. C. 1905, § 2215; 1901, ch. 128, § 3; 1903, ch. 129, § 3; 1905, ch. 141, § 3.]

§ 3064. Inspector's duties. All illuminating oils, the product of petroleum, or into which petroleum or any product of petroleum enters or is found as a constituent, whether manufactured in this state or not, shall be inspected as provided in this article before being sold or offered for sale or used for illuminating purposes in this state. It shall be the duty of the state inspector of oils, or his deputies, to examine and test within this state all such oils held or offered for sale or sold by any manufacturer, vender, person, firm or corporation in this state for illuminating purposes, and if upon such tests and examination said illuminating oils shall meet the requirements hereinafter specified he shall affix to the receptacle containing the same his brand, showing the date of his inspection, his name, and the words, "Approved, flash test not less than one hundred (100) degrees, fire test not less than one hundred and twenty-five (125) degrees." But if such illuminating oils, so tested, shall not meet said requirements, hereinafter specified, the words, "Rejected for illuminating purposes," shall be marked in plain letters upon the receptacle containing the same.

All oils, the product of petroleum, or into which petroleum, or any product of petroleum enters or is found as a constituent, sold or offered for sale or used in this state for illuminating purposes, shall conform to the following requirements: The color shall be water white when viewed by transmitted light through a layer of oil four inches deep. It shall not give a flash test below one hundred (100) degrees, closed cup test, Elliott cup, and shall not

have a fire test below one hundred and twenty-five (125) degrees Fahrenheit, Elliott cup.

Said state inspector of oils or his deputies shall also examine and test, within this state, all such illuminating oils held or offered for sale or sold for illuminating purposes by any manufacturer, vender or by any person, firm or corporation in this state, for gravity. The gravity of said illuminating oils shall be determined by the Tagliabue standard, registered hydrometer, Beaume scale, at a temperature of sixty (60) degrees Fahrenheit; and every manufacturer, vender or dealer in said illuminating oils in this state shall stencil on each barrel or package containing said illuminating oils the words, "Gravity Test not less than degrees Beaume," inserting in the blank space left therefor a Beaume gravity not higher than the actual Beaume gravity of the contents at a temperature of sixty (60) degrees Fahrenheit.

Every person, firm or corporation selling or delivering said illuminating oil in bulk by means of portable tanks or tank wagons, or at retail, shall, in lieu of the stamp or brand above provided for, furnish and deliver to the purchaser a certificate covering each delivery therefor in the following words, figures and terms:

"This is to certify that the illuminating oil covered by this sale has a gravity test of not less than degrees, Beaume, and a flash test of not less than one hundred (100) degrees, and a fire test of not less than one hundred and twenty-five (125) degrees, and has been inspected and approved by the state oil inspector, and complies with North Dakota chemical tests."

Inserting in the blank space left therefor a Beaume gravity not higher than the actual Beaume gravity of the oil covered by the sale at a temperature of sixty (60) degrees Fahrenheit; provided, so-called fuel oil and other petroleum products test forty (40) degrees Beaume or lower at a temperature of sixty (60) degrees Fahrenheit shall be inspected as in this act provided, and the same shall be labeled "fuel oil" or "distillate," as the case may be, and the fee for inspection and branding or labeling the same shall be twenty-five (25) cents per barrel. It is not the intent of this provision to include lubricating oils. [1913, ch. 214, § 8; 1909, ch. 171, § 5; R. C. 1905, §§ 2216, 2218; 1901, ch. 128, §§ 4, 6, 7; 1903, ch. 129, §§ 4, 6; 1905, ch. 141, §§ 4, 6; 1897, ch. 90; R. C. 1899, § 1760.]

Right to require that articles offered for sale shall answer a designated standard of purity. 41 L.R.A. (N.S.) 149.

§ 3065. Duty of seller. Penalty. All oils the product of petroleum, or into which petroleum or any product of petroleum enters or is found as a constituent, sold or offered for sale, or used in this state for illuminating purposes shall likewise conform to the following, which shall be known as chemical tests, to wit: (a) Such illuminating oils shall not contain water or tar-like matter, nor shall they contain more than a trace of any sulphur compound. (b) It shall be the duty of the state inspector of oils, or his deputy, to at least once in each ninety days have a chemical test made at the state university and the state agricultural college, demonstrating whether or not such oils contain more than four per cent residue after being distilled at a temperature of five hundred and seventy (570) degrees Fahrenheit, and shall not contain more than six per cent of oil distilling at three hundred and ten (310) degrees Fahrenheit, when one hundred (100) cubic centimeters of the oil are distilled from a side-neck distilling flask two and three-fourths inches in diameter, the length of the neck between the body of the flask and the side tube being two and one-half inches, said flask to be covered with a closely adhering jacket of asbestos paper; also, a determination of the amount of sulphur compounds in said oils, together with such burning tests as may be necessary to determine the photometric value of the oils,

which shall not, in the photometric test, when burning under normal conditions, show a fall of more than twenty-five per cent in candlepower in a test of not less than six nor more than eight hours' duration, consuming ninety-five per cent of the oil. The result of such chemical tests shall be included in the annual report of the state inspector of oils to the governor. The failure of the state inspector of oils to have the above tests made shall render him liable to a fine of one hundred dollars for each offense. In case any corporation, company or individual, manufacturer or vender, has or offers for sale for illuminating purposes oils which do not comply with the hereinbefore prescribed chemical tests, the state inspector of oils shall reject such oils for illuminating purposes, and the offending officer of any such corporation or company, or the manufacturer, vender or individual having or offering for sale for illuminating purposes such oils shall be deemed guilty of a misdemeanor. [1913, ch. 214, § 8½; 1909, ch. 171, § 5; R. C. 1905, § 2218; 1897, ch. 90; R. C. 1899, § 1760; 1901, ch. 128, §§ 6, 7; 1903, ch. 129, § 6; 1905, ch. 141, § 6.]

§ 3066. Duty of seller. Penalty. All gasolines and all petroleum products having a flash test of less than one hundred (100) degrees Fahrenheit, closed cup test, Elliott cup, whether manufactured in this state or not, shall be inspected as provided in this article before being sold or offered for sale or used in this state. It shall be the duty of the state inspector of oils or his deputies to examine and test within this state all such gasolines and petroleum products of less than one hundred (100) degrees Fahrenheit, flash test, held or offered for sale or sold by any manufacturer, vender, person, firm or corporation in this state for gravity. The gravity of said gasolines and said petroleum products of less than one hundred (100) degrees Fahrenheit, flash test, shall be determined by the Tagliabue standard registered hydrometer, Beaume scale, at a temperature of sixty (60) degrees Fahrenheit. After making said examination and test he shall affix to the receptacle containing the same his brand showing the date of inspection, his name and the word "inspected."

Every person, firm or corporation selling or delivering any of the said gasolines or petroleum products of less than one hundred (100) degrees Fahrenheit, flash test, in this state, in barrels or packages, shall plainly stencil or label on each barrel or package containing the same the words "Gravity not less than degrees, Beaume. Unsafe for illuminating purposes. For power purposes only." Inserting in the blank space left therefor a Beaume gravity not higher than the actual Beaume gravity of the contents of said barrel or package at a temperature of sixty (60) degrees Fahrenheit. Every person, firm or corporation selling or delivering said gasoline or petroleum products of less than one hundred (100) degrees Fahrenheit, flash test, by means of portable tanks or tank wagons, or at retail, shall, in lieu of the stamp, brand or label hereinbefore provided for, furnish and deliver to the purchaser a certificate covering each delivery of the same in the following words, figures and terms:

"This is to certify that the gasoline or petroleum product of less than one hundred (100) degrees Fahrenheit, flash test, covered by this sale, is unsafe for illuminating purposes, has a gravity of not less than degrees Beaume, and has been inspected by the state inspector of oils. For power purposes only."

Inserting in the blank space left therefor a Beaume gravity of not higher than the actual Beaume gravity, at a temperature of sixty (60) degrees Fahrenheit, if the gasoline or petroleum products of less than one hundred (100) degrees Fahrenheit, flash test, covered by said sale. Provided, nevertheless, that all gasolines sold or offered for sale in this state for household purposes shall, when one hundred cubic centimeters are subjected to distillation in a flask as described for distilling oil, show not less than three per

cent distilling at one hundred and fifty-eight (158) degrees Fahrenheit, and there shall not be more than six per cent residue at two hundred and eighty-four (284) degrees Fahrenheit, which shall be known as the chemical test for gasoline sold or offered for sale in this state for household purposes.

Every person, firm or corporation selling or delivering any such gasoline in barrels or packages shall plainly stencil or label on each barrel or package containing the same, the words:

"Gravity not less than degrees Beaume. Unsafe for illuminating purposes. Sold for household purposes."

Every person, firm or corporation selling or delivering such gasoline in bulk by means of portable tanks or tank wagons, or at retail, shall, in lieu of the stamp or brand hereinbefore provided for, furnish and deliver to the purchaser a certificate covering each delivery thereof in the following words, figures and terms:

"This is to certify that the gasoline or petroleum product of less than one hundred degrees Fahrenheit, flash test, covered by this sale, is unsafe for illuminating purposes; has a gravity test of not less than degrees Beaume; has been inspected by the state inspector of oils and complies with the North Dakota chemical test for gasoline for household purposes."

Inserting in the blank space left therefor a Beaume gravity not higher than the Beaume gravity of the gasoline or petroleum product of less than one hundred (100) degrees Fahrenheit, flash test, covered by said sale, at a temperature of sixty (60) degrees Fahrenheit.

Any person, firm or corporation selling or offering to sell within this state gasoline for household purposes which does not comply with the foregoing requirements, shall be guilty of a misdemeanor. [1913, ch. 214, § 9; 1909, ch. 171, §§ 5, 10; R. C. 1905, §§ 2218, 2222; 1897, ch. 90; R. C. 1899, §§ 1760, 1765; 1901, ch. 128, §§ 6, 7, 14; 1903, ch. 129, §§ 6, 10; 1905, ch. 141, §§ 6, 10; 1890, ch. 107, § 7.]

§ 3067. Providing appropriations for chemical tests. [For the purpose of employing chemists and the purchase of apparatus and material, and to cover any other expenses incident to the making of chemical tests as above provided, there shall be set aside from the general funds four thousand dollars annually, which sum shall be divided equally between the state university and the state agricultural college, and shall be paid quarterly of each year to the treasurers of said institutions in July, October, January and April.] It shall be the duty of the chemist of the state university and the agricultural college, having in charge the testing of oils, to make tests of such lubricating oils as are submitted to them to determine the lubricating value of the oils submitted to be tested. [1913, ch. 214, § 10.]

"The item carried in section 10 [§ 3067] providing that there shall be set aside from the general fund four thousand dollars annually" was "vetoed for the reason that the appropriations largely exceed the revenues of the state," in Laws 1913, ch. 214, p. 337.

§ 3068. Brand to be stamped on containers. Every person, firm or corporation offering for sale or selling or manufacturing within the state, such illuminating oils, gasolines or petroleum products of less than one hundred (100) degrees Fahrenheit, flash test, shall stamp or brand every package, barrel or cask containing the same with the name of brand contained in such package, cask or barrel. Every package, cask or barrel which contains gasoline or any petroleum product of less than one hundred (100) degrees Fahrenheit, flash test, shall be branded before being shipped into the state, "unsafe for illuminating purposes." [1913, ch. 214, § 11; 1909, ch. 171, § 4; R. C. 1905, § 2217; 1890, ch. 107, § 5; R. C. 1899, § 1763; 1901, ch. 128, § 5; 1903, ch. 129, § 5; 1905, ch. 141, § 5.]

Police regulations as to labeling articles of commerce. 1 L.R.A.(N.S.) 184; 17 L.R.A.(N.S.) 684; 40 L.R.A.(N.S.) 875.

§ 3069. Duty of inspector, of transportation company. Penalty. It shall be the duty of the state inspector of oils to forward to each of the transporta-

tion companies whose lines enter the state, and to the state auditor, a list of the ports of entry which have been created, at once upon entering upon the duties of his office, and to report to such companies and state auditor new ports of entry as they may be established, together with the names of the deputies at each port; and the transportation company bringing petroleum, illuminating oils, gasolines, petroleum products of less than one hundred (100) degrees Fahrenheit, flash test, into the state, subject to inspection as herein provided, shall stop and hold for inspection at points designated as ports of entry, all consignments of such goods, and a failure to do so will be a misdemeanor on the part of the transportation company and its representative in charge, and punishable by a fine not to exceed one hundred and fifty dollars, or by imprisonment not to exceed thirty days, or both. Any person, firm, corporation or individual bringing into the state such goods in same manner are subject to same regulations and penalties, except as to notifications of ports of entry and deputies, and for their notification notices shall be posted at every transportation company's station in each port of entry. [1913, ch. 214, § 12; 1909, ch. 171, § 6.]

§ 3070. Inspector's fees. Each and every inspector and deputy inspector who shall inspect any consignment of illuminating oils or gasoline or petroleum products of less than one hundred (100) degrees Fahrenheit, flash test, as provided in this article, shall charge the consignor of such goods the sum of twenty-five cents for testing a barrel or less quantity. Fifty gallons shall constitute a barrel. Every such inspector and deputy inspector shall keep an accurate record of all such goods inspected, rejected, branded or certified to by him, which record shall state the date of such inspection; the number of packages, barrels, casks or tanks approved; the number rejected; the name of the persons for whom inspected; the name of the person to whom consigned, with his address; the sum of money charged for such inspection; and such records shall be open to all persons interested. The state inspector of oils shall, in the month of January, in each year, make and deliver to the governor a report of his acts, and those of his deputies, during the year preceding, together with remarks and suggestions for the benefit of the service, which shall include a copy and summary of the report submitted by said deputies as provided in this section. [1913, ch. 214, § 13; 1909, ch. 171, § 7; R. C. 1905, § 2219; 1890, ch. 107, §§ 4, 6; R. C. 1895, §§ 1762, 1764; 1901, ch. 128, § 9; 1903, ch. 129, § 7; 1905, ch. 141, § 7.]

§ 3071. Inspection reports. A record of all inspections shall be made in quadruplicate in a carbon copy book; one copy shall be retained at the port of entry where inspection is made. On the date of inspection, one copy of the report shall be forwarded to the consignor, one copy to the state inspector of oils and one copy to the state auditor, either on the date of inspection or on or before the fifth day of the succeeding month, at the discretion of the state inspector of oils. On the first day of each month each deputy shall also furnish to the state inspector of oils and state auditor a summary of any and all inspections made by him during the month preceding, including the name and address of every consignor and the amount of inspection fees due. One copy of the monthly summary shall be retained at each port of entry. [1913, ch. 214, § 14; 1909, ch. 171, § 7; R. C. 1905, § 2219; 1890, ch. 107, §§ 4, 6; R. C. 1895, §§ 1762, 1764; 1901, ch. 128, § 9; 1903, ch. 129, § 7; 1905, ch. 141, § 7.]

§ 3072. Inspector and deputies shall not deal in petroleum products. Penalty. It shall be unlawful for the state inspector of oils or his deputies, to directly or indirectly, while in office, traffic in any of the illuminating oils, gasoline or other petroleum products which he has been appointed to inspect. Any person violating the provisions of this section shall be subject to a penalty of not exceeding five hundred dollars and be removed from office. [1913, ch. 214, § 15; 1909, ch. 171, § 15; R. C. 1905, § 2220; 1890, ch. 107,

§ 13; R. C. 1899, § 1771; 1901, ch. 128, § 12; 1903, ch. 129, § 8; 1905, ch. 141, § 8.]

§ 3073. State's attorney shall prosecute in certain cases. It shall be the duty of the state inspector of oils, or any of his deputies, or any person having cognizance of any violation of the provisions of this article, to forthwith make complaint to the state's attorney for the county in which the offense is alleged to have been committed, against the person or persons so offending, and it is hereby made the duty of such state's attorney to represent and prosecute on behalf of the people in this county all cases of offense arising under the provisions of this article. Any inspector or state's attorney who willfully refuses or neglects to carry out the provisions of this section shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be removed from office. [1913, ch. 214, § 16; 1909, ch. 171, § 9; R. C. 1905, § 2221; 1890, ch. 107, § 12; R. C. 1899, § 1770; 1901, ch. 128, § 13; 1903, ch. 129, § 9; 1905, ch. 141, § 9.]

§ 3074. False brand. Adulteration. Penalty. It shall be unlawful for any person, firm or corporation, whether vender, dealer or manufacturer, to knowingly have, use, sell, attempt to sell or deliver to any person in this state for illuminating purposes any of the illuminating oils hereinbefore mentioned, until the same shall have been inspected and approved, and branded, labeled or certified, according to the provisions of this article. It shall be unlawful for any person, firm, corporation, whether vender, dealer or manufacturer, to knowingly have, use, attempt to sell or deliver to any person in this state, any of the gasolines or petroleum products of less than one hundred (100) degrees Fahrenheit, flash test, until the same shall have been inspected and branded, labeled or certified, according to the provisions of this article. It shall be unlawful for any person to falsely brand and label any package, barrel or cask, or falsely certify to the contents of any tank car, tank or tank wagon containing said illuminating oils or said gasolines or said petroleum products of less than one hundred (100) degrees Fahrenheit, flash test, or to deliver therefrom, for the purpose of deceiving the purchaser thereof in any manner, as to the contents of the same. It shall be unlawful for any person to dispose of any empty barrel, cask or package that has once been used for said illuminating oils or gasolines or petroleum products of less than one hundred (100) degrees Fahrenheit, flash test, and has been branded or labeled in accordance with this article, before thoroughly cancelling, removing or effacing the inspection brand on the same.

It shall be unlawful for any person, firm or corporation to adulterate with paraffin or other substance for the purpose of sale or use, any of the illuminating oils specified in this article, nor shall any person knowingly use or sell or offer for sale for illuminating purposes, oils which shall emit a combustible vapor at a temperature of less than one hundred (100) degrees Fahrenheit, according to the test herein described.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be subject to a penalty not to exceed five hundred dollars fine, or imprisonment in the state penitentiary not exceeding one year, or both such fine and imprisonment. [1913, ch. 214, § 17; 1909, ch. 171, § 10; R. C. 1905, § 2222; 1890, ch. 107, § 7; R. C. 1899, § 1765; 1901, ch. 128, § 14; 1903, ch. 129, § 10; 1905, ch. 141, § 10.]

§ 3075. Containers. Penalty. It shall be unlawful for any person, firm or corporation to keep for sale or use or to sell any gasoline or petroleum products of less than one hundred (100) degrees Fahrenheit, flash test, in any barrel, cask, package, can or receptacle, unless the same is painted red, or to keep for sale or use or to sell, any petroleum, illuminating oils, in any barrel, cask, package, can or receptacle, if the same is painted red; provided, however, that in case of gasoline, benzine or naphtha being sold in bottles for cleaning and similar purposes, it shall be deemed sufficient if the contents

are so designated by red label securely pasted or attached thereto bearing the words, "gasoline," "benzine" or "naphtha," as the case may be; provided, however, that the provisions of this article shall not apply to any barrel, cask, package, can or other receptacle, the capacity of which is over sixty gallons.

Any person, firm or corporation violating any of the provisions of this section shall be punished by a fine of not more than twenty-five dollars, or by imprisonment in the county jail not to exceed sixty days, or both. [1913, ch. 214, § 18; R. C. 1905, §§ 2228, 2229; 1903, ch. 104, §§ 1, 2.]

§ 3076. **Penalty.** Whoever shall knowingly use, sell or cause to be sold unlawfully for illuminating purposes any of the illuminating oils specified in this article which are below one hundred (100) degrees Fahrenheit, flash test, as tested by the official test as herein described, shall be liable to any person purchasing such oil, or to any person injured thereby for any damage to any person or property arising from an explosion thereof. [1913, ch. 214, § 19; 1909, ch. 171, § 11; R. C. 1905, § 2223; 1890, ch. 107, § 10; R. C. 1899, § 1768; 1901, ch. 128, § 15; 1903, ch. 129, § 11; 1905, ch. 141, § 11.]

Defense of contributory negligence may be interposed, where such negligence was proximate and efficient cause of explosion. *Morrison v. Lee*, 22 N. D. 251, 38 L.R.A.(N.S.) 412, 133 N. W. 548, 1 N. C. C. A. 258.

Liability of manufacturer, packer or vender to persons not in privity of contract, for injuries from defects in articles sold in violation of statute. 48 L.R.A.(N.S.) 319.

Contributory negligence as defense in case of explosion of oil below standard. 38 L.R.A.(N.S.) 412.

§ 3077. **Removed from office in certain cases.** It shall be the duty of the governor, whenever he shall find that the state inspector of oils is guilty of refusal or neglect to discharge any of the duties enjoined upon him by this article, to promptly remove him from office. It shall be the duty of the state inspector of oils to promptly remove from office any of his deputies who shall prove to be unfaithful or dishonest in the discharge of his duties. [1913, ch. 214, § 20; 1909, ch. 171, § 13; R. C. 1905, § 2225; 1901, ch. 128, § 17; 1903, ch. 129, § 13; 1905, ch. 141, § 13.]

§ 3078. **Ports of entry designated, how.** The state inspector of oils is hereby authorized to designate as ports of entry ports where public necessity requires inspections should be made. For making inspection other than at points designated as ports of entry the state inspector of oils or his deputy shall be entitled, in addition to the fees prescribed, to actual traveling expenses, such expenses to be paid by the party for whom the inspection is made. [1913, ch. 214, § 21; 1909, ch. 171, § 14; R. C. 1905, § 2226; 1899, ch. 117, § 5; R. C. 1899, § 1773d; 1901, ch. 128, § 18; 1903, ch. 129, § 14; 1905, ch. 141, § 14.]

§ 3079. **Expenses paid out of general fund.** All expenses other than salaries shall be paid out of the general fund on the order of the state inspector of oils. [1913, ch. 214, § 22; 1909, ch. 171, § 15.]

§ 3080. **No exemption from inspection and fees.** Nothing in this article shall be construed to exempt from inspection and payment of fees any illuminating oils, gasoline, power oils or distillates. [1913, ch. 214, § 23.]

ARTICLE 70.—COAL MINE LICENSE AND STATISTICS.

§ 3081. **Coal mine license, how procured.** The operator of each and every coal mine operated in the state of North Dakota, and selling coal to the general public, shall annually, on or before the tenth day of July, after the passage and approval of this article, procure a license from the commissioner of agriculture and labor, for which he shall pay a fee of five dollars. [1907, ch. 50, § 1.]

§ 3082. **Statistics to be furnished.** There shall be kept in a book to be provided for that purpose, at each mine operated and selling coal to the general public, the following information: Name of the mine; its location; when

it began business; by whom owned; by whom operated; number of tons of coal mined; number of men employed; wages paid by the day, week, month and year; the total cost of operating the mine; the total amount of coal sold and the price received therefor, and such other statistical information as the commissioner of agriculture and labor may prescribe, to be kept by such mine, under the provisions of section 163; provided, that when the report of any operator of a coal mine in this state shows that the output of his mine has not been more than five hundred tons of coal for the year, the five dollars paid as license shall be returned to such operator. [1907, ch. 50, § 2.]

§ 3083. Report to commissioner of agriculture. It shall be the duty of all persons operating mines within this state, as provided in sections 3081 and 3082, to make a verified report to the commissioner of agriculture and labor, containing all the information to be kept by said mine operator, as provided in section 3082, together with such further information as the commissioner of agriculture and labor may require under the provisions of section 163. [1907, ch. 50, § 3.]

§ 3084. Penalty for failure to comply with law. Every mine owner and operator who shall operate any coal mine without first procuring the license herein provided for, or who shall willfully fail, neglect or refuse to comply with the provisions of this article, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be subject to a fine of one hundred dollars, or imprisonment in the county jail not exceeding thirty days, or both such fine and imprisonment, as the court may determine. [1907, ch. 50, § 4.]

ARTICLE 71.—COAL INSPECTION.

§ 3085. Oil inspector ex-officio coal inspector. In order to protect the interests of the consumers of coal shipped into the state of North Dakota, the provisions herein enacted are made incumbent upon the state oil inspector, who shall be ex-officio inspector of coal imported into the state. [1913, ch. 213, § 1.]

As to the state oil inspector, see section 3057 et seq.

§ 3086. Standards and tests. For the purpose of this article, coal marketed as anthracite shall meet as a standard the following requirements:

(All determinations shall be made on a moisture-free basis.) In such standard the ash should be under fifteen per cent (15%) ; the British thermal units should be over 12,000. Any coal marketed below this standard shall be sold at a price based upon the following scale of reduction, the price corrections authorized for anthracite due to variations in the British thermal unit value in "dry coal" below the standard herein specified and in ash content above said standard shall be determined in the following manner:

The prices to be paid shall be computed by dividing the market price at the point of sale by the British thermal unit value hereinbefore specified and multiplying by the actual determined British thermal unit value from which shall be subtracted ten cents (10c) per ton for each increase of one per cent (1%) in ash content above fifteen per cent (15%), as hereinbefore specified. For the provisions of this article, coal other than anthracite and marketed as bituminous coal shall meet as a standard the following requirements:

(All determinations shall be made on a moisture-free basis.) In such standard the ash should be under ten per cent (10%) and the British thermal units should be above thirteen thousand (13,000).

Any bituminous coal marketed below the standard shall be sold at a price based upon the following scale of reduction, the price corrections authorized for bituminous coal due to variations in British thermal unit value in the "dry coal" below the standard herein specified, and any ash content above said standard shall be determined in the following manner:

The price to be paid shall be computed by dividing the market price at the point of sale by the British thermal unit value hereinbefore specified and

multiplying by the actual determined British thermal unit value, from which shall be subtracted seven cents (7c) per ton for each increase of one per cent (1%) in ash content above ten per cent (10%), as hereinbefore specified. [1913, ch. 213, § 2.]

§ 3087. Duties and powers. It shall be the duty of the state oil inspector and his deputies to collect samples of anthracite and bituminous coals imported into this state when in the judgment of the state oil inspector there seems to be a need of so doing for the protection of the consumers; and in case of serious grievance upon the written request accompanied by a proper affidavit stating the party from whom the coal was purchased, the place and date of purchase and accompanied by such other information as may be required by the oil inspector, and provided that upon careful investigation there seems to be sufficient cause to warrant action, the state oil inspector or his deputies are hereby authorized to enter into or upon the premises of any dealer or vender of coal at any time for the inspection or taking of samples of anthracite or bituminous coal as herein specified. [1913, ch. 213, § 3.]

§ 3088. Samples, how secured. Samples of coal shall be taken from at least three ports of entry at intervals of not longer than ninety (90) days and all samples of coal taken for or subjected to tests under this article shall be promptly transmitted to the school of mines of the state university, and it shall then be the duty of the said school of mines to make the tests herein specified and report the results of said tests to the oil inspector. In securing samples, proper care shall be exercised to obtain an average sample of the lot to be tested and such sample shall not be less than fifty pounds or over one hundred pounds, which when tested at said school of mines shall be properly reduced and sampled for the necessary tests herein provided. [1913, ch. 213, § 4.]

An appropriation in section 5 of the act of 1913, above cited, for the purpose of making the tests, etc., was vetoed. Laws 1913, ch. 213, p. 334.

§ 3089. Report. It shall be the duty of the state oil inspector to make a biennial report to the governor of the state of the inspection of coal imported into the state as herein provided. [1913, ch. 213, § 6.]

As to biennial reports to the governor, see in general sections 95, 97, 98.

ARTICLE 72.—ABSTRACTERS.

§ 3090. Abstracters to give bonds. It shall be unlawful for any person, firm or corporation to engage or continue in the business of making or compiling abstracts of title to real estate in this state or to demand and receive pay for the same without first having for use in such business a complete set of abstract books or records of all instruments filed or of record in the office of the register of deeds in and for the county in which such business is to be conducted, or in good faith engaged in the preparation for not less than three months of such books or records, and without first filing in the office of the county auditor of the county in which such business is to be conducted, a surety or personal bond to the county in the penal sum of ten thousand dollars for each and every ten thousand inhabitants or major part of that number residing within such county as shown by the official federal or state census last taken prior to the filing of such bond, to be approved as to form and security by the board of county commissioners of such county, conditioned for the payment by such abstracters of any and all damages that may be sustained by or accrue to any person by reason or on account of any error, deficiency or mistake in any abstract or certificate of title or continuation of an abstract of title made and issued by such person, firm or corporation; provided, that in counties containing less than a major part of ten thousand inhabitants, the bond herein required shall be for not less than five thousand dollars. Provided, that if a personal bond is given there shall be at least three sureties, none of whom shall be officers or stockholders of the abstract

company and each of whom shall justify for the full amount of the bond. [1913, ch. 1; 1911, ch. 329, § 1; 1907, ch. 1; R. C. 1905, § 2231; 1899, ch. 1, § 1; R. C. 1895, § 1774; 1905, § 2.]

This section amends R. C. 1905, § 2231, which, with R. C. 1905, §§ 2232, 2233 and 2234, had been amended in Laws 1911, ch. 329, the latter having been vetoed, reinstated by mandamus in State ex rel. Watkins v. Norton, 21 N. D. 473, 131 N. W. 257, and finally repealed in Laws 1913, ch. 1, § 2.

Abstracters are liable to a purchaser of property who relies on their abstract, without regard to who paid for or ordered abstract. *Goldberg v. Sisseton Loan & Title Co.*, 24 S. D. 49, 140 Am. St. Rep. 775, 123 N. W. 266.

Liability of title abstractor. 12 L.R.A.(N.S.) 449; 26 L.R.A.(N.S.) 1207; 42 L.R.A.(N.S.) 176; 72 Am. St. Rep. 315.

Right of abstracters to have access to public records. 124 Am. St. Rep. 911.

§ 3091. Certificate issued, when. When any abstractor shall have filed his bond and the same shall have been approved as above provided, he shall be entitled to receive from such county auditor a certificate reciting that such bond has been duly approved and that the same has been filed in his office, which certificate shall be valid so long as such abstractor shall maintain his sureties upon the bond, unimpaired. [R. C. 1905, § 2232; 1889, ch. 1, § 2; R. C. 1899, § 1775.]

See note to section 3090.

§ 3092. Certificate of authority. It is the duty of the county auditor after the bond of any abstractor shall have been filed and approved to issue to such abstractor on demand a certificate of authority in writing, under his hand and official seal, which shall authorize him to make such abstracts. Such certificate shall continue in force for five years, unless recalled or cancelled as provided in the next section. After such certificate shall have been issued the person, firm or corporation holding the same during the continuance of such certificate shall have full access to all records of the county during office hours; and it is the duty of any person, firm or corporation holding such certificate, to furnish an abstract of the title to any tract of land in such county when requested to do so, on payment of the fees hereinafter provided. [R. C. 1905, § 2233; 1889, ch. 1, § 2; R. C. 1895, § 1776.]

See note to section 3090.

§ 3093. Additional security. The bond herein provided for may run during the continuance of such person, firm or corporation in such abstract business, not to exceed five years, and the board of county commissioners may at any time require such abstractor upon ten days' notice to furnish an additional bond, and show cause why the same should not be declared invalid, and the certificate thereof recalled and annulled, and if within such time such additional bond is not furnished and no sufficient reason is shown to the commissioners why the same should not be required, then the certificate issued to such abstractor shall be recalled and annulled. [R. C. 1905, § 2234; 1889, ch. 1, § 3; R. C. 1895, § 1777.]

See note to section 3090.

§ 3094. Appeal. The abstractor or complainant may have an appeal to the district court of such county from the decision of the board of county commissioners by preserving the evidence taken at the hearing, which shall be certified up by the county auditor of such county; and such appeal shall be summarily decided by the court on such evidence, and the costs of such appeal, including the furnishing of such evidence, shall be adjudged against the defeated party. [R. C. 1905, § 2235; 1889, ch. 1, § 4; R. C. 1899, § 1778.]

§ 3095. Penalty for violation. Any person, firm or corporation violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding one hundred dollars nor less than twenty-five dollars for each offense. [R. C. 1905, § 2236; 1889, ch. 1, § 5; R. C. 1899, § 1779.]

§ 3096. Officers' certificates to abstracts. The provisions of this article shall not be construed to prevent the register of deeds, county treasurer, and clerks of court of the different counties from certifying to abstracts

of title to lands from the records of the respective offices; but such officers shall be liable on their official bond for the faithful performance of all acts as abstracters. [R. C. 1905, § 2237; 1889, ch. 1, § 6; R. C. 1895, § 1780.]

Recording of abstracts, see section 5547.

§ 3097. Fees. For making and certifying to abstracts under the provisions of this article, the following fees and no more shall be allowed: For the first entry on any one abstract, one dollar; for each subsequent entry or transfer on such abstract, twenty-five cents; for entry relating to taxes, twenty-five cents; for entry relating to mechanics' liens, twenty-five cents; for entry as to judgments, which may constitute liens on the property so abstracted, fifteen cents for each name certified to; for certificate to abstract, twenty-five cents. It shall be the duty of such abstracters to continue any abstract so made by them, on the payment of twenty-five cents for each entry made thereon, and twenty-five cents for the certificate of continuation thereto. Each and every deed, mortgage, affidavit, lease, lis pendens, judgment, mechanic's lien or other instrument on file or of record in the offices of the registers of deeds or clerks of court affecting the title to the real estate so abstracted shall constitute an entry; for the abstracting of estates in county courts which are not recorded in the office of the register of deeds, such fees may be charged by such abstracters as may be reasonable, but in no case to exceed five dollars for each estate. [R. C. 1905, § 2238; 1889, ch. 1, § 7; R. C. 1895, § 1781.]

§ 3098. Seal. Any person, firm or corporation furnishing abstracts of title to real property under the provisions of this article shall first provide a seal, which seal shall have stamped thereon the name and location of such person, firm or corporation, and shall deposit with the county auditor an impression of such seal before the certificate mentioned in section 3092 shall issue, which seal shall be affixed to every abstract or certificate of title, issued by such abstracters. [R. C. 1905, § 2239; 1889, ch. 1, § 8; R. C. 1899, § 1782.]

§ 3099. Auditor to certify abstracts. Fees. It shall be the duty of the county auditor to attach his certificate to each abstract of title to real estate of his county that may be presented to him for that purpose, which certificate shall show the amount of taxes due and unpaid against, or tax title affecting the land described in such abstract, as the same may appear from the records of his office, and collect therefor the sum of twenty-five cents for each abstract so certified. He shall keep a book known as a fee receipt book in which shall be kept true and correct records of all fees received by him for any purpose, and it shall be his duty to deliver to the county treasurer to be turned into the general fund on the first day of each month all fees collected by him during the preceding month and take a receipt from the county treasurer therefor, and for each failure or refusal to comply with the provisions of this section he shall be liable to a fine not exceeding one hundred dollars. [1911, ch. 111; R. C. 1905, § 2240; 1901, ch. 1.]

The emergency section in the act of 1911, above cited, recites that "under the present law county auditors are retaining the moneys received as fees for certifying to abstracts and deeds owing to an ambiguity in the language of the present law."

ARTICLE 73.—PUBLIC WAREHOUSES.

§ 3100. Commissioners of railroads, powers and duties. The duties imposed by the provisions of this article and the powers conferred herein devolve upon the commissioners of railroads. [R. C. 1905, § 2241; 1891, ch. 126, § 1; R. C. 1899, § 1783.]

§ 3101. Commissioners of railroads. Duties. It shall be the duty of the commissioners of railroads to supervise the handling, weighing and storing of grain and seed; to establish all necessary rules and regulations for the weighing of grain and for the management of public warehouses of the state, so far as such rules and regulations may be necessary to enforce the

provisions of this article or any law in this state in regard to the same; investigate all complaints of frauds or oppression in the grain trade of this state, and correct the same. They shall revoke the license of any warehouse for cause upon notice and hearing. [1909, ch. 230; R. C. 1905, § 2242; 1891, ch. 126, § 2; R. C. 1899, § 1784.]

Law defining public warehouses and prescribing maximum charges constitutional. No deprivation of property or regulation of commerce. *State v. Brass*, 2 N. D. 482, 52 N. W. 408, affirmed in *Brass v. State*, 153 U. S. 391, 38 L. ed. 757, 14 Sup. Ct. Rep. 857.

Board of railroad commissioners may examine into sufficiency of bond given by grain elevator operator. *State ex rel. Dakota Trust Co. v. Stutsman*, 24 N. D. 68, 139 N. W. 83.

§ 3102. Rules to be published. The rules and regulations so established shall be printed and published by the commissioners of railroads in such manner as to give the greatest publicity thereto, and the same shall be in force and effect until they are changed or abrogated by such commissioners in a like public manner. [R. C. 1905, § 2243; 1891, ch. 126, § 3; R. C. 1899, § 1785.]

§ 3103. Railroad commissioners establish grades for grain. The board of railway commissioners of the state of North Dakota shall, before the first day of September of each year, establish grades of all kinds of grain bought or handled by any elevator or warehouse in this state, which shall be known as "North Dakota grades," which shall conform to the grades established at the terminal points, and the grades so established shall be printed and published in the manner required by section 3102; provided, that no such application shall be necessary except when changes are made in such grades, and then the changes so made only shall be published. And said board of railroad commissioners shall have supervision of the grading, weighing and shipping of all grain purchased or handled by public warehousemen in North Dakota, and all public warehousemen shall grade all grain purchased or handled by them in conformity with the established "North Dakota grades" as herein provided. Any person aggrieved at the weights or grades given by any warehouseman may appeal to the board of railroad commissioners, and it is hereby made the duty of said board to without delay inquire into said grievance and adjust the same in accordance with established standards. [1909, ch. 135, § 1.]

§ 3104. Agents at Minnesota terminals. Report to commissioners. It shall be the duty of the expert representatives at the terminal points of Minneapolis and Duluth appointed by law to sit with the Minnesota board of grain appeals, and to act as representatives of the grain shippers of North Dakota and look after their interests in all matters relating to the inspection, weighing, grading and docking of grain shipped from North Dakota, so far as the same may not be inconsistent with the laws of Minnesota or the rules and regulations of the railroad and warehouse commission of Minnesota. Said agents shall report all complaints and grievances to the board of railroad commissioners of this state, which shall receive all such reports and shall use all proper means to correct and remedy the same. [1909, ch. 135, § 2.]

An amendment to this section was vetoed in Laws 1911, ch. 319. The "expert representatives" referred to in this section are those which the governor was authorized to appoint in Laws 1909, ch. 134, referred to in the veto message above cited, from which it appears that the usefulness of those representatives has ceased and no compensation is now provided for them.

§ 3105. Grading of grain. All public warehouses within this state, as defined by section 3107, when requested by the seller, shall, before testing for grade any grain handled by them, remove therefrom and make due allowance for any dockage of such grain made by reason of the presence of straw, weed seeds, dirt or any other foreign matter. Such test shall be made by taking a fair sample of such grain and cleaning the same before testing for the grade of such grain. And no public warehouse within this state, as defined

in section 3107, shall grade any grain offered to it for sale in this state, after such request has been made, until due allowance has been made for such dockage and such dockage has been deducted or removed from such grain; and, when such dockage has been removed, deducted or allowance made for the same by such public warehouse, such warehouse shall proceed to test such grain for grade and shall grade the same as if such dockage had been removed, deducted or allowance made therefor as provided herein. [1913, ch. 176, § 1.]

§ 3106. Misdemeanor. Penalty for violation. Any person, association, copartnership or corporation, or the agent of any person, association, copartnership or corporation owning, operating or conducting the business of a public warehouse, in this state, who shall violate any of the provisions of this act [sections 3105, 3106] shall be guilty of a misdemeanor and shall be punished by a fine of not less than ten dollars nor more than one hundred dollars or by imprisonment in the county jail not less than ten nor more than thirty days or both such fine and imprisonment. [1913, ch. 176, § 2.]

§ 3107. Public warehouse defined. All buildings, elevators and warehouses, and all grist and flour mills doing a shipping business in this state, erected and operated, or which may hereafter be erected or operated by any person, association, copartnership, corporation or trust, for the purpose of buying, selling, storing, shipping or handling grain for profit, are declared public warehouses, and the person, association, copartnership or corporation owning or operating such buildings, elevators or warehouses, which are now, or may hereafter be located or doing business within this state, whether such owners or operators reside within this state or not, are public warehousemen within the meaning of this article, and none of the provisions of this article shall be construed so as to permit discrimination with reference to buying, receiving and handling grain of standard grades or in regard to the persons offering such grain for sale, storage and handling at such public warehouses, while the same are in operation. [R. C. 1905, § 2244; 1899, ch. 126; R. C. 1899, § 1786; 1901, ch. 140.]

Officer of corporation manufacturing flour is not guilty of larceny in refusing to deliver or pay for wheat delivered to it. *Ex parte Bellamy*, 17 N. D. 140, 114 N. W. 376.

§ 3108. License, how obtained. Fee, how determined. A biennial state license must be maintained through the commissioners of railroads to expire on the first day of August of each odd numbered year and for each and every public grain warehouse in operation in this state. No license issued under this article shall describe more than one public grain warehouse, or grant permission to operate any other public grain warehouse than the one therein described. The license fee is hereby fixed at eight dollars for warehouses of a capacity of twelve thousand bushels or less, and ten dollars for warehouses of a capacity of over twelve thousand bushels and not to exceed twenty-five thousand bushels, and twelve dollars for all warehouses over twenty-five thousand bushels and not to exceed fifty thousand bushels, and twenty dollars for all warehouses over fifty thousand bushels and not to exceed eighty thousand bushels, and twenty-five dollars for all warehouses over eighty thousand bushels capacity for each public grain warehouse; provided, that before any license is issued the person applying therefor shall file with the commissioners of railroads the receipt of the state treasurer showing that the applicant has paid into the state treasury the amount of said license fee. [1907, ch. 112; R. C. 1905, § 2245; 1895, ch. 115, § 1; R. C. 1899, § 1787.]

Warehouse used exclusively for owner's goods or products as subject of license tax. 39 L.R.A.(N.S.) 803.

§ 3109. License to be conspicuously posted. Penalty. The license thus obtained shall be posted in a conspicuous place in the public warehouse so licensed. Every such license shall expire on the first day of August next following the issuance thereof, and no license shall run for a longer period than one year. Any person or association who shall transact the business of public

warehouseman without first procuring a license as herein provided shall, on conviction, be fined in a sum not less than twenty-five dollars for each and every day such business is carried on. [R. C. 1905, § 2246; 1895, ch. 115, § 2; R. C. 1899, § 1788.]

§ 3110. Refund of license fee of public grain warehouses authorized. The board of railroad commissioners are hereby authorized to refund the license fee of a public grain warehouse, or so much thereof as in their judgment would be just and reasonable when satisfactory proof is furnished said board that such warehouse or elevator has been transferred to some other person, firm or corporation, and application is made by the new owner for a license for the same warehouse or elevator, for the same biennial period for which the original license was issued. Provided, that where a warehouse or elevator is destroyed by fire or other cause, the license fee may be prorated in such amount as the board of railroad commissioners may determine. [1911, ch. 244.]

§ 3111. Bond to be filed. The proprietor, lessee or manager of any public warehouse, elevator or flour mill, or any individual buying or shipping grain for profit in this state, and who does not pay cash in advance for the grain so bought shall file with the commissioner of railroads a bond to the state with good and sufficient sureties to be approved by such commissioners in the penal sum of not less than five thousand nor more than seventy-five thousand dollars, in the discretion of the commissioners, conditioned for the faithful performance of their duties as public warehousemen, and the compliance with all the laws of this state in relation thereto. One bond only need be given for any line of elevators, mills or warehouses owned, controlled or operated by one individual, firm or corporation. Such bond, specifying the location of each elevator, mill or warehouse operated by such individual, firm or corporation, shall be in sufficient amount to protect the holders of outstanding tickets. [1913, ch. 236, § 6; R. C. 1905, § 2247; 1891, ch. 126, § 5; R. C. 1895, § 1789.]

Board of railroad commissioners may examine into sufficiency of bonds given by grain elevator operators and may for such purpose summon any witness before them that they please. *State ex rel. Dakota Trust Co. v. Stutsman*, 24 N. D. 68, 139 N. W. 83.

Liability of warehouseman for injury to agricultural products by weevil. 26 L.R.A. (N.S.) 1114.

Liability of warehouseman for goods damaged or destroyed while stored in building other than that called for by contract. 24 L.R.A. (N.S.) 1117.

§ 3112. Warehouse receipts, what to contain. All owners of such elevators and warehouses shall, upon the request of any person delivering grain thereat, give a warehouse receipt therefor, subject to the order of the owner or consignee, which receipt shall bear date corresponding with the receipt of the grain, and shall state upon its face the quantity and grade upon the same. All warehouse receipts shall be consecutively numbered, and no two receipts bearing the same number and series shall be issued during the same year. No warehouse receipt shall be issued except upon actual delivery of grain into such warehouse. No such warehouseman shall insert in any warehouse receipt issued by him any language in anywise limiting or modifying his liability as imposed by the laws of this state. [R. C. 1905, § 2248; 1891, ch. 126, § 6; R. C. 1899, § 1790.]

Receipts do not give holder possession of the grain. *Best v. Muir*, 8 N. D. 44, 77 N. W. 95; *Plano Mfg. Co. v. Jones*, 8 N. D. 315, 79 N. W. 338; *Towne v. St. Anthony & Dakota El. Co.*, 8 N. D. 200, 77 N. W. 608.

Refusal to deliver grain to holder of receipt prima facie conversion. *Marshall v. Andrews*, 8 N. D. 364, 79 N. W. 851.

Pledgee of warehouse receipts may sue in his own name. *Citizens' Nat. Bank v. Elevator Co.*, 13 S. D. 1, 82 N. W. 186.

Warehouse receipts as evidence of the value. *Willard v. Elevator Co.*, 10 N. D. 400, 87 N. W. 996.

Inapplicable to issuance of receipt by general warehouseman on property in warehouse. *State use of Hart-Parr Co. v. Robb-Lawrence Co.*, 17 N. D. 257, 16 L.R.A. (N.S.) 227, 115 N. W. 846.

One depositing grain and receiving general storage ticket loses control over identical wheat deposited. *Best v. Muir*, 8 N. D. 44, 77 N. W. 95; *Plano Mfg. Co. v. Jones*, 8 N. D. 315, 79 N. W. 338.

Evidence of value at time of demand necessary to recovery in conversion. *Towne v. Elev. Co.*, 8 N. D. 200, 77 N. W. 608.

Unrecorded contract of sale not binding upon elevator company without actual knowledge of contents of contract. *Towne v. Elev. Co.*, 8 N. D. 200, 77 N. W. 608.

In suit for conversion it is necessary to prove the value of wheat at time of demand. *Towne v. Elev. Co.*, 8 N. D. 200, 77 N. W. 608.

Replevin will not lie against an elevator company for wheat held under general storage elevator tickets. *Best v. Muir*, 8 N. D. 44; *Plano Mfg. Co. v. Jones*, 8 N. D. 315; *Marshall v. Andrews & Gage*, 8 N. D. 364.

A pledgee of warehouse receipts may institute action in his own name and account to pledgor for amount he may recover. *Bank v. Elev. Co.*, 13 S. D. 2, 82 N. W. 186.

Warehouse receipts and their transfer and negotiability. 84 Am. Dec. 752.

Receipts of warehousemen, whether conclusive against them on the question of quality. 100 Am. Dec. 243.

Effect as to warehousemen of recitals in their receipts. 19 L.R.A. 302.

Issuance and delivery by warehouseman of receipt for his own property as a constructive transfer of possession essential to a valid pledge. 16 L.R.A.(N.S.) 227; 30 L.R.A.(N.S.) 552.

Effect of putting warehouse receipts payable to bearer into another's possession to estop owner as against purchaser in good faith. 29 L.R.A.(N.S.) 257.

§ 3113. What storage receipts shall express. Each storage receipt issued in this state shall expressly provide that at the option of the holder of such receipt the kind, quality and quantity of grain for which such receipt was issued shall be, on his demand, delivered back to him, at any terminal point or at the same place where it was received upon the payment of a reasonable charge per bushel for receiving, handling, storage and insurance charges; and in case of terminal delivery the payment, in addition to the above, of the regular freight charges on the gross amount called for by the tickets being surrendered — such charges to be fixed by express terms in the storage receipt at the time of receiving the grain at the elevator or warehouse, and at the time of issuing the receipt, but no charges shall be made for cleaning grain unless such grain has been actually cleaned. Nothing in this section shall be construed to require the delivery of the identical grain specified in the receipt so presented, but an equal amount of the same grade of grain or in lieu thereof a receipt issued by a bonded warehouse or elevator company doing business at terminal points, for an equal amount of grain of the same grade; provided, that grain placed in a special bin be excepted from the provisions of this section. [R. C. 1905, § 2249; 1891, ch. 126, § 7; R. C. 1899, § 1791; 1905, ch. 110.]

Effect as to warehousemen of recitals in their receipts. 19 L.R.A. 302.

Intent as ingredient of offense by warehouseman selling goods for which he has issued receipt. 27 L.R.A.(N.S.) 160.

§ 3114. Bailment not a sale. Insolvency. Whenever any grain shall be delivered to any person, association, firm or corporation doing a grain, warehouse or grain elevator business in this state and the receipt issued therefor provides for the delivery of a like amount and grade to the holder thereof in return, such delivery shall be a bailment and not a sale of the grain so delivered, and in no case shall the grain so stored be liable to seizure upon process of any court in an action against such bailee, except actions by owners of such warehouse receipts to enforce the terms thereof, but such grain shall at all times in the event of the failure or insolvency of such bailee be first applied exclusively to the redemption of outstanding warehouse receipts for grain so stored with such bailee. And in such event grain on hand in any particular elevator or warehouse shall first be applied to the redemption and satisfaction of receipts issued by such warehouse. [R. C. 1905, § 2250; 1891, ch. 126, § 8; R. C. 1899, § 1792.]

Bailment relationship is created by delivery of storage receipt provided for in this section. *Anderson v. Farmers' Co-op. Shipping & Elevator Co.*, 29 S. D. 450, 136 N. W. 1123.

Bailment of cereals in custody of warehousemen. 94 Am. St. Rep. 220.

§ 3115. Larceny. Punishment. Each person and each member of any association, firm or corporation doing a grain, warehouse or grain elevator business in this state, who shall, after demand, tender and offer as provided in the last section, willfully neglect or refuse to deliver to the person making such demand, the full amount of grain of the grade or the market value thereof, which such person is entitled to demand of such bailee, shall be deemed guilty of larceny. [R. C. 1905, § 2251; 1891, ch. 126, § 9; R. C. 1899, § 1793.]

Intent as ingredient of offense by warehouseman selling goods for which he has issued receipt. 27 L.R.A.(N.S.) 160.

§ 3116. Rates of storage. The charges for storage and handling of grain shall not exceed the following rates: For receiving, elevating, insuring, delivering and twenty days' storage, two cents per bushel. Storage rates after the first twenty days, one-half cent per each fifteen days or fraction thereof, and not exceeding five cents for six months. The grain shall be kept insured at the expense of the warehouseman for the benefit of the owner. [R. C. 1905, § 2252; 1891, ch. 126, § 11; R. C. 1899, § 1794.]

Not unconstitutional as deprivation of property or regulation of commerce. *State v. Brass*, 3 N. D. 482, 52 N. W. 408, affirmed in *Brass v. State*, 153 U. S. 391, 38 L.ed. 757, 14 Sup. Ct. Rep. 857.

Legislative regulation of warehouse rates. 33 L.R.A. 178; 6 L.R.A.(N.S.) 836.

Power of equity to regulate charges of public warehouseman. 24 L.R.A.(N.S.) 399.

§ 3117. Penalty for violation of this article. Any person who shall knowingly cheat, or falsely weigh any wheat or other agricultural products, or who shall violate any of the provisions of this article shall be deemed guilty of a misdemeanor, and shall on conviction thereof be subject to a fine of not less than two hundred dollars nor more than one thousand dollars and be imprisoned in the penitentiary for a period not exceeding one year, in the discretion of the court. [R. C. 1905, § 2253; 1891, ch. 126, § 12; R. C. 1899, § 1795.]

The words "this article" do not include sections 3103, 3104, 3105, or 3106.

§ 3118. Warehouse on railroad right of way. Application. Any person, firm or corporation desirous of erecting and operating at or contiguous to any railway station or siding a warehouse or elevator for the purchase, sale, shipment or storage of grain for the public for hire may make application in writing, containing a description of that portion of the right of way of said railroad on which said person, firm or corporation desires to erect a warehouse or elevator, and the size and capacity of the warehouse or elevator proposed to be erected and the time for which it is desired to maintain said warehouse or elevator, to the person, firm or corporation owning, leasing or operating the railway at such station or siding for the right, privilege and easement of erecting and maintaining for the time stated in said application, and for reasonable compensation such warehouse or elevator as aforesaid, upon the right of way appertaining to such railway at such siding or station, and within and between the outside switches of the yard of such railway station or siding and upon paying or securing in the manner hereinafter prescribed reasonable compensation for the right, privilege and easement aforesaid, shall absolutely and unconditionally be entitled to the same. [R. C. 1905, § 2254; 1903, ch. 142, § 1.]

Use of railroad right of way for purposes of warehouse as against owner of fee. 36 L.R.A.(N.S.) 519.

§ 3119. Compensation. Notice to applicant. The application provided in section 3118 shall also state the amount the applicant deems a reasonable compensation for the right, privilege and easement he desires to acquire, and said applicant shall tender and pay to such person, firm or corporation, from whom such easement is sought, the sum stated in such application, and in case the amount so named and tendered is not accepted, and the parties cannot agree on the amount to be paid for such right, privilege and easement, the same shall be ascertained, assessed and determined by proceedings in the district court of the county in which the station or siding at which the right, privilege and easement sought is situated, which court is hereby given full

jurisdiction in the premises, and shall at all times be deemed open and in session for the purposes of this article. It shall be the duty of any person, firm or corporation to whom application is made for the right to erect and maintain an elevator or warehouse under the provisions of this article, to within ten days after the receipt of said application notify said applicant in writing of the acceptance or rejection of the amount stated in said application to be reasonable compensation for the right, privilege and easement sought to be acquired, and in case said person, firm or corporation fails to notify the applicant within said ten days, said person, firm or corporation shall be deemed to have accepted said amount, and upon payment or tender thereof said applicant shall be deemed to have acquired the right, privilege and easement applied for. [R. C. 1905, § 2255; 1903, ch. 142, § 2.]

§ 3120. Procedure in district court. Proceedings in the district court shall be instituted and carried on as follows: The party seeking the right, privilege and easement aforesaid shall present to and file with the district court a petition in writing and under oath specifying and describing the right, privilege and easement sought and the time for which the same is sought and the fact that the parties to the proceedings are unable to agree upon the amount of compensation therefor. A copy of the application for such privilege shall be attached to said petition and thereupon it shall at once be the duty of the court, by its order in writing, to fix upon a place and a time not more than thirty days thereafter where and when the court will try, ascertain, assess and determine the amount of such compensation; a certified copy of which order at least twenty days before the time so fixed upon, shall be served upon the party from whom the right, privilege and easement is sought, as summons are served in civil actions of said court, and such service when made shall be ample notice to and summons for the party so served to appear and join in the proceedings and shall be ample to give the court full jurisdiction over the party against whom the proceedings are instituted and the property involved in the proceedings. [R. C. 1905, § 2256; 1903, ch. 142, § 3.]

§ 3121. Trial. Election of gross sum or annual rental. Writ. At the time and place so fixed for ascertaining, assessing and determining the compensation aforesaid, the court shall immediately proceed to try said matter, without a jury, if the parties consent, and if they do not consent and if the time and place fixed for said hearing is at a general or special term of said court where a petit jury has been summoned, the court shall proceed to a hearing of such matter with a jury selected and sworn from the panel present at such term, in the same manner as jurors are selected in civil actions, and if the regular panel is exhausted before a jury is secured, talesmen may be summoned. In case said proceedings are made returnable at any other time than at a term where a petit jury shall have been summoned, the court shall make an order requiring the selection of twenty-four jurors from those returned by the county commissioners, which jury shall be drawn and selected in the same manner as provided by law for the drawing of jurors for general terms of the district court, and from the jurors so returned, a jury shall be selected the same as in civil actions and the trial shall proceed after the manner of trials in civil actions, and the court or jury, as the case may be, shall find and assess compensation both in the form of an annual rental and in the form of a gross sum for the right, privilege and easement sought, and immediately after the finding or verdict has been made the party against whom the proceedings have been taken shall elect whether to receive the annual rental or the gross sum found, and in case such election is not made by this party, then the other party to the proceedings may make such election, and after election is made as aforesaid, judgment shall be rendered adjudging, among other things, that upon payment of the gross sum found or the annual rental found, yearly in advance, as the case may be, the party instituting the proceedings shall be entitled to the right, privilege and easement of erecting

and maintaining the elevator or warehouse asked for in the application and petition aforesaid, and for the time therein specified; and thereupon the party in whose favor said judgment is rendered shall be entitled to a writ of execution in proper form to immediately invest such party with the right, privilege and easement aforesaid. [R. C. 1905, § 2257; 1903, ch. 142, § 4.]

§ 3122. Forfeiture. Appeal. Costs. In case the annual rental is elected the same shall be paid, yearly in advance, and if not so paid after thirty days' default the right, privilege and easement aforesaid shall be absolutely forfeited. Within thirty days after the entry of said judgment as hereinbefore provided, but not later, an appeal may be taken by either party to the supreme court, but such appeal shall not stay or hinder the use or enjoyment to the fullest extent of the right, privilege and easement asked for by the petition and conferred by the judgment, if the party instituting the proceedings shall make and file a bond with sureties, to be approved by the court, in an amount double the gross sum or annual rental, conditioned to pay such sum or rental and to abide and satisfy any judgment the supreme court may render in the premises. Costs and disbursements as in civil actions shall, in each court, be paid by the unsuccessful party. If the finding of the court or jury is for a less or the same amount as tendered by the petitioner before instituting the proceedings, then the petitioner shall be deemed the successful party; but if the amount found is larger than the sum tendered, then the petitioner shall be deemed the unsuccessful party. In the supreme court, if the judgment or order appealed from is reversed or modified, the appellant shall be deemed the successful party; but if the judgment or order appealed from is affirmed, the respondent shall be deemed the successful party. [R. C. 1905, § 2258; 1903, ch. 142, § 5.]

§ 3123. Warehouses deemed public. Open, when. All elevators and warehouses erected and maintained under the provisions of this article shall be deemed public elevators and public warehouses and shall be subject to legislative control and shall be kept open for business for the public for reasonable business hours from the fifteenth day of September in each calendar year to the fifteenth day of January in each succeeding calendar year. Any person, firm or corporation who fails to comply with the provisions of this section shall forfeit the rights, privileges and easements acquired under this article. [R. C. 1905, § 2259; 1903, ch. 142, § 6.]

§ 3124. Erection of warehouses. Any persons, firms or corporations availing themselves of the provisions of this article shall within sixty days after the amount to be paid for the easement acquired thereunder is finally determined, by agreement or by proceedings in court, commence the erection of the warehouse or elevator stated in the application referred to in section 3118 and complete the same within ninety days thereafter, and in case of failure to comply with the provisions of this section they shall be deemed to have abandoned the right, privilege and easement acquired, and the part or portion of the railroad right of way described in their application shall be subject to selection by other applicants who may desire to avail themselves of the provisions of this article. [R. C. 1905, § 2260; 1903, ch. 142, § 7.]

§ 3125. Side tracks provided by railroad company. Every railroad company or corporation organized under the laws of this state, or doing business therein, shall upon application in writing provide reasonable side track facilities and running connections between its main track and elevators and warehouses upon or contiguous to its right of way at such stations; and every such railroad corporation shall permit connections to be made and maintained in a reasonable manner with its side tracks to and from any warehouse or elevator without reference to its size, cost or capacity, where grain is or may be stored; provided, that such railroad company shall not be required to construct or furnish any side tracks except upon its own land or right of way; provided, further, that such elevators and warehouses shall not be

constructed within one hundred feet of any existing structure and shall be at safe fire distance from the station buildings and so as not essentially to conflict with the safe and convenient operation of the road; and where stations are ten miles or more apart the railroad company when required so to do by the commissioners of railroads shall construct and maintain a side track for the use of shippers between such stations. [R. C. 1905, § 2261; 1890, ch. 189, § 3; R. C. 1899, § 1798.]

See note to section 4715.

ARTICLE 74.—CERTIFICATE OF INSPECTION AND WEIGHT.

§ 3126. Requiring the return of certificate of weight and inspection. Every elevator company, corporation, copartnership or association of individuals, operating any elevator, building or place in this state for the purchase, storage or deposit of any grain or other farm commodity, shall return to the local buyer at the place where such grain or other farm commodity is purchased, stored or deposited, the official certificate of inspection, together with the weighmaster's certificate for any such grain or other farm commodity sold, whether said grain is sold in this state or in any foreign state where such grain is weighed and inspected. [1907, ch. 113, § 1.]

It is to be observed that the phrase "or other farm commodity" withdraws this section, to that extent, from the definition in section 3107.

§ 3127. Duty of agent or local buyer. It shall be the duty of the local buyer or agent of the elevator company or other association enumerated in section 3126, to post in a conspicuous place in such elevator building or place the official weighmaster's certificate and the official inspector's certificate, and have the same at all times so that the public may inspect the same. [1907, ch. 113, § 2.]

§ 3128. When certificates are to be returned. The elevator company or other association enumerated in section 3126, shall forthwith, upon the sale of each car or part of car of grain or other farm commodity, return the certificates provided for in this article. [1907, ch. 113, § 3.]

§ 3129. Penalty. Any elevator company, corporation, copartnership or other association of individuals, or any person who shall violate any of the provisions of this article, shall be guilty of a misdemeanor and all right to transact any business in this state shall be forfeited. [1907, ch. 113, § 4.]

ARTICLE 75.—UNIFORM ACCOUNTING.

§ 3130. Railroad commission to formulate a system of uniform accounting. It shall be the duty of the railroad commission of this state to plan and formulate a uniform system of accounting for public elevators and warehouses defined in section 3107. To formulate such system of accounting the commission may employ one or more expert accountants, who shall receive a compensation for their services to be determined by the commission. When a uniform system of accounting has been formulated, as herein provided for, the railroad commission shall recommend the adoption of such system of accounting to every firm, association, copartnership or corporation conducting a public elevator or warehouse in this state, as defined in section 3107. [1913, ch. 236, § 1.]

§ 3131. Examination. The railroad commission may and whenever requested by not less than fifteen per cent of the stockholders of any association, copartnership, firm or corporation conducting such public elevator or warehouse, the railroad commission shall install such uniform system of accounting, and on request of the percentage of stockholders as before required shall send a competent examiner to examine the books and financial accounts of such elevator or warehouse. Whenever a request for the examination of the financial accounts of any association, copartnership, firm or corporation has been made to the railroad commission, as provided herein, an

examination shall thereafter be made at least once every year until the board of railroad commissioners shall be requested to discontinue such examination by resolution adopted by the stockholders at any annual meeting. When such examination has been made the examiner shall immediately report the result thereof to the president and secretary of such association, copartnership, firm or corporation and to the railroad commission. [1913, ch. 236, § 2.]

§ 3132. **Certificate.** If the board of railroad commissioners is satisfied from such examination that such person, association, copartnership or corporation is solvent and its method of doing business is such as is likely to be beneficial to all of its members or persons interested therein the board shall issue a certificate, countersigned by the examiner, to the agent or manager, which certificate shall be kept posted conspicuously in the warehouse or elevator of such person, association, copartnership or corporation stating that said methods of doing business are sound and that such person, association, copartnership or corporation is solvent, and that its books and accounts are properly kept. If the affairs and methods of doing business of such person, association, copartnership or corporation shall not seem sound or satisfactory to the board of railroad commissioners the board shall issue a certificate or statement, countersigned by the person who made the examination, stating in what particular and in what respects the business methods practiced or methods of keeping books and accounts of such person, association, copartnership or corporation are not deemed safe. The said board shall mail a copy of said statement or certificate to each of such shareholders or stockholders as may have requested said board to make such examination. The board shall also send a copy thereof to the president and secretary of such association, copartnership or corporation. [1913, ch. 236, § 3.]

§ 3133. **Penalty for interfering with examiner.** Any person who interferes with such examination (examiner) in the performance of his duty shall be guilty of a misdemeanor, and shall be fined not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100), or be imprisoned in the county jail not less than ten nor more than thirty days, or by both such fine and imprisonment, in the discretion of the court. [1913, ch. 236, § 4.]

§ 3134. **Fees.** For making such installation and examination such firm, association, copartnership or corporation shall pay this examiner a fee of five dollars (\$5) per day for each day or fraction thereof that the examiner is absent from the capitol for the purpose of making such examination, plus his actual traveling and hotel expenses, together with the actual cost of such books and blanks as may be necessary for the installation of a complete system of uniform accounting; such fees shall be paid into the state treasury and used for the purpose of paying the expenses incurred under the provisions of this article. Such expenses shall be audited and paid in the same manner as other expenses are audited and paid. [1913, ch. 236, § 5.]

ARTICLE 76.—REPORTS OF ELEVATORS AND WAREHOUSES.

§ 3135. **Report of grain shipments.** The owner, agent or operator of every elevator, warehouse or grain station shall make an annual sworn statement and report to the commissioner of agriculture and labor on or before the twentieth day of August in each year. Such report shall show the amount and kind of grain bought and shipped during the preceding year ending July thirtieth. [1907, ch. 111, § 1.]

§ 3136. **Report of track or independent buyers.** Every station agent of every railroad shall report to the commissioner of agriculture and labor annually as provided in the preceding section, the amount of grain shipped by independent or track buyers or by other individuals not the owners or operators of any warehouse or elevator at his station. [1907, ch. 111, § 2.]

§ 3137. **Commissioner of agriculture furnishes blanks.** It shall be the duty of the commissioner of agriculture and labor to furnish all persons required

to make the reports provided for in this article with the necessary and appropriate blanks on which to make and return such report. [1907, ch. 111, § 3.]

ARTICLE 77.—STORAGE COMPANIES.

§ 3138. License keepers of public warehouses. The board of railroad commissioners may license any suitable person, persons or corporations established under the laws of this state and having their place or places of business within this state to carry on business of public storage companies or public warehousemen, who may keep and maintain public warehouses for the storage of goods, wares and merchandise, etc., excepting grain in bulk. Said license may be obtained upon the payment annually into the treasury of the state of the sum of ten dollars, to be credited to the general fund of the state. [1913, ch. 239; R. C. 1905, § 2262; 1901, ch. 141, § 1.]

Warehouseman can create pledge by issuance of receipt for property owned by him in warehouse as security for indebtedness. *State use of Hart-Parr Co. v. Robb-Lawrence Co.*, 17 N. D. 257, 16 L.R.A. (N.S.) 227, 115 N. W. 846.

Duty of warehousemen in the care of property. 136 Am. St. Rep. 212.

Liability of warehousemen and who liable as. 24 Am. Dec. 245.

Receipts of warehousemen, whether conclusive against them on the question of quality. 100 Am. Dec. 243.

§ 3139. Bonds. Each person or corporation licensed under section 3138 shall give a bond to the treasurer of the state, in the penal sum of five thousand dollars, with good and sufficient sureties to be approved by the board of railroad commissioners, for the faithful discharge of the duties of a public warehouseman. [1913, ch. 239; R. C. 1905, § 2363; 1901, ch. 141, § 2.]

§ 3140. Subject to action in name of state. When any one licensed to do business as a public storage company or as a public warehouseman fails to perform his duty or violates any of the provisions of this article, any person, persons or corporation injured by such failure or violation may, with the consent of the board of railroad commissioners and the attorney-general, bring an action in the name of the state, but to his or their own use, in any court of competent jurisdiction, on the bond of such company or warehouseman. In such action the person, persons or corporation in whose behalf the action is brought shall file with the court a satisfactory bond for costs, and the state shall not be liable for any costs. [1913, ch. 239; R. C. 1905, § 2264; 1901, ch. 141, § 3.]

§ 3141. Insuring property stored. Every public storage company or warehouseman shall when requested thereto in writing by any party placing property with him in storage, cause such property to be insured for whom it may concern; and such storage company or warehouseman shall not be held liable for the loss or damage by fire to the owner or owners of any property stored with him, unless such request to insure is made as aforesaid and he or they fail to comply therewith; provided, that such loss or damage is not occasioned through the negligence of himself, his agents, servants or employees; provided, that such storage company or warehouseman may, in case they deem it necessary and proper, insure such property without such request, in writing, in which event the cost of such insurance shall be and become a valid lien and charge thereon as provided in section 3145. [R. C. 1905, § 2265; 1901, ch. 141, § 4.]

§ 3142. Title of goods stored. The title of goods and chattels stored with a public storage company or in a public warehouse shall pass to a purchaser or pledgee, by the indorsement and delivery to him of the storage company's or warehouseman's negotiable receipt therefor, signed by the party to whom such receipt was originally given, or by an indorsee of such receipt, subject to all liens and charges thereon for warehousing, advanced charges and insurance. [R. C. 1905, § 2266; 1901, ch. 141, § 5.]

As to delivery of warehouse receipt as pledge of property without formality of transfer of possession. *State use of Hart-Parr Co. v. Robb-Lawrence Co.*, 17 N. D. 257, 16 L.R.A. (N.S.) 227, 115 N. W. 846.

Assignment and delivery of storage ticket passes title to property represented and to storage ticket. *St. Anthony & D. Elevator Co. v. Dawson*, 20 N. D. 23, 126 N. W. 1013, Ann. Cas. 1913B, 1337.

Receipts of warehousemen and their transfer and negotiability. 84 Am. Dec. 752.

§ 3143. Storage charges. No discrimination. Every such storage company or warehouseman shall receive, forward and store all property offered for such purposes by any person, persons or corporation, impartially and at as low a rate of charge, and in a manner and on terms, and in quantities as favorable to the party offering such property as it or he at the same place receives, forwards and stores, in the ordinary course of business, property of like description and in similar quantities offered by any other person, persons or corporation. No such storage company or warehouseman shall discriminate against any particular person, persons or corporation, or subject them or him to any undue and unreasonable prejudice or disadvantage. Any court having jurisdiction shall have power to enforce the provisions of this article by injunction or other suitable process. [R. C. 1905, § 2267; 1901, ch. 141, § 6.]

Legislative regulation of warehouse rates. 33 L.R.A. 178; 6 L.R.A.(N.S.) 836.

Power of equity to regulate charges of public warehouseman. 24 L.R.A.(N.S.) 399.

§ 3144. Penalty. Every such storage company or warehouseman who neglects or refuses to comply with the provisions of section 3143 shall forfeit, for every such offense, not less than fifty nor more than five hundred dollars, to be recovered in an action by the party offering the property for storage. [R. C. 1905, § 2268; 1901, ch. 141, § 7.]

§ 3145. Lien thereon. Every such storage company or warehouseman who stores, keeps, cares for or advances money on, or insures personal property, shall have a lien thereon for his reasonable charges for storing, keeping, caring for and insuring the same, and for the charges he may have advanced on the same and legal interest thereon. [R. C. 1905, § 2269; 1901, ch. 141, § 8.]

§ 3146. Unlawful without license. It shall be unlawful for any person, persons or corporation, not duly licensed as herein provided, to conduct or carry on the business of a public storage company or public warehouseman in the state. [R. C. 1905, § 2270; 1901, ch. 141, § 9.]

§ 3147. Guilty of misdemeanor. Punishment. Any person, persons or corporation who shall violate the provisions of this article shall be deemed guilty of a misdemeanor, and shall be punishable by a fine of not exceeding one thousand dollars. [R. C. 1905, § 2271; 1901, ch. 141, § 10.]

§ 3148. To whom applied. This article shall not be construed to apply to any implement transfer company or to any railroad or transportation company; provided, such railroad or transportation company shall, within forty-eight hours after receipt of such goods, wares and merchandise, notify the consignee of the arrival thereof in writing, and in case such consignee or his assigns fails and neglects to call for or receive said goods, wares or merchandise within thirty days after such receipt of same by any railroad or transportation company as aforesaid, said railroad or transportation company must then turn over said goods, wares or merchandise to a licensed bonded storage company or warehouseman in the city, town or village in which said goods, wares or merchandise are then located, if any there be, and if not, to the licensed bonded storage company or warehouseman in the city, town or village on the line of the carrier nearest to the place where such goods, wares or merchandise are then located, upon the payment of the charges of said carrier thereon, which charges thus paid by said bonded storage company or warehouseman to said carriers shall be a lien on said goods, wares or merchandise. [1913, ch. 235; R. C. 1905, § 2272; 1901, ch. 141, § 11.]

ARTICLE 78.— COLD STORAGE WAREHOUSES.

§ 3149. Definition of terms. The term "cold storage" as used in this article shall be construed to mean a place artificially cooled to a temperature of forty degrees Fahrenheit or below, but shall not include such a place in a private home, hotel or restaurant or refrigerator cars.

The term "cold stored" as used in this article shall be construed to mean the keeping of "articles of food" in "cold storage" for a period exceeding thirty days.

The term "articles of food" as used in this article shall be construed to mean and include fresh meat and fresh meat products, except in process of manufacture, fresh food, fish, game, poultry, eggs and butter. [1913, ch. 94, § 1.]

Liability of bailee for damages to goods received for cold storage. 52 L.R.A. 106; 38 L.R.A. (N.S.) 994; 90 Am. St. Rep. 295.

§ 3150. License to operate cold storage warehouse, how obtained. Fee. Any person, firm or corporation desiring to operate a public cold storage or refrigerating warehouse, shall make application in writing to the food commissioner of the experiment station at Fargo for that purpose, stating the location of its plant or plants. On receipt of the application the food commissioner shall cause an examination to be made into the sanitary condition of said plant or plants, and if found to be in a sanitary condition and otherwise properly equipped for the business of cold storage, the food commissioner shall cause a license to be issued authorizing the applicant to operate a cold storage or refrigerating warehouse for and during the period of one year. The license shall be issued upon payment by the applicant of a license fee of ten dollars (\$10) to the food commissioner. [1913, ch. 94, § 2.]

§ 3151. Suspension of license for unsanitary condition. In the event that any place or places, or any part thereof, covered by a license, under the provisions of this article, shall at any time be deemed by the food commissioner to be in an unsanitary condition, it shall be the duty of the food commissioner to notify licensee of such condition, and upon the failure of the licensee to put said specified place or places, or the specified part thereof, in a sanitary condition within a designated time, it shall be the duty of the food commissioner to prohibit the use under its license of such specified place or places, or part thereof, as he deems in an unsanitary condition until such time as it may be put in a sanitary condition. [1913, ch. 94, § 3.]

§ 3152. Records and reports of food products in storage. It shall be the duty of any person, firm or corporation licensed to operate a cold storage or refrigerating warehouse, to keep an accurate record of the receipts and the withdrawals of the articles of food, and the food commissioner shall have free access to these records at any time. Every such person, firm or corporation shall, furthermore, submit a quarterly report to the food commissioner, setting forth in itemized particular the quantity of food products held in cold storage. Such quarterly reports shall be filed on or before the sixth of January, April, July and October of each year, and the reports so rendered shall show the conditions existing on the first day of the month in which the report is filed. The food commissioner shall have the authority to require such reports to be made at more frequent intervals than the times herein specified, if in the judgment of the food commissioner more frequent reports shall be needed in the interest of a proper enforcement of this article, or for other reasons affecting the public welfare. [1913, ch. 94, § 4.]

§ 3153. Cold storage of diseased or tainted articles. No article of food intended for human consumption shall be placed in cold storage if diseased or tainted or deteriorated so as to injure its keeping qualities, or if not slaughtered, handled and prepared for storage in accordance with the pure food and sanitary laws and such rules and regulations as may be prescribed by the food commissioner for the sanitary preparation of food products for cold

storage, under the authority hereinafter conferred. Any article of food if intended for use other than human consumption before being cold stored shall be marked by the owner in accordance with forms prescribed by the food commissioner (under authority hereinafter conferred) in such a way as to plainly indicate the fact that such articles are not to be sold for human food. [1913, ch. 94, § 5.]

§ 3154. Inspection and supervision of warehouses. It shall be the duty of the food commissioner to inspect and supervise all cold storage or refrigerating warehouses in this state, and to make such inspection of the entry of articles of food therein as the food commissioner may deem necessary to secure proper enforcement of this article. The food commissioner, or his duly authorized agents, inspectors or employes, shall be permitted access to such establishments, and all parts thereof, at all reasonable times for purposes of inspection and enforcement of the provisions of this article. The said food commissioner may also appoint and designate such person or persons as he deems qualified to make the inspections herein required. [1913, ch. 94, § 6.]

§ 3155. Date of receipt and withdrawal marked on containers. All articles of food when deposited in cold storage shall be marked plainly on the containers in which they are packed or on or in connection with the individual article with the date of receipt, and when removed from cold storage shall be marked with the date of withdrawal, in accordance with such forms as may be prescribed by the food commissioner, under the authority hereinafter conferred. [1913, ch. 94, § 7.]

§ 3156. Period of allowable cold storage. No person, firm or corporation, as owners or having control, shall keep in cold storage any article of food for a longer period than twelve calendar months, except with the consent of the food commissioner, as hereinafter provided. The food commissioner may, upon application, grant permission to extend the period of storage beyond twelve months for a particular consignment of goods, if the goods in question are found, upon examination, to be in proper condition for further storage at the end of twelve months. The length of time for which further storage is allowed shall be specified in the order granting the permission. A report on each case in which such extension of storage may be permitted, including information relating to the reason for the action of the food commissioner, the kind and amount of goods for which the storage period was extended, and the length of time for which the continuance was granted, shall be included in the annual report of the food commissioner. [1913, ch. 94, § 8.]

§ 3157. Sale of cold storage goods regulated. It shall be unlawful to sell, or to offer or expose for sale, uncooked articles of food which have been held in cold storage without notifying persons purchasing or intending to purchase the same, that they have been so kept, by the display of a sign marked "cold storage goods sold here," and it shall be unlawful to represent or advertise as fresh goods articles of food which have been held in cold storage. [1913, ch. 94, § 9.]

§ 3158. Return of article to cold storage prohibited. It shall be unlawful to return to cold storage any article of food that has once been released from such storage and placed on the market for sale to consumers, but nothing in this section shall be construed to prevent the transfer of goods from one cold storage or refrigerating warehouse to another, provided that such transfer is not made for the purpose of evading any provision of this article. [1913, ch. 94, § 10.]

§ 3159. Food commissioner to make rules and regulations. The food commissioner may make rules and regulations to secure a proper enforcement of the provisions of this article, including rules and regulations with respect to the sanitary preparation of articles of food for cold storage, the use of marks,

tags or labels and the display of signs, and the violation of such rules shall be punished on conviction as provided in section 3160. [1913, ch. 94, § 11.]

§ 3160. **Penalty for violation of provisions.** Any person, firm or corporation violating any of the provisions of this article shall, upon conviction, be punished for the first offense by a fine not less than ten (\$10) dollars and not more than one hundred (\$100) dollars, and for the second offense by a fine of not less than fifty (\$50) dollars nor more than five hundred (\$500) dollars, or by imprisonment for not more than thirty days, or by such fine and imprisonment. [1913, ch. 94, § 12.]

§ 3161. **What constitutes violation of the law.** The doing of anything prohibited by this article shall be evidence of the violation of the provisions of this article relating to the things so prohibited, and the omission to do anything directed to be done shall be evidence of a violation of the provisions of this article relative to the things so directed to be done. [1913, ch. 94, § 13.]

ARTICLE 79.—SUPERIOR GRAIN AND WAREHOUSE COMMISSION.

§ 3162. **Governor appoints member, when. Term of office. Salary.** The governor of this state shall, within sixty days after receipt by him of a request by the governor of the state of Wisconsin so to do, recommend one or more persons who shall have had at least five years' experience in the handling or grading of grain, for appointment upon the grain and warehouse commission for the city of Superior, Wisconsin, and shall, within said period, forward to the governor of the state of Wisconsin the name or names of the person or persons so recommended. [R. C. 1905, § 2273; 1893, ch. 191, § 1; 1905, ch. 115.]

§ 3163. **Term of office. Salary.** The person appointed by the governor of Wisconsin, if he has been recommended by the governor of North Dakota, shall be paid the sum of three hundred dollars per annum from the date of his appointment for the period of two years, which shall be in addition to all sums paid him under the laws of the state of Wisconsin. [R. C. 1905, § 2274; 1903, ch. 191; 1905, ch. 115.]

ARTICLE 80.—HABITUAL DRUNKARDS.

§ 3164. **Treatment of drunkards. Method of procedure.** Any inhabitant of this state, who is of kin to, or a friend of an habitual drunkard as herein-after defined, may petition the board of county commissioners of the county where such drunkard resides for leave to send such drunkard, at the expense of the county, to any reputable institute for the treatment of drunkenness, designated by a committee of three persons to be appointed by the governor; which petition shall set forth the name, age and condition of such drunkard; that such drunkard or those of his kin petitioning are not financially able to incur the expense of such cure, and that such habitual drunkard is willing and has agreed to attend such institute for the cure of drunkenness, which petition shall be verified by the person making such request, and shall contain, in addition thereto, the written agreement of such habitual drunkard, his desire to take such treatment, and the names of three reputable taxpayers in the county where such habitual drunkard resides, stating that they are familiar with the facts set forth in the petition, and with the financial circumstances of the drunkard and of the petitioner and think it a proper case for assistance by the board of county commissioners. [R. C. 1905, § 2275; 1895, ch. 68, § 1; R. C. 1899, § 1800.]

Validity of statute providing for governmental assistance of. 7 L.R.A. (N.S.) 1196.

§ 3165. **Duties of county commissioners.** When such petition is filed the board of county commissioners, if satisfied from examination that the facts set forth in the petition are true, that such drunkard has been a resident

of the county for six months, and of his own free will desires to take such treatment, shall send such drunkard to some reputable institute for the treatment of such disease, which will treat the same at the lowest figure; but such board shall not be compelled to send such person to the institute making the lowest bid, unless, in its judgment, the best interests of such drunkard will be promoted thereby; and the board shall order that the expense for the treatment be paid out of the county treasury in the manner that other claims and bills against the county are paid. The treatment of such drunkard shall at all times be under the supervision of the board of county commissioners, who may at any time it deems proper, discontinue the treatment of such drunkard, or change him from one institute to another, as to it shall seem best. No county shall be required to send the same person a second time at its expense to any such institute. [R. C. 1905, § 2276; 1895, ch. 68, § 2; R. C. 1899, § 1801.]

§ 3166. Drunkard defined. A drunkard, as defined herein, includes a person who uses alcoholic, spirituous, malt, fermented or intoxicating liquors, morphia, laudanum, cocaine, opium or other narcotics to such a degree as to deprive him of a reasonable degree of self control. [R. C. 1905, § 2277; 1895, ch. 68, § 3; R. C. 1899, § 1802.]

§ 3167. May reimburse the county. Any person who shall be treated for drunkenness under the provisions of this article, and who desires to reimburse the county at whose expense he has been treated, may pay to the county treasurer of such county the amount expended for his treatment, and the treasurer shall give him a receipt for the amount so paid, which receipt shall state that such payment is for reimbursement as aforesaid, and the amount so paid shall be covered into the treasury of the county. [R. C. 1905, § 2278; 1895, ch. 68, § 4; R. C. 1899, § 1803.]

ARTICLE 81.—PREVENTING INFANT BLINDNESS.

§ 3168. Duty of physician, midwife or other attendant. That whenever a child is born, the physician, midwife or any other person who is present and engaged as professional attendant, shall report said birth on a blank supplied by the state board of health to the health officer having jurisdiction, within thirty-six hours after such birth occurs. Said birth certificate in addition to other data ordered by the state board of health shall have upon it this question: "Were precautions taken against ophthalmia neonatorum?" And it shall be a violation of this act for any physician or midwife in professional attendance at a birth to fail to report same as herein commanded or to omit answering the said question, "Were precautions taken against ophthalmia neonatorum?" All bills or charges for professional services rendered at a birth shall be unlawful if report is not made as herein commanded. [1911, ch. 188, § 1.]

§ 3169. Same. It shall be the duty of all physicians or midwives in professional attendance upon a birth to always carefully examine the eyes of the infant, and if there is the least reason for suspecting of disease of the eyes then said physician or midwife in professional attendance shall apply such prophylactic treatment as may be recognized as efficient in medical science. [1911, ch. 188, § 2.]

§ 3170. Same. Exception. Should one or both eyes of an infant become inflamed, swollen or reddened, or show any unnatural discharge or secretion at any time within two weeks after its birth, and no legally qualified physician is in attendance upon the infant at that time, it shall be the duty of its parents, or in their absence, whoever is caring for said infant to report the fact in writing within six hours after discovery, to the health officer having jurisdiction. Provided, said report to said health officer need not be made from recognized hospitals. [1911, ch. 188, § 3.]

§ 3171. Duty of health officer. Upon receipt of a report as set forth in section 3170, health officers shall direct the parents or whoever has charge of such infant suffering from such inflammation, swelling, redness or unnatural secretion or discharge of the eyes, to immediately place it in charge of a legally qualified physician or in charge of the city or township physician if unable to pay for medical services. [1911, ch. 188, § 4.]

§ 3172. Penalty. Any violation of the provisions of this act shall be punished by a fine of not less than ten dollars nor more than fifty dollars. [1911, ch. 188, § 5.]

ARTICLE 82.—NEWSPAPERS QUALIFIED TO DO LEGAL PRINTING.

§ 3173. Newspapers qualified to do legal printing. File copies with historical society. Before any newspaper in this state shall be qualified to publish any legal notice, or any matter required by law to be printed or published in some newspaper in this state, or any public notices for any county, city or other municipality within this state, such newspaper must have been established at least one year—at least one page of the same actually printed at the place designated in the date line—and have been in regular and continuous circulation during that time with a bona fide subscription list of at least one hundred and fifty regular and continuous subscribers. Such newspaper must contain at least four pages of five columns to the page, said columns to be not less than eighteen inches in length and twelve ems pica in width, with not less than four columns of reading or news matter; or must contain eight pages of four columns to the page, or its equivalent, the columns thereof to be not less than twelve inches in length; provided, that in counties where there is no newspaper published having the above prescribed qualifications, any newspaper at the county seat of said county shall be entitled to publish such legal notices, even though it may not have been established six months; provided, further, that in counties in which no newspaper is published any notices required by law to be published may be published in a newspaper printed in an adjoining county, having a general circulation in said county. It shall be the duty of the owner or publisher of every legal newspaper in the state to send to the state historical society of North Dakota, to such address as shall be designated by the secretary thereof, two copies of each issue of such newspaper. [R. C. 1905, § 2279; 1897, ch. 98; R. C. 1899, § 1804; 1905, ch. 139.]

Statute authorizing improvements strictly pursued; resolution must specifically designate work to be done. *Mason v. City of Sioux Falls*, 2 S. D. 640, 51 N. W. 770, 39 Am. St. Rep. 802; *McLauren v. Grand Forks*, 6 D. 397, 43 N. W. 710.

City empowered to improve streets may contract to straighten stream running through it. *McGuire v. Rapid City*, 6 D. 346, 43 N. W. 706, 5 L.R.A. 752.

Applicable only when street improvement is to be paid for by special assessment. *Lidgerwood v. Michalek*, 12 N. D. 348, 97 N. W. 541.

Cities empowered to lay out and open streets and exercise right of eminent domain. *Lidgerwood v. Michalek*, 12 N. D. 348, 97 N. W. 541.

As to appropriation for land taken for public street. *Fargo v. Keeney*, 11 N. D. 484, 92 N. W. 836.

Only one street can be included in single pavement improvement. *Whittaker v. Deadwood*, 23 S. D. 538, 122 N. W. 590.

As to power of city to make improvements and reimburse itself through special assessments. *Pine Tree Lumber Co. v. Fargo*, 12 N. D. 360, 96 N. W. 357.

Publication of a mortgage-sale notice in a paper complying with the statutory requirements is sufficient, though not the paper published nearest the mortgaged premises. *Trenery v. Ann Mont. Co.*, 11 S. D. 506, 78 N. W. 991.

§ 3174. Publisher to file affidavit. It shall be the duty of the owner or manager of any newspaper in this state, before such newspaper can be awarded any contract for public printing of any nature whatsoever, or publish any legal notices of any kind or nature, to file with the county auditor of

the county in which such newspaper is published a verified statement setting forth the number of regular and continuous subscribers and the length of time such newspaper has been established and in general circulation. [R. C. 1905, § 2280; 1890, ch. 120, § 2; R. C. 1899, § 1805.]

Charging entire cost of improvement to adjoining property is constitutional. *Webster v. City of Fargo*, 9 N. D. 208, 82 N. W. 732; *Rolph v. City of Fargo*, 7 N. D. 640, 76 N. W. 242, 42 L.R.A. 646; *Roberts v. Bank*, 8 N. D. 504, 79 N. W. 1049.

Assessment per foot front is constitutional, though one lot twice as deep as other. *Tripp v. City of Yankton*, 10 S. D. 516, 74 N. W. 447.

All property abutting on portion of street improved may be assessed for cost of improving such portion including street intersections. *Brandhuber v. Pierre*, 21 S. D. 447, 113 N. W. 569.

Front-foot rule valid and constitutional. *Whittaker v. Deadwood*, 23 S. D. 538, 128 N. W. 590.

§ 3175. Penalty. Any person, association or corporation publishing any legal notices or doing any public printing contrary to the provisions of this article, shall be liable to a fine of not less than twenty-five dollars nor more than two hundred dollars, and to a forfeiture of all pay for any such printing. [R. C. 1905, § 2281; 1890, ch. 120, § 3; R. C. 1899, § 1806.]

§ 3176. Public printing to be done in the state. Voucher for printing, what to contain. All state, county and other public printing, binding and blank book manufacturing, blanks and other printed stationery shall be done only by established and qualified printing and publishing houses that shall have been established and in continuous business in this state not less than one year, except as in this section otherwise provided, and where practicable shall be awarded to established institutions in the county for which such printing is required; provided, that the rates charged for such printing, binding, blanks and other supplies shall not exceed [by] more than fifteen per cent the sum or sums the same class and quality of work can be secured for from publishing houses outside the state. In case any board or official empowered to secure public printing and binding as provided herein, shall ascertain that there exists any combination, agreement or understanding by and between two or more publishers or publishing houses in this state, directly or indirectly fixing the prices to be charged for the printing mentioned in this section, or where prices in excess of the maximum rates prescribed herein are charged, then and in that event the provisions of this section shall not apply and officers and boards empowered to secure public printing, in relation to which any such combination, agreement or understanding as mentioned herein exists, [from publishing houses outside the state.]* Every voucher for public printing and binding mentioned in this section shall have thereon or attached thereto a duly verified affidavit setting forth that the prices charged are reasonable and just and in accordance with law; that no agreement, combination or understanding exists with any other person, firm or corporation in the printing and publishing business, fixing the charges therein for such printing and binding, and that no agreement or understanding exists by which a division of any portion of the amounts charged has been or is to be made, either directly or indirectly, with any board or member thereof, or any person or official authorized or empowered to secure public printing mentioned in this section. Any person, firm or corporation violating the provisions of this section shall be guilty of a misdemeanor. [1907, ch. 185, § 1; R. C. 1905, § 2282; 1899, ch. 125; R. C. 1899, § 1807.]

County printing must be done within state. Not repugnant to constitution. Does not discriminate against nonresidents. *Tribune v. Barnes*, 7 N. D. 591, 75 N. W. 904.

*Words in brackets are so in Sess. Laws 1907, ch. 185, § 1.

CHAPTER 39.

WOOL MARKET.

§ 3177. **Markets, how established.** If any city or village in this state shall in any year provide a building wherein not less than one hundred thousand pounds of wool may be stored free of charge from June fifteenth to August thirty-first, it may direct its clerk to notify the commissioner of agriculture and labor on or before May first, in such year, of the fact that provision has been made, stating the regulations established by such city for receiving, storing and marketing wool, and the quantity of wool which will probably be marketed at such city in that year. [R. C. 1905, § 2283; 1891, ch. 127, § 1; R. C. 1899, § 1808.]

§ 3178. **Proclamation by commissioner of agriculture and labor.** The commissioner of agriculture and labor shall thereupon make proclamation to the sheep raisers of this state, to the manufacturers of woollen goods and to the wool buyers of this state and other states, by notices in newspapers, circulars and such other means as he shall deem most effective, that a wool market will be held at such city, naming the same, stating the beginning and duration of such market, the provision for free storage, the quantity of wool likely to be received, and such other facts as he may deem proper for publication. [R. C. 1905, § 2284; 1891, ch. 127, § 2; R. C. 1899, § 1809.]

§ 3179. **Wool to be held free of liens, etc.** Any person purchasing any wool while the same is stored in any building thus provided for between June fifteenth and August thirty-first, both inclusive, shall hold the wool so purchased free and clear of any and all liens, claims and incumbrances of which he does not have notice at the time he purchases and pays for the same, and such purchaser shall not be liable in any action either for the delivery of such wool or for the damages to the holder of any lien or incumbrance on such wool. [R. C. 1905, § 2285; 1891, ch. 127, § 3; R. C. 1899, § 1810.]

§ 3180. **Expenses of commissioner.** The commissioner of agriculture and labor shall make a verified and itemized statement of his expenses and disbursements incurred under the provisions of this chapter and file the same with the state auditor, who shall thereupon issue his warrant on the state treasurer therefor, but such expenses shall not in any one year exceed in the aggregate the sum of two hundred dollars. [R. C. 1905, § 2286; 1897, ch. 51; R. C. 1899, § 1811.]

CHAPTER 40.

SOLDIERS AND SAILORS.

ARTICLE 1. BURIAL, §§ 3181-3185.

2. PREFERMENT FOR OFFICIAL APPOINTMENT, §§ 3186, 3187.

ARTICLE 1.—BURIAL.

§ 3181. **State to pay funeral expenses, when.** All honorably discharged soldiers, sailors or marines who served in the army, navy or marine corps of the United States during the war of the Rebellion, who shall hereafter die within this state and whose relatives and friends are unable or unwilling to defray the expenses of their funeral, shall be buried at the expense of this state: but such funeral expenses, including cost of burial lot, shall not in any case exceed the sum of fifty dollars. [R. C. 1905, § 2287; 1887, ch. 151, § 1; R. C. 1899, § 1812.]

§ 3182. **Interment.** The interment shall be in this state and shall not be made in any cemetery or plot used exclusively for the burial of the pauper dead. [R. C. 1905, § 2888; 1887, ch. 151, § 2; R. C. 1899, § 1813.]

Legislature not limited to actual increase in value in making assessment for local improvements. *Webster v. City of Fargo*, 9 N. D. 208, 82 N. W. 732; *Rolph v. City of Fargo*, 7 N. D. 640, 76 N. W. 242.

Statutory requirements of publication of notice mandatory. *McLauren v. Grand Forks*, 6 D. 397, 43 N. W. 710.

Proceedings to improve street and levy tax therefor presumed regular, unless contrary is shown. *Phillips v. Sioux Falls*, 5 S. D. 524, 59 N. W. 881.

Tax invalid when levied upon abutting property for street improvements without statutory authority. *Pickton v. City of Fargo*, 10 N. D. 469, 88 N. W. 90.

§ 3183. Duty of county judge. Upon notice to the county judge of the death of any soldier, sailor or marine within his county, it shall be the duty of such judge to appoint a suitable person to carry into effect the provisions of this article in reference to the burial of such deceased soldiers, sailors or marines, for which service the person so appointed shall receive a fee not to exceed three dollars. It shall also be the duty of such judge immediately to notify the secretary of war of the death of any such soldier, sailor or marine, furnishing him with the name, age, date of birth, date of death, designating the company, regiment and name of the organization in which such soldier, sailor or marine served, and request the secretary of war to furnish a headstone for such deceased soldier, sailor or marine, under the provisions of an act of congress authorizing the secretary of war to erect headstones over the graves of union soldiers who have been interred in private, city or village cemeteries, approved February third, 1879; and when such headstone is so furnished it shall be the duty of the county judge or other person designated by him for such purpose, to cause the grave of such soldier, sailor or marine to be marked with such headstone; and the expense of erecting the same, not exceeding in any case the sum of five dollars, shall be paid by the state. [R. C. 1905, § 2289; 1887, ch. 151, § 3; R. C. 1899, § 1814.]

Damages must be assessed before street grade is changed. *Searle v. City of Lead*, 10 S. D. 312, 73 N. W. 101; *Whittaker v. City of Deadwood*, 12 S. D. 608, 82 N. W. 202.

Grade should be established before enactment of ordinance declaring necessity for grading. *Whittaker v. City of Deadwood*, 12 S. D. 608, 82 N. W. 202.

§ 3184. Duty of other officers. All expenses under this article shall be approved, allowed and certified to in duplicate by the county judge of the county in which such soldier, sailor or marine died or is buried, which duplicate certificate shall be delivered by such judge to the county auditor of the county, the original of which shall be forwarded by him at once to the state auditor, the duplicate to remain on file in his office. Upon the receipt by the state auditor of such certificate he shall draw his warrant on the state treasurer in favor of the county judge for the amount specified therein, and the county judge shall pay the same to the person entitled thereto. [R. C. 1905, § 2290; 1887, ch. 151, § 4; R. C. 1899, § 1815.]

§ 3185. Appropriation. There is hereby appropriated out of the state treasury a sum sufficient to carry out the provisions of this article. [R. C. 1905, § 2291; 1887, ch. 151, § 5; R. C. 1899, § 1816.]

ARTICLE 2.—PREFERMENT FOR OFFICIAL APPOINTMENT.

§ 3186. Preferred for appointment. In each public department and upon all public works of the state and of the cities and villages therein, honorably discharged union soldiers and sailors of the late war shall be preferred for appointment, and age, loss of limb or other physical impairment which does not in fact incapacitate shall not be deemed to disqualify them, if they possess the requisite qualifications and business capacity necessary to discharge the duties of the position involved. [R. C. 1905, § 2292; 1887, ch. 205, § 1; R. C. 1899, § 1817.]

That applicant was a soldier must be made known to appointing power at time of appointment. *Thomas v. Commissioners*, 1 S. D. 452, 47 N. W. 529.

Validity of statute giving veterans preference in appointment to office. 10 L.R.A. (N.S.) 825.

§ 3187. Officials to comply with this article. All officials or other appointing power in the public service shall comply with the provisions of the last section. [R. C. 1905, § 2293; 1887, ch. 205, § 2; R. C. 1895, § 1818.]

CHAPTER 41.

AMENDMENTS TO CONSTITUTION.

§ 3188. Amendments to be published. Whenever any amendment to the constitution of this state is referred to the legislative assembly to be chosen at the next general election after the session in which such amendment is first proposed, the same shall be published for three months previous to the time of making such choice in one weekly paper in each county in which a weekly paper is published, once in the first month, once in the second month and four times in the third month. [R. C. 1905, § 2294; 1891, ch. 46, § 1; R. C. 1899, § 1819.]

§ 3189. Papers, how selected. The paper in which such publication is made shall be designated by the secretary of state. The secretary of state in making such designation shall as far as possible endeavor to select the paper having the largest circulation. [R. C. 1905, § 2295; 1891, ch. 46, § 2; R. C. 1899, § 1820.]

§ 3190. Fees. Accounts, how audited. The compensation for such publication shall be at the rate of twenty-five cents per square of twelve lines of solid brevier type or its equivalent, to each newspaper designated to publish such amendment. The state auditor, upon receipt of an account of the expenditure required by the provisions of this chapter, duly certified as correct by the secretary of state, shall draw his warrant on the state treasurer for the amount due each of such papers as shown by such account. [R. C. 1905, § 2296; 1891, ch. 46, §§ 3, 4; R. C. 1899, §§ 1821, 1822.]

CHAPTER 42.

COUNTIES AND COUNTY OFFICERS.

- ARTICLE 1. COUNTY ORGANIZATION IN UNORGANIZED TERRITORY, §§ 3191-3198.**
2. CHANGING COUNTY LINES, §§ 3199-3204.
 3. DIVISION OF COUNTIES, §§ 3205-3232.
 4. COUNTY SEATS, §§ 3233-3244.
 5. ORGANIZATION OF MCKENZIE COUNTY, §§ 3245-3249.
 6. CORPORATE POWERS AND LIABILITIES, §§ 3250, 3251.
 7. STATE ACCOUNTS WITH COUNTIES, §§ 3252-3256.
 8. COUNTY OFFICERS, §§ 3257-3259.
 9. COUNTY COMMISSIONERS, §§ 3260-3311.
 10. COUNTY BUDGET, §§ 3312-3314.
 11. DEPOSITARIES OF COUNTY FUNDS, §§ 3315-3329.
 12. REGISTER OF DEEDS, §§ 3330-3340.
 13. COUNTY TREASURER, §§ 3341-3365.
 14. COUNTY AUDITOR, §§ 3366-3375.
 15. STATE'S ATTORNEYS, §§ 3376-3381.
 16. CONTINGENT FUND FOR STATE'S ATTORNEY, §§ 3382-3386A.
 17. CLERK OF DISTRICT COURT, §§ 3387-3389.
 18. SHERIFF, §§ 3390-3404.
 19. CORONER, §§ 3405-3424.
 20. COUNTY SURVEYOR, §§ 3425-3437F.
 21. PUBLIC ADMINISTRATOR, §§ 3438-3448.
 22. COUNTY BONDS, §§ 3449-3456.
 23. BONDS FOR COUNTY BUILDINGS, §§ 3457-3470.
 24. BONDS FOR SEED GRAIN, §§ 3471-3490.
 25. CERTIFICATE OF DEBT LIMIT, § 3491.

ARTICLE 1.— COUNTY ORGANIZATION IN UNORGANIZED TERRITORY.

§ 3191. How organized. Petition. Any unorganized territory in this state having a population of at least one thousand bona fide inhabitants and com-

prising an area of not less than twenty-four congressional townships, may become organized into a county by presenting to the governor a written petition signed by at least one hundred and fifty bona fide residents of such territory, which petition shall contain the name of the proposed county, and describe its boundaries, and set forth that it has the requisite number of bona fide inhabitants for organization, and request him to organize it as a county under the name stated in the petition, and as hereinafter provided. [1907, ch. 63, § 1; R. C. 1905, § 2300; 1885, ch. 40, § 1; R. C. 1895, § 1823.]

Selection of county seat on organization of county is temporary until submitted to electors at general election. *State ex rel. Simons v. Nyquist*, 22 S. D. 200, 116 N. W. 754.

Exact typographical boundaries not necessary to "county seat." *Fall Riv. County v. Powell*, 5 S. D. 49, 58 N. W. 7.

§ 3192. Duty of governor. When the petition described in section 3191 has been presented to the governor, he shall first satisfy himself as to its sufficiency, and also that the proposed county has the requisite area and number of bona fide inhabitants for a county organization, and that in fixing the boundary of the proposed county congressional township lines and natural boundaries have been observed as nearly as may be. If he is satisfied as to the foregoing requirements, it shall be his duty to grant the petition and proceed at once to complete the organization of such county, as provided in the next section. [1907, ch. 63, § 2; R. C. 1905, § 2301; 1885, ch. 40, § 2; R. C. 1895, § 1824.]

§ 3193. Temporary county seat located. Officers appointed. Upon the granting of the petition for the organization of such county, and within thirty days thereafter, the governor is empowered and it is hereby made his duty by written order to locate a temporary county seat therein at such place as the greatest number of bona fide residents of such county shall designate by petition to the governor, and within the same period to appoint a full set of county officers for such county, including three county commissioners, and the governor is empowered and it is hereby made his duty to fill such vacancies in such offices as may exist by reason of the failure of any appointee to qualify. [1907, ch. 63, § 3.]

§ 3194. Officers qualify. The county commissioners so appointed shall first qualify and shall proceed at once to fix the amounts of the bond of all officers where the amounts are not fixed by law. All officers appointed, as by this article provided, shall qualify within thirty days after their appointment, and enter upon the discharge of their respective duties, and shall hold their respective offices until their successors are elected and qualified. [1907, ch. 63, § 4.]

§ 3195. County divided into commissioner districts. The county commissioners appointed under this article shall, after they have qualified, immediately convene at the place selected as the county seat, and proceed to the discharge of their duties as such county commissioners, and shall divide the county into three commissioners' districts, which shall be numbered from one to three. Three commissioners shall be elected at the next general election, one from each of said districts, one of whom shall be chosen for the term of two years, two for four years, and thereafter as provided by law. [1907, ch. 63, § 5.]

§ 3196. Records transcribed. It shall be the duty of the county commissioners of such new county to cause to be transcribed into the proper books all the records or deeds or other instruments relating to real property in such new county, and all other records affecting the property rights of the residents and property owners of such new county, and the officers of such new county shall have the right to examine the records of other counties affecting such property rights, and to transcribe the same. It shall be the duty of the proper officers of the county containing such original records to certify to the copies

thus transcribed, and such transcribed records shall have the same effect in all respects as original records. [1907, ch. 63, § 6.]

§ 3197. Terms of court. Any county organized under this article shall constitute a subdivision of the judicial district of which the territory embraced in it was originally a part, and the terms of district court for such new county shall be held at such times as are fixed by the presiding judge until fixed by law. [1907, ch. 63, § 7.]

§ 3198. Annexed territory part of county. Such portions of the state, not organized into counties, as are annexed to any organized county shall for judicial and other purposes be deemed to be within the limits and a part of the county to which they are annexed. [R. C. 1905, § 2322; R. C. 1899, § 1846.]

Laws of 1907, ch. 59, repealed by numerical designation every section in chapter 28, articles 1 and 2 of the Political Code of 1905 (R. C. 1905, §§ 2297-2322) except section 2322 therein, which is therefore here retained as section 3198.

Attaching lands for judicial purposes is not "annexing." *State v. Board*, 1 S. D. 292, 46 N. W. 1127.

ARTICLE 2.—CHANGING COUNTY LINES.

§ 3199. County lines. How changed. When a majority of the legal voters residing in any territory, not less than one congressional township, as appears by the vote cast for secretary of state at the last general election, shall petition the board of county commissioners of their county, and also the county to which they desire such territory to be transferred, for leave to have such territory transferred to such county, the boards of county commissioners so petitioned shall order an election for such purpose in their respective counties, to be held at and in connection with the next general election; provided such petition shall be presented to the several boards of county commissioners at least sixty days before such general election and the returns of such election shall be made to the secretary of state. [1911, ch. 107; R. C. 1905, § 2323; R. C. 1895, § 1847.]

§ 3200. Notices of election, how posted. Notices of such election shall contain a description of the territory proposed to be transferred, the name of the county from and to which such transfer is intended to be made, and shall be posted as required for general elections. [R. C. 1905, § 2324; R. C. 1895, § 1848.]

§ 3201. Taxes. Officers. Ballots. Transfer of territory. The ballots to be used at such election shall be in the following form: "For transferring territory," and "against transferring territory." If a majority of the voters voting upon such question in each of such counties shall be for transferring territory, then such territory shall be transferred to and become a part of the county to which it is proposed to transfer the same, on and after the first day of March succeeding such election, and shall be subject to all the laws, rules and regulations thereof; provided, that the assessment and collection of taxes and judicial and other official proceedings commenced prior to such first day of March shall be continued, prosecuted and completed in the same manner as if no such transfer had been made; and provided, further, that all township officers within such transferred territory shall continue to hold their respective offices within the county to which they may be transferred until their respective terms of office expire. [R. C. 1905, § 2325; R. C. 1895, § 1849.]

§ 3202. Area and population. The area of no county shall be reduced, under the provisions of this article, to less than twenty-four congressional townships, nor the population to less than one thousand bona fide inhabitants. [R. C. 1905, § 2326; R. C. 1895, § 1850.]

§ 3203. Debts, how paid by territory transferred. No territory transferred under the provisions of this article shall be released from the payment of its proportion of the debts of the county from which it was transferred;

and such proportionate indebtedness from such transferred territory shall be collected by the county to which such territory is transferred, at an equal or greater rate than is levied and collected in the county from which such territory was transferred, such rate to be ascertained by the certificate of the county auditor of such last named county, and when so collected the same shall be paid over to the county entitled thereto. When the county to which such territory is transferred is also indebted, the county board of such county shall release such transferred territory from the payment of such indebtedness to an amount equal to that which such territory is required to pay to the county from which it was transferred. [R. C. 1905, § 2327; R. C. 1895, §§ 1851, 1852.]

Legal results of change of county boundaries and of the erection of a new county out of part of an old one. 85 Am. Dec. 100.

Division of territory of counties as affecting its assets and liabilities. 39 L.R.A. (N.S.) 285.

Liability of original county for debts of county defectively organized from part of its territory. 6 L.R.A. (N.S.) 791.

Liability of territory annexed to county to pay proportion of share of existing debts. 27 L.R.A. (N.S.) 1147.

§ 3204. Election, how called. When a majority of the legal voters of any territory less than one-half of one congressional township shall petition the boards of county commissioners as above provided, such boards may in their discretion order elections to be held as herein provided, and in any case where elections have been held under this article and the result has been adverse to the petitioners, it shall be in the discretion of such boards of county commissioners to order another election on a petition to transfer the same territory, presented within three years from the time of holding such former election. [R. C. 1905, § 2328; R. C. 1895, § 1853.]

ARTICLE 3.—DIVISION OF COUNTIES.

§ 3205. Electors may petition. Whenever it is desired to form a new county out of one or more of the then existing counties, and a petition praying for the formation of such new county, describing the territory proposed to be taken for such new county, together with the name of such proposed new county, signed by a majority of the legal voters residing in the territory to be stricken from such county or counties (as appears by the number of votes cast for governor at the last preceding general election), shall be presented to the board of county commissioners of each county to be affected by such division, and it appearing that such new county can be constitutionally formed, it shall be the duty of such boards of county commissioners to make an order providing for the submission of the question of the formation of such new county to a vote of the people of the counties to be affected, at the next succeeding general election, and notice thereof shall be given, the votes canvassed, and the returns made as in the case of the election of members of the legislative assembly; and the form of the ballot to be used in the determination of such question shall be "for new county" and "against new county." [1907, ch. 60; R. C. 1905, § 2329; 1887, ch. 38, § 1; R. C. 1895, § 1854.]

As to right of electors of town to vote upon all petitions in reference to division of county, that conform to statute. *State ex rel. Steel v. Fabrick*, 17 N. D. 532, 117 N. W. 860.

Notice of election upon question of division of county, published for three consecutive weeks only, is insufficient. *State ex rel. Minehan v. Meyers*, 19 N. D. 804, 124 N. W. 701.

Necessity of execution and filing of equivalent of certificate of election on canvass of county division election. *State ex rel. Minehan v. Thompson*, 24 N. D. 273, 139 N. W. 960.

Proceedings for division of county and for organization of new counties are strictly statutory, and no intendants can be indulged in their favor. *State ex rel. Minehan v. Meyers*, 19 N. D. 804, 124 N. W. 701.

§ 3206. Governor to appoint county commissioners. If it shall appear that a majority of all votes cast at such election in each of the counties interested is

in favor of the formation of such new county or counties the county auditor of each of such counties shall certify the same to the secretary of state, stating in such certificate the name, territorial contents and boundaries of such new county, whereupon the secretary of state shall notify the governor of the result of such election, whose duty it shall be to appoint three persons, residents of the county so formed, possessing the qualification of electors, who will accept and qualify in such office, county commissioners for such new county, or counties, who shall hold their office until the first general election thereafter and until their successors are elected and qualified, and upon the qualifying of such commissioners such county shall be deemed to have existence as such and be governed by the laws of the state relating to counties. [1907, ch. 62; R. C. 1905, § 2330; 1887, ch. 38, § 5; R. C. 1899, § 1855; 1905, ch. 75.]

Necessity of execution and filing of equivalent of certificate of election on canvass of county division election. *State ex rel. Minehan v. Thompson*, 24 N. D. 273, 139 N. W. 960.

Legal existence is not conferred upon new county where county has been divided until after governor has appointed commissioners, and they have qualified as such. *Murray v. Davis*, 21 N. D. 64, 128 N. W. 305.

§ 3207. County commissioners to appoint county officers. The county commissioners appointed under the provisions of the preceding section, after having qualified according to law, shall appoint all the county officers of the county so organized, who after having qualified shall hold their offices until the first general election thereafter and until their successors are elected and qualified; provided, that all justices of the peace and constables in office within the boundaries of any county organized under this article shall continue to hold such offices in such new county during the remainder of their term, and shall give bonds to the county organized under this article of the same amount and in the same manner as to the original county. [R. C. 1905, § 2331; 1887, ch. 38, § 6; R. C. 1895, § 1856.]

§ 3208. County seat, how located. The county commissioners of such county shall have power temporarily to fix the county seat and such location shall remain the county seat until the first general election thereafter, when the qualified voters of such county are empowered to vote for and select the place of county seat by ballot as provided by law. Immediately after the selection of such county seat either by the county commissioners or by the canvass of returns of votes the county commissioners shall issue their proclamation announcing such fact and publish the same in a newspaper published in such county if there is one, and if not, by posting a copy thereof in a public place in each election precinct in such county. [R. C. 1905, § 2332; 1887, ch. 38, § 7; R. C. 1895, § 1857.]

§ 3209. Commissioners governed by existing law. In all matters not specially provided for in this article the county commissioners appointed as hereinbefore provided shall be governed by the laws then existing. [R. C. 1905, § 2333; 1887, ch. 38, § 8; R. C. 1899, § 1858.]

§ 3210. Election governed by general law. All elections under this article, where not otherwise provided, shall be conducted in the same manner as required by law for general elections, and no refusal or neglect on the part of any official to perform his lawful duties in connection therewith shall in anywise affect the validity of such election. [R. C. 1905, § 2334; 1887, ch. 38, § 9; R. C. 1899, § 1859.]

Neglect on part of election officials to perform their duties will not make election void, but person seeking to vote must know that his vote is void unless statute is complied with. *Fitzmaurice v. Willis*, 20 N. D. 372, 127 N. W. 95.

§ 3211. Records to be transcribed. When a new county is organized in whole or in part from an organized county or from territory attached to such organized county for judicial purposes, it shall be the duty of the commissioners of such new county to cause to be transcribed by copying or by photographing in the proper books all the records or deeds or other instruments

relating to real estate and other records, deeds or instruments of every kind required by law to be kept on file or recorded in the respective county offices in such new county, and all contracts heretofore made by any board of county commissioners for the transcribing by copying or by photographing of any such records are hereby made valid and all records transcribed by copying or by photographing thereunder or under the provisions of this section shall have the same effect in all respects as original records, and any person authorized by such board of county commissioners to transcribe such records shall have free access at all reasonable times to such original records for the purpose of transcribing the same as aforesaid. [1909, ch. 66; R. C. 1905, § 2335; 1887, ch. 38, § 10; 1895, ch. 38, § 1; R. C. 1899, § 1860.]

§ 3212. New counties, indebtedness of. Any county organized under this article shall assume and pay as herein provided a just proportion of the indebtedness of the county from which it is segregated, based upon the last assessed valuation of such original county and in the proportion that the valuation within the segregated portion bears to the aggregate of the valuation within the whole of the original county; and it is the duty of the commissioners of both the county organized under this article and the county from which the latter segregates to meet together at the county seat of the original county on the third Monday in the sixth month following the appointment of county commissioners by the governor as provided for in this article. They shall ascertain as near as may be the total outstanding indebtedness of the original county on the first day of January or July, as the case may require, next preceding the date of the joint session provided for in this section and from such total they shall make the following deductions:

1. The amount of all dues for rents.
2. The amount of outstanding bonds given or money paid for public property owned by and remaining within the limits of the original county.
3. The amount of public funds on hand and belonging to the original county on the day for which its outstanding indebtedness is ascertained by the joint board of county commissioners as provided for in this section and not belonging to the special funds hereinafter mentioned. The amount remaining after such deductions shall have been made shall, for the purpose and as a basis for the settlement herein provided, be the amount which the county organized under this article shall pay a portion of, in the proportion hereinbefore specified, and it shall be the duty of such commissioners to ascertain and fix the amount the county organized under this article shall assume and pay to the county from which it segregates. [R. C. 1905, § 2336; 1887, ch. 38, § 11; R. C. 1899, § 1861.]

Roads and bridges do not constitute public property owned by county within meaning of this section. *State ex rel. Mountrail County v. Amundson*, 23 N. D. 238, 135 N. W. 1117.

Legal results of change of county boundaries and of the erection of a new county out of part of an old one. 85 Am. Dec. 100.

Liability of territory annexed to county to pay proportionate share of existing debts. 27 L.R.A.(N.S.) 1147.

New counties, their relation and that of their officers to old counties. 20 Am. St. Rep. 676.

§ 3213. Division of property. All moneys belonging to special funds such as fire, school, road and other funds and property owned by the districts within the boundaries of a county organized under this article, on hand at the time of the settlement provided for in the preceding section, in a county from which a portion segregates, shall be turned over in full by the treasurer of the original county to the treasurer of the county organized under this article and shall be duly receipted for by the latter and placed to the credit of the districts within his county to which they properly belong. [R. C. 1905, § 2337; 1887, ch. 38, § 12; R. C. 1899, § 1862.]

§ 3214. Moneys turned over to new county, when. Any county in which the amount of public funds on hand at the time of the settlement provided

for in section 3212 exceeds the total of its outstanding indebtedness shall, after deducting such outstanding indebtedness and after making the deductions provided for in section 3212 from the amount of such public funds on hand, pay over to the county segregated from it and organized under this article a just proportion of such funds, based upon the assessed valuation of the whole of the original county in and for the year prior to the date of such segregation and in the proportion that the valuation within the segregated portion bears to the aggregate of the valuation within the whole of the original county. The boards of county commissioners shall meet as provided in section 3212 and ascertain the amount so to be paid and the board of county commissioners of the original county shall issue warrants for such amount, payable immediately to the treasurer of the county organized under this article and the amount so received by the latter shall be by him placed to the credit of the proper funds of his county. [R. C. 1905, § 2338; 1887, ch. 38, § 13; R. C. 1899, § 1863.]

§ 3215. Commissioners to redistrict counties. The county commissioners of a county from which a portion segregates under this article shall immediately after such segregation redistrict their county into the districts provided for by the laws then existing and shall fill the vacancies occasioned by such segregation in the manner provided by law for filling vacancies. [R. C. 1905, § 2339; 1887, ch. 38, § 14; R. C. 1895, § 1864.]

Legal findings of county commissioners as to vacancy in county office are prima facie evidence of truth. Holtan v. Beck, 20 N. D. 5, 125 N. W. 1048.

§ 3216. Redistricting provided for. Whenever the boundaries of any organized county in this state shall have been enlarged by the addition thereto of any unorganized territory, it shall be the duty of the county commissioners of such organized county forthwith to redistrict the said county into commissioner districts, and such redistricting may be done at a regular or special meeting. In redistricting such county it shall be the duty of the county commissioners to make the districts as regular and as compact in form as practicable, and as equal in population as possible, but no new district shall be so formed that any two of the then acting commissioners shall reside in the same district. [R. C. 1905, § 2340; 1905, ch. 71.]

§ 3217. Districts renumbered and renamed. School districts and road districts within counties affected by this article shall be renumbered so as to make their numbers in each county run consecutively, and the names of school townships may when necessary be changed. [R. C. 1905, § 2341; 1887, ch. 38, § 15; R. C. 1899, § 1865.]

§ 3218. When districts liable for bonds. When the boundaries of any school district or school township have been changed under the provisions of this article that portion of such school district or school township in which the school houses and other property remain shall be liable for the payment of the bonds, if any, issued by such school district or school township, and if such portion shall have been attached to another school district or school township the school district or school township to which such portion has been attached shall be liable for the payment of the bonds, if any, of the school district or school township to which such portion formerly belonged. [R. C. 1905, § 2342; 1887, ch. 38, § 16; R. C. 1899, § 1866.]

§ 3219. Validity of bonds. The validity of bonds issued by school districts or school townships prior to the division of any county under this article shall in nowise be affected by such division nor by the renumbering or renaming of the school district or school township that issued them. [R. C. 1905, § 2343; 1887, ch. 38, § 17; R. C. 1899, § 1867.]

§ 3220. Fees of county commissioners. County commissioners while in the discharge of their duties as provided for in the preceding sections of this article shall receive the same compensation as is allowed by law for the performance of their ordinary official duties. [R. C. 1905, § 2344; 1887, ch. 38, § 18; R. C. 1899, § 1868.]

§ 3221. Indebtedness of new county. The amount of indebtedness of a county organized under this article as ascertained by the two boards of county commissioners as aforesaid shall be paid to the county from which it segregates in the bonds of the new county thus segregated as hereinafter provided. [R. C. 1905, § 2345; 1887, ch. 38, § 19; R. C. 1899, § 1869.]

§ 3222. When bonds to be dated. Such bonds shall be dated on the first day of January or July, from which the outstanding indebtedness of the original county is calculated as provided in section 3212; shall be issued for a period corresponding with the time or term on which the obligations of the original county become due and payable; shall be payable at the same place and shall bear the same rate of interest as the obligations of the original county, said commissioners taking care to classify the liquidating bonds, issuing a due proportion of each in proportion to each of the original county obligations bearing different rates of interest and places of payment; and such original county shall have authority to exchange such bonds for an equal amount of obligations of its own of the same class. [R. C. 1905, § 2346; 1887, ch. 38, § 20; R. C. 1899, § 1870.]

§ 3223. County treasurer to keep bond register. The county treasurer of a county issuing bonds under the provisions of this article shall provide himself with a book to be called the "bond register" wherein he shall note the number and denomination of each bond issued by his county, the date of issue, when and where payable, with such other facts as the county commissioners of his county shall direct, which bond register when completed shall be deposited with the county auditor of his county and shall be and remain a part of the records of his office. [R. C. 1905, § 2347; 1887, ch. 38, § 21; R. C. 1899, § 1871.]

§ 3224. Commissioners to issue liquidating bonds. The board of county commissioners of a county organized under this article is empowered and directed to issue such liquidating bonds in denominations as may be required by the old county, not to exceed one thousand dollars each, and deliver the same to the county auditor of the old county who shall receipt therefor, affixing the seal of his office to such receipts, and the county auditor of the county organized under this article shall enter such receipts at large upon the records of the board of county commissioners and note the same in the bond register of his county. [R. C. 1905, § 2348; 1887, ch. 38, § 22; R. C. 1899, § 1872.]

§ 3225. Commissioners to levy tax. The board of county commissioners of a county issuing bonds under the provisions of this article shall, for each year after the date of such bonds, levy and cause to be collected a tax sufficient to pay the interest on such bonds as it shall become due, and also such sinking funds as shall correspond with the laws under which the bonds of the original county were issued, sufficient to redeem such bonds at maturity; and as fast as such sinking fund shall become available, they shall redeem such bonds in the manner provided for redeeming the bonds of the original county; provided, that public notice shall be given by such board in a newspaper, if one is published within the county, setting forth that certain bonds, giving their number and description, will be redeemed by such county, and naming the date of such redemption. [R. C. 1905, § 2349; 1887, ch. 38, § 23; R. C. 1899, § 1873.]

§ 3226. Interest for redemption of bonds. The money collected for the payment of the interest or principal of said bonds shall not be used for any other purpose until such bonds are redeemed; any surplus thereafter shall be placed in the county general fund. [R. C. 1905, § 2350; 1887, ch. 38, § 24; R. C. 1899, § 1874.]

§ 3227. Revenue of counties. The authority of any county, from which a portion segregates under the provisions of this article, for the collection of revenue within the boundaries of the portion segregating, shall cease from

the date upon which the two boards of county commissioners under the provisions of section 3212 base the settlement between their counties, and all assessments and levies made by the authority of the county, from which a portion segregates, by its officers in the lawful performance of their official duties, affecting any of the territory embraced in the boundaries of such new county, shall remain the same and shall be payable to and collectible by the lawful authorities of the latter only. [R. C. 1905, § 2351; 1887, ch. 38, § 25; R. C. 1899, § 1875.]

§ 3228. Judicial subdivision. Any county organized under the provisions of this article shall, as soon as its organization shall have been completed, constitute and be created a judicial subdivision of the judicial district to which it properly belonged at and before its organization. [R. C. 1905, § 2352; 1887, ch. 38, § 26; R. C. 1899, § 1876.]

§ 3229. Judge to appoint term of district court. The judge of the judicial district in which a county organized under this article is created a legal subdivision of his district under the provisions of the last section shall appoint and hold at least two terms of the district court each year at the county seat of such county. [R. C. 1905, § 2353; 1887, ch. 38, § 27; R. C. 1895, § 1877.]

§ 3230. Venue, when changed. In all actions or proceedings, civil or criminal, for the prosecution of a crime committed or a cause of action arising within the boundaries of any judicial subdivision created under the provisions of this article, and properly triable in such subdivision under the provisions of the codes of civil and criminal procedure, the venue thereof shall be changed to the new county by order of the court upon the demand of either party, which demand shall be served upon the opposite party or his attorney, if either can conveniently be found in the state; but if neither can conveniently be found therein, then such change of venue may be made upon filing such demand with the clerk of the district court. [R. C. 1905, § 2354; 1887, ch. 38, § 28; R. C. 1895, § 1878.]

§ 3231. Writs, bonds and recognizances. All process, writs, bonds, notices, appeals, recognizances, papers and proceedings in actions changed to a new county under this article, issued and made returnable to the district court of the county from which a portion has been segregated and organized under this article prior to the creation of such legal subdivision, shall be taken and considered as made, taken and returnable to the district court within the boundaries of such new judicial subdivision, and such bonds, recognizances and obligations shall be payable to such new county and recoverable upon in the name of such new county, and all papers and certified copies of all proceedings had in such action shall be transmitted by the clerk of the district court of the old to the clerk of the district court of the new county. [R. C. 1905, § 2355; 1887, ch. 38, § 29; R. C. 1899, § 1879.]

§ 3232. Jurisdiction of officials. All territory within the state of North Dakota over which any county has exercised jurisdiction in civil and criminal matters and which has for all intents and purposes been treated as a portion of such county for not less than two years last past, shall be and the same is hereby declared a part of such county, and all of the official acts and doings of all state, county, township, school district or other officials within such county in the exercise of such jurisdiction are hereby ratified in so far as to give such acts the same validity as they would have had if such territory had been a part of such county when such acts were performed. [R. C. 1905, § 2356; 1889, ch. 57; R. C. 1899, § 1879a.]

ARTICLE 4.—COUNTY SEATS.

§ 3233. County seat, removal of. Whenever the inhabitants of any county in this state desire to remove the county seat of the county from the place where it is fixed by law, or otherwise, to another place, they may present a petition to the board of county commissioners of their county praying such

removal and that an election be held to determine whether or not such removal shall be made. Such petition must be verified by the affidavit of each of the signers thereof, stating that he is a resident of the county, a qualified elector therein, and that he personally signed his name thereto knowing the contents and purposes of the petition; provided, however, that where any city, town or village has been recognized as the county seat of any county for the period of more than ten years last past, and where all of the public business required by law to be transacted at the county seat has been transacted at said place during all of said period, said city, town or village shall be deemed to be the county seat of such county, and the county seat can be removed therefrom only in the manner now provided by law. [R. C. 1905, § 2358; R. C. 1895, § 1880; 1901, ch. 57.]

Mandamus proper remedy to determine whether county seat has been legally changed. Two-thirds vote polled means on particular question. Determination of county board final on sufficiency of petition. *State ex rel. Little v. Langlie*, 5 N. D. 594, 67 N. W. 958.

Changed only by majority of all votes cast at election. *Adkins v. Lien*, 10 S. D. 436, 73 N. W. 909.

County failing to select cannot resubmit question for four years. *State v. Porter*, 13 S. D. 126, 82 N. W. 415.

Ballot requirements are mandatory and statute is removal statute, and is constitutional. *Miller v. Norton*, 22 N. D. 196, 132 N. W. 1080.

Attack upon petition for removal of county seat is too late, when made after necessary two-thirds of electors of county have at election determined in favor of removal. *Miller v. Norton*, 22 N. D. 196, 132 N. W. 1080.

Reverter of land dedicated or conveyed for purpose of court house on removal of county seat or failure to use land for such purposes. 35 L.R.A.(N.S.) 603.

Right to withdraw names from petition for removal of county seat. 35 L.R.A.(N.S.) 1113.

§ 3234. Commissioners to submit question to vote, when. If the petition is signed by qualified electors of the county equal in number to at least three-fifths of all the votes cast in the county at the last preceding general election, the board must, at the next general election, submit the question of removal to the electors of the county. [R. C. 1905, § 2359; 1899, ch. 70; R. C. 1899, § 1881.]

§ 3235. Notice of election. Notice of such election, clearly stating its object, must be given and the election must be held and conducted and the returns made in all respects in the manner prescribed by law in regard to the submitting of questions to the electors of a locality under the general election law. [R. C. 1905, § 2360; R. C. 1895, § 1882.]

§ 3236. Ballot, how marked. Notice of result. In voting on the question, each elector must vote for the place in the county which he prefers by placing opposite the name of the place the mark (X). When the returns have been received and compared and the result ascertained by the board, if two-thirds or more of all the legal votes cast at such election are in favor of any particular place the board must give notice of the result by posting notices thereof in all the election precincts in the county and by publishing a like notice in a newspaper published in the county at least once a week for four weeks. [1907, ch. 61; R. C. 1905, § 2361; R. C. 1895, § 1883.]

On what basis majority essential to adoption of proposition for change of county seat is to be computed. 22 L.R.A.(N.S.) 478.

§ 3237. County seat, when deemed changed. In the notice provided for in the last section the place selected to be the county seat of the county must be so declared from a day specified in the notice, not more than ninety days after the election. After the day thus named in the notice, the place chosen shall be the county seat of the county. [R. C. 1905, § 2362; R. C. 1895, § 1884.]

§ 3238. Statement of result of election, where filed. Whenever any election has been held as provided in this article, the statement made by the board of county commissioners, showing the result thereof, must be deposited in the office of the county auditor, and whenever the board gives the notice prescribed in the last section, it must transmit a certified copy thereof to the secretary of state. [R. C. 1905, § 2363; R. C. 1895, § 1885.]

§ 3239. Election held only once every ten years. When an election has been held and at least two-thirds of the votes cast at such election are not cast for some other place than that fixed by law as the former county seat, no second election for the removal thereof must be held within ten years thereafter. [1907, ch. 61; R. C. 1905, § 2364; R. C. 1895, § 1886.]

§ 3240. Subsequent removal, petition for. When the county seat of a county has been once removed by a two-thirds vote of the people of the county, it may be again removed from time to time in the manner provided in this article; but no election must be ordered to effect any such subsequent removal, unless a petition praying an election is signed by the qualified electors of the county equal in number to at least two-thirds of all the votes cast at the last preceding general election, nor unless at such election, when ordered, two-thirds of all the votes cast are in favor of some other place as the county seat of the county, and such election, when so ordered, shall take place at the first general election held thereafter, nor must two elections to effect such removal be held within four years. [R. C. 1905, § 2365; R. C. 1895, § 1887.]

Election held not oftener than once in four years. *State ex rel. Cosper v. Porter*, 13 S. D. 126, 82 N. W. 415.

§ 3241. Special provisions where no court house has been constructed. In all organized counties in this state wherein prior to the taking effect of this article no court house has been constructed or is owned by such county, the county commissioners shall upon the petition of the inhabitants of such county, equal in number to one-third of the votes cast therein for governor at the last preceding election, submit to the electors of such county at a special election to be called in sixty days, or at the next general election, as may be required by said petition, the question of moving the county seat from the place where it is located by law or otherwise, to another place. Such petition must be verified by the affidavit of each of the signers thereof, stating that he is a resident of the county and a qualified elector therein and that he personally signed such petition. [R. C. 1905, § 2366; 1905, ch. 77, § 1.]

§ 3242. Notice of, how given. Notice of such election shall be given in the manner prescribed by section 3235. [R. C. 1905, § 2367; 1905, ch. 77, § 2.]

§ 3243. Ballots, how marked. Notice of result. In voting on the question each elector must vote for the place in the county which he prefers by placing opposite the name of the place the mark "X." When the returns have been received, compared and the result ascertained by the board of county commissioners, if more than one-half of all the legal votes cast by those voting on the proposition are in favor of any particular place, the board must give notice of the result by publishing a notice thereof, in each newspaper in the county, at least once a week for four consecutive weeks, and the place so selected as the county seat shall be designated in such notice as the county seat, from a date specified therein not more than sixty days after the election. [R. C. 1905, § 2368; 1905, ch. 77, § 3.]

§ 3244. Record of result. Counties exempt. The board of county commissioners shall cause a statement of the result of said election to be deposited and transmitted as provided by section 3238. This article shall not apply in counties having more than six thousand five hundred inhabitants according to the last census. [R. C. 1905, § 2369; 1905, ch. 77, §§ 4, 5.]

ARTICLE 5.—ORGANIZATION OF MCKENZIE COUNTY.

§ 3245. McKenzie county created. There shall be formed out of the unorganized counties of McKenzie, Allred and Wallace a new county, to be called McKenzie county, to be organized as hereinafter provided. [R. C. 1905, § 2370; 1905, ch. 73, § 1.]

As to constitutionality of statute. *State ex rel. Madderson v. Nolde*, 16 N. D. 168, 125 Am. St. Rep. 628, 112 N. W. 141.

§ 3246. Boundaries. The boundaries of said McKenzie county shall be as

follows, to wit: Commencing at the southeast corner of township one hundred forty-five north, of range ninety-eight west; thence running north between ranges ninety-seven and ninety-eight west to the twelfth standard parallel; thence east and along said twelfth standard parallel to the southeast corner of township one hundred forty-nine north, of range ninety-four west; thence north between ranges ninety-three and ninety-four west to the Missouri river; thence up and along the west bank of the Missouri river to the west boundary line of North Dakota; thence south and along the west boundary line of North Dakota to the eleventh standard parallel; thence east and along the eleventh standard parallel to the southeast corner of township one hundred forty-five north, of range ninety-eight west, and the place of beginning. [R. C. 1905, § 2371; 1905, ch. 73, § 2.]

§ 3247. Governor to locate temporary county seat and appoint officers. The governor of this state is hereby authorized and directed, within sixty days after this article takes effect, to locate a temporary county seat and to appoint for the said McKenzie county the following officers, to wit: Three county commissioners; one sheriff; one auditor; one treasurer; one register of deeds; one clerk of the district court; one superintendent of schools; one state's attorney; one county judge; one public administrator; one coroner; one surveyor; three assessors; four justices of the peace and four constables, and the officers so appointed shall immediately qualify and enter upon the discharge of their respective duties. The officers so appointed shall hold their respective offices and shall discharge the duties of such until their successors are elected and qualified. [R. C. 1905, § 2372; 1905, ch. 73, § 3.]

§ 3248. Duties of registers of deeds of Stark and Williams counties. Fees for transcribing. Accounts, how audited. The register of deeds of Stark county and the register of deeds of Williams county shall, within ninety days after the organization of McKenzie county, transcribe all matters of record from the record books of the counties of Stark and Williams, respectively, that should be of record in McKenzie county, and deliver the same to the register of deeds of McKenzie county, and when so transcribed and delivered, they shall be the official records of all property and other matters to which they refer, and shall have the same force and effect as the original. The county of McKenzie shall pay to the register of deeds of Stark and Williams counties, respectively, for the work that each shall do under this article, which shall be over and above the maximum compensation and regular fees of each of said offices, twenty cents per folio, for transcribing said records, including the indexing of said records. Said account shall be audited and allowed by the commissioners of McKenzie county as other proper accounts against said county. [R. C. 1905, § 2373; 1905, ch. 73, § 4.]

§ 3249. Laws governing counties made applicable. All laws of a general nature applicable to the several counties of this state and the officers thereof, are hereby made applicable to the county of McKenzie and the officers who may hereafter be appointed or elected therein. [R. C. 1905, § 2376; 1905, ch. 73, § 7.]

ARTICLE 6.—CORPORATE POWERS AND LIABILITIES.

§ 3250. County a corporate body. Powers. Each organized county is a body corporate for civil and political purposes only and as such may sue and be sued, contract and be contracted with, and in all cases where lands have been granted to any county for public purposes and any part thereof has been sold, and the purchase money or any part thereof shall be due and unpaid, all proceedings necessary to recover possession of such lands or to enforce the payment of the purchase money shall be instituted in the name of the proper county. [R. C. 1905, § 2377; R. C. 1899, § 1888.]

May sue in corporate capacity. *McCook Co. v. Kammoss*, 7 S. D. 558, 64 N. W. 1123, 58 Am. St. Rep. 854, 31 L.R.A. 461; *Barrett v. Stutsman County*, 4 N. D. 175, 59 N. W. 964; *State v. Davis*, 11 S. D. 111, 75 N. W. 897, 74 Am. St. Rep. 780; *Lyman County v. State*, 9 S. D. 413, 69 N. W. 601.

- Counties as trustees of charities. 14 L.R.A. 70; 14 L.R.A.(N.S.) 113.
 Authority of county to employ "tax ferret." 4 L.R.A.(N.S.) 339; 38 L.R.A.(N.S.) 261.
 By whom action affecting counties must be brought. 64 L.R.A. 619.
 Garnishment of counties. 37 L.R.A. 207.
 Applicability of statute of limitations to actions by counties. 3 L.R.A.(N.S.) 746; 22 L.R.A.(N.S.) 921.
 Right of county to surrender valid claim upon partial payment thereof. 19 L.R.A.(N.S.) 320.
 Liability of county on implied contract. 27 L.R.A.(N.S.) 1117; 39 L.R.A.(N.S.) 72.
 Liability of county on implied contract for publishing notices in newspaper. 27 L.R.A.(N.S.) 1130.
 Presentation of claims against county by county board as condition precedent to suit. 39 L.R.A. 77.
 Recovery of money loaned a county on invalid contract to pay its indebtedness. 15 L.R.A.(N.S.) 567.
 Liability of county for injuries caused by construction or maintenance of bridge to property thereto adjoining. 21 L.R.A.(N.S.) 209.
 Liability of county for imprisonment of person in unhealthful or unfit prison. 36 L.R.A. 293; 2 L.R.A.(N.S.) 95.
 Liability of county for injuries to one employed about house of detention. 23 L.R.A.(N.S.) 910.
 Liability of counties for injuries to travelers and vehicles. 39 L.R.A. 33.
 Liability of counties, mode of its enforcement, and the power of the legislature to modify or impair. 68 Am. Dec. 291.

§ 3251. Judgments against counties, how paid. When any judgment is obtained against a county the board of county commissioners shall have power at any time after the expiration of six months from the rendition thereof to assess and collect a sufficient amount of revenue to pay off and discharge such judgment in addition to the ordinary expenses of the county. But the property of the county, and of persons owning property situated or liable to taxation therein, shall in no case be subject to judgment lien nor to seizure or sale upon execution or other process of any court. [R. C. 1905, § 2378; 1881, ch. 54, § 1; R. C. 1899, § 1889.]

ARTICLE 7.—STATE ACCOUNTS WITH COUNTIES.

§ 3252. Auditor to keep account with each organized county. The state auditor shall keep an account with each organized county of the state in which each county shall be charged with the amount of delinquent tax now due the state and with all sums hereafter levied in each county for state purposes; and credited with all sums paid into the state treasury on account of such taxes. [R. C. 1905, § 2379; 1890, ch. 183, § 1; R. C. 1899, § 322.]

§ 3253. County auditors to furnish abstract of tax lists. He shall require the county auditors to furnish him with an abstract of the tax lists of their respective counties when the same are completed, on such blanks as he shall prescribe. [R. C. 1905, § 2380; 1890, ch. 183, § 2; R. C. 1899, § 323.]

§ 3254. Monthly statements of taxes collected. County treasurer to furnish. He shall require the several county treasurers to furnish him with a statement, attested by the county auditor, on the fifteenth day of each month, showing the amount of state taxes collected during the preceding calendar month, and the October statement shall be an abstract of the total receipts by the county treasurer for the preceding year. [R. C. 1905, § 2381; 1890, ch. 183, § 3; 1891, ch. 1, § 1; R. C. 1895, § 324.]

§ 3255. Auditor to deliver to state treasurer order on county treasurer. The state auditor shall immediately after receiving the statement provided for in the preceding section draw and deliver to the state treasurer an order on each county treasurer for the amount so certified as collected for the state, and charge the state treasurer with the same, giving the county credit for the amount and sending to the county auditor of each county a duplicate of such order or draft. [R. C. 1905, § 2382; 1890, ch. 183, § 4; R. C. 1899, § 325.]

§ 3256. State treasurer to notify county treasurer. The state treasurer

shall notify each county treasurer of the amount of such draft or order and designate the manner in which the money shall be forwarded to him, and upon receipt of the same shall forward such draft or order to the county treasurer with his endorsement, and such draft or order shall be the county treasurer's receipt for the amount stated. All funds collected by or in the hands of the treasurer of any county in this state shall be promptly remitted by such county treasurer without expense to the state, and at the risk of the county treasurer, for which the county treasurer shall be allowed his actual expenses by the board of county commissioners. [R. C. 1905, § 2383; 1890, ch. 183, § 5; 1899, ch. 152; R. C. 1899, § 326.]

Assessment against abutting property of costs of laying water mains not authorized. *Lee v. Town of Mellette*, 15 S. D. 586, 90 N. W. 855.

ARTICLE 8.—COUNTY OFFICERS.

§ 3257. Number and election of. Each organized county shall have the following officers: One county auditor, one register of deeds, one clerk of the district court, one state's attorney, one sheriff, one county judge, one county treasurer, one county surveyor, one coroner, one county superintendent of schools, one public administrator, four justices of the peace and four constables. And there shall be three or five county commissioners as hereinafter provided, who shall constitute the board of county commissioners. Such officers shall be chosen by the qualified electors of their respective counties at the general election in each even numbered year, except the commissioners who shall be chosen by the electors of their respective districts, of which district such commissioners shall be qualified electors. [R. C. 1905, § 2384; 1883, ch. 33, § 3; R. C. 1895, § 1890; 1903, ch. 140.]

§ 3258. Additional justices, when. Petition for. Whenever ten or more qualified electors of any election precinct in this state, comprising one or more unorganized townships, shall file a petition with the county auditor of the county in which they reside, setting forth that there are not enough justices of the peace or constables in such precinct for the proper administration of justice, there shall thereafter be elected at the general election in each even numbered year two justices of the peace and two constables whose jurisdiction shall be the same as county justices and constables. On the filing of said petition such offices shall be deemed vacant and shall be filled by appointment of the board of county commissioners at their next regular meeting or at a special meeting called for that purpose. The officers so appointed shall hold office until their successors are elected and qualified, or until the township or townships comprising said election precinct shall become organized. [1909, ch. 81.]

§ 3259. Sheriff and treasurer eligible two terms only. The sheriff and the county treasurer shall not be eligible for election to such offices for more than two successive terms of two years each. [R. C. 1905, § 2385; 1889, ch. 103, § 1; R. C. 1899, § 1891.]

ARTICLE 9.—COUNTY COMMISSIONERS.

§ 3260. Number of county commissioners may be changed, how. The number of county commissioners of any county may be increased to five or reduced to three in the manner following: Whenever the legal voters of the county, equal in number to twenty per cent of the legal votes cast at the preceding general election, petition the board of county commissioners for an increase or decrease in the number of county commissioners, said board shall submit the question to a vote of the electors of the county at a special election to be held either at the next state primary election, or general election, as the petition may pray. Notice of the submission of such question shall be given in the notice of election prescribed by section 982. If the petition

is for an increase in the number of commissioners, the proposition shall be submitted in this form:

"For five commissioners."

"Against five commissioners."

If it is for reduction, the proposition shall be in this form:

"For three commissioners."

"Against three commissioners." [1913, ch. 120; R. C. 1905, § 2386; 1897, ch. 45; R. C. 1899, § 1892.]

On party nominations for county commissioners. *State ex rel. Long v. Rexford*, 21 S. D. 86, 109 N. W. 216.

Where number of county commissioners has been increased by vote of county as provided for in this section, vacancy arises in office of county commissioner of each of new districts. *State ex rel. Atty.-Gen. v. Davies*, 23 N. D. 334, 136 N. W. 955.

§ 3261. Districts, how formed. Commissioners, how designated. When the returns of such election show a majority of all the legal votes cast to be for an increase from three to five, it shall be the duty of the board of county commissioners, within ten days after the votes have been canvassed, to divide the county into five districts. The districts shall be numbered from one to five, those last created being designated fourth and fifth, respectively. At the ensuing general election commissioners for such additional districts shall be elected, the commissioner for the fourth district for a term of two years, and the commissioner for the fifth district for a term of four years. The tenure of office of the existing board of county commissioners shall not be affected. The district which each commissioner shall represent shall be designated by such board. When the special election results in a majority for a decrease of from five to three, the existing county board shall, at the end of the first two expiring terms of the same year, declare such districts vacant, and at their first regular meeting thereafter proceed to divide the county into three commissioner districts, and in such division designate the district which each of the three remaining commissioners shall represent. [R. C. 1905, § 2387; 1890, ch. 48, § 2; R. C. 1899, § 1893; 1901, ch. 52, § 2.]

Commissioners bound to call county judge and auditor together, where petition to divide county is duly presented. *State ex rel. Schilling v. Menzie*, 17 S. D. 535, 97 N. W. 745.

County commissioner will not lose office by moving to another district in county. *Gray v. Beadle County*, 21 S. D. 97, 110 N. W. 36.

Where number of county commissioners has been increased by vote of county, vacancy arises in office of county commissioner of each of new districts. *State ex rel. Atty.-Gen. v. Davies*, 23 N. D. 334, 136 N. W. 955.

§ 3262. Commissioner districts redistricted, when. The county judge, auditor and clerk of the district court of each county shall constitute a redistricting board with power to redistrict the commissioner districts in any county whenever twenty-five per cent of the legal voters of the county, as shall be determined by the votes cast at the last preceding general election for congressmen, shall petition said board to change the boundaries of the commissioner districts and file said petition with the county auditor. Within twenty days after the filing of said petition it shall be the duty of the county auditor to call a meeting of the redistricting board to consider such petition, and if it shall appear that the commissioner districts of such county are not reasonably equal in population or extent of territory they shall proceed at once to redistrict such county into commissioner districts. [R. C. 1905, § 2388; 1895, ch. 34, § 1; R. C. 1899, § 1894; 1901, ch. 54.]

Districts can only be changed every third year. *Van Den Bos v. Board*, 11 S. D. 190, 76 N. W. 935.

Acceptance of warrant for claim against county which has been duly presented and allowed in part, is presumed to be in full of claims presented. *Paulson v. Ward County*, 23 N. D. 601, 42 L.R.A. (N.S.) 111, 137 N. W. 486.

§ 3263. Duty of redistricting board. In redistricting any county it shall be the duty of the redistricting board to make the districts as regular and compact in form as practicable, and as equal in population as possible, as shall be determined by the vote cast at the last preceding general election, but

no new district shall be so formed that any two of the then acting commissioners shall reside in the same district, and no county shall be redistricted oftener than once in five years. [R. C. 1905, § 2389; 1895, ch. 34, § 2; R. C. 1899, § 1895; 1901, ch. 54.]

§ 3264. Term of office of commissioners. The commissioners shall hold their office for the term of four years, except as provided by law for the organization of counties, and in counties now organized, the order of their election and succession shall be as herein provided, and commissioner districts in such counties shall continue as now constituted until changed as provided by law. Provided, that at the general election next after the organization of a county, either from unorganized territory or from territory segregated by division from another county, one county commissioner shall be elected for a term of two years and two commissioners for a term of four years, and thereafter as provided by law, the order of succession to be determined by lot. Provided, further, that in all counties in this state wherein heretofore commissioners have been elected after the organization of a new county, either from unorganized territory or upon division or segregation from another county, and where all the commissioners now serving were elected for the same term, the county commissioners shall, at the regular meeting of the board of county commissioners next after the taking effect of this act [article], by lot determine the order of their succession; three commissioners to hold their office for four years and two for two years from the first Monday in January, 1913, in counties having five commissioner districts; two commissioners to hold their office for four years and one for two years from the first Monday in January, 1913, in counties having three commissioner districts. [1913, ch. 123; R. C. 1905, § 2390; R. C. 1899, § 1896; 1901, ch. 52, § 3; 1903, ch. 74, § 1.]

§ 3265. County seal. The board of county commissioners shall procure and keep a seal with such emblems and devices as they may think proper, which shall be the seal of the county and no other seal shall be used by the county auditor; and the impression of such seal by the stamp shall be sufficient sealing in all cases where sealing is required. [R. C. 1905, § 2391; R. C. 1899, § 1897.]

As to necessity of seal on certificate of tax sale. *Beggs v. Paine*, 15 N. D. 436, 109 N. W. 322.

Affixing county seal to contract makes it a specialty. *Heffleman v. Pennington County*, 3 S. D. 162, 52 N. W. 851.

§ 3266. Meetings of board, time and place of. The county commissioners shall meet and hold sessions for the transaction of business at the court houses in their respective counties, or at the usual places of holding court, on the first Mondays in January, April, July and October of each year, and may adjourn from time to time; and the county auditor shall have power to call special sessions when the interests of the county demand it, upon giving five days' notice of the time and object of such meeting by posting up notices in three public places in the county or by publication in one newspaper in the county; provided, that in case of a vacancy in the office of the county auditor the chairman of the board shall have power to call a special session for the purpose of filling the same. [R. C. 1905, § 2392; R. C. 1899, § 1898.]

Object of special meeting must be stated in call with reasonable certainty. *Emmons County v. Bank*, 9 N. D. 583, 84 N. W. 379.

§ 3267. Chairman, duties of. At the first meeting of the board each year they shall elect one of their number chairman who shall act as chairman of such board during the year in which he is elected or until his successor is elected, and in case of a vacancy from any cause whatever the board shall elect another chairman. It shall be the duty of the chairman to preside at the meetings of the board; and all orders made by the board and all warrants drawn on the county treasurer, except warrants for salaries of county officers,

shall be signed by the chairman and attested by the county auditor. [R. C. 1905, § 2393; R. C. 1895, § 1899.]

Signature of the acting chairman of board of commissioners necessary to make warrant valid. *State v. Ryan*, 9 N. D. 419, 83 N. W. 865; *State ex rel. Wiles v. Heinrich*, 11 N. D. 31, 88 N. W. 734.

Acts of de facto board held valid. *Merchants' Bank v. McKinney*, 2 S. D. 106, 48 N. W. 841.

County bonds signed by chairman and clerk of board unauthorized by board, invalid. *Brown v. Bon Homme County*, 1 S. D. 216, 46 N. W. 173.

Acceptance of warrant for dam against county, which has been duly presented and allowed in part, is presumed to be in full of claims presented. *Paulson v. Ward County*, 23 N. D. 601, 42 L.R.A. (N.S.) 111, 137 N. W. 486.

§ 3268. Tie vote defers decision. When the board is equally divided on any question it shall defer a decision until the next meeting, at which time the matter shall be decided by a majority of the board. [R. C. 1905, § 2394; R. C. 1899, § 1900.]

§ 3269. Proceedings. Copies as evidence. Copies of the proceedings of the board duly certified and attested by the county auditor under seal shall be received as evidence in all courts of this state. [R. C. 1905, § 2395; R. C. 1899, § 1901.]

§ 3270. Power of board to preserve order. The board shall have power to preserve order when sitting as a board and may punish contempts by fines not exceeding five dollars or by imprisonment in the county jail not exceeding twenty-four hours; and it may enforce obedience to its orders by attachment or other compulsory process, and when fines are assessed by it the same may be collected before any justice of the peace having jurisdiction, and shall be paid over as other fines within ten days after they are collected. [R. C. 1905, § 2396; R. C. 1899, § 1902.]

§ 3271. Boards to keep record books. They shall keep a book in which all orders and decisions made by them shall be recorded, except those relating to roads and bridges; and all orders for the allowance of money from the county treasury shall state on what account and to whom the allowance is made, dating the same and numbering them consecutively as allowed from the first day of January to the thirty-first day of December in each year; also a book for the entry of all proceedings relating to bridges and the establishment, change or discontinuance of roads, and a book for the entry of warrants on the county treasurer, showing the number, date, amount and name of the payee of each warrant drawn, which book shall be known as the warrant book, and the warrants shall be numbered in relation to the order and decision allowing the amount for which the same is drawn. [R. C. 1905, § 2397; R. C. 1899, § 1903.]

Keeping minutes of proceedings by board of equalization in separate book as compliance with statute. *Fisher v. Betts*, 12 N. D. 197, 96 N. W. 132.

Mandamus lies to compel supervisors to enter their findings on their records. *State ex rel. Andrews v. Boyden*, 18 S. D. 388, 100 N. W. 763.

Writ of certiorari should be directed to board of county commissioners and not to the auditor. *State ex rel. Lindsay v. Boyden*, 18 S. D. 379, 100 N. W. 761.

§ 3272. Warrants cancelled, when. Description of, in minutes. The board is authorized and required at each regular meeting to cancel and destroy all warrants drawn on any fund of the county which may have remained uncalled for and on file for a period of six years or more next preceding the regular meeting on which such cancellation takes place. Such board shall before cancelling and destroying any such warrants cause to be entered in the minutes of its proceedings a brief description thereof, containing the name of the payee, and the number, date and amount of each warrant to be destroyed. [R. C. 1905, § 2398; 1887, ch. 3, §§ 1, 2; R. C. 1899, § 1904.]

§ 3273. Board, powers of. It shall have power to institute and prosecute civil actions in the name of the county for and on behalf of the county. It shall also have power to make all orders respecting property of the county, to sell the public grounds of the county and to purchase other grounds in lieu

thereof; and for the purpose of carrying out the provisions of this section it shall be sufficient to convey all the interest of the county in such grounds when an order is made for the sale and a deed is executed in the name of the county by the chairman of the board reciting the order and signed and acknowledged by him for and on behalf of the county; provided, that the question of the sale of such public grounds or land shall first be submitted to a vote of the people of the county as hereinafter provided and sanctioned by a majority vote thereof. [R. C. 1905, § 2399; R. C. 1899, § 1905.]

Powers of county commissioners. *State ex rel. Wiles v. Albright*, 11 N. D. 22, 88 N. W. 729.

Strictly construed when county commissioners charge public officer with penal offense. *Minnehaha County v. Thorne*, 6 S. D. 449, 61 N. W. 688.

No action by state's attorney unless authorized by commissioners. *Hughes County v. Ward*, 81 Fed. 314.

County commissioners may sell uncollectible notes due county, to outgoing officer not officially interested. *Brown County v. Jenkins*, 11 S. D. 330, 77 N. W. 579.

County commissioners have power to compromise disputed claims. *State v. Davis*, 11 S. D. 111, 75 N. W. 879, 74 Am. St. Rep. 780.

County commissioners no right to employ other counsel where the control and management of action is vested in attorney-general. *Storey v. Murphy*, 9 N. D. 115, 81 N. W. 23.

Unauthorized to make contract to collect judgment. Bring supplementary proceedings or actions against judgment debtors. Exclusive control and jurisdiction is in district court. *Fox v. Walley et al.*, 13 N. D. 610, 102 N. W. 161.

Power of officers of county to act as determined by place of performance. 33 L.R.A. 86.

Power of board to make contract for term extending beyond its own term. 29 L.R.A. (N.S.) 652.

Liability of county boards to private individuals. 95 Am. St. Rep. 80.

§ 3274. Commissioners authorized to sell. Publish notice. The county commissioners of any county in this state shall have the right to dispose of any property, either real or personal, which the county may have acquired, either through purchase, forfeiture or operation of law. Upon resolution of any board of county commissioners authorizing the same, the county auditor shall cause to be published a notice in some legal newspaper published in such county, once each week for three consecutive weeks, containing a description of the property to be sold, and designating the day and hour when such sale shall be held. Such sale shall be held at the office of the county auditor and conducted by him, and the property so advertised shall be sold to the highest responsible bidder, if such bid is deemed sufficient by a majority of the board authorizing the sale, and such bids may be either auction or sealed bids as may be ordered by the board and specified in the notice; provided, however, that when the property to be disposed of is estimated by the board to be of a value below one hundred dollars such sale may be at private sale upon proper resolution of the board of county commissioners. The proceeds of such sale shall be paid into the county treasury and any amounts which may be due the state or any city, township, incorporated village or school district, from taxes which had been previously levied against said property, or their just proportion thereof, shall be apportioned and placed to the credit of the state, city, township, incorporated village or school corporation entitled thereto, and the remainder shall go to the general funds of the county. [1907, ch. 67.]

§ 3275. Additional powers. In addition to the powers hereinbefore mentioned such board shall have power:

1. To levy a tax not exceeding the amount authorized by law and to liquidate indebtedness.
2. To audit the accounts of all officers having the care, management, collection or disbursements of all money belonging to the county or appropriated for its benefits.
3. To construct and repair bridges, and to open, lay out, vacate and change highways in the cases provided by law.
4. To establish election precincts in its county and to appoint the judges of election in cases provided by law.
5. To equalize the assessments of the county in the manner provided by law.

6. To furnish the necessary blank books, blanks, stationery, telephone, postage, telephone and telegraph tolls, and all other things necessary and incidental to the performance of the duties of their respective offices, for the clerk of the district court, county auditor, register of deeds, county treasurer, county judge, sheriff, public administrator and state's attorney of its county, to be paid out of the county treasury; also to furnish a fireproof safe, when in its judgment the same shall be advisable, in which to keep all the books, records, vouchers and papers pertaining to the business of the board; provided, that the county auditor, county treasurer and the chairman of the board of county commissioners together shall constitute a committee, empowered and required to purchase and provide all necessary blanks, books and other stationery, for the use of all county officers in their official capacity.

7. To do and perform such other duties as now are or may hereafter be prescribed by law. [1911, ch. 115; R. C. 1905, § 2400; 1899, ch. 59; R. C. 1899, § 1906.]

Committee of county treasurer, auditor and chairman of county commissioners must purchase stationery for county officers' use. *Knight v. Cass County*, 14 N. D. 340, 103 N. W. 940.

Board of county commissioners is not empowered to employ attorney to collect judgment due it. *Fox v. Walley*, 18 N. D. 610, 102 N. W. 161.

Delegation of legislative power to county boards of supervisors. 16 L.R.A. 161.

Delegation of power of taxation to county authorities. 15 L.R.A.(N.S.) 62.

Claims against counties, effect of allowance or rejection of. 55 Am. St. Rep. 203.

§ 3276. Board to superintend fiscal affairs of county. It shall superintend the fiscal affairs of the county, supervise the conduct of the respective county offices and at its first regular meeting in January, April, July and October audit and verify the accounts of all officers having the care, management, collection or disbursement of any money belonging to the county or appropriated for its benefit. It shall keep an account of the receipts and expenditures of the county and on the first Monday of July, annually, it shall cause a full and accurate statement of the assessments, receipts and expenditures of the preceding year to be made out in detail under separate heads with an account of all debts payable to and by the county treasurer and it shall have the same published in at least one newspaper in its county. If there is no newspaper in the county the same shall be posted up at the usual place of holding its sessions. [1911, ch. 118; R. C. 1905, § 2401; R. C. 1895, § 1907.]

Board of county commissioners superintend fiscal affairs of county and constitute the auditing board to audit claims. *State ex rel. Wiles v. Heinrich*, 11 N. D. 31, 88 N. W. 734.

County commissioners acting in good faith may for value sell outstanding overdue notes belonging to county. *Brown County v. Jenkins*, 11 S. D. 330, 77 N. W. 579.

County treasurer cannot bind county for clerk hire. *Jacobson v. Ransom County*, 15 N. D. 69, 105 N. W. 1107.

Board of county commissioners empowered to sell and assign judgment obtained for personal property taxes. *Hagler v. Kelly*, 14 N. D. 218, 103 N. W. 629.

§ 3277. Special tax levy for immigration. The board of county commissioners is authorized at the time fixed for the levying and assessment of taxes to levy and tax not in excess of one-fourth of one mill on the dollar upon the assessed valuation of all of the property in the county upon presentation of a petition signed by twenty per cent of the legal voters of the county, taking the total vote at the last general election for a basis, the proceeds of which shall be used solely for the purpose of promoting and assisting immigration to this state. [1913, ch. 118; R. C. 1905, § 2402; 1891, ch. 72, § 1; R. C. 1899, § 1908.]

§ 3278. Immigration fund. The funds provided to be raised in accordance with the last section shall be denominated the "immigration fund" and shall be kept separate and distinct by the county treasurer and shall be expended by and under the direction and control of the board of county commissioners at such time and in such manner as is by such commissioners deemed best for the purpose of securing immigration to the state. [R. C. 1905, § 2403; 1891, ch. 72, § 2; R. C. 1899, § 1909.]

§ 3279. Board may procure original field notes. The board is authorized to procure for its county a copy of the field notes, as soon as practicable, of the original survey of its county by the United States, and cause a map of the county to be constructed therefrom on a scale of not less than one inch to a mile, and laid off in congressional townships and sections, the same to be kept open in the office of the county auditor and the field notes to be deposited therein. [R. C. 1905, § 2404; R. C. 1899, § 1910.]

§ 3280. Board to submit extraordinary outlay to vote. It shall submit to the people of the county at any regular or special election any question involving an extraordinary outlay of money by the county or any expenditure greater in amount than can be provided for by the annual tax, or the construction of any court house, jail or other public building by establishing a building fund to aid in the construction of the same when the board shall consider the permanent buildings of the county, aforesaid, inadequate for the needs of its business and that it is not to the best interests of the county to issue bonds to aid in such construction or for the construction of such buildings by any other procedure as is, or may be provided by law, or whether it will aid in constructing or construct any highway or bridge. [1909, ch. 67, § 1; R. C. 1905, § 2405; R. C. 1895, § 1911.]

Resolution as to issuing courthouse bonds should specify amount to be voted upon. *Territory v. Steele*, 4 D. 78, 23 N. W. 91.

§ 3281. Extraordinary expenditures authorized by vote. If the county commissioners deem any expenditure necessary greater in amount than can be provided for by the annual tax, they shall require a vote of the county thereon, either at a general election, or one called especially for the purpose. In either case four weeks' notice of said election shall be given in the official newspapers of the county, and the notice shall specify the amount to be raised, and the precise purpose for which it is to be expended; and if a majority of the votes cast authorize the tax, the county commissioners shall authorize the same to be levied and collected in the same manner as the annual tax, and if possible, at the same time; provided, however, that no new assessment shall be made for any special tax; provided, further, that whenever in the opinion of the board of county commissioners of any county, or a majority thereof, it shall be deemed for the best interests of said county that any land adjoining the court house is, or shall thereafter be necessary for the enlargement of said court house, or the county jail of said county, or for the purpose of beautifying such county buildings, or for the prevention of other buildings in such close proximity to said court house and jail that the transaction of public business would be thereby discommoded or rendered inconvenient, then said board of county commissioners, or a majority thereof, shall have power and authority and they are hereby vested with such power and authority, to purchase such land so adjoining said court house, without submitting such question to a vote of the people, and the money required for the purpose of such additional land hereinbefore provided for shall be raised as provided for the raising of funds for general county purposes. [R. C. 1905, § 2406; R. C. 1899, § 1311; 1901, ch. 73.]

Residents, citizens and taxpayers of county have such interest as entitles them to maintain action to enjoin carrying out, by officials, of an unlawful contract for erection of court house. *McKinnon v. Robinson*, 24 N. D. 367, 139 N. W. 580.

§ 3282. Mode of submitting propositions. The mode of submitting questions to the people contemplated by the last two sections shall be the following: The whole question, including the sum desired to be raised and the amount of the tax desired to be levied or the rate per annum and the years in which said tax is to be levied, shall be published for at least four weeks in the official newspapers of the county. If there are no such newspapers the publication shall be made by posting in at least one of the most public places in each election precinct in the county; and in all cases the notices shall name the time when such questions shall be voted upon and the form in which the question will be submitted; and a copy of the question submitted shall be

posted at each voting place during the day of election. [1909, ch. 67, § 2; R. C. 1905, § 2407; R. C. 1895, § 1912.]

§ 3283. Proposition to tax must accompany question submitted. When the question submitted involves the establishment of a building fund for the construction of buildings, or the borrowing or expenditure of money, such proposition must be accompanied by a proposition to levy a tax for the provision or payment thereof, in addition to the usual taxes required to be levied; and no vote adopting the question shall be valid unless it likewise adopts the amount of tax to be levied to meet the appropriation or liability incurred. [1909, ch. 67, § 3; R. C. 1905, § 2408; R. C. 1895, § 1913.]

§ 3284. Tax not to exceed three mills annually. The rate of tax levied in pursuance hereof shall in no case exceed three mills on the dollar on the assessed valuation of the county in any one year. When the object is to establish a building fund to aid in the erection of public buildings the rate shall be such as to raise the fund within six years; provided, that the total sum to be so raised, including the then existing indebtedness of the county, shall not exceed five per cent of its valuation according to the last assessment thereof. When the object is to borrow money to aid in the erection of public buildings the rate shall be such as to pay the debt in ten years. When the object is to construct or aid in constructing any road or bridge the annual tax shall not exceed one mill on the dollar of the valuation, and any special tax or taxes levied in pursuance of this article, after becoming delinquent, shall draw the same rate of interest as ordinary taxes levied in pursuance of law. [1909, ch. 67, § 4; R. C. 1905, § 2409; R. C. 1899, § 1914.]

§ 3285. Record of vote. Board cannot rescind. Such commissioners upon being satisfied that the above requirements have been substantially complied with and that a majority of the votes cast are in favor of the proposition submitted, shall cause the same to be entered at large upon the book containing a record of their proceedings, and they shall then have power to levy and collect the special tax in the same manner that the other county taxes are collected. Propositions thus acted upon cannot be rescinded by the board. [R. C. 1905, § 2410; R. C. 1899, § 1915.]

§ 3286. Money to be specifically applied. Money raised by the county commissioners in pursuance of the last five sections is specifically appropriated and constitutes a fund distinct from all others, in the hands of the county treasurer, until the obligations assumed are discharged. [R. C. 1905, § 2411; R. C. 1899, § 1916.]

§ 3287. Board may transfer unexpended balances, when. The board of county commissioners may at any regular meeting thereof, whenever in their judgment there is immediate need for the erection and repairing of court houses, jails or other necessary buildings within and for the county, by resolution, create a county building fund, and thereafter at their regular meeting in July of each year, may transfer to said building fund any unexpended balances which are or may be in the hands of the treasurer belonging to the road and bridge fund, penalty and interest fund or emergency fund, after current bills or authorized expenditures against said funds have been audited and paid, or any balance in the interest on bonds fund in excess of the forthcoming installment of interest on any outstanding bonds, or any balance remaining in any sinking fund created for the purpose of paying bonded indebtedness, when all bonds for which said fund was created have been retired and paid. In cases where there are no immediate demands for the erection and repairing of any court houses, jails or other necessary buildings within and for the county, then the transfers herein contemplated may be made to the county general fund. [R. C. 1905, § 2412; 1890, ch. 175, § 1; 1891, ch. 3, § 1; R. C. 1899, § 1917; 1903, ch. 73.]

Appeal must be taken as provided by statute. *Lyman County v. Board*, 14 S. D. 341, 85 N. W. 597; *Wood v. Bangs*, 1 Dak. 179, 46 N. W. 586; *Taubman v. Board*, 14 S. D. 206, 84 N. W. 784.

Appeal from the board of county commissioners must be tried de novo in the district court. *Goldstreet v. Newton*, 2 Dak. 149, 3 N. W. 329.

Action on claim not barred by failure to appeal from action of board thereon. *Spencer v. Sully County*, 4 Dak. 474, 33 N. W. 97.

§ 3288. Special funds may be transferred, when. Whenever there remains in the treasury of any county an unexpended balance of any special fund and all claims against such fund have been fully paid, and the purpose for which it was created has been fully subserved and there remains no further use for such balance for the purpose for which it was created, it shall be lawful for the board to transfer such balance to any other fund of the county or subdivisions to which such balance belongs. [R. C. 1905, § 2413; 1887, ch. 144, § 1; R. C. 1899, § 1918.]

§ 3289. Warrants, how signed and attested. All warrants upon the county treasury, except warrants for salaries of county officers, shall be issued upon the order of the board of county commissioners, signed by the chairman thereof and attested by the signature of the county auditor with the county seal affixed, and shall designate the fund upon which they are drawn. Warrants for salaries of county officers may be drawn by the county auditor from time to time as such salaries become due and payable. [R. C. 1905, § 2414; R. C. 1895, § 1919.]

County warrant sealed instrument; action must be brought within twenty years. *Hefleman v. Pennington Co.*, 3 S. D. 162, 52 N. W. 851.

After tax sale is adjudged invalid, action by board of county commissioners, permitting drawing of warrant, is necessary prerequisite to return of money paid for void certificate. *Sherwood v. Barnes County*, 22 N. D. 310, 134 N. W. 38.

Residents, citizens and taxpayers of county have such interest as entitles them to maintain action to enjoin carrying out by officials of an unlawful contract requiring extraordinary expenditures of public funds in erection of court house. *McKinnon v. Robinson*, 24 N. D. 367, 139 N. W. 580.

§ 3290. Sessions of board to be public. The board shall hold its sessions with open doors and transact all business in the most public manner, and, if the county has no court house or the court house shall be unfit or inconvenient, such sessions may be held at any other suitable place at the county seat. All matters pertaining to the affairs of the county shall be heard by the board in session only, but they may continue any business from any regular session to an intermediate day. [R. C. 1905, § 2415; R. C. 1899, § 1920.]

§ 3291. Record, what constitutes. The books required to be kept by this article shall constitute the records of the board of county commissioners. [R. C. 1905, § 2416; R. C. 1899, § 1921.]

§ 3292. Where records to be kept. The office of county auditor, county treasurer, clerk of court, county judge, sheriff, county superintendent of schools, or any other county officer having in charge any public records, shall be in the court house in said county, in rooms provided for said offices by the county commissioners. Any person elected to any office mentioned in this section who refuses or neglects to keep the records of his office in the room in the court house provided for that purpose, shall be deemed guilty of a misdemeanor; provided, however, that in counties not having court houses of sufficient size to accommodate all of these offices, the commissioners may make other provision for same. [R. C. 1905, § 2417; 1903, ch. 77.]

§ 3293. Board to provide offices, court room, jail, etc. In any county where there is no court house or jail erected by the county, or where those erected have not sufficient capacity, it shall be the duty of the board to provide a court room and jail, also offices for the following named officers: Sheriff, treasurer, register of deeds, auditor, clerk of the district court, state's attorney, county judge and county superintendent of schools, to be furnished by such county in a suitable building at the lowest rent to be obtained at the county seat, or to secure and occupy suitable rooms at a free rent within the limits of the county seat or any of the additions thereto until such county builds a court house. It shall also provide the courts appointed to be held therein with attendants, fuel, lights and stationery suitable for the transaction of

their business. If the board neglects, the court may order the sheriff to do so, and the expense incurred by him in carrying such order into effect, when certified by the court, shall be a county charge. [R. C. 1905, § 2418; 1885, ch. 41, § 1; R. C. 1899, § 1922.]

Absence of suitable buildings and vaults at county seat no defense to action to compel county officers to hold offices there. *State v. Porter*, 15 S. D. 387, 89 N. W. 1012.

Officer cannot rent an office at charge of county; remedy is by mandamus. *Cleary v. Eddy County*, 2 N. D. 397, 51 N. W. 586.

§ 3294. To erect and repair buildings from current revenue. The board shall have authority under the provisions of this article to provide for the erection and repairing of court houses, jails and other necessary buildings within and for the county, and to make contracts on behalf of the county for the building and repairing of the same; but no expenditure for the purpose herein named greater than can be paid out of the annual revenue of the county for the current year shall be made unless the question of such expenditure shall have first been submitted to a vote of the qualified electors of such county and shall have been approved by a majority of the votes so cast; and the board shall determine the amount and rate of taxes to be submitted to a vote for such purpose. [R. C. 1905, § 2419; R. C. 1899, § 1923.]

Expenditure by county of greater sum than annual revenue for the current year must be submitted to voters. *State v. Getchell*, 3 N. D. 243, 55 N. W. 585.

Contract for collecting taxes for percentage void. *Storey v. Murphy*, 9 N. D. 115, 81 N. W. 23.

County commissioners cannot declare office vacant after state's attorney has entered upon duties. *Howard v. Burns*, 14 S. D. 383, 85 N. W. 920.

When judge may appoint additional counsel. *Idem*.

Estoppel to contest illegal claims or expenditures. 137 Am. St. Rep. 354.

§ 3295. Duty to use building fund. After a building fund has been accumulated either from the proceeds of the sale of town lots, or from any other source, it shall be the duty of the board, within one year from the time such fund becomes available, to proceed to the erection of the necessary county buildings, including a jail, if such fund shall in the judgment of the board be sufficient for that purpose. [R. C. 1905, § 2420; R. C. 1899, § 1924.]

§ 3296. Contracts let only on competitive bids. The board shall cause an advertisement for bids for the erection of such building to be published for at least thirty days prior to the opening of bids by at least four publications in some newspaper published in the county, and such other newspaper as may seem to them advisable. Such advertisement shall state where the plans and specifications may be examined and the time allowed for the completion of such building, also the time when bids will be opened and passed upon by the board, which may be at a regular or duly adjourned session of the board, or at a meeting duly called by the auditor, as provided in section 3266 of this chapter. Each bid must contain a certified check in a sum equal to five per cent of the amount of the bid, made payable to the chairman of the board of county commissioners, as a guarantee that the bidder will enter into contract should it be awarded to him, and furnish a bond as herein provided; and the lowest responsible bid must in all cases be accepted, and the contract for such building shall be so conditioned that not more than seventy per cent of the contract price for the same shall be made until the contract shall be executed and the buildings completed to the satisfaction and acceptance of the board, their architect or authorized superintendent, and payments to the extent of the per cent above stated may be made from time to time during the process of construction and divided into such installments as the board may agree upon. The board must further require a bond from the contractor in a sum equal to the contract price, conditioned, the contractor will execute his contract and complete the building according to the plans and specifications and to the full satisfaction of the board, and account for all moneys paid to him and pay all bills and claims on account of labor or materials furnished in and about the performance of said contract, including all demands of subcontractors, and said bond to stand as

security for all such bills, claims and demands. The sureties on such bond shall be as required in section 4801 [6834], except, however, the board may demand a surety bond, in which case the expense of procuring such bond shall be paid for by the county requiring such. The provisions of this section shall apply to all contracts for fuel, stationery and all other articles for the use of the county, or labor to be performed therefor, when the amount to be paid for the same during any year exceeds the sum of one hundred dollars; provided, that in all cases advertisements for bids therefor need not be for more than three consecutive weeks in some weekly newspaper published in such county; and provided, also, that all contracts for the furnishing of stationery, blank books and supplies generally for all county officers shall be let at the first regular meeting in April to run for the period of one year. All contracts shall be made and set forth in writing and may be signed on behalf of the board by the chairman with the county seal affixed, after such contract has been voted upon and carried by a majority of the board. The board shall, by virtue of this section, be empowered to engage some competent architect to prepare plans and specifications, details, etc., for such building, and for which services they shall pay a compensation in a sum not to exceed five per cent of the cost of the building. [R. C. 1905, § 2421; 1899, ch. 59; R. C. 1899, § 1925; 1905, ch. 72.]

This section is R. C. 1905, § 2421. The provision that "the sureties on such bond shall be as required in section 4801, except," etc., is an unaccountable mistake, for section 4801 relates to an entirely different matter. The provision above quoted originated in Laws 1905, ch. 72, which is cited as one of the sources from which R. C. § 2421 was derived, and in that act of 1905 it read: "The sureties on such bond shall be as required in paragraph 3, chapter 133, of the Revised [sic] Laws of 1901, except," etc. Laws 1901, ch. 133, § 3, became R. C. 1905, § 6254, which constitutes section 6834 in the present compilation, and is therefore here substituted for "4801" in the text of section 3296.

County treasurer, and not county board, to designate paper to publish tax-sale notices. Dewell v. Board, 8 S. D. 452, 66 N. W. 1079.

In absence of charter or statutory requirements municipal contracts need not be let under competitive bidding. Price v. Fargo, 24 N. D. 440, 139 N. W. 1054.

§ 3297. Unused buildings may be destroyed, when. In any county containing a population of less than six thousand inhabitants as shown by the last state or federal census, it shall be lawful for the board of county commissioners, when petitioned by one hundred or more of the voters of such county, to sell or repair any building owned by the county and not used for county purposes and which is unsafe to remain standing, or to cause such building to be torn down and to do anything in the premises which a private owner might or could do with his property. [R. C. 1905, § 2422; 1893, ch. 44, § 1; R. C. 1895, § 1926.]

§ 3298. Appeals lie from decision of board. From all decisions of the board upon matters properly before it an appeal may be taken to the district court by any person aggrieved, upon filing an undertaking in such sum and with such sureties as may be approved by the county auditor, conditioned that the appellant will prosecute such appeal without delay and pay all costs adjudged against him in the district court. Such undertaking shall be executed to the county and may be sued on in the name of the county. The state's attorney, upon the written demand of at least seven taxpayers of the county, shall take an appeal from an action of the board of county commissioners to the district court, when the interests of the county are affected, which appeal shall be taken in the name of the county, and in such case no bond shall be required. Upon serving the notice provided for in the next section the county auditor shall proceed the same as if an undertaking had been filed, and his fees for making the transcript shall be paid as other claims by the county. [R. C. 1905, § 2423; 1883, ch. 5, § 1; R. C. 1895, § 1927.]

Action of board final unless appeal is taken. Tillotson v. Potter County, 10 S. D. 60, 71 N. W. 754.

Inapplicable to refusal of county commissioners to meet to consider petition or call commission together. State ex rel. Schilling v. Menzie, 17 S. D. 535, 97 N. W. 745.

Notice of appeal by state's attorney must be served on claimant. *Lyman County v. Board*, 14 S. D. 341, 85 N. W. 597.

Appeal from action of county commissioners must be tried de novo. *Goldstreet v. Newton*, 2 D. 149, 3 N. W. 329.

No equitable relief when appeal lies from decision. *Wood v. Bangs*, 1 D. 172, 46 N. W. 586.

Rejection of claim no bar to action in court. *Spencer v. Sully County*, 4 D. 474, 33 N. W. 97.

Appeal lies from decision of board sitting as board of equalization. *Pierre Waterworks Co. v. Hughes County*, 5 D. 145, 37 N. W. 733.

Court has no jurisdiction on appeal if it could not have heard the case originally. *Champion v. Board*, 5 D. 416, 41 N. W. 739.

Owner of newspaper who failed to appeal from refusal of board to designate it as official paper, not entitled to mandamus. *Taubman v. Board*, 14 S. D. 206, 84 N. W. 784.

Refusal of board to employ clerk for county treasurer, final unless appeal is taken. *Tillotson v. Potter County*, 10 S. D. 60, 71 N. W. 754.

Appeal from all decisions of board of county commissioners may be had under this section. *Re Sorenson Drainage Ditch*, 27 S. D. 342, 131 N. W. 300.

Certiorari lies to review result of election conducted by county commissioners on question of licensing sale of liquors. *State ex rel. Cook v. Tripp County*, 29 S. D. 358, 137 N. W. 354.

§ 3299. Appeal, how taken. Such appeal must be taken within thirty days after the decision of the board by serving a written notice of appeal upon one of the members of the board; and the county auditor shall, upon the filing of the undertaking and the payment of his fees as hereinafter provided, make out a complete transcript of the proceedings of such board relating to the matter in controversy, and shall deliver the same to the clerk of the district court. [R. C. 1905, § 2424; R. C. 1899, § 1928.]

Sufficiency of serving notice of appeal on trustee of corporation and executing undertaking to corporation. *Starcher v. Gregory*, 23 S. D. 217, 121 N. W. 388.

§ 3300. Appeals to be filed, when. Such appeal shall be filed on or before the first day of the next term of the district court after such appeal is taken, and the cause shall stand for trial at such term. [R. C. 1905, § 2425; R. C. 1899, § 1929.]

§ 3301. Appeals docketed and tried de novo. All appeals thus taken shall be docketed as other causes pending in the district court and the same shall be heard and determined de novo. [R. C. 1905, § 2426; R. C. 1899, § 1930.]

§ 3302. Power of district court. The district court may enter a final judgment and cause the same to be executed, or may send the same back to the board with an order how to proceed and require such board to comply therewith by mandamus, or by attachment for contempt. [R. C. 1905, § 2427; R. C. 1899, § 1931.]

§ 3303. Officers to make settlement. All treasurers, sheriffs, clerks, constables and other officers chargeable with money belonging to any county, shall render their account to and settle with the county commissioners at the time required by law, and pay into the county treasury any balance which may be due the county, taking duplicate receipts therefor, and deposit one of the same with the county auditor within five days thereafter. [R. C. 1905, § 2428; R. C. 1899, § 1932.]

§ 3304. Board to ascertain amount of redemption money. It is the duty of the board at each annual meeting to examine the county treasurer's tax sale book and stub receipts, and ascertain the amount of redemption money in the treasury, and require such treasurer to account for the same. [R. C. 1905, § 2429; 1879, ch. 49, § 10; R. C. 1899, § 1933.]

§ 3305. Penalty for failure to render or settle accounts. If any person thus chargeable shall neglect or refuse to render true accounts or settle as aforesaid, the board of county commissioners shall adjust the accounts of such delinquent according to the best information it can obtain and ascertain the balance due the county and order suit to be brought in the name of the county therefor; and such delinquent shall not be entitled to any commission

and shall forfeit and pay to the county a penalty of twenty per cent on the amount of funds due the county. [R. C. 1905, § 2430; R. C. 1899, § 1934.]

Twenty per cent penalty may be recovered in action against county treasurer and sureties for money due county. *Jerauld County v. Williams*, 7 S. D. 196, 63 N. W. 905.

§ 3306. Warrants draw interest, when. All county warrants hereafter drawn by the proper authorities shall, after having been presented to the county treasurer for payment and by him indorsed "not paid for want of funds," from such date draw interest at the rate of seven per cent per annum. [R. C. 1905, § 2431; 1881, ch. 139, § 1; R. C. 1899, § 1935.]

§ 3307. Official newspapers. Designation of. The board of county commissioners of each county in this state must at its first regular meeting in January of each year designate three newspapers, qualified to make such publication within the county, to publish the proceedings of said board as provided by law; provided, that at least one of the newspapers so designated must be located at the county seat of such county. [1911, ch. 232.]

§ 3308. Proceedings of board to be published. Legal rates therefor. It shall be the duty of the board to cause to be published in three newspapers published in its county, or in case there are not three newspapers published within the county qualified to make such publication, then in as many as there are, a full and complete report of all its official proceedings at each regular and special meeting, such proceedings to be published as soon after each meeting as practicable, and the board shall pay for such publication seven cents per counted line of nonpareil type for the first insertion and four cents per line of nonpareil type for each subsequent insertion; or five cents per counted line of brevier type for the first insertion and three cents per line of brevier type for each subsequent insertion. All tabulated matter which shall consist of at least three justifications in each line shall be computed at double the rates for straight matter. A line shall be construed to mean thirteen ems pica in length. Said proceedings, however, shall be published only in such newspapers as are designated to publish such proceedings, and which shall file or cause to be filed with the county auditor an affidavit of publication executed in proper form; provided, that not more than two newspapers in any congressional township shall be so designated, and when there are but two newspapers in the county and both are in the same congressional township the commissioners shall designate but one of such papers. In case there is no newspaper published in the county the board shall cause such proceedings to be published in such newspaper in the state as has the largest circulation in such county, and shall also cause such report to be posted in three public places in the county, one of which places shall be the office of the county auditor. [1911, ch. 232, § 1; R. C. 1905, § 2432; 1887, ch. 51, § 2; R. C. 1895, § 1936.]

§ 3309. Rates and methods of computation applicable to legal notices and publications generally. The rates of compensation and the methods of calculating the same provided for in section 2620 of the Revised Codes of 1905, as amended by section 3308 [herein] shall be applicable to and made to apply in all cases where publication of legal notices of any kind, proceedings of board of county commissioners, reports and lists of the state experiment station to inspect and analyze foods and beverages, election returns and other publications and reports as required and allowed by law. [1911, ch. 232, § 2.]

R. C. 1905, § 2620, above referred to, was amended by Laws 1909, ch. 178, which constitutes section 3540 herein.

And see the note to the latter section.

§ 3310. Auditor to furnish copy of proceedings. The county auditor shall make out a full and complete report of the proceedings of each regular and special meeting of the board, and transmit the same to the publishers of the newspapers selected by such board to publish such proceedings, such report to be made out and transmitted within one week from the time such proceedings are had. [R. C. 1905, § 2433; R. C. 1895, § 1937.]

§ 3311. Proceedings to be published, when. It shall be the duty of the

publisher of each newspaper selected to publish the proceedings of the board to cause such proceedings to be published in the issue of his paper next succeeding the time of their reception. [R. C. 1905, § 2434; R. C. 1895, § 1938.]

ARTICLE 10.—COUNTY BUDGET.

§ 3312. **Officers to file itemized statement with county auditor.** It shall be the duty of every officer in charge of any institution, office or undertaking supported wholly or in part by the county, to file with the county auditor, on or before March fifteenth of each year, on suitable blanks furnished by him, an itemized statement of the amounts of moneys which, in the opinion of such officer, will be required for the proper maintenance, extension or improvement of such institution, undertaking or office for the fiscal year next ensuing. The local officers who have charge of any poor relief which is supported wholly, or in part, by the county, shall in like manner furnish the county auditor with statements of the estimated amounts required from the county for poor relief during the ensuing financial year. It shall be the duty of the county auditor to furnish each officer or person required to make a statement with suitable blank forms, on or before March first of each year. [1913, ch. 62, § 1.]

§ 3313. **Duty of auditor.** It shall be the duty of the auditor to furnish each county commissioner, on or before the first meeting of the board of county commissioners in April, with a tabulated statement showing the several amounts asked for, for each institution, office and undertaking, and a brief explanation of the reasons therefor. Such tabulated statement shall be accompanied by a statement showing estimates of income from each and every source, and such other data as the county auditor may deem necessary for the full comprehension of said tabulated statement. [1913, ch. 62, § 2.]

§ 3314. **Commissioners to prepare estimates and tabulations.** At the April meeting of each year, the board of county commissioners in each county of this state shall prepare, or cause to be prepared, a statement:

1. Showing in detail the proposed undertaking of the county and the relative importance of each such undertaking.

2. Showing detailed estimates of the cost of the proposed undertakings.

3. Showing detailed estimates of the cost of the whole operation of the county government for the ensuing fiscal year, and the cost of each principal detail or line of endeavor of each such operation.

Also a statement showing:

1. The amounts appropriated for each such estimate for the ensuing fiscal year.

2. The amount of revenues applicable to meet expenditures and the sources of such revenue.

3. The amounts necessary to be raised by taxes for each purpose and the total amount for all purposes.

Such statement shall be published at least once in at least one newspaper in the county during the month of May.

In order to prepare the estimates and tabulations herein provided for, the county commissioners may require every officer or board which has charge of any county institution, undertaking or office, to furnish any information in relation to the affairs of their respective offices, undertakings or institutions, that the board may deem necessary, and the board may also employ such experienced accountants as may be necessary, whose compensation shall be fixed by the board. [1913, ch. 62, § 3.]

ARTICLE 11.—DEPOSITARIES OF COUNTY FUNDS.

§ 3315. **Commissioners to designate depositaries.** The board of county commissioners of each county in this state at its first regular meeting after the adoption of this code and thereafter at its first regular meeting in January of each odd numbered year, shall designate one or more national or

state banks in its county as county depositaries, in which all the funds of such county shall be deposited. [R. C. 1905, § 2435; 1893, ch. 49, § 2; R. C. 1895, § 1939.]

§ 3316. Proposals, advertisement for. The county auditor of each county shall advertise in one or more newspapers of the county for at least two weeks immediately prior to such meeting for sealed proposals for the deposit of the funds of such county, which advertisement shall state the date up to which such proposals will be received, which date shall be the first day of the meeting of the board at which such proposals are to be opened. Such proposals shall state in writing what rate of interest will be paid on the average daily balances during the month, interest to be paid monthly, on condition that such funds, with accrued interest, shall be held subject to draft at all times on demand. Such proposals shall be inclosed in sealed envelopes addressed to the county auditor and marked "proposals for deposit of county funds," and shall be by the county auditor filed in his office. [R. C. 1905, § 2436; 1893, ch. 49, § 3; R. C. 1895, § 1940.]

§ 3317. Proposals, acceptance of bonds. Such proposals shall be presented to the board at such meetings, and then, but not until then, shall be opened by the county auditor in the presence of the board, and the board shall thereupon proceed to accept the proposal of the bank or banks offering the highest rate of interest not inconsistent herewith, subject to the filing of a satisfactory bond as hereinafter provided, the amount of which bond shall then and there be fixed by the board. Before any bank shall be designated as such depositary it shall submit to the board for its approval a bond payable to the county, conditioned for the safe keeping and repayment of any and all funds deposited in such bank, which bond shall be signed by not less than five freeholders of the county as sureties; such bond to be in the sum required by the board, but in no case less than double the probable amount of funds to be deposited in such bank. If at any time the amount of funds on deposit in any such depositaries shall exceed one-half of the amount named in such bond, it shall be the duty of the board at its next regular meeting thereafter to require from such depositary an additional bond in a sum not less than twice the amount of such excess. Such bond shall be approved by the board, and the approval thereof endorsed thereon by the chairman of the board and by him deposited with the county auditor; and any bank whose bond shall have been so approved shall thereupon be designated by the board as a county depositary and shall continue as such until the board of county commissioners shall re-advertise for bids and shall have designated new depositaries. If the board fails or refuses to approve any such bond, the same may be presented to the judge of the district court, upon three days' notice to the county auditor, who shall proceed to hear and determine the sufficiency of such bond and may approve or disapprove the same as the facts warrant. If he approves such bond said bank shall be declared a public depositary as aforesaid. The sureties on such bond shall be required to justify as required by law in arrest and bail proceedings; provided, however, that in lieu of such personal bond, the board of county commissioners may require such bank or banks to file a surety company bond for a sum equal to the amount of funds such bank may receive according to this article. If at any time the amount of funds on deposit in any such depositaries shall exceed the amount named in such surety bond, it shall be the duty of the board at its next regular meeting thereafter to require from such depositaries an additional surety bond in the sum of not less than the amount of such excess. Such surety company bonds shall be approved as provided by law. [1911, ch. 116; R. C. 1905, § 2437; 1893, ch. 49, § 4; R. C. 1895, § 1941; 1901, ch. 65.]

As to liability of sureties on bond. *Cass County v. American Exch. State Bank*, 11 N. D. 238, 91 N. W. 59.

Liability of sureties on bond of bank as depository of public funds as affected by acquiescence or connivance of public officials in misuse of the funds. 26 L.R.A. (N.S.) 865.

§ 3318. Equal bidders. Depositary, how determined. When two or more banks in the same county proposing to become depositaries, offer the same rate of interest, it shall be the duty of the board to select impartially as many of such banks as depositaries as offer ample security for such deposit. In estimating the value of the security offered by any proposed depositary the capital, surplus and general credit of the bank shall be taken into consideration, as well as the bonds proposed to be given. [R. C. 1905, § 2438; 1893, ch. 49, § 5; R. C. 1899, § 1942; 1901, ch. 68.]

§ 3319. Sinking fund. Duty of county commissioners. Whenever there shall be accumulated in the sinking fund, or any other revenue county funds established by law, in any of the counties of this state an amount of money exceeding one thousand dollars, and for which there is no immediate use, the board of county commissioners of such county are authorized, empowered and shall direct a time deposit of such funds for a period of one year, as they may deem expedient, either in one or more of the county depositaries as created by law, or such state or national bank as said board of county commissioners may designate; provided, that the rate of interest offered by banks making bids for sinking funds shall not be less than three per cent per annum; provided, further, that whenever funds accumulated in any sinking or special assessment fund, created for the purpose of redeeming bonds and paying interest thereon, or for carrying on some work of public improvement, are so deposited, the interest received from such time deposit shall belong to and become a part of the sinking or special assessment fund thereunto entitled. [1911, ch. 110; 1909, ch. 70; 1907, ch. 92; R. C. 1905, § 2439; 1903, ch. 75, § 1.]

§ 3320. Depositaries, how designated. The depositaries for such time deposits of the said county funds may be designated at any regular meeting of the board of county commissioners of such county, upon the advertisement and proposals as provided by law for designating the depositaries of the general county funds, and the bank or banks designated as the depositary or depositaries of such time deposits of such county funds shall be required to furnish a bond in the same amount, manner and form as prescribed by law for the several county depositaries. [R. C. 1905, § 2440; 1903, ch. 75, § 2.]

§ 3321. Two or more depositaries. Duty of treasurer. In case two or more banks are designated as depositaries the county treasurer shall, as far as practicable, keep in each of the several depositaries equal balances at all times; provided, that in counties where two or more banks are designated as depositaries, the amount deposited in any bank shall not exceed the capital of such bank; provided, further, that in counties where the county deposits exceed the capital of the banks in the county, then the county commissioners shall deposit the funds of the county, in the banks of the county, upon their giving a bond according to law. [R. C. 1905, § 2441; 1899, ch. 63; R. C. 1899, § 1943.]

§ 3322. Duty of board in designating depositaries. Further to secure the safety of the county funds deposited under the provisions of this article, the board of county commissioners shall satisfy itself of the responsibility of the several banks proposing to act as depositaries, and no bank offering more than three or less than two per cent per annum on deposits subject to check shall be designated as a depositary under the provisions of this article. [R. C. 1905, § 2442; 1893, ch. 49, § 7; R. C. 1899, § 1944; 1905, ch. 74.]

§ 3323. Treasurer to deposit funds. All funds of the county shall be deposited in the name of the county by the county treasurer as soon as received by him in such bank or banks as shall have been designated as county depositaries. [R. C. 1905, § 2443; 1893, ch. 49, § 1; R. C. 1899, § 1945.]

§ 3324. Penalty for violation. If any county treasurer shall deposit any of the funds of his county or loan the same in any manner except in accordance with the provisions of this article he shall be liable to a penalty of five hundred dollars for each deposit or loan so made. [R. C. 1905, § 2444; 1893, ch. 49, § 9; R. C. 1899, § 1946.]

§ 3325. Monthly statement by depositary. Each depositary shall furnish to the county auditor on the first day of each month an itemized statement of the county's account with such depositary, duly verified by the affidavit of the cashier of such bank, which statement shall be filed and carefully preserved in the office of the county auditor. All sums of interest accruing on the funds deposited as aforesaid shall be credited to such deposit account on the first day of each month for the preceding month and a statement of such interest shall be rendered by such depositary to the county auditor on the first day of each month and the auditor shall charge the treasurer with the amount thereof and credit the same to the general fund of the county. [R. C. 1905, § 2445; 1893, ch. 49, § 8; R. C. 1899, § 1947.]

§ 3326. Checks, how signed. All checks drawn upon the county depositaries shall be signed by the county treasurer in the name of the county by himself as treasurer. [R. C. 1905, § 2446; 1893, ch. 49, § 10; R. C. 1899, § 1948.]

§ 3327. Depositaries where only one bank or no bank is located. It is the duty of the officers mentioned in this article to comply with the provisions hereof; provided, that, in counties where only one bank is located, the board of county commissioners shall designate such bank or other banks within this state a depositary without advertising for bids, if such bank agrees to pay interest at the rate of at least two per cent per annum, and complies with the provisions of the foregoing section. In counties where there is no bank, or where no bank offers to comply with the requirements of this article, the board must designate some bank or banks outside of such county and within this state as such depositaries, but such bank or banks must furnish bonds in the same manner as other depositaries. [R. C. 1905, § 2447; 1897, ch. 61; R. C. 1899, § 1949; 1905, ch. 74.]

§ 3328. Treasurer exempt from liability, when. When the funds of any county are deposited by the county treasurer as provided herein, such treasurer and his sureties shall be exempt from all liability thereon by reason of loss of any such funds from the failure, bankruptcy or any other act of any such bank to the extent only of such funds in the hands of such bank or banks at the time of such failure or bankruptcy. [R. C. 1905, § 2448; 1893, ch. 49, § 12; R. C. 1899, § 1950.]

Constitutionality of statute releasing public officer or his surety from liability for loss of public fund. 41 L.R.A.(N.S.) 97.

§ 3329. Violation of this article a misdemeanor. Any officer violating any of the provisions of this article shall be deemed guilty of a misdemeanor. [R. C. 1905, § 2449; 1893, ch. 49, § 13; R. C. 1895, § 1951.]

ARTICLE 12.—REGISTER OF DEEDS.

§ 3330. Record of instruments. The register of deeds shall keep a full and true record in proper books kept for that purpose of all deeds, mortgages, bills of sale, chattel mortgages and all other instruments authorized by law to be admitted to record, filed with him for that purpose, if the person so filing them for record shall first pay him the fees provided by law for filing or recording the same. When an instrument is filed with him for record he shall indorse thereon the date and hour and minute of the day of such filing and when recorded, also the pages and designating the letter or number of the book or records in which the record thereof is made; and in a note at the foot of the record of each instrument recorded by him he shall write the date, the hour and minute of the day when it was filed with him and the page on which it is recorded. [R. C. 1905, § 2450; R. C. 1895, § 1952.]

Deed filed for record without demand of fees must be recorded. *Parrish v. Mahany*, 10 S. D. 276, 73 N. W. 97, 65 Am. St. Rep. 715.

Duty to record certain documents on payment of fees. *Erskine v. Steele Co.*, 4 N. D. 339, 60 N. W. 1050, 28 L.R.A. 645.

Registry fee book kept by one who was not register of deeds at time deed was returned, is inadmissible to show to whom deed was returned. *Davis v. Davis*, 24 S. D. 474, 124 N. W. 715.

Liability of registrar of deeds for neglect, delay or mistake in registering or indexing instrument affecting title to real property. 23 L.R.A.(N.S.) 127.

Liability to private individuals of registers of deeds, county clerks, clerks of court, prothonotaries, etc. 95 Am. St. Rep. 85.

§ 3331. Seal of register of deeds. He shall provide himself with a seal and make an impression of the same upon each instrument to which he attaches his official signature. Such seal shall bear the following inscription: "Register of deeds of.....County." [R. C. 1905, § 2451; 1883, ch. 95, § 1; R. C. 1895, § 1953.]

§ 3332. Numerical index required. He shall prepare from the records of his office and thereafter keep a numerical index of the deeds, mortgages and other instruments of record in his office affecting or relating to the title to real property. [R. C. 1905, § 2452; R. C. 1899, § 1954.]

Purchaser of real property is charged with notice of what he would find on examining numerical index in register's office. *Fullerton Lumber Co. v. Tinker*, 22 S. D. 427, 118 N. W. 700, 18 A. & E. Ann. Cas. 11.

§ 3333. Separate indexes to be kept. There shall be prepared and kept one index of the deeds and contracts and other instruments, not liens merely, and another index of mortgages and other liens, which indexes shall be substantially or as near as may be in the following forms:

FORM OF NUMERICAL INDEX TO CITY AND TOWN PROPERTY.

BLOCK NO. 1, IN.....

No. of Lot.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.
1																
2																
3																
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10																
11																
12																
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14																
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16																
17																
18																

FORM OF SECTIONAL SYSTEM OF NUMERICAL INDEX TO REAL ESTATE.

TOWNSHIP NO. RANGE NO. SECTION NO.

No. of section.	Quarter Sec.	Part Qr. Sec.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.	Vol.	Page.
1	N. E.	N. E. quarter												
		N. W. quarter												
		S. W. quarter												
		S. E. quarter												
	N. W.	N. E. quarter												
		N. W. quarter												
		S. W. quarter												
		S. E. quarter												
	S. W.	N. E. quarter												
		N. W. quarter												
		S. W. quarter												
		S. E. quarter												
	S. E.	N. E. quarter												
		N. W. quarter												
		S. W. quarter												
		S. E. quarter												

[R. C. 1905, § 2453; R. C. 1899, § 1955.]

§ 3334. Grantor and grantee indexes required. He shall prepare from the records of his office and keep grantor and grantee indexes of the deeds, mortgages and other instruments of record in his office, affecting or relating to the title of real property, in addition to the numerical indexes above provided for. [R. C. 1905, § 2454; 1887, ch. 134, § 1; R. C. 1899, § 1956.]

§ 3335. Separate indexes of deeds and liens. He shall prepare and keep one index of the deeds and contracts and other instruments not liens merely, and another index of the mortgages and other instruments which are liens, which indexes shall show the name of the grantor and grantee, dates of instruments, dates of filing and description of property affected. [R. C. 1905, § 2455; 1887, ch. 134, § 2; R. C. 1899, § 1957.]

§ 3336. Document number. Priority of filing. It shall be the duty of each register of deeds in this state when any deed, patent, mortgage, receiver's receipt, contract, notice of lis pendens, copy of decree or other instrument affecting the title to, or creating a lien upon any real estate within his county, is filed in his office, immediately to write or stamp thereon a document number, which numbers shall be consecutive in the order of filing commencing with number one in each county, and following in the order of filing of the various documents; and priority of number shall be prima facie evidence of priority of filing; provided, that when such register of deeds shall receive by mail or other like inclosure more than one instrument at a time he shall affix such numbers in the consecutive order in which such instruments actually come to his hand on opening such inclosure save that when more than one instrument is received from the same source at the same time he may follow such directions, if any, as the sender may give in such numbering. [R. C. 1905, § 2456; R. C. 1895, § 1958.]

§ 3337. Reception book to be kept. There shall be provided by the county commissioners of each county in the state in the same manner that other record books are provided a book for use in the office of the register of deeds to be known as the reception book, in which shall be entered, immediately after

numbering, all documents and papers enumerated in the last section and such book shall be ruled in parallel columns showing, in the first column at the left hand side of the page, the document number; in the second column, the date of filing; in the third column, the grantor; in the fourth column, the grantee; in the fifth column, the character of the instrument; in the sixth, the book and page where recorded; in the seventh, to whom delivered; and in the last column at the right, a brief description of the property, if any, described therein, and such books shall be a part of the public records of the office and open to public inspection during office hours. [R. C. 1905, § 2457; R. C. 1895, § 1959.]

§ 3338. Duty of register of deeds. When such instruments are numbered and entered in the reception book and indexed, they shall be recorded or filed as now provided by law and it shall be the duty of the register of deeds to write or stamp, or cause to have written or stamped at the beginning of the record thereof, if recorded, the words "document number" and add thereto the number stamped or written on such document and to add, immediately after the record of such instrument, a certificate setting forth that the same was filed in his office, giving the date and hour as now provided by law, which certificate he shall authenticate with his official signature, but to which he need not affix his official seal. [R. C. 1905, § 2458; R. C. 1895, § 1960.]

§ 3339. Record, when complete. Penalty for alteration. The affixing of the signature of the register of deeds to such record shall be deemed to have completed the record thereof, and any person who shall thereafter willfully erase, add to, interline, mutilate, conceal, destroy or in any manner change such record shall be deemed guilty of a violation of section 9363 of the penal code of this state and on conviction thereof be punished as therein provided. [R. C. 1905, § 2459; R. C. 1895, § 1961.]

§ 3340. Chattel mortgages excluded. The last four sections shall not be construed to extend to or cover the filing and indexing of chattel mortgages as now provided by law. [R. C. 1905, § 2460; R. C. 1895, § 1962.]

ARTICLE 13.—COUNTY TREASURER.

§ 3341. Duties of. It shall be the duty of the county treasurer to receive all moneys belonging to the county from whatever source they may be derived and other moneys which by law are directed to be paid to him, and all moneys received by him for the use of the county shall be paid out by him only on the warrant of the board of county commissioners drawn according to law, except as otherwise specially provided, and all other moneys shall be paid over by him as provided by law. [R. C. 1905, § 2461; R. C. 1895, § 1963.]

§ 3342. Method and publicity of accounts. He shall be the collector of taxes and shall be charged with the amount of all tax lists in his hands for collection, and credited with the amounts collected thereon, and the delinquent list, and shall keep a fair and accurate current account of the moneys by him received, showing the amount thereof, the time when, from whom and on what account received; also of all disbursements by him made showing the time when, to whom, on what account and the amount paid; and he shall so arrange his books that the amounts received and paid on account of each separate and distinct fund or appropriation shall be exhibited in separate and distinct columns and accounts, and he shall at all times exhibit such accounts, when desired, to the state, county or school officers entitled to examine the same, and shall at any time pay over the balance in his hands to the proper officer, upon receiving proper vouchers. [R. C. 1905, § 2462; R. C. 1895, § 1964.]

Stub from stub book in which notices of payment of license required to be given to party paying were detached was inadmissible to show period for which license money was paid. *State v. Flagstad*, 25 S. D. 337, 126 N. W. 585.

§ 3343. Board examines and settles accounts. The books, accounts and vouchers of the county treasurer and all moneys, warrants or orders remaining in the treasury shall at all times be subject to the inspection and examination of the board of county commissioners and at the regular meetings of the board in January and July of each year and at such other times as it may direct, he shall settle with the board his accounts as treasurer, and for that purpose shall exhibit to it all his books, accounts and moneys and all vouchers relating to the same to be audited and allowed, which vouchers shall be retained by the board as evidence of such settlement; and if found correct the account shall be so certified; if not, he shall be liable on his bond. [R. C. 1905, § 2463; R. C. 1895, § 1965.]

§ 3344. To insure county property. When directed by the board, he shall cause to be insured at the expense of the county any or all of the public buildings of the county and other property belonging to the same, in the name of the county or otherwise as the board may direct; and in case of the destruction or damage to the buildings or the property so insured, such treasurer shall demand and receive the moneys due on account of such insurance and pay the same into the county treasury, and such moneys shall be applied to the fund for rebuilding or restoring such buildings or property. [R. C. 1905, § 2464; R. C. 1895, § 1966.]

§ 3345. To certify abstracts. Fees. It shall be his duty to attach his certificate to each abstract of title to real estate of his county that may be presented to him for that purpose, which certificate shall show the amount of taxes due and unpaid against, or tax title affecting the land described in such abstract, as the same appears from the records in his office; and as compensation therefor he shall receive the sum of twenty-five cents for each abstract so certified, and for each failure or refusal to comply with the provisions of this article, he shall be liable to a fine of not exceeding one hundred dollars. [R. C. 1905, § 2465; 1887, ch. 1, § 1; R. C. 1899, § 1967.]

§ 3346. Report to township clerks, when. The county treasurer of each county shall, between the fifth and twentieth days of February of each year, notify by mail the township clerk of each organized township in his county of the amount of money on hand in the county treasury belonging to the township on the fifth of February, the amount belonging to each fund being stated separately. He shall also between the fifteenth day of November and the first day of December of each year, mail a like notice to each township clerk stating the amount of money in the county treasury belonging to the township on the fifteenth day of November, the amount in each fund being stated separately. [R. C. 1905, § 2466; 1895, ch. 47, § 1; R. C. 1899, § 1968.]

§ 3347. Statement of amount paid. Whenever the county treasurer pays or remits any township funds to a township treasurer he shall on the same day mail to the township clerk of such township a statement of the amount so paid or remitted, stating the amount belonging to each fund separately. [R. C. 1905, § 2467; 1895, ch. 47, § 2; R. C. 1899, § 1969.]

§ 3348. Township clerk to keep record. The township clerk shall make a record of the statements thus received from the county treasurer, and shall keep an account of the township funds in the same manner as is required of the township treasurer; and at the annual township meeting in March of each year the books of each officer shall be examined, compared and balanced. [R. C. 1905, § 2468; 1895, ch. 47, § 3; R. C. 1899, § 1970.]

§ 3349. Treasurer to keep warrant book, form of. Each county treasurer is required to keep a book called a "warrant book," in which he shall enter every county, road or other warrant or order paid by him, or received in payment of road or poll taxes, specifying the date at which the same was received and cancelled, from whom received, the payee or person in whose favor it was drawn, its number and date, the amount for which it was originally drawn, the total amount of indorsements or payments made thereon, the

principal sum for which it was received, the interest allowed and the total amount for which it was received; and the treasurer shall keep his accounts of road warrants, receipts and orders by him received for and on account of taxes, separate and distinct from the warrants paid by him in cash, and in another and separate place he shall enter an account of all indorsements made on road warrants or orders in part payment thereof. Such warrant book shall be in the following form, to wit:

TREASURER'S WARRANT BOOK..... COUNTY, N. D.

Date.	From What Received.	Payee of Warrant.	Number of Warrant.	Date of—Amount—Warrant.	Indorsement.	Receipts.	Interest.

[R. C. 1905, § 2469; R. C. 1899, § 1292.]

§ 3350. Warrants, order of payment. All warrants upon the state treasurer, the treasurer of any county, or any municipal corporation therein, shall be paid in the order of their presentation therefor. [R. C. 1905, § 2470; R. C. 1899, § 1293.]

As to duty of city treasurer to register and pay warrants. *Red River Valley Nat. Bank v. Fargo*, 14 N. D. 88, 103 N. W. 390.

Paying out of taxes collected after issuance of warrant, will not prevent recovery. *Shannon v. City of Huron*, 9 S. D. 356, 69 N. W. 598.

Treasurer who fails to pay a warrant in the order of its registration is civilly liable upon his official bond. *State v. Campbell*, 7 S. D. 568, 64 N. W. 1125.

§ 3351. Warrant register, by whom kept. Form of. The state treasurer and the treasurer of every organized county, and every incorporated city or town therein, shall provide himself with and keep a warrant register, which register shall show in a column arranged for that purpose, the number and registered number, date and amount of each warrant presented, the particular fund upon which the same is drawn, the date of presentation, the name and address of the person in whose name the same is registered, and subsequent assignees, if furnished therewith, the date of payment when made, the amount of interest and the total amount paid thereon, with the date when notice to the person in whose name such warrant is registered, is mailed as hereinafter provided. [R. C. 1905, § 2471; R. C. 1899, § 1294.]

Limitation will not run on town warrants until funds are provided or time to provide has elapsed. *Brannon v. White Lake Twp.*, 17 S. D. 83, 95 N. W. 284.

§ 3352. Registration of warrants. Paid in order of registration. It shall be the duty of every such treasurer to enter such warrant in his warrant register for payment in the order of presentation for registration, and upon every warrant so registered he shall indorse "registered for payment," with the date of such registration, and shall sign such indorsement; provided, that nothing in this chapter shall be construed to require the holder of any warrant to register the same, unless on presentation of the same to the treasurer for payment it shall be indorsed by him, "not paid for want of funds," and when so indorsed and registered it shall draw interest at seven per cent per annum from the date of such indorsement, but not otherwise. When the treasurer shall have received money belonging to any particular fund sufficient to pay the warrant against such fund, which by his warrant register appears to be next due and payable, such treasurer shall by mail immediately notify the person in whose name the same is registered, or his as-

signee, if notified of the assignment, and interest upon such warrant shall immediately cease. [R. C. 1905, § 2472; 1881, ch. 140, § 1; R. C. 1899, § 1295.]

Failure of treasurer to register warrant in the order of its presentation will not defeat recovery thereon. *Freeman v. City of Huron*, 10 S. D. 368, 73 N. W. 260.

Suit cannot be maintained on a township registered warrant until there are funds in treasurer's hands to pay. Statute of limitations does not begin to run until such time. *Brannon v. White Lake Twp.*, 17 S. D. 83, 95 N. W. 284.

§ 3353. Cash book and register to be footed and closed annually. Penalty. Every such treasurer shall daily, as moneys are received, foot the several columns of his cash book and of his register, and carry the amounts forward, and at the close of each year, in case the amount of money received by such treasurer is insufficient to pay the warrants so registered, he shall close the account for that year, in such register, and shall carry forward the excess. Any such treasurer who shall fail regularly to enter upon his cash book the amounts so received, or who shall fail to keep his cash book footed from day to day, as required by this chapter, for the space of three days, shall forfeit, for each offense, the sum of one hundred dollars, to be recovered in a civil action on his official bond, by any person holding a warrant drawn on such treasurer. The cash book and register of every such treasurer shall at all times be open to the inspection of any person in whose name any warrant is registered and unpaid. [R. C. 1905, § 2473; R. C. 1899, § 1296.]

§ 3354. Failure to register warrants. Liability of treasurer. Any such treasurer who shall fail to register any warrant in the order of its presentation therefor, or shall fail to pay the same in the order of its registration shall be liable on his official bond to each and every person, the payment of whose warrant is thereby postponed, in the sum of three hundred dollars to be recovered in a civil action. [R. C. 1905, § 2474; R. C. 1899, § 1297.]

§ 3355. Dereliction of duty, penalty for. In the case of dereliction of duty on the part of any officer or person, required by law to perform any duty under the provisions of this chapter, in any county, such person shall thereby forfeit all pay and allowance that would otherwise be due him, and the county commissioners in such county, on receiving satisfactory evidence of such dereliction or failure to perform, as required by law, any duty enjoined by this chapter, shall refuse to pay such person or persons any sum whatever for such services. [R. C. 1905, § 2475; R. C. 1899, § 1299.]

§ 3356. Redemption of warrants. Duty of treasurer. Warrants marked "redeemed," when. When the county treasurer shall redeem any county warrants, or shall receive any road warrants in payment of taxes, on which any interest is due, he shall note on such warrants or orders the amount of interest paid by him thereon, and shall enter in his accounts the amount of such interest distinct from the principal. When the county treasurer of any county shall pay any warrants drawn on him by the board of county commissioners, or when he shall take or receive any warrant, or receipt in payment for any tax, he shall write on the face of each warrant, order or receipt, "redeemed," and the date of redemption, and shall sign his name thereto. [R. C. 1905, § 2476; R. C. 1899, § 1300.]

§ 3357. Indorsements of road warrants. When any person desiring to pay any taxes due and unpaid, shall present a warrant on the road fund of his road district, in payment for such taxes as it may be applied to, which shall exceed the amount that the treasurer is authorized to receive in such warrants in payment for such taxes, the treasurer shall indorse on the back of such warrant in part payment, the amount he is authorized by law to receive, and date the same; said treasurer shall take two receipts from the holder thereof for the amount so indorsed and paid, showing the date of the indorsement, a full description of such warrant, including the date thereof, to whom issued, the amount for which it was given, and all the indorsements, including registration, if registered; one of which receipts he shall, on the

day received, file with the county auditor, and the other he shall retain as his voucher. [R. C. 1905, § 2477; R. C. 1899, § 1301.]

§ 3358. Partial payment of taxes and special assessments. How made. When any person shall desire to pay only a portion of the taxes or special assessments charged on any real property, such person shall pay a like proportion of the several taxes and special assessments charged thereon, and no person will be permitted to pay one of said taxes or special assessments without paying the others, except taxes and special assessments the collection of which shall have been enjoined by law. [1913, ch. 278; R. C. 1905, § 2478; R. C. 1899, § 1302.]

Owner of tax sale certificates may pay subsequent delinquent general taxes, without paying subsequent special assessments, and receipts for such taxes constitute additional lien. *State ex rel. Moore v. Furstenuau*, 20 N. D. 542, 129 N. W. 81.

§ 3359. County auditor to sue treasurer, when. If any county treasurer shall fail to make return, fail to make settlement, or fail to pay over all money with which he may stand charged, at the time and in the manner prescribed by law, it shall be the duty of the county auditor on receiving instructions for that purpose from the state auditor, or from the board of county commissioners of his county, to cause suit to be instituted against such treasurer and his sureties, or any of them. [R. C. 1905, § 2479; R. C. 1899, § 1303.]

§ 3360. Suit against delinquent treasurer. Commissioners may remove, when. Whenever suit shall have been commenced against any delinquent county treasurer, as aforesaid, the board of county commissioners of such county may, at their discretion, remove such treasurer from office and appoint some suitable person to fill the vacancy thereby created, as provided by law. [R. C. 1905, § 2480; R. C. 1899, § 1304.]

§ 3361. Additional bond may be required, when. The board of county commissioners of any county may require the treasurer to give an additional bond, whenever in the opinion of a majority of said commissioners the existing security shall have become insufficient; and the commissioners are also authorized and empowered to demand and receive from said county treasurer an additional bond, as required by law, with good and sufficient freehold security, in such sum as said commissioners or a majority of them may direct, whenever in their opinion, more money shall have passed or is about to pass into the hands of said treasurer than is or would be recovered by the penalty in the previous bond; but the giving of such additional bond or bonds, as provided in this section, shall not invalidate any previous bond or bonds, nor discharge the sureties from any liability thereon. If any county treasurer shall fail or refuse to give such additional bond, for and during the time of ten days from and after the day on which said commissioners shall have required said treasurer so to do, his office shall be considered vacant and another treasurer shall be appointed, agreeably to the provisions of law. [R. C. 1905, § 2481; R. C. 1899, § 1305.]

§ 3362. Treasurer not to speculate in county warrants. Penalty for. No county treasurer shall either directly or indirectly contract for or purchase any warrant or warrants, or other evidence of indebtedness issued by the county of which he is treasurer, at any discount whatever upon the sum due on such warrant or warrants, or other evidence of indebtedness; and if any county treasurer shall so contract for or purchase any warrant or warrants, or other evidence of indebtedness, he shall not be allowed, in settlement, the amount of said warrant or warrants, or other evidence of indebtedness, or any part thereof, and shall also forfeit the whole amount due on such warrant or evidence of indebtedness, to be recovered by civil action at the suit of the state of North Dakota, for the use of the county. [R. C. 1905, § 2482; R. C. 1899, § 1306.]

§ 3363. Treasurer not credited with interest paid, when. The county treasurer, on his settlement with the county commissioners, shall not be

credited with any sum for interest paid on any warrant or order, unless he shall, at the time of receiving the same, have noted thereon the amount of interest due thereon. [R. C. 1905, § 2483; R. C. 1899, § 1307.]

§ 3364. Loaning county funds, penalty for. If any county treasurer shall loan any money belonging to his county, with or without interest, or shall use the same for his own purposes, he shall forfeit and pay for every such offense a sum not exceeding five hundred dollars nor less than one hundred dollars to be recovered in an action at law, at the suit of the state of North Dakota, for the use of the county. [R. C. 1905, § 2484; R. C. 1899, § 1308.]

§ 3365. Auditor and treasurer jointly to make annual statement. Publication. The county auditor and county treasurer conjointly shall make out annually a detailed exhibit, showing the receipts and disbursements of the county for the fiscal year; also the assets and liabilities at the time of making out the same. Said exhibits shall show the amount of all orders on the treasury issued during the year next preceding, to whom allowed, and on what account; also the liabilities of the county stated in detail, and the assets of every kind, as nearly as may be; showing also the amount of funds in the treasury at the time of making said exhibit, on what account paid in and in the kind of funds. Said exhibit shall be made out annually up to and including the thirty-first day of December, and filed with the county auditor, and a copy posted upon the same day in the office of the treasurer. Provided, that such auditor and treasurer shall not receive their December salary until such report has been made, filed and posted. [1913, ch. 112; R. C. 1905, § 2485; R. C. 1899, § 1309.]

ARTICLE 14.—COUNTY AUDITOR.

§ 3366. Clerk of board of county commissioners. The county auditor shall by virtue of his office be clerk of the board of county commissioners of his county and he shall keep an accurate record of its official proceedings and carefully preserve all the documents, books, records, maps and other papers required to be deposited or kept in his office, and prepare a financial statement of the county annually, unless otherwise ordered by the board, and carefully do and perform all other acts and duties required by law. [R. C. 1905, § 2486; 1887, ch. 10, § 4; R. C. 1899, § 1971.]

Mandamus lies to compel supervisors to enter their findings on their records. *State ex rel. Andrews v. Boyden*, 18 S. D. 388, 100 N. W. 763.

Writ of certiorari should be directed to board of county commissioners and not to the auditor. *State ex rel. Lindsay v. Boyden*, 18 S. D. 379, 100 N. W. 761.

§ 3367. To keep account current with treasurer. He shall keep an accurate account current with the treasurer of his county, and when any person shall deposit with him any receipt given by the treasurer for money paid into the treasury, he shall file such receipt in his office and charge the treasurer with the amount thereof. [R. C. 1905, § 2487; 1887, ch. 10, § 5; R. C. 1899, § 1972.]

§ 3368. To deliver moneys and records to successor. On going out of office he shall deliver up to his successor in office all the moneys, books, records, documents, maps, papers, vouchers and other property in his hands belonging to the county, and in case of his death his personal representatives shall in like manner deliver the same to his successor as aforesaid. [R. C. 1905, § 2488; 1887, ch. 10, § 6; R. C. 1899, § 1973.]

§ 3369. To draw all county warrants. He shall draw warrants on the county treasurer in favor of all persons entitled thereto in payment of all claims and demands chargeable against the county which have been legally examined, allowed and ordered paid by the board of county commissioners; also, for all debts and demands against the county when the amounts are fixed by law, and which are not directed to be audited by some other person or tribunal. All warrants must distinctly specify the liability for which they

are drawn and when it accrued. [R. C. 1905, § 2489; 1887, ch. 10, § 7; R. C. 1895, § 1974.]

Warrants nonnegotiable instruments, and the rule relating to innocent purchasers does not apply. *Erskine v. Steele County*, 4 N. D. 339, 60 N. W. 1050.

The law-making powers of the state did not grant to county commissioners unrestricted authority as to county funds. Auditor must draw warrants; chairman county commissioners signs them. *State v. Ryan*, 9 N. D. 419, 83 N. W. 865.

Issuance of warrants a ministerial act controlled by mandamus. *State ex rel. Wiles v. Albright*, 11 N. D. 22, 88 N. W. 729.

§ 3370. Warrants consecutively numbered and registered. All warrants issued by the county auditor during each year, commencing with the first Monday in January, must be numbered consecutively and the number, date and amount of each and the name of the person to whom payable and the purpose for which drawn, must be stated therein and they must at the time they are issued be registered by him in a book kept for that purpose. [R. C. 1905, § 2490; 1887, ch. 10, § 7; R. C. 1895, § 1975.]

§ 3371. Reception book provided. There shall be provided by the board of county commissioners of each county in the state, in the same manner that other record books are provided, a book for use in the office of the county auditor to be known as the "reception book," in which shall be entered, immediately after numbering, all documents, bonds and other papers required by law to be deposited in the office of the county auditor. Such book shall be ruled in parallel columns, showing in the first column at the left hand side of the page the document number, in the second column the date of filing, in the third column the character of the instrument, and in the fourth column miscellaneous remarks. [1907, ch. 71, § 1.]

§ 3372. Duty of county auditor. It is hereby made the duty of each county auditor in the state to immediately upon receipt of any document, bond or other paper required to be filed in his office, number the same, and to make the proper entries in the reception book, and index the same. He shall also cause to be recorded at length in the office of the register of deeds all bonds that are required by law to be deposited in his office. [1907, ch. 71, § 2.]

§ 3373. General duties. He shall do, perform and transact all county business without any extra or greater compensation than is allowed by law; and shall keep all the books required to be kept by the county commissioners; shall file and preserve in his office all accounts, vouchers and other papers pertaining to the settlement of any and all accounts to which the county shall be a party, copies of which, certified under the hand and seal of the auditor, shall be admitted as evidence in all courts in this state. [R. C. 1905, § 2491; R. C. 1899, § 1976.]

§ 3374. Election duties. He shall perform all the duties required of him by law relative to the making out and delivering notices of general and special elections, making abstracts of and canvassing the votes cast at any such election, issuing certificates of election and forwarding the abstracts of votes cast at such elections to the secretary of state; and whenever the county commissioners for any cause shall fail or refuse to call special elections, the county auditor shall have authority to provide for and call any such election upon the petition of a majority of the legal voters of the county, to be determined by the poll lists of the preceding general election. [R. C. 1905, § 2492; 1881, ch. 73, § 1; R. C. 1895, § 1977.]

§ 3375. Liability of auditor. If any county auditor fails to make settlement or pay over any moneys with which he stands charged at the time and in the manner prescribed by law or misapplies any money which comes into his possession in the discharge of his official duties, the county commissioners shall commence an action against him and his sureties in the district court of such county, and he shall be proceeded against as provided by law in other cases. In case of suspension under the provisions of this section, such

auditor, if restored to office, shall not be deprived of his salary during the time of such suspension and the reasonable expenses of his defense upon such hearing shall be paid by the county. If upon the trial of such action such auditor is adjudged guilty of any neglect of duty, his office shall be deemed vacant. [R. C. 1905, § 2493; 1887, ch. 10, § 11; R. C. 1899, § 1978.]

ARTICLE 15.—STATE'S ATTORNEY.

§ 3376. Duties of state's attorney. The state's attorney is the public prosecutor, and must:

1. Attend the district court and conduct on behalf of the state all prosecutions for public offenses.

2. Institute proceedings before magistrates for the arrest of persons charged with or reasonably suspected of public offenses, when he has information that such offenses have been committed and for that purpose, when not engaged in criminal proceedings in the district court, must attend upon the magistrates in cases of arrest, when required by them, except in cases of assault and battery and petit larceny, and attend before, and give advice to, the grand jury whenever cases are presented to them for their consideration.

3. Draw all indictments and informations, defend all suits brought against the state or his county, prosecute all bonds forfeited in the courts of record and all actions for the recovery of debts, fines, penalties and forfeitures accruing to the state or his county.

4. Deliver receipts for money or property received in his official capacity, and file duplicate receipts therefor with the county auditor.

5. On the first Mondays of January, April, July and October in each year, file with the county auditor an account, verified by his oath, of all moneys received by him in his official capacity during the preceding three months and at the same time pay it over to the county treasurer.

6. Give when required, and without fee, his opinion in writing to the county, district, township and school district officers, on matters relating to the duties of their respective offices.

7. Keep a register of all official business, in which must be entered a note of each action, whether civil or criminal, prosecuted officially, and of the proceedings therein.

8. Make a written report to the attorney-general, on the first day of each month, of all proceedings instituted or pending in his county in any court, other than justice courts, wherein the state is a party or is interested; which reports shall give the title of the case, the date when commenced, the purpose of the action, the proceedings had and taken therein, and the final disposition of such cases.

9. It is the intention of this article to make the attorney-general, his assistants and the state's attorney the only public prosecutors in all cases civil and criminal, wherein the state, or county, is a party to the action, and that they only shall be authorized and empowered to perform the duties herein set forth, except as hereinafter provided. The attorney-general or his assistants are authorized to institute and prosecute any cases in which the state is a party whenever in their judgment it would be to the best interests of the state so to do, and in case the state's attorney of any county refuses or neglects to perform any of the duties prescribed in subdivisions 2 and 3 of this section, after it has been properly brought to his attention, or when he has information that a public offense has been committed, or that a civil suit in which the state is a party, should be instituted and the fact of such refusal or neglect to perform such duty, and that the action is one that should be prosecuted, has been brought before the judge of the district court in the judicial district having jurisdiction of such action, by affidavit or otherwise, and said judge is satisfied that such action should be prosecuted, and that said state's attorney has failed or neglected to perform his duty,

then in that case, he shall request the attorney-general or an assistant attorney-general to take charge of such prosecution, or he shall appoint, by an order to be entered upon the minutes of the court, some suitable person, an attorney-at-law, and the person so appointed shall thereupon be vested with all the powers of such state's attorney for that action, but for no other purpose, and the district court shall by order, to be entered in the minutes of the court, fix his fee therefor, which amount shall be allowed by the board of county commissioners and which amount, if so ordered by the court, shall be deducted from the salary of the state's attorney and the person so appointed shall be the only person authorized to proceed therein; provided, however, that nothing herein contained shall prevent the county commissioners of any county, in cases of public importance and with the advice and consent of the state's attorney, employing such additional counsel as may be deemed advisable, to assist the state's attorney, upon such compensation as may be agreed upon; provided, further, that the provisions of this article shall not be construed so as to abridge any of the powers conferred upon the attorney-general, his assistants or the state's attorney, or to relieve them from the infliction of any punishment, fine or forfeiture, for neglect of duty, as prescribed by the provisions of chapter 83 of the penal code, commonly known as the prohibition law.

10. He is the legal adviser of the board of county commissioners. He must attend their meetings when required, and must oppose all claims and accounts presented against the county which are unjust or illegal.

11. If the board of county commissioners without authority of law orders any money paid as a salary, fees or for any other purpose, and such money has been actually paid, or if any other county officer has drawn any warrant in his own favor or in favor of any other person, without being authorized by the board of county commissioners, or by law, and the same has been paid, the state's attorney is empowered, and it is his duty to institute an action in the name of the county against such person to recover the money so paid, and no order of the board of county commissioners therefor is necessary to maintain such action; but when the money has not been paid on such order or warrants, it is the duty of the state's attorney upon receiving notice thereof, to commence an action in the name of the county to restrain the payment of the same, and no order of the board of county commissioners is necessary to maintain such action.

12. The state's attorney, except for his own services, must not present any claim, account or other demand for allowance against the county, nor in any way advocate the relief asked on the claim or demand made by another.

13. He shall not receive any fee or reward from or on behalf of any prosecutor or other individual for services in any prosecution or business to which it shall be his official duty to attend, nor be concerned as attorney or counselor for either party, other than for the state or county, in any civil action depending on a state of facts upon which any criminal prosecution then pending shall depend; nor shall any state's attorney be eligible to or hold any judicial office whatever. When required to go to any other county or from one part to another part of his county to transact any official business as such state's attorney, he shall be entitled to receive from his county the amount of his actual and necessary expenses in transacting such business, in addition to the salary fixed by law, which expenses shall be audited and paid by the board of county commissioners as other county expenses are audited and paid. [R. C. 1905, § 2494; R. C. 1895, §§ 1979, 1983; 1901, ch. 178.]

"Attorney" means one who holds license to practice law. *Danforth v. Egan*, 23 S. D. 43, 119 N. W. 1021.

State's attorney cannot vindicate himself in disbarment proceedings by pleading ignorance of provisions of statute. *Re Schull*, 25 S. D. 602, 127 N. W. 541.

Attorney-general was not subject to disbarment proceedings as attorney for commene-

ing action for conversion of horses, which were subject of prosecution, for larceny, he having received no compensation. *Re Johnson*, 27 S. D. 386, 131 N. W. 453.

Subject to removal for unlawful exaction of money from county. *Re Simpson*, 9 N. D. 379, 83 N. W. 541.

County commissioners have no authority to summarily declare office vacant, because incumbent not eligible, where he has entered upon the duties. *Howard v. Burns*, 14 S. D. 383, 85 N. W. 920.

Contract with county commissioners to prosecute a suit upon contingent fee is ultra vires and void. *Storey v. Murphy*, 9 N. D. 115, 81 N. W. 23.

Employment of counsel to assist state's attorney ultra vires. *Storey v. Murphy*, 9 N. D. 115, 81 N. W. 23.

Counsel employed by private parties may assist in a criminal trial. *State v. Kent*, 4 N. D. 577, 62 N. W. 631.

Duty to bring action to enforce dissolution of corporation. *Dudley v. Dakota Co.*, 11 S. D. 559, 79 N. W. 839.

When disqualified, court not authorized to appoint an attorney to argue appeal for state in supreme court; duty devolves upon attorney-general. *State v. Marshall County*, 14 S. D. 149, 84 N. W. 775.

Order that fee of attorney appointed by court to prosecute criminal case be deducted from salary of state's attorney, reviewable on certiorari. *State v. Lauder*, 11 N. D. 136, 90 N. W. 564.

Board of county commissioners is not empowered to employ attorney to collect judgment due it. *Fox v. Walley*, 13 N. D. 610, 102 N. W. 161.

Attorney-general and his assistants have right to appear before grand jury and examine witnesses in regard to matters relating to prohibition law. *State ex rel. Miller v. District Ct.*, 19 N. D. 819, 124 N. W. 417, Ann. Cas. 1912D, 935.

Eligibility of women to office of prosecuting attorney. 27 L.R.A.(N.S.) 532.

Extent of restriction on right of unlicensed person to act as, or assist, prosecuting attorney. 24 L.R.A.(N.S.) 753.

Extent of restriction on right of disbarred or suspended attorney to act as prosecuting attorney. 24 L.R.A.(N.S.) 756.

Right of accused to complain because prosecution is conducted or assisted by unofficial member of bar. 24 L.R.A.(N.S.) 564.

Improper influence or interference with grand jury by prosecuting attorney. 28 L.R.A. 368.

Right of prosecuting attorney to compensation from individual. 39 L.R.A.(N.S.) 81.

Delay of prosecution due to neglect to provide prosecuting attorney as ground for discharge of accused. 36 L.R.A. 528.

As to similar provision in Cal. Pol. Code, § 4256, subd. 2, see *Pillsbury v. Brown*, 47 Cal. 477.

§ 3377. To receipt for public moneys. It shall be his duty, whenever he shall receive any moneys from fines, penalties or costs, to deliver to the officer or person paying the same duplicate receipts, one of which shall be filed by such officer or person in the office of the county treasurer. [R. C. 1905, § 2495; 1883, ch. 43, § 8; R. C. 1899, § 1984.]

§ 3378. Penalty for failure to pay over moneys. Whenever such state's attorney shall refuse or neglect to account for or pay over the moneys so received by him as required by law, he shall be liable to a fine of not less than fifty dollars nor more than two hundred dollars, and it shall be the duty of the county treasurer to cause an action to be instituted upon the bond of such state's attorney for the recovery of the moneys so received and unpaid by him. [R. C. 1905, § 2496; 1883, ch. 43, § 10; R. C. 1895, § 1985.]

§ 3379. Court may appoint state's attorney, when and how. In judicial districts in this state, containing unorganized counties or territory, the district court shall have the power to appoint a state's attorney for such unorganized counties or territory, said attorney, when so appointed, to be the prosecuting officer for offenses arising within said unorganized counties or territory. The said court, whenever there shall be no state's attorney for an organized county, or when the state's attorney is absent or unable to attend to his duties, may, when necessary, appoint, by an order to be entered in the minutes of the court, some suitable person, an attorney at law, to perform for the time being the duties required by law to be performed by the state's attorney, and the person so appointed shall thereupon be vested with all the powers of such state's attorney for that purpose; and the district court shall, by order, to be entered in the minutes of the court, fix his fee therefor, which

amount shall be allowed by the board of county commissioners, and which amount shall be deducted from the salary of the state's attorney. Nothing in this section shall be so construed as to give the court the power permanently to fill vacancies in such office in organized counties, but such power is vested in the board of county commissioners, as elsewhere provided in this code. [R. C. 1905, § 2497; 1883, ch. 43, § 7; 1889, ch. 59, § 1; R. C. 1895, § 1986; 1903, ch. 179.]

An ineligible incumbent cannot be summarily removed by county commissioners. *Howard v. Burns*, 14 S. D. 383, 85 N. W. 920.

State attorney's salary cannot be depleted where he is in court and able to perform his official duties. *State ex rel. Clyde v. Lauder*, 11 N. D. 136, 90 N. W. 564.

Court is authorized to appoint attorney to assist state's attorney in trial where in its opinion justice requires such appointment. *State v. Johnson*, 24 S. D. 590, 124 N. W. 847.

§ 3380. State's attorney may appoint, and duties prescribed for assistant. The state's attorney is authorized and empowered to appoint an assistant state's attorney within his county, who, when qualified, by filing his oath of office, shall have the same power, and perform any and all duties, now required of the state's attorney; provided, however, that the state's attorney shall be responsible, under his official bond, for any and all acts of such assistant. [R. C. 1905, § 2498; R. C. 1895, § 1987; 1903, ch. 180.]

Deputy may be under twenty-five years of age. *State v. Phelps*, 5 S. D. 480, 59 N. W. 471.

§ 3381. Judge may appoint special counsel. Compensation. The judge of the district court may in his discretion appoint special counsel to assist the state's attorney in important cases. Such special counsel shall be paid a reasonable fee therefor to be approved by the court and paid by the county for which the services were rendered. [R. C. 1905, § 2499; R. C. 1895, § 1988.]

As to power of district judge to appoint special counsel to assist state's attorney. *Fox v. Walley*, 13 N. D. 610, 102 N. W. 161.

ARTICLE 16.—CONTINGENT FUND FOR STATE'S ATTORNEY.

§ 3382. County commissioners appropriate money. The county commissioners of each county in this state are hereby authorized and directed to set apart at their first meeting in January of each year, from any funds then in the county treasury not specifically appropriated or set aside for any other purposes, in an amount to be fixed by said board of county commissioners, a sum of money not less than one hundred dollars and not more than one thousand dollars, to be used by the state's attorney of such county as a contingent fund for the purpose of defraying such necessary expenses as are not otherwise specifically provided for in the trial and preparation for trial of criminal cases, and in the payment of such necessary expenses as are not otherwise provided for in securing evidence in the investigation of criminal cases. [1907, ch. 76, § 1.]

Section 7 of the act of 1907, of which act the foregoing is § 1, provided as follows: "During the year of 1907 the expenses mentioned in section one of this act shall be paid in the manner provided for herein, from any funds in the county treasury not specifically appropriated or set aside for other purposes."

§ 3383. State's attorney may use funds. The state's attorney of each county, by and with the consent and approval first had and obtained of the district court or any judge thereof in and for his county, is hereby authorized and empowered to incur the expenses specified in section 1 of this act, so far as is necessary, to the amount annually appropriated by said board of county commissioners for said purpose. [1907, ch. 76, § 2.]

§ 3384. Auditor draws warrant. All disbursements from said fund shall be made in the usual manner by the county treasurer of each county upon the warrant of the auditor of each county, which auditor's warrant shall be executed and delivered in an amount and to the person designated by the order of the state's attorney, countersigned by the judge of the district court for that county. [1907, ch. 76, § 3.]

§ 3385. Approval district judge required. Before any approval shall be indorsed upon any such order of any state's attorney so applying for the same, it shall be the duty of said state's attorney to present to said judge of the district court an itemized and detailed statement of the expenses for the payment of which he then makes application, and which statement shall be verified in the usual manner provided for the verification of claims against the counties in this state. [1907, ch. 76, § 4.]

§ 3386. Verified expense account. Immediately upon such judge of the district court affixing his signature to said order of the state's attorney, said judge, if in his opinion the public interest will not be prejudiced thereby, and if he be of the opinion that the public interest will be prejudiced thereby, then as much as the public interest will permit, shall file in the office of the county auditor of the county on which said order is drawn said itemized and verified statement so made by said state's attorney. [1907, ch. 76, § 5.]

§ 3386a. Unexpended balance. Any sum remaining in said fund on the thirty-first day of December of each year shall then be transferred by the county auditor to the general county revenue fund of said county. [1909, ch. 69; 1907, ch. 76, § 6.]

ARTICLE 17.—CLERK OF DISTRICT COURT.

§ 3387. Duties of. The clerk of the district court shall perform the following duties:

1. Take charge of and safely keep and dispose of according to law all books, papers and records which may be filed or deposited in his office.

2. Act as clerk of the district court and attend each session thereof and upon the judge at chambers when required.

3. Issue all process and notices required to be issued; enter all orders and judgments proper to be entered; keep in his office a register of all actions, which must state the names of the attorneys and all fees charged therein and such other matters as are required by law.

4. Keep for the district court in separate volumes an index of all suits, labeled "General Index — Plaintiffs," each page of which must be divided into seven columns, under their respective heads alphabetically arranged as follows, "Number of action," "plaintiffs," "defendants," "date of judgment," "number of judgment," "page of entry of judgment in judgment book," "page of minute book of district court;" also an index labeled "General Index — Defendants," each page of which must be divided into seven columns as above provided.

5. Keep a minute book, which must contain the daily proceedings of the court, which must be signed by the clerk, which book must be indexed in the names of both plaintiff and defendant.

6. Keep two books, in one of which must be entered in alphabetical order the names of all persons who from the organization of the court have declared, or who may hereafter declare their intention to become citizens of the United States, and the date of such declaration, which book must be labeled "declaration of intention to become citizens of the United States," and in the other of which must be entered in alphabetical order the names of all persons who have been or may be hereafter admitted citizens of the United States by the court of which he is clerk, which book must be labeled "naturalization, final papers," and enter in a separate column, opposite each name, the country of which such person was before a citizen or subject, the date of his admission and the page of the minute book or book of record containing the order admitting him a citizen.

7. Keep a book called "register of criminal actions," in which must be entered the title and number of the action, with a memorandum of each paper filed, order or proceeding had therein, with the date thereof, and the name

of each witness, number of days in attendance and his legal fees, with a proper index to the same.

8. Keep a book called "book of jurors' certificates," in which must be contained the blank certificates and stubs to be filled, as provided in this code.

9. Keep a "witness book," in which must be contained blank certificates and stubs, to be filled as provided in this code.

10. Keep a record of the attendance of all jurors, and of witnesses in criminal actions and compute the mileage of each.

11. Keep such other records and perform such other duties as are prescribed by law. [R. C. 1905, § 2500; R. C. 1895, § 1989.]

Right of women to be clerks. 38 L.R.A. 213.

Power of clerks to take bail. 1 L.R.A. (N.S.) 849.

In whose name deputy clerk should act. 19 L.R.A. 181.

Improper influence or interference with grand jury by clerk. 28 L.R.A. 371.

Certification of copies of records by clerk for evidence in other state. 5 L.R.A. (N.S.) 955, 967.

Right to attach or garnish fund in hands of clerk after he has been ordered to pay same to party. 13 L.R.A. (N.S.) 758; 30 L.R.A. (N.S.) 720.

§ 3388. Penalty for neglect of duty. Any person who may at any time be injured or aggrieved by reason of the violation of the duties of his office upon the part of any such clerk, or by any willful neglect or refusal to perform any of the duties of his office, may institute legal proceedings upon the bond of such clerk and collect therein double the amount of damages actually sustained by such aggrieved person; and the county treasurer is also authorized and required for every such violation and neglect of duty to collect a fine of not less than fifty dollars for every such violation of duty, or refusal or neglect on the part of such clerk. [R. C. 1905, § 2501; R. C. 1895, § 1990.]

Liability to private individuals of registers of deeds, county clerks, clerks of court, prothonotaries, etc. 95 Am. St. Rep. 85.

§ 3389. Clerk may adjourn court, when. Whenever the judge, whose duty it may be to preside at any term of the district court, is hindered or delayed from any cause from being at the place of holding the same on the first, second or third day of the term, such clerk is authorized, and it shall be his duty to adjourn such court from day to day, until the fourth day of the term, and if such judge does not appear and take his seat to preside therein on the fourth day of such term, and the clerk does not at or before such fourth day receive a written order of adjournment, he shall adjourn such court without day; but the judge may by written order to the clerk made at any place in the state adjourn such court to such other time as he may appoint, and such adjourned term shall be considered as a regular term for all purposes. [R. C. 1905, § 2502; R. C. 1899, § 1991.]

Adjournment for more than four days presumed to be made by court, contrary not appearing. *Myers v. Mitchell*, 1 S. D. 249, 46 N. W. 245.

ARTICLE 18.—SHERIFF.

§ 3390. Duties of. It is the duty of the sheriff:

1. To preserve the peace.
2. To arrest and take before the nearest magistrate, or the magistrate who issues the warrant, all persons who attempt to commit or have committed a public offense.
3. To prevent and suppress all affrays, breaches of the peace, riots and insurrections which may come to his knowledge.
4. To attend each term of the district court held within his county and obey its lawful orders and directions.
5. To command the aid of as many male inhabitants of his county as he may think necessary in the execution of his duties.
6. To take charge of and keep the county jail and the prisoners therein.
7. To indorse upon all notices and process received by him for service, the year, month, day, hour and minute of reception, and issue therefor to the

person delivering it, on payment of his fees, a certificate showing the names of the parties, title of paper and time of reception.

8. To serve all process or notices in the manner prescribed by law.

9. To certify under his hand upon process or notices the time and manner of service, or, if he fails to make service, the reasons of his failure and return the same without delay. [R. C. 1905, § 2503; R. C. 1895, § 1992.]

Sheriffs as public officers. 17 L.R.A. 245.

Right of woman to be sheriff. 38 L.R.A. 211.

Place at which official acts of sheriff may be performed. 33 L.R.A. 92.

Powers and duties of sheriff after expiration of official term. 36 Am. Dec. 705.

As to similar provision in Cal. Pol. Code, § 4176, see *Merrill v. Gorham*, 6 Cal. 41; *People v. Edwards*, 9 Cal. 286; *People ex rel. Attorney-General v. Squires*, 14 Cal. 16; *People v. Love*, 25 Cal. 520; *Lathrop v. Brittain*, 30 Cal. 680; *Wood v. Lowden*, 117 Cal. 232, 49 Pac. 132.

2. Liability of sheriff for making arrest. 42 L.R.A.(N.S.) 69.

Liability of sheriff for his deputy's tort in making arrest. 12 L.R.A.(N.S.) 1019.

Mandamus to compel sheriff to enforce liquor law. 28 L.R.A.(N.S.) 246.

5. Duties and liabilities of persons summoned by sheriff to serve as posse comitatus. 44 Am. St. Rep. 136.

As to similar provision in Cal. Pol. Code, § 4176, subd. 6, see *Hicks v. Folks*, 97 Cal. 241, 32 Pac. 8.

7. Indorsement stamped on back of summons and complaint showing time of filing is sufficient evidence that they were delivered to him at time stated in indorsement. *Galehouse v. Minneapolis*, St. P. S. S. M. R. Co., 22 N. D. 615, 47 L.R.A.(N.S.) 965, 135 N. W. 189.

8. Liability of officer who uses criminal process to collect a debt. 24 L.R.A.(N.S.) 301.

As to similar provision in Cal. Pol. Code, § 4176, subd. 8, see *Whitney v. Butterfield*, 13 Cal. 335, 73 Am. Dec. 584; *Wheaton v. Neville*, 19 Cal. 41; *Golden Gate C. H. M. Co. v. Superior Court*, 65 Cal. 87, 3 Pac. 628; *Bruner v. Superior Court*, 92 Cal. 239, 28 Pac. 341; *Hibernia S. & L. Soc. v. Clarke*, 110 Cal. 27, 42 Pac. 425; *Foley v. Martin*, 142 Cal. 256, 100 Am. St. Rep. 123, 71 Pac. 165, 75 Pac. 842.

9. As to similar provision in Cal. Pol. Code, § 4176, subd. 9, see *Cardwell v. Sabichi*, 59 Cal. 490.

§ 3391. Foreign process, how returnable. When process or notices are returnable to another county, the sheriff may inclose such process or notices, in an envelope, addressed to the officer or person sending them, and deposit it in the post office, prepaying postage. [R. C. 1905, § 2504; R. C. 1895, § 1993.]

§ 3392. Return prima facie evidence. The return of the sheriff upon process or notices is prima facie evidence of the facts stated in such return. [R. C. 1905, § 2505; R. C. 1895, § 1994.]

As to similar provision in Cal. Pol. Code, § 4178, see *Egery v. Buchanan*, 5 Cal. 53; *Ritter v. Scannell*, 11 Cal. 238, 70 Am. Dec. 775; *Gavitt v. Douth*, 23 Cal. 78; *Rowley v. Howard*, 23 Cal. 401; *Hunt v. Loucks*, 38 Cal. 372, 99 Am. Dec. 404; *Hewell v. Lane*, 53 Cal. 213; *Harvey v. Foster*, 64 Cal. 296, 30 Pac. 849; *People v. Lee*, 128 Cal. 330, 60 Pac. 854.

§ 3393. Liability for failure to return. If the sheriff does not return a notice or process with the necessary indorsement thereon without delay, he is liable to the party aggrieved for all damages sustained by him. [R. C. 1905, § 2506; R. C. 1895, § 1995.]

§ 3394. Liability for failure to execute process. If the sheriff to whom a writ of execution or attachment is delivered neglects or refuses after being required by the creditor or his attorney to levy upon or sell any property of the party charged in the writ which is liable to be levied upon or sold, he is liable to the creditor for the value of such property. [R. C. 1905, § 2507; R. C. 1895, § 1996.]

Burden of proof in action against sheriff for failure to execute process. 3 L.R.A.(N.S.) 420.

Diligence required in serving execution and other process and liability resulting from losses for want of such diligence. 95 Am. Dec. 423.

As to similar provision in Cal. Pol. Code, § 4180, see *Alexander v. Wilson*, 144 Cal. 5, 77 Pac. 706.

§ 3395. Liability for failure to pay over money. If he neglects or refuses to pay over on demand to the person entitled thereto any money which may come into his hands by virtue of his office, after deducting his legal fees, the

amount thereof with twenty-five per cent damages and interest at the rate of ten per cent per month from the time of demand may be recovered by such person. [R. C. 1905, § 2508; R. C. 1895, § 1997.]

As to similar provision in Cal. Pol. Code, § 4181, see *Shumway v. Leakey*, 73 Cal. 260, 14 Pac. 841.

§ 3396. Liability for escapes and rescues. A sheriff who suffers the escape of a person arrested in a civil action, without the consent or connivance of the party in whose behalf the arrest or imprisonment was made, is liable as follows:

1. When the arrest is upon an order to hold to bail or upon a surrender in exoneration of bail before judgment, he is liable to the plaintiff as bail.

2. When the arrest is on an execution or commitment to enforce the payment of money, he is liable for the amount expressed in the execution or commitment.

3. When the arrest is on an execution or commitment, other than to enforce the payment of money, he is liable for the actual damages sustained.

Upon being sued for damages for an escape or rescue he may introduce evidence in mitigation or exculpation. He is liable for a rescue of a person arrested in a civil action equally as for an escape. [R. C. 1905, § 2509; R. C. 1895, §§ 1998, 1999.]

§ 3397. Action, when cannot be maintained against. An action cannot be maintained against the sheriff for a rescue, or for an escape of a person arrested upon an execution or commitment, if, after his rescue or escape and before the commencement of the action, the prisoner returns to the jail or is retaken by the sheriff. [R. C. 1905, § 2510; R. C. 1895, § 2000.]

§ 3398. Office, when vacant. When the sheriff is committed under an execution or commitment for not paying over money received by him by virtue of his office and remains committed for sixty days, his office shall become vacant. [R. C. 1905, § 2511; R. C. 1895, § 2001.]

As to similar provision in Cal. Pol. Code, § 4186, see *People ex rel. Sweet v. Ward*, 107 Cal. 236, 40 Pac. 538; *Morton v. Broderick*, 118 Cal. 474, 50 Pac. 644.

§ 3399. To execute all process. A sheriff or other ministerial officer is justified in the execution of and must execute all process and orders regular on their face and issued by competent authority, whatever may be the defect in the proceeding upon which they were issued. [R. C. 1905, § 2512; R. C. 1895, § 2002.]

As to similar provision in Cal. Pol. Code, § 4187, see *Van Pelt v. Littler*, 14 Cal. 194; *Spencer v. Long*, 39 Cal. 700; *Wellman v. English*, 38 Cal. 583; *Babe v. Coyne*, 53 Cal. 261; *Dusy v. Helm*, 59 Cal. 188; *Brickman v. Ross*, 67 Cal. 601, 8 Pac. 316; *Loughlin v. Thompson*, 76 Cal. 287, 18 Pac. 330; *Ayres v. Burr*, 132 Cal. 125, 64 Pac. 120; *Alexander v. Wilson*, 144 Cal. 5, 77 Pac. 706.

§ 3400. To exhibit process. The officer executing such process must at all times, so long as he retains it, upon request, show the same with all papers attached to any person interested therein. [R. C. 1905, § 2513; R. C. 1895, § 2003.]

§ 3401. To open and adjourn court. The sheriff in attendance upon court must act as the crier thereof and make proclamation of the opening and adjournment of the court and of any other matter under its direction. [R. C. 1905, § 2514; R. C. 1895, § 2004.]

§ 3402. Service of papers on sheriff, how made. Service of a paper, other than a process, may be made upon the sheriff by delivering it to him or to one of his deputies, or to a person in charge of the office during office hours, or, if no such person is there, by leaving it in a conspicuous place in the office. [R. C. 1905, § 2515; R. C. 1895, § 2005.]

§ 3403. Coroner or constable to execute process, when. In all actions or proceedings where the sheriff of any county in this state is, or hereafter may be, a party to any action or proceeding by virtue of his office, it shall be lawful for the coroner or any constable of the county of which such sheriff is

an officer to serve all necessary process on such sheriff, and then make return thereon. [R. C. 1905, § 2516; R. C. 1895, § 2006; 1905, ch. 93.]

§ 3404. To perform all lawful duties. The sheriff must perform such other duties as are required of him by law. [R. C. 1905, § 2517; R. C. 1895, § 2007.]

Liability for misperformance and nonperformance of official duties. 95 Am. St. Rep.

96.

—for torts of deputies. 11 Am. Dec. 145.

—to private individuals. 95 Am. St. Rep. 96.

—of sureties for personal injuries inflicted by sheriff. 71 Am. St. Rep. 519; 91 Am. St. Rep. 534.

What constitute breach of bond of sheriff. 46 Am. Dec. 509.

As to similar provision in Cal. Pol. Code, § 4193, see *Bruner v. Superior Ct.*, 92 Cal. 239, 28 Pac. 341.

ARTICLE 19.—CORONER.

§ 3405. Coroner to act as sheriff, when. When there shall be no sheriff or deputy sheriff in any organized county, it shall be the duty of the coroner in such county to exercise all the powers and duties of that office until the same shall be filled as provided by law; and when the sheriff is committed to jail or otherwise disqualified the coroner shall be the keeper of the jail and perform the duties of sheriff during the continuance thereof. When the sheriff is sued the coroner shall serve the papers on him if required, and his return on all papers served by him shall have the same credit as the sheriff's return; and he shall receive the same fees as the sheriff for like service. [R. C. 1905, § 2518; R. C. 1899, § 2008.]

§ 3406. To hold inquests. The coroner shall hold an inquest upon the dead bodies of such persons only as are supposed to have died by unlawful means, except as otherwise specially provided. When he has notice of the dead body of a person supposed to have died by unlawful means found or being in his county, he is required to issue his warrant to the sheriff or any constable of his county, requiring him to summon forthwith three electors, having the qualifications of jurors of the county, to appear before the coroner at the time and place named in the warrant, or when the services of such sheriff or constable cannot conveniently be procured, then the coroner may summon such electors from the bystanders. [R. C. 1905, § 2519; 1881, ch. 55, § 1; R. C. 1895, § 2009.]

Power of coroners to order post mortem examination. 31 L.R.A. 540.

When coroner's inquest necessary or proper. 21 L.R.A. 394.

§ 3407. Warrant, form of. The warrant may be in substance as follows:

State of North Dakota, }
County of } ss.:

To the sheriff or any constable of said county:

You are hereby required to summon forthwith three electors, having the qualifications of jurors of your county, to appear before me at (name the place) at (name the day and hour or say forthwith), then and there to hold an inquest on the dead body of there lying and find by what means he died.

Witness my hand this day of 19....

.....
Coroner.

[R. C. 1905, § 2520; R. C. 1899, § 2010.]

§ 3408. Completing jury and oath. If any juror fails to appear the coroner shall cause the proper number to be summoned from the bystanders and immediately proceed to empanel them and administer the following oath in substance: You do solemnly swear (or affirm) that you will diligently inquire and true presentment make, when, how and by what means the person whose body here lies dead came to his death, according to your knowledge and the evidence given you. [R. C. 1905, § 2521; R. C. 1899, § 2011.]

§ 3409. Subpoenas for witnesses. Contempts. The coroner may issue subpoenas within his county for witnesses, returnable forthwith or at such time and place as he shall direct, and witnesses shall be allowed the same fees as in cases before a justice of the peace, and the coroner has the same authority to enforce the attendance of witnesses and to punish them and jurors for contempt in disobeying his process, as a justice of the peace has when his process issues in behalf of the state. [R. C. 1905, § 2522; R. C. 1899, § 2012.]

§ 3410. Oath to witnesses. An oath shall be administered to the witnesses, in substance as follows:

You do solemnly swear that the testimony which you shall give to this inquest concerning the death of the person here lying dead shall be the truth, the whole truth and nothing but the truth. So help you God. [R. C. 1905, § 2523; R. C. 1899, § 2013.]

§ 3411. Return by jury. Form. The jurors having inspected the body, heard the testimony and made all needful inquiries, shall return to the coroner their inquisition in writing under their hands, in substance as follows, and stating the matters in the following form suggested, as far as found:

State of North Dakota, }
County of } ss.:

An inquisition held at in county, state aforesaid, on the day of, A. D., 19.., before, coroner of such county, upon the body of (or person unknown) there lying dead, by the jurors whose names are hereto subscribed. The said jurors upon their oaths do say (here state when, how, by what person, means, weapon, or accident, he came to his death, and whether feloniously).

In testimony whereof, said jurors have hereunto set their hands the day and year aforesaid.

Such inquisition shall be attested by the coroner. [R. C. 1905, § 2524; R. C. 1899, § 2014.]

§ 3412. Not to disclose name of accused. If at such inquisition it is found that a crime has been committed on the deceased, the name of the person whom the jury believe has committed it shall not be made public until after the arrest directed in the next section. [R. C. 1905, § 2525; R. C. 1895, § 2015.]

§ 3413. May order arrest. If the person charged is present the coroner may order his arrest by an officer or any other person present, and shall then make a warrant requiring the officer or other person to take him before a justice of the peace. If the person charged is not present, and the coroner believes he can be taken, the coroner may issue a warrant to the sheriff and constables of the county, requiring them to arrest the person and take him before a justice of the peace. [R. C. 1905, § 2526; R. C. 1899, § 2016.]

§ 3414. Warrant returnable to a justice of the peace. The warrant of the coroner in such case shall be of equal authority with that of a justice of the peace, and when the person charged is brought before the justice, the same proceedings shall be had as in other cases under a complaint, and he shall be dealt with as a person under a complaint in the usual form in criminal cases. [R. C. 1905, § 2527; R. C. 1899, § 2017.]

§ 3415. Warrant to recite verdict. The warrant of the coroner shall recite substantially the transactions before him and the verdict of the jury leading to the arrest, and such warrant shall be sufficient foundation for the proceedings of the justice. [R. C. 1905, § 2528; R. C. 1899, § 2018.]

§ 3416. Testimony reduced to writing. The testimony of all witnesses examined before the coroner's jury must be reduced to writing by the coroner or under his direction, and be subscribed by the witnesses respectively, and the coroner shall forthwith file such testimony together with a record of all proceedings had before him, in the office of the clerk of the district court of the county wherein such inquest is held. In all cases brought to the at-

tention of the coroner wherein he does not deem it necessary to hold an inquest he shall file with such clerk a certificate setting forth the facts in relation thereto. The clerk of said district court shall forthwith duly file, index and enter such case or proceeding in a book or books to be kept for that purpose, in the same manner as proceedings in civil actions are now entered, and shall receive from the treasury of said county the same fees as are now allowed by law for like services, and he shall index and enter in the manner above described all the proceedings of the coroner that have heretofore at any time been filed in his office. [R. C. 1905, § 2529; 1895, ch. 37, § 1; R. C. 1899, § 2019.]

Admissibility of coroners' inquests as evidence. 95 Am. St. Rep. 763.

Admissibility of finding of coroners to show cause of death. 68 L.R.A. 285.

§ 3417. Disposition of body. Payment of expenses. The coroner shall cause the body of each deceased person, which he is called to view, to be delivered to his friends, if any, but if there are no friends, he shall cause such body to be decently buried, and the expenses thereof shall be paid from the county treasury and the county shall be reimbursed therefor out of any property found with his body. The coroner shall certify an account of such expenses to the county auditor and the board of county commissioners shall allow the same if deemed reasonable and direct a warrant to issue therefor. [R. C. 1905, § 2530; R. C. 1895, § 2020.]

§ 3418. Justice may act as coroner, when. When there is no coroner, or in case of his absence or inability to act, any justice of the peace of the county is authorized to perform the duties of coroner in relation to dead bodies, and in such case he may cause the person charged to be brought before him by his warrant, and may proceed with him as a justice of the peace. [R. C. 1905, § 2531; R. C. 1899, § 2021.]

§ 3419. Physicians summoned as experts, when. In the above inquisition by a coroner, when he or the jury deem it requisite, he may summon one or more physicians or surgeons to make a scientific examination, and shall allow in such case a reasonable compensation, instead of witness fees. [R. C. 1905, § 2532; R. C. 1899, § 2022.]

§ 3420. Disposition of property found on body. The coroner must, within thirty days after an inquest upon a dead body, deliver to the county treasurer any money or other property which may be found upon the body, unless claimed in the meantime by the legal representative of the deceased. If he fails to do so the treasurer may proceed against him for its recovery by a civil action in the name of the county. [R. C. 1905, § 2533; R. C. 1899, § 2023.]

§ 3421. Treasurer's duty with money and property. Upon the delivery of money to the treasurer he must place it to the credit of the county. If it is other property he must within thirty days sell it at public auction upon reasonable public notice and must in like manner place the proceeds to the credit of the county. [R. C. 1905, § 2534; R. C. 1899, § 2024.]

§ 3422. Money, when and how paid. If the money in the treasury is demanded within six years by the legal representatives of the deceased, the treasurer must pay it to them after deducting the fees and expenses of the coroner and of the county in relation to the matter; or it may be paid at any time thereafter upon the order of the board of county commissioners. [R. C. 1905, § 2535; R. C. 1899, § 2025.]

§ 3423. Statement by coroner. Before auditing and allowing the account of the coroner, the board of county commissioners must require him to render a statement in writing of any money or other property found upon persons on whom inquests have been held by him, verified by his oath, to the effect that the statement is true, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased or to the county treasurer. [R. C. 1905, § 2536; R. C. 1899, § 2026.]

§ 3424. To perform all lawful duties. The coroner must perform such other duties as may be prescribed by law. [R. C. 1905, § 2537; R. C. 1895, § 2027.]

ARTICLE 20.—COUNTY SURVEYOR.

The following sections 3425-3437 constitute Laws 1907, ch. 72. The heading of that chapter is "County Surveyor," and the title reads as follows: "An act providing for the election of county surveyor and prescribing his duties and the manner in which his records shall be kept, and authorizing the board of county commissioners and the board of township supervisors to make surveys, and authorizing and prescribing the manner for the payment of the expenses incurred therein." The chapter concludes with the usual section repealing all acts and parts of acts in conflict therewith. It manifestly supersedes some provisions in "Article 19.—County Surveyor," in the Revised Codes of 1905 (§§ 2538-2544), but other provisions in that article not so clearly superseded in their entirety are retained herein as sections 3437a-3437f.

Election of county surveyor, see section 3257.

§ 3425. Elected. Bond. There shall be elected at the general election of each organized county in the state for the term of two years a county surveyor, who shall give bond to the people of this state in the penal sum of not to exceed two thousand dollars, the amount to be fixed by the board of county commissioners, either with two sureties, who must justify as sureties are required to justify in arrest and bail, or by an indemnity bond of some reputable company to be approved by the board of county commissioners, the same to be filed with the county auditor of the proper county, conditioned for the faithful and impartial discharge of the duties of his office. [1907, ch. 72, § 1.]

Duty to survey public roads when directed by county commissioners. *Van Antwerp v. Dell Rapids Twp.*, 3 S. D. 305, 53 N. W. 82.

§ 3426. Deputies. Each county surveyor may appoint one or more deputies and revoke such appointment at pleasure, which appointment and revocation shall be in writing, under his hand, and filed with the clerk of court, and such deputies shall take the constitutional oath of office; and for the faithful performance of the duties of their office by such deputies the said surveyor and his sureties shall be responsible. [1907, ch. 72, § 2.]

§ 3427. Certificate evidence. The certificate of the surveyor or his deputy, of any survey made by him of any lands in the county, shall be presumptive evidence of the facts therein contained unless such surveyor or his deputy shall be interested therein. [1907, ch. 72, § 3.]

§ 3428. Surveys presumptively correct. The county surveyor or his deputies shall make in a good and professional manner all surveys of land within the county which they may be called upon by the owner thereof or his representative or directed by the district or county courts, the board of county commissioners or the board of township supervisors to make; and also all lands, tracts or lots owned by the county, and public roads, when so directed by said board; and his surveys shall be held as presumptively correct. [1907, ch. 72, § 4; R. C. 1905, § 2538; R. C. 1895, § 2028.]

This section is clearly a substitute for R. C. 1905, § 2538.

Presumption of accuracy of surveys refers to measurements and computations, not to disputed starting points of boundaries. *Radford v. Johnson*, 8 N. D. 182, 77 N. W. 601.

Presumption of accuracy confined to authenticated, recorded survey. Parol evidence cannot take place of surveyor's official report. *Arneson v. Spawm*, 2 S. D. 269, 49 N. W. 1066, 39 Am. St. Rep. 783.

Presumption of correctness overcome by failure of survey to describe highway as originally established. *Dunstan v. City*, 7 N. D. 1, 72 N. W. 899.

§ 3429. Other surveyor acts, when. Whenever a survey may be required of any land in which the county surveyor or either of his deputies shall be interested or when from any cause there shall be no surveyor or deputy surveyor of the county to be found or able to act, such survey may be made by the surveyor of an adjoining county or either of his deputies in like manner, and to the same effect as if such survey had been made by the surveyor where the land is situated. [1907, ch. 72, § 5.]

§ 3430. Records. Each county surveyor shall record in a suitable book, to be provided by him at the expense of the county, all surveys for permanent purposes made by him and his deputies, except surveys for township highways and village plats. The record of each survey shall set forth the evidence by which the surveyor determined or identified the corners or other starting points of his survey, describing the points fully, and also setting forth whatever means were taken by him to perpetuate them upon the ground or to assist in determining and preserving their location. The record shall show the object of the survey and the methods pursued by the surveyor in making it, diagrams or plats being used to illustrate the same when necessary or convenient to do so. Upon the diagrams shall be shown the courses and distances of such boundary lines as may have been located by the survey, and such other facts as may have been determined by it. Such diagrams shall be considered a part of the record. When the courses of the lines are given by the magnetic needle the record shall show the amount and direction of the allowance made by the surveyor for the difference between the magnetic meridian and the true meridian. The record shall show the date of the survey, the name of the person or persons for whom it was made, and of the persons employed as chainmen on the survey. The surveyor shall certify upon the record that he has carefully compared the record with the original field notes taken by him at the time of the survey and that it is a true statement of the facts of such survey, as shown by said original notes. Each county surveyor and his deputies shall keep the original field notes of all surveys made by them for permanent purposes in books of convenient size and well bound in leather, to be furnished by the county surveyor at the expense of the county. These notes shall be taken and set down in the manner in which field notes of the United States surveys are kept, and shall contain all the details of each survey in the order in which the survey was made, including in full all calculations made by the surveyor to determine areas, or for measuring inaccessible distances, such as lake and river crossings, or for any other purpose required by the survey. Diagrams may be used for purposes of illustration, but shall not be used instead of the written notes required to be kept. Each field book shall contain an index referring to the surveys of which it contains the field notes. It shall also contain the certificate of the surveyor who made the surveys, that the field notes therein contained are the complete original field notes of the surveys therein referred to and described. These original field notes shall be a part of the record required to be kept by the county surveyor and the books containing them shall be deposited and kept with the surveyor's other records of the county. Each deputy county surveyor whenever one of these books shall be filled with field notes by him, or whenever he shall, for any cause, have ceased taking notes in the book he had been using, shall deposit the same in the office of the county surveyor or county auditor, and whenever his own term of office expires shall turn over to the county surveyor such books as have been partly filled by him. [1907, ch. 72, § 6.]

See sections 3437a, 3437b, and the note to the title of this article, immediately preceding section 3425.

§ 3431. Papers delivered to successor. When the term of office of any county surveyor shall expire or he shall resign or be removed he shall deliver over all books and papers relating to this office to his successor therein, and any county surveyor who, on the expiration of his term of office or on his resignation or removal shall neglect for the space of one month after his successor shall be elected or appointed and qualified to deliver such books and papers as aforesaid and any executor or administrator of any deceased county surveyor who shall neglect for the space of one month to deliver to such successor all such books and papers which shall have come to his hands shall forfeit and pay a sum not less than ten or more than fifty dollars, which

amount shall be fixed by the board of county commissioners at their first meeting after such failure on the part of the county surveyor, and a similar sum for every month thereafter during which he shall so neglect to deliver the same as aforesaid. [1907, ch. 72, § 7.]

§ 3432. Copies of U. S. plats. The county surveyor shall arrange the terms of a contract with the surveyor-general of the state or other proper officer, for certified copies of the field notes and plats of the original surveys by the United States of the lands of his county, and if such contract be approved by the board of county commissioners of his county the county surveyor shall upon receiving such copies direct the county auditor to draw an order upon the treasurer of his county for the amount so agreed upon, and transmit it to the said surveyor-general or other person to whom it may be due, and shall have said plats and field notes substantially bound in book form which shall be kept open in said county surveyor's or county auditor's office for the benefit of the public; and all records of surveys, field notes and calculations made by any former county surveyor since the organization of the state government and now in the hands of such former county surveyor, or any other person, shall, on demand of the county surveyor of the proper county, be immediately delivered to him as a part of the records and files of his office and the boards of county commissioners of the several counties shall respectively audit and allow to the person entitled thereto, such sum as they shall deem a reasonable compensation for the expense of the books containing such records. [1907, ch. 72, § 8.]

§ 3433. Form of surveys. All surveys made by the county surveyors in this state must be made in accordance with the rules and regulations laid down by the commissioner of the United States general land office, and in accordance with the following principles, when applicable:

First. All corners that can be identified by the original field notes or other unquestionable testimony shall be regarded as the original corners and must not be changed while they can be so identified.

Second. Extinct intersection corners must be re-established at proportional distances as recorded in the original field notes from the nearest known points in the original section line, east and west and north and south from such extinct section corners.

Third. Any extinct quarter section corner except on fractional section lines must be re-established equidistant and in a right line between the section corners in all other cases at proportional distances between the nearest known points in the original lines.

Fourth. Central quarter corners of whole sections and of fractional sections adjoining the north and west boundary of townships, must be re-established at the intersection of two right lines connecting their opposite quarter section corners respectively. It shall be the duty of county surveyors to perpetuate the original corners they may work from by noting new bearing trees when timber is near. They shall also perpetuate the principal corners made by themselves in like manner. [1907, ch. 72, § 9.]

§ 3434. Oath of chainman. Every chainman and marker employed in making surveys pursuant to the provisions of this article, shall first take an oath that he will faithfully discharge his duties as such, which oath the county surveyor or his deputy making the survey is hereby authorized to administer. [1907, ch. 72, § 10.]

See section 3437c and the note under the title of this article.

§ 3435. Corners located. Expenses, how paid. Whenever two or more resident owners of real estate after having given at least ten days' notice by personal or written service to all other persons or their agents owning land in the same section, or abutting on same section that will be affected by said survey, who reside in the same township, shall desire to have their corners and lines, or any of them, established or relocated or perpetuated,

the county surveyor shall proceed to make the required surveys and the expense thereof shall be borne by all the persons benefited to the amount of work done for each to be determined by the surveyor, and if any person thus benefited, whether a nonresident or otherwise, shall refuse or neglect to pay his share of such expense within sixty days thereafter, such surveyor shall certify the same, and to whom due, to the county auditor, together with a description of the land of such person, who shall assess it upon the land of such person to be collected and paid to the county treasurer in the same manner as state and county taxes, and paid by said county treasurer on the order of the county surveyor. [1907, ch. 72, § 11.]

§ 3436. Section corners, how made. The surveyor as above employed shall sink into the earth at all section and quarter post corners a column of concrete or cement block at least two feet high, twelve inches square at the base and six inches square at the top, and carefully describe the same in the records of his survey, and also dig pits and mark and record new witness trees wherever possible to do so, and if any person shall willfully cut down, destroy, deface or injure any living witness tree, or remove a corner post in any shape as above established, he shall be deemed guilty of a misdemeanor and upon conviction thereof shall be liable to a fine of not less than twenty-five dollars nor more than fifty dollars. [1907, ch. 72, § 12.]

§ 3437. Commissioners perpetuate corners. The board of county commissioners of the several counties in this state, or the board of township supervisors of any organized civil township in this state, are hereby authorized to establish and perpetuate any government section corners or quarter posts in their respective counties, which they may have good reason to believe are lost or are in danger of being lost, by the employment of the county surveyor or some other competent surveyor therefor, who shall keep a full and complete record of his work, giving in detail the evidences by which any corner is identified, also the manner in which lost corners are re-established, which record shall be kept in the same book provided by the county for county surveyor's records and kept in the office of the county surveyor, or county auditor, and the record so made and entered by the surveyor aforesaid shall be received as evidence in all the courts in this state wherein any question may arise as to the establishment or identification of such corner or corners; provided, that such work shall be done only in such townships where a majority of the voters, voting, shall vote to raise such sum as is required for such work by any surveyor authorized to do such work, as provided by this article; provided, further, that nothing in this article shall apply to lands where section and quarter section lines are already properly established, such sum to be assessed upon the real estate of such townships, according to its assessed valuation. Such assessment to be levied and taxes therefrom collected in the same manner as other assessments and collection of taxes are made; provided, further, that any surveyor as above employed, shall mark all corners substantially, as provided for in section 3436, [1907, ch. 72, § 13.]

§ 3437a. Record of field notes and plats. He shall transcribe the field notes and plats of such surveys into convenient and substantial record books to be furnished by the county, when the board of county commissioners shall deem it advisable, and said records shall be entered in an orderly manner, easy of reference, and shall be delivered to his successor in office. They may be kept in the office of the county auditor and said record shall be competent evidence in all courts of the facts therein set forth. [R. C. 1905, § 2539; R. C. 1899, § 2029.]

See section 3430 and the note under the title of this article.

§ 3437b. Resurvey and subdivision, how made. The resurvey and subdivision of lands by all surveyors shall in all respects be according to the laws of the United States and the instructions issued by the officers thereof in charge of the public land surveys and in the subdivision of fractional

sections bounded on any side by a meandered lake or river or the boundary of any reservation or irregular survey, the subdivision lines running toward and closing upon the same shall be run at courses in all points intermediate and equidistant, as near as may be, between the like section lines established by the original survey. [R. C. 1905, § 2540; R. C. 1899, § 2030.]

See section 3430 and the note under the title of this article.

When monuments are destroyed question of location is for jury. Surveyor to locate lines from original government field notes. *White v. Amrhien*, 14 S. D. 270, 85 N. W. 191.

Must recognize only government monuments. *Cope v. Eckert*, 15 S. D. 177, 87 N. W. 972.

It was error for court to charge that where location of government monuments is uncertain or in doubt, the government field notes "will control." *Coulter v. Gudehus*, 30 S. D. 616, 139 N. W. 330.

Resurvey of lands must be in accordance with laws of United States. *Nystrom v. Lee*, 16 N. D. 561, 114 N. W. 478.

As to method of ascertaining quarter section by resurvey. *Phillips v. Hink*, 21 S. D. 561, 114 N. W. 699.

Resurvey must follow boundaries and monuments of original government survey if they can be identified. *Randall v. Burk Township*, 4 S. D. 337, 57 N. W. 4; *Dowdle v. Cornue*, 9 S. D. 126, 68 N. W. 194; *McGray v. Monarch Elevator Co.*, 16 S. D. 109, 91 N. W. 457.

§ 3437c. Sworn chainmen in disputed cases. Whenever the survey is of lines and monuments in dispute between parties, or is made by order of the district or county court, the chainmen must be disinterested persons, approved and sworn by the surveyor to measure justly and impartially to the best of their skill and ability. [R. C. 1905, § 2541; R. C. 1899, § 2031.]

See section 3434 and the note under the title of this article.

§ 3437d. Fullness and accuracy of field notes and plats. The record of the field notes and plats shall show distinctly of what piece of land it is a survey, at whose request it was made, what owners were notified and present, the date of the survey, the names of the chainmen and that they were approved and sworn by the surveyor, when so required by law. The courses shall be taken according to the true meridian, and the variation of the magnetic needle therefrom shall be noted, and also when any material change therein shall occur. [R. C. 1905, § 2542; R. C. 1899, § 2032.]

See section 3430 and the note under the title of this article.

§ 3437e. Retracing lines to avoid errors. In retracing lines or making any survey he shall take care to observe and follow the boundaries and monuments as run and marked by the original survey, but shall not give undue weight to partial and doubtful evidence or appearances of monuments, the recognition of which shall require the presumption of marked errors in the original survey, and he shall note an exact description of such apparent monuments. [R. C. 1905, § 2543; R. C. 1899, § 2033.]

See section 3433 and the note under the title of this article.

Courses and distances in government field notes considered where boundaries not fixed, and monuments in dispute. *Hanson v. Township*, 4 S. D. 358, 57 N. W. 11; *Randall v. Burk Township*, 4 S. D. 337, 57 N. W. 4.

Recognition of certain corners by adjoining land owners not conclusive that they are government corners. *Cope v. Eckert*, 15 S. D. 177, 87 N. W. 972.

Question of location of boundary line for jury where monuments destroyed. *White v. Amrhien*, 14 S. D. 270, 85 N. W. 191.

§ 3437f. Assistants, how paid. All necessary chainmen and other assistants must be paid for their services by the person for whom the survey is made, unless otherwise specially agreed. [R. C. 1905, § 2544; R. C. 1899, § 2034.]

ARTICLE 21.—PUBLIC ADMINISTRATOR.

§ 3438. Creation. There is hereby established and created in every organized county in this state the office of public administrator. [R. C. 1905, § 2545; 1903, ch. 140, § 1.]

§ 3439. Election. Term and qualifications. Every organized county in this state shall elect a public administrator at the general election in 1904, and every four years thereafter, who shall be ex-officio public guardian in

and for his county, and shall hold his office four years and until his successor is elected, or appointed and qualified. The term of office of such officer shall commence on the first day of January following his election. He shall be an elector in the county where elected or appointed. [R. C. 1905, § 2546; 1903, ch. 140, § 2.]

§ 3440. Oath. Bond and certificate of election. Before entering upon the duties of his office he shall file his oath, certificate of election and bond with the judge of the county court, which bond, oath and certificate shall be recorded at length in the record book of said court. Said bond shall run to the state of North Dakota for the benefit of the parties damaged by breach of the conditions thereof, and shall be in a sum of not less than ten thousand dollars, with sufficient sureties justifying and conditioned that he will:

1. Faithfully discharge all the duties of his office.
2. Account annually to the judge of the county court for all estates and property under his official control and care, or whenever required so to do by the said judge.
3. Turn over to his successor in office all property and estates in his official care and control, and truly account for the same.
4. Turn over all property and estates in his official care and control to any other administrator, executor or guardian designated by the judge of the county court, and truly account for the same.
5. Perform such other acts and duties properly relating to his office, as may be ordered by the county judge.

Which bond shall be approved and indorsed as provided for administrators and executors; and it shall be the duty of the judge of the county court to require the public administrator to make a statement annually, under oath, of the amount of property in his hands or under his control as such administrator, for the purpose of ascertaining the amount of bond necessary to secure such property, and the court may from time to time, as occasion shall require, demand additional security of such administrator, and in default of giving the same within twenty days of such demand, may remove the public administrator and appoint another. [R. C. 1905, § 2547; 1903, ch. 140, § 3.]

§ 3441. Compensation. How removed from office. Why. He shall receive the same compensation for his services as may be allowed by law to executors, administrators and guardians, unless the court, for special reasons, allows a higher compensation. Such public administrator may be removed from office in the same manner and for the same reasons as other public officers, except as provided in sections 3440 and 3445, in which case the removal may be summary and upon motion of the judge of the county court. [R. C. 1905, § 2548; 1903, ch. 140, § 4.]

§ 3442. Duties and powers of public administrator. It shall be the duty of the public administrator to take into his charge, without application to the county court, or special appointment, the estates of all deceased persons, and the person and estate of all minors, and the estate or person and estates of all insane persons in his county, in the following cases:

1. When a person dies intestate in the county without relations, or dies leaving a will, and the executor named is absent or fails to qualify.
2. When persons die intestate without any known heirs.
3. When persons unknown die or are found dead in the county.
4. When money, property, papers or other estate are left in a situation exposed to loss or damage, and no other person administers on the same.
5. When any estate of any person who dies intestate therein or elsewhere, is left in the county liable to be injured, wasted or lost, when such intestate does not leave a known husband, widow or heirs in this state.
6. The persons of all minors under the age of fourteen years, whose parents are dead, and who have no legal guardian.

7. The estate of all minors whose parents are dead, or if living refuse or neglect to qualify as guardian, or having qualified, have been removed, or are, from any cause, incompetent to act as such guardian, and who have no one authorized by law to take care of and manage their estates.

8. The estates or person and estates of all insane persons in his county who have no legal guardian and no one competent to take charge of such estate, or to act as such guardian can be found, or is known to the court having jurisdiction, who will qualify.

9. Where from any other good cause, said court shall order him to take possession of any estate to prevent its being injured, wasted, purloined or lost. [R. C. 1905, § 2549; 1903, ch. 140, § 5.]

Validity of acts by public administrator where letters of administration are afterwards revoked or held invalid. 21 L.R.A. 156.

§ 3443. Additional powers. Duties and remedies. In addition to the provisions of the foregoing sections he shall have the same powers as are conferred upon, and be subject to the same duties, penalties, provisions and proceedings as are enjoined upon or authorized against special administrators and guardians by the probate code, so far as the same may be applicable. And he may be appointed in proper cases as general administrator without giving additional bond, except as provided in section 3439, and shall then continue the administration until finally settled, unless he resigns, dies, is discharged in the ordinary course of law as the administrator, or is removed for cause as public administrator or as administrator, and may exercise the powers conferred upon, and shall be subject to the duties and liabilities imposed upon such administrators. [R. C. 1905, § 2550; 1903, ch. 140, § 6.]

§ 3444. Prohibited. A public administrator shall not charge fee as attorney in the administration of the estates of decedents, of which he shall be the administrator. Any violation of this section shall be deemed a misdemeanor and punishable by a fine of not less than one hundred dollars. [1911, ch. 234.]

§ 3445. Giving notice on taking charge of estate. Penalty for failure. It shall be the duty of every public administrator immediately upon taking charge of any estate, except those which he shall have taken charge under the order of the county court for the purpose of administering the same, to file a notice of the fact in the office of the county court. If any public administrator shall fail to file the notice provided for in this section, he shall forfeit and pay to the persons entitled to the estate a sum not exceeding two hundred dollars to be recovered before said court, on motion, and after reasonable notice thereof to said public administrator; and said court may in its discretion remove such public administrator from office. [R. C. 1905, § 2551; 1903, ch. 140, § 7.]

§ 3446. Civil officers to inform him as to property, when. It shall be the duty of all civil officers to inform the public administrator of all property and estate known to them which is liable to loss, waste or injury and which by law ought to be in the hands of the public administrator. [R. C. 1905, § 2552; 1903, ch. 140, § 8.]

§ 3447. Shall prosecute necessary suits. The public administrator shall institute all manner of suits and prosecutions that may be necessary to recover the property, debts, papers or other estates of the person deceased, or of any minor, or insane person, in his charge or custody. [R. C. 1905, § 2553; 1903, ch. 140, § 9.]

§ 3448. Court may order him to account to successor, when. The probate court may at any time, for good cause shown, order the public administrator to account for and deliver all money, property or papers belonging to any estate in his hands to his successor in office or to the heirs of said estate, or to any executor or administrator regularly appointed as provided by law. [R. C. 1905, § 2554; 1903, ch. 140, § 10.]

ARTICLE 22.—COUNTY BONDS.

§ 3449. Bonds, how issued. Disputed claims. Each organized county in this state is authorized and empowered by and through its board of county commissioners, when in the judgment of said board it is deemed to be to the best interests of the county, to issue its negotiable bonds in the name of said county for the sole purpose of funding or refunding the outstanding indebtedness of such county, represented by the county warrants, bonds or orders of such county; or for the purpose of funding and paying claims against such county which have heretofore been disputed, but which may have been or may hereafter be adjusted and allowed by such board; or for the purpose of paying any final judgment which may have been rendered against such county; provided, that the board in making settlement of disputed claims shall not allow interest at a greater rate than seven per cent per annum; provided, however, that no county shall in any event issue its bonds in any amount which, with its prior bonded indebtedness, will exceed the maximum indebtedness allowed by law; but the issuing of new bonds in lieu of outstanding bonds or indebtedness shall not be considered as the creation of a new debt. [R. C. 1905, § 2555; 1890, ch. 30, § 1; R. C. 1895, § 2035.]

Issuance of county bonds in excess of five per cent indebtedness limit, to refund warrants, is lawful, where exchange will diminish indebtedness. *Walling v. Lummis*, 16 S. D. 349, 92 N. W. 1063.

Refunding bonds as indebtedness within meaning of debt limit provisions. 37 L.R.A. (N.S.) 1099.

§ 3450. Appeal in disputed claims. Whenever any disputed or litigated claim shall have been adjusted and determined by the board, an appeal may be taken from said settlement in the manner and within the time now allowed by law to the district court in and for said county; and no bonds shall be issued as hereinafter provided until the expiration of the period allowed by law within which said appeal may be taken. [R. C. 1905, § 2556; 1890, ch. 30, § 2; R. C. 1899, § 2036.]

§ 3451. Bonds. Rate of interest. Mode of issue. Said bonds shall be in denominations of not less than one hundred dollars nor more than one thousand dollars, shall bear the date of their issue, and shall be made payable to the order of the purchaser in not less than five nor more than twenty years from their date, and bear interest not to exceed six per cent per annum, payable semi-annually, with coupons attached for each interest installment; said bonds and coupons shall be signed by the chairman of the board of county commissioners and shall be attested by the county auditor. The seal of the county shall be affixed to each bond but not to the coupons. Such bonds shall be printed, lithographed or engraved on bond paper, and each bond shall state on its face that it is issued in accordance with the provisions of this article, and that portion of this article relating to the issuance of funding and refunding bonds shall be printed on the back of each bond. Such bonds may be made payable anywhere in the United States. [R. C. 1905, § 2557; 1890, ch. 30, § 3; R. C. 1895, § 2037.]

Mandatory injunction to compel reception of coupons for taxes. 20 L.R.A. 167.

§ 3452. Bonds may be exchanged or sold. Said bonds may be exchanged at par value for an equal amount of indebtedness of said county with the holder of such indebtedness, whether evidenced by county warrants, bonds or orders, judgment or adjusted claim; or said bonds may be sold by the board at not less than par value, and the proceeds applied solely to the payment of the indebtedness for which they were issued. A record of each bond so issued shall be kept by the county treasurer showing the number of each bond so issued, its date, amount, rate of interest, when and where payable, the amount received therefor, to whom sold, and how the proceeds were disposed of, and it shall be the duty of the county auditor to keep a duplicate account of the same. [R. C. 1905, § 2558; 1890, ch. 30, § 4; R. C. 1899, § 2038.]

Accrued interest as part of par value within prohibition against sale of bonds at less than par. 35 L.R.A. (N.S.) 789.

Payment of commissions for sales of bonds as violating requirement that bonds shall not be sold for less than par. 39 L.R.A.(N.S.) 248.

§ 3453. Tax to be levied. The board of county commissioners shall levy each year upon the taxable property of the county a sufficient tax to pay the interest on said bonds as the same accrues, and a reasonable time before maturity a sufficient tax to provide a sinking fund for the payment of the bonds when they mature. [R. C. 1905, § 2559; 1890, ch. 30, § 5; R. C. 1899, § 2039.]

§ 3454. County treasurer to pay, when. When said bonds and the coupons hereto attached mature, it shall be the duty of the county treasurer to pay the same on presentation out of any funds in his hands applicable thereto; and he shall then cancel them by writing or stamping across the face of each coupon or bond the words "paid thisday of....." (inserting the date of the payment.) [R. C. 1905, § 2560; 1890, ch. 30, § 6; R. C. 1899, § 2040.]

Validity of agreement to pay interest on interest coupons. 33 L.R.A.(N.S.) 296.

§ 3455. Commission allowed treasurer. The county treasurer shall be allowed a commission of one-fourth of one per cent on the face value of said bonds for receiving and disbursing all funds arising from the sale of exchange thereof and the commission herein provided for shall be in lieu of all other commissions allowed by law and shall be paid into the salary fund and be disposed of as is now provided by law. [R. C. 1905, § 2561; 1890, ch. 30, § 7; R. C. 1899, § 2041.]

§ 3456. Bonds negotiable, when. Bonds issued in substantial conformity with this article shall in law be deemed negotiable. [R. C. 1905, § 2562; 1890, ch. 30, § 8; R. C. 1899, § 2042.]

ARTICLE 23.—BONDS FOR COUNTY BUILDINGS.

§ 3457. Power to bond. Whenever in any county in the state, having five hundred votes or more, the county seat shall have been permanently located as provided by law and the buildings occupied by such county for court house, office or jail purposes are inadequate to the wants thereof, or unsafe by reason of extraordinary risk of fire or otherwise, such county may issue bonds, for the purpose of purchasing a site for and erecting a court house or jail, or both, under the restrictions and according to the provisions of this article. [1911, ch. 106; R. C. 1905, § 2563; 1889, ch. 42, § 1; 1893, ch. 43, § 1; R. C. 1899, § 2043.]

Question of issuing bonds for erection of court house and jail in one building may be voted upon as one question. *Hughes v. Pierce County*, 18 N. D. 474, 122 N. W. 799.

§ 3458. Limit of issue. No county shall issue its bonds under the provisions of the last section in excess of five per cent of its valuation according to the last assessment thereof, including all the outstanding indebtedness of such county at the time of issuing such bonds. [R. C. 1905, § 2564; 1889, ch. 42, § 2; 1890, ch. 31, § 1; R. C. 1899, § 2044.]

§ 3459. Election for bonds. Whenever in the judgment of a majority of the board of county commissioners in any county which comes under the provisions of this subdivision such county has insufficient or inadequate buildings for its use for court house or jail, or both, such board may order an election for the purpose of determining by a vote of the electors of such county the question of issuing its bonds for the purpose of the erection of a court house or jail, or both, as by this subdivision provided, including the purchase of a site for such court house and jail, or both, at such county seat, if none is provided. Such election shall be held in the manner and upon the notice prescribed by law for other elections, but the published and posted notices of such election shall state its object, the amount of bonds to be issued, the denominations of such bonds, the length of time for which they shall run and the rate of interest which they shall bear, and the ballots shall have printed or written, or partly printed and partly written thereon "for issue of bonds" or "against issue of bonds" and if a majority of the ballots so

cast shall be for the issue of bonds, then the county commissioners shall issue and dispose of said bonds as provided by this subdivision, and erect a court house or jail, or both, for the use of such county according to the provisions hereof. [R. C. 1905, § 2565; 1889, ch. 42, § 3; R. C. 1899, § 2045.]

As to sufficiency of notice of election on issuance of bonds. *Hughes v. Pierce County*, 18 N. D. 474, 122 N. W. 799.

On what basis majority essential to adoption of proposition for issuing municipal bonds is to be computed. 22 L.R.A.(N.S.) 478.

§ 3460. Power of county commissioners. Contracts. The board of county commissioners of any county erecting county buildings under the provisions of this subdivision shall have power to purchase ground for a site if necessary, let contracts for the building and completion of such court house or jail, or both, and the buildings connected therewith, and shall have the entire supervision of its construction; provided, that all contracts connected with the erection of such buildings shall be let to the lowest responsible bidder, after notice of the letting of such contracts shall have been published in one of the newspapers of such county, and in case there is no newspaper in such county, then in a newspaper in some adjoining county, for at least once a week for four consecutive weeks, before the letting of such contracts, and the board shall have power to reject any or all bids. [R. C. 1905, § 2566; 1889, ch. 42, § 4; R. C. 1895, § 2046.]

Rights and remedies of lowest bidders on public contracts. 26 L.R.A. 707.

Remedy of lowest bidder for refusal of authorities to award contract to him. 30 L.R.A.(N.S.) 126.

Discretion in choosing between bidders for public contract. 38 L.R.A.(N.S.) 653.

Validity of contract for material patented or held in monopoly where a public letting to the lowest bidder is required. 5 L.R.A.(N.S.) 680.

§ 3461. Board of auditors. The county auditor, county treasurer and some qualified elector and freeholder of such county appointed by the board of county commissioners outside of its own number shall act as a board of auditors to audit accounts of such board of county commissioners in connection with the erection of county buildings, pursuant to the provisions hereof, and the members of such board of auditors shall receive for their services the sum of three dollars each for every day actually and necessarily employed in such capacity, to be paid upon the warrant of such board of county commissioners. [R. C. 1905, § 2567; 1889, ch. 42, § 5; R. C. 1899, § 2047.]

§ 3462. Denominations. Interest. Mode of issue. All bonds pursuant to the provisions hereof shall be in denominations of not less than one hundred dollars and not more than one thousand dollars, shall bear the date of their issue, shall be made payable to the purchaser or bearer and become due in not less than ten years nor more than twenty years from their date and shall bear interest at the rate of not exceeding seven per cent per annum, payable annually, with coupons attached for each interest payment. The bonds and each coupon shall be signed by the chairman of the board of county commissioners and shall be attested by the county auditor. The seal of the county shall be affixed to each bond but not to the coupons, and said bonds shall each contain a recital in substantially the following words: "Issued in pursuance of section 2563 [section 3457 herein] to 2576 [section 3470 herein] inclusive of the revised codes of 1905, authorizing and empowering organized counties to erect county buildings for court house and jail purposes and to issue and dispose of bonds to provide funds to pay therefor, and to provide for the payment of the principal and interest of such bonds." Such bonds shall be printed, engraved or lithographed on bond paper and may be made payable anywhere in the United States. They shall be sold by the board of county commissioners at not less than their par value and the proceeds applied solely to the payment of the indebtedness incurred in the erection of a court house or jail or both, and the purchase of a site therefor. [R. C. 1905, § 2568; 1889, ch. 42, § 6; R. C. 1899, § 2048.]

Accrued interest as part of par value within prohibition against sale of bonds at less than par. 35 L.R.A.(N.S.) 789.

Payment of commissions for sales of bonds as violating requirement that bonds shall not be sold for less than par. 39 L.R.A.(N.S.) 248.

§ 3463. Notice of sale. No such bonds shall be sold until after having been duly advertised at least once a week for four consecutive weeks in one of the newspapers published at the seat of government, and for the same length of time at any other point deemed advisable by the board. [R. C. 1905, § 2569; 1889, ch. 42, § 6; R. C. 1899, § 2049.]

§ 3464. Proceeds. The proceeds of the sale of such bonds shall be deposited in the treasury of such county, to be paid out by the county treasurer on the order of such board. The county treasurer shall give an additional bond in double the amount of the bonds so issued and sold, and shall receive as compensation for the receiving and disbursing of all funds arising from the sale of such bonds one per cent of the par value of such bonds, and the compensation herein provided for shall be in lieu of all other commissions allowed him by law. [R. C. 1905, § 2570; 1889, ch. 42, § 6; R. C. 1899, § 2050.]

§ 3465. Tax to be levied. The board of county commissioners at or before the issuance of such bonds shall levy upon the taxable property of the county a sufficient tax to pay the interest on such bonds as the same accrues and the principal thereof when due. [R. C. 1905, § 2571; 1889, ch. 42, § 7; R. C. 1895, § 2051.]

§ 3466. Treasurer to pay and cancel at maturity. When such bonds and the several coupons thereto attached mature it shall be the duty of the county treasurer to pay the same on presentation and to cancel them when paid. [R. C. 1905, § 2572; 1889, ch. 42, § 8; R. C. 1899, § 2052.]

§ 3467. Bonds to be registered. Before the bonds are delivered to the purchaser they shall be presented to the county auditor, who shall register them in a book kept for that purpose and known as the "bond register," in which register he shall enter the number of each bond, its date of maturity, amount, rate of interest, to whom and where payable. [R. C. 1905, § 2573; 1889, ch. 42, § 9; R. C. 1899, § 2053.]

§ 3468. Bonds negotiable, when. Bonds issued in substantial conformity herewith shall be in law considered negotiable. [R. C. 1905, § 2574; 1889, ch. 42, § 10; R. C. 1899, § 2054.]

§ 3469. Funding bonds, when issued. Any county which has issued warrants or other evidences of indebtedness since the first day of January, 1887, for the purpose of building a court house or jail, or both, may issue bonds under the provisions of this subdivision to fund such warrants or other evidences of indebtedness and if such indebtedness was authorized by a majority vote of the qualified electors of such county previous to the incurring of the same, no new election shall be had, and the board of county commissioners of any such county is hereby authorized and empowered when in the judgment of such board it is deemed to the best interests of such county to issue such bonds, and to apply the proceeds solely to the redemption of such warrants or other evidences of indebtedness; provided, that the bonds issued under the provisions of this section shall bear a lower rate of interest than the outstanding indebtedness proposed to be funded. [R. C. 1905, § 2575; 1889, ch. 42, § 11; R. C. 1899, § 2055.]

§ 3470. When election not necessary. Any county which has heretofore and since the first day of January, 1887, submitted to the voters of such county the question of building a court house or jail, or both, and issuing bonds therefor and upon such election the building of a court house or jail, or both, and the issuing of bonds therefor was authorized or directed by a majority vote of the qualified electors of such county as evidenced by a majority of the votes cast at such election upon said question so submitted to them, no new election shall be had, but such elections and the bonds when issued thereunder are hereby held and declared legal and valid as if the election had been held after the taking effect of this article, and the board of county commissioners of any such county are authorized and empowered to issue such

bonds, and with the funds so obtained from the sale thereof to construct a court house or jail, or both, and are also hereby empowered to purchase a site for such court house or jail, or both, at such county seat if none is provided and pay for the same out of any unappropriated moneys in the county treasury; or contract in the name and in behalf of the county for the purchase and conveyance of such site, to be paid for from the proceeds of such bonds when negotiated. [R. C. 1905, § 2576; 1889, ch. 42, § 12; R. C. 1899, § 2056.]

ARTICLE 24.—BONDS FOR SEED GRAIN.

§ 3471. **Bonds authorized. Petition for. Time to run.** In any county of the state where the crops for any preceding year have been a total or partial failure by reason of drouth, hail or other cause, it shall be lawful for the board of county commissioners of such county to issue the bonds of the county under and pursuant to the provisions of this article, and with the proceeds derived from the sale thereof, to purchase seed wheat for the inhabitants thereof who are in need of seed grain and are unable to procure the same, whenever said board shall be petitioned in writing so to do by not less than one hundred freeholders resident in the county; and said board at a meeting called as hereinafter provided to consider said petition, shall by a majority vote determine that the prayer of the petitioners should be granted; provided, that all such petitions shall be filed with the county auditor, or county clerk, on or before the fifteenth day of April; and thereupon it shall be the duty of said officer to forthwith call a meeting of the board of county commissioners of his county to consider said petitions; and provided, further, that the total amounts of bonds issued by any county under the provisions of this article shall not, with the then existing indebtedness of the county, exceed the limit of indebtedness fixed by the constitution in such case; that said bonds shall be in denominations of five hundred dollars; shall bear a rate of interest not exceeding seven per cent per annum, payable semi-annually at such place and times as shall be determined by the board, and that all bonds issued under the provisions of this article shall become due and payable in not less than two nor more than five years from the date thereof, the date of maturity to be fixed by the county board at the time of the issuance thereof, with the above limitation. [1909, ch. 210, § 1.]

§ 3472. **Bonds, how executed.** Such bonds shall be signed by the chairman of the board of county commissioners and be attested by the county auditor, or county clerk, as the case may be, who shall affix the seal of the county thereto and shall have indorsed thereon a certificate signed by the county auditor or county clerk, stating that said bonds are issued pursuant to law and are within the debt limit. [1909, ch. 210, § 2.]

§ 3473. **Bonds, how sold.** It shall be the duty of said board to receive sealed proposals for the purchase of said bonds after giving notice for ten days in three newspapers of general daily circulation, published as follows: One in the city of St. Paul, in the state of Minnesota; one in the city of Bismarck, in the state of North Dakota; and one in the county where the bonds are to be issued, if there be one published in such county; if not, then publication may be made in a weekly paper published in said county, if there be one so published, and said bonds shall be sold to the highest bidder for cash; provided, the same shall not be sold for less than their par value; and, provided, further, that the said county may reject all bids and postpone the sale of said bonds for a time not exceeding fifteen days. [1909, ch. 210, § 3.]

§ 3474. **Proceeds paid county treasurer.** The proceeds arising from the sale of said bonds shall be paid by the purchaser thereof to the county treasurer of the county, or to his authorized agent, at the time of the delivery thereof, and such proceeds shall be paid out only on the order of the board of county commissioners. [1909, ch. 210, § 4.]

§ 3475. Treasurer gives additional bond. It shall be the duty of said board to require the county treasurer to give an additional bond with sureties to be approved by the board, in a sum to be determined by said board, before the proceeds of said bonds are paid into the treasury. [1909, ch. 210, § 5.]

§ 3476. Tax levied for sinking fund. Bonds registered. For the purpose of securing prompt payment of the principal and interest of said bonds, there shall be levied by the board of county commissioners at the time and in the manner other taxes are levied, such sums as shall be sufficient to pay such interest, and in addition thereto a sinking fund tax shall be annually levied sufficient to pay and retire said bonds at their maturity, and it shall be the duty of the county treasurer to pay promptly the interest upon the said bonds as the same shall fall due. No tax or fund provided for the payment of such bonds, either principal or interest, shall at any time be used for any other purpose; provided, however, that the board of county commissioners may deposit any part or portion of the sinking fund herein provided for, in any bank furnishing satisfactory security to the state of North Dakota, which shall furnish to the county a bond of indemnity to be approved by the board, and receive interest on the same which shall be credited to the sinking fund. It shall be the duty of the treasurer when said bond or any coupons attached thereto are paid, to cancel the same by writing upon the face thereof the word "paid" and the date of payment. Before the bonds are delivered to the purchaser, the treasurer of the county shall register them in a book to be provided for that purpose, known as the bond register, in which register he shall enter the number of each bond, its date, date of maturity, amount, rate of interest, to whom and where payable; provided that said treasurer shall receive a per centum at the discretion of the county commissioners, not to exceed one per cent, for the receiving and disbursing of the amount received from the sale of said bonds, said per centum to be covered into the treasury as a part of the salary fund. The board of county commissioners may issue warrants instead of bonds, if in their judgment the best interests of the county are thereby served, provided, that such warrants shall not be issued in any amount to exceed one per cent of the assessed valuation of such county. [1911, ch. 273; 1909, ch. 210, § 6.]

§ 3477. Proceeds used exclusively to purchase seed grain. The fund arising from the sale of said bonds shall be applied exclusively by the said board for the purchase of seed grain for residents of the county who are unable to procure the same; provided, that not more than one hundred and fifty bushels of wheat or its equivalent in other grain shall be furnished to any one person; provided, further, that in any county in which it is necessary to procure seed grain under the provisions of this article and the parties taking advantage of the same are unable to obtain feed for their stock for the putting in of said seed grain, the county commissioners may, in their discretion, purchase and deliver to such parties who are unable to procure in any other way, such amount of feed as will in their judgment enable said parties to put in their seed; such feed to be furnished at actual cost, the amount to be paid for such feed to become a part of the seed lien on the crop raised from the seed furnished to such party under the provisions of this article. [1909, ch. 210, § 7.]

§ 3478. Commissioners may issue warrants for purchase. In providing for the purchase of seed grain the commissioners may in lieu of issuing bonds, order warrants drawn upon the general fund of the county to pay for the seed grain purchased under the general provisions of this article. [1909, ch. 210, § 8.]

§ 3479. Applications for aid, how made. All persons entitled to, and wishing to avail themselves of the benefit of this article, shall file with the county auditor, or county clerk, of the county where said applicant resides, on or before the first day of March, an application duly sworn to before said county auditor, or county clerk, or some other officer authorized to administer oaths.

Said application shall contain a true statement of the number of acres the applicant has plowed or prepared for seeding; how many acres the applicant intends to have plowed or prepared for seeding; how many bushels and what kind of grain he will require to seed the ground so prepared as aforesaid; how many bushels of grain the applicant harvested in the preceding year; that the applicant has not procured and is not able to procure the necessary seed grain for the current year; that he desires the same for seed and no other purpose, and that he will not sell or dispose of the same or any part thereof, but will use the same and the whole thereof in seeding the land so prepared or to be prepared for crop. Said application shall also contain a true and full description of all the real and personal property owned by the applicant, and the incumbrances thereon; and a true description by government subdivisions of the land upon which the applicant intends to sow said seed grain. All applications filed under the provisions of this article shall be consecutively numbered and shall be open to public inspection, and no application shall be considered by the board of county commissioners except such as have been made and filed in the manner prescribed in this section; provided, that the board of commissioners may in their discretion consider any application although made after the time so specified. [1909, ch. 210, § 9.]

§ 3480. Adjustment of application, county commissioners make. The board of county commissioners of each county issuing bonds under the provisions of this article are hereby appointed and constituted a board of examination and adjustment of the applications for seed grain filed under the preceding section, and it shall be the duty of said board to meet at the county auditor's or clerk's office on the first Tuesday in March, or as soon thereafter as possible, to examine and consider separately each application filed under the provisions of this article, and to determine who are entitled to the benefits thereof, and the amount to which each applicant is entitled, and said board shall on or before the tenth day of March, deliver and file with the county auditor, or county clerk, its adjustment of the said applications, which shall be signed by the chairman of the board. [1909, ch. 210, § 10.]

§ 3481. Contract for repayment. Delinquent payments extended on tax list. The county auditor of each county shall, as soon as the county commissioners shall have performed the duty prescribed in the preceding section, issue to each applicant demanding it an order for the number of bushels of each kind of seed grain which has been allowed to said applicant, unless otherwise directed by the board or the chairman thereof; provided, however, that said order shall not be delivered until said applicant shall have signed a contract in duplicate, attested by the county auditor, to the effect that said applicant, for and in consideration of bushels of seed grain received from county, promises to pay to said county dollars, the amount of cost of said seed grain; that said sum shall be taxable against all the real property for which said seed was furnished and all personal property of said applicant; that such tax shall be levied by the county auditor of his county and collected as other taxes are collected under the laws of this state; that the amount of such indebtedness shall become due and payable on the first day of October in the year in which said seed grain is furnished, together with interest on such amount from the first day of April of that year, at the rate of seven per cent per annum, and if said indebtedness be not paid on or before the fifteenth day of October of that year it shall then be the duty of the county auditor of the said county to cause the amount of said indebtedness to be entered upon the tax lists of said county then in the hands of the county treasurer as a tax against the land owned by the applicant for which said seed was furnished, to be collected as other taxes are, and the sum so entered and levied shall be a lien upon the real estate owned by said person, for which said seed was furnished, until said indebtedness is fully paid; when it shall be the duty of the proper officer to cancel the same; provided,

that such indebtedness shall not be subject to the penalty provided for taxes, nor shall it bear a greater rate of interest than seven per cent per annum. [1913, ch. 249; 1909, ch. 210, § 11.]

§ 3482. Contract made first lien. Upon the filing of the contracts provided for in section 3480, the county shall acquire a just and valid lien upon the crops of grain raised each year by the person receiving seed grain to the amount of the sum then due to the county upon said contract, as against all creditors, purchasers or mortgagees, whether in good faith or otherwise, and the filing of said contract shall be held and considered to be full and sufficient notice to all parties of the existence and extent of said lien, which shall continue in force until the amount covered by said contract is fully paid. [1909, ch. 210, § 12.]

§ 3483. Crops sold for repayment of advances. Each and every person who has received seed grain under the provisions of this article, shall, as soon as his crops for the year wherein payment is to be made are harvested and threshed, market a sufficient amount of grain to pay the amount then due on his contract and pay the same over to the treasurer of his county. [1909, ch. 210, § 13.]

§ 3484. Penalty for misuse of seed furnished. Any person or persons, who shall, contrary to the provisions of this article, sell, transfer, take or carry away, or in any manner dispose of the seed grain, or any part thereof, furnished by the county under this act, or shall use or dispose of said seed grain, or any part thereof, for any other purpose than that of planting or sowing the same as stated in his application, or shall sell, transfer, take or carry away, or in any manner dispose of the crop, or any part thereof, produced from the sowing or planting of said seed grain, shall be guilty of a misdemeanor, and upon conviction thereof shall pay a fine of not less than ten dollars, nor more than one hundred dollars, or may be imprisoned in the county jail for a term of not less than ninety days, and shall pay all the costs of prosecution, and whoever under any of the provisions herein shall be found guilty of false swearing shall be deemed to have committed perjury and shall upon conviction suffer the pains and penalties of that crime. Upon the filing of said application in the office of the register of deeds, and the sowing of the seed obtained thereunder, the title and right of possession to the growing crop and to the grain produced from said seed shall be in the county which shall have furnished the seed until the debt incurred for said seed shall have been paid, and any seizure thereof or interference therewith, except by the applicant and those in his employ, for the purpose of harvesting, threshing and marketing the same to pay the debt aforesaid, shall be deemed a conversion thereof, and treble damages may be recovered against the person so converting the same by the county furnishing said seed. [1909, ch. 210, § 14.]

§ 3485. Duty of officers to prosecute. It shall be the duty of the constables and town clerks of the towns, and the county commissioners, sheriffs and state's attorneys of the counties furnishing seed grain under the provisions of this article, having any knowledge of the violation of its provisions, to make complaint thereof to a justice of the peace, and said justice shall thereupon issue a warrant for the arrest of the offender, and proceed to hear and determine the matter, or to bind the offender over to appear before the grand jury, as the case may be. [1909, ch. 210, § 15.]

§ 3486. Commissioners advertise intention of distribution. The county commissioners of every county proposing to distribute seed grain under the provisions of this article shall advertise such intention in such manner and for such length of time prior to the first day of March as is possible for them to do, giving notice that all applications must be filed with the county auditor, or county clerk, by the first day of March; provided, that no distribution of seed grain under the provisions of this article shall take place prior to the tenth day of March. If more seed grain is applied for than can be supplied by the commissioners under the provisions of this article, a pro rata distribu-

tion shall be made by them among those who shall have been found entitled to the benefits of this article. The commissioners shall have the right to refuse any application which they may deem improper to grant, and they may revise their adjustment of applications at any time before final distribution. [1909, ch. 210, § 16.]

§ 3487. **Grain furnished at cost.** It shall be the duty of the commissioners providing seed grain under the provisions of this article, to purchase the same at the lowest price at which suitable grain can be obtained, and to furnish the same to applicants at the actual cost thereof to the commissioners, with transportation and handling charges added, if any there be, and any person requiring or extorting from any applicant a greater price shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by fine or imprisonment, or both, as the court may determine. [1909, ch. 210, § 17.]

§ 3488. **Sinking fund.** All money received by the county treasurer in payment of debts incurred under the provisions of this article, shall be paid into, and become a part of the sinking fund herein provided for, and be used exclusively in the purchase or payment of bonds issued hereunder. [1909, ch. 210, § 18.]

§ 3489. **Bonds may be retired.** Said board may at any time, with the concurrence of the owners thereof, pay and retire any of the bonds issued under the provisions of this article out of the funds provided for that purpose, at not more than the par value thereof and accrued interest. [1909, ch. 210, § 19.]

§ 3490. **No tax levied, when.** In case a sufficient fund has been paid into the county treasury in any one year, as provided in section 3480, on or before November first, to meet the interest and sinking fund provided for in this act, then there shall be no tax assessed for such purpose in that year, and in no year shall there be a greater sum assessed than will, together with the balance at that date in the treasury belonging to the seed grain fund, be sufficient to meet said interest and sinking fund promptly for that year. [1909, ch. 210, § 20.]

ARTICLE 25.—CERTIFICATE OF DEBT LIMIT.

§ 3491. **Certificate of debt limit necessary.** No bond or evidence of debt of any county, or bond of any township or other political subdivision of this state, shall be valid unless the same has indorsed thereon a certificate stating that such bond or evidence of debt is issued pursuant to law and is within the debt limit, which certificate in case of a county shall be signed by the county auditor, and in the case of a township or other political subdivision shall be signed by the treasurer of such township or other political subdivision. [R. C. 1905, § 2577; 1890, ch. 33, § 1; R. C. 1899, § 2057.]

CHAPTER 43.

FEES AND SALARIES OF COUNTY, TOWNSHIP AND OTHER OFFICERS.

- ARTICLE
1. STATE'S ATTORNEYS, §§ 3492, 3493.
 2. CLERK OF THE DISTRICT COURT, §§ 3494-3499.
 3. COUNTY JUDGES, §§ 3500-3504.
 4. COUNTY AUDITORS, §§ 3505-3507.
 5. REGISTER OF DEEDS, §§ 3508-3511.
 6. COUNTY TREASURER, §§ 3512, 3513.
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- ARTICLE 14. COUNTY COMMISSIONERS, § 3533.
 15. JURORS, § 3534.
 16. WITNESSES, §§ 3535, 3536.
 17. SALARIES OF DEPUTIES, §§ 3537-3539.
 18. PRINTER, § 3540.
 19. FEES IN MATTERS OF ESTRAYS, § 3541.
 20. OFFICIAL REPORTS OF COUNTY AND OTHER OFFICERS, §§ 3542-3544.
 21. MISCELLANEOUS PROVISIONS, §§ 3545-3551.

ARTICLE 1.—STATE'S ATTORNEYS.

§ 3492. **Salary of state's attorney, assistant and clerk.** As compensation for his services the state's attorney shall be paid in all counties an annual salary, based on the assessed valuation as follows: In counties having a valuation under five hundred thousand dollars, three hundred dollars; over five hundred thousand dollars, and under one million dollars, five hundred dollars; over one million dollars and under one million five hundred thousand dollars, six hundred dollars; over one million five hundred thousand dollars and under two million dollars, seven hundred dollars; over two million dollars and under two million five hundred thousand dollars, eight hundred dollars; over two million five hundred thousand dollars and under three million dollars, one thousand dollars; over three million dollars and under five million dollars, twelve hundred dollars; over five million dollars and under seven million dollars, fifteen hundred dollars; over seven million dollars and under eight million dollars, seventeen hundred and fifty dollars, and in all counties having a valuation of over eight million dollars, two thousand dollars for his personal services; provided, that in counties of over nine million dollars assessed valuation, an assistant state's attorney shall be appointed by the state's attorney, who shall receive a salary fixed by the county commissioners, and in counties of over nine million dollars assessed valuation, the county commissioners may, whenever they deem necessary and for such time as they may deem necessary, by resolution authorize the state's attorney to appoint a clerk, who shall be subject to discharge by the state's attorney and whose salary shall be fixed by the county commissioners and paid by the county. In counties of less than nine million dollars assessed valuation, the salary of the assistant state's attorney, if one is allowed by the county commissioners, may be fixed by the county commissioners, and in such counties of less than nine million dollars assessed valuation, the county commissioners may, whenever they deem it necessary and for such time as they deem necessary, by resolution, authorize the state's attorney to appoint a clerk in lieu of an assistant state's attorney, which clerk shall be subject to discharge at any time by the state's attorney, and whose salary shall be fixed by the county commissioners and paid by the county. [1909, ch. 68; 1907, ch. 75; R. C. 1905, § 2578; 1899, ch. 149; R. C. 1899, § 2058.]

§ 3493. **Office to be furnished. Salary not diminished.** The county commissioners in each county, the population of which does not exceed ten thousand, shall provide a suitable and convenient office for the state's attorney or in lieu thereof may allow a reasonable sum not exceeding forty per cent of the salary prescribed by law for the rental and maintenance of such office. The salary of the state's attorney shall not be diminished during the term for which he was elected. [R. C. 1905, § 2579; R. C. 1895, § 2060.]

Commissioners cannot diminish salary during term of office. *Polk v. Minnehaha County*, 5 D. 129, 37 N. W. 93.

ARTICLE 2.—CLERK OF THE DISTRICT COURT.

§ 3494. **Salary of clerk of district court, how determined.** The salary of the clerk of the district court shall be regulated by the value of the property in his county as fixed by the state board of equalization for the preceding

year, as follows: He shall be entitled to receive not to exceed five hundred dollars in counties where the assessed valuation does not exceed five hundred thousand dollars; six hundred dollars in counties where the assessed valuation exceeds five hundred thousand dollars but does not exceed one million five hundred [thousand] dollars; eight [hundred dollars in counties] where the assessed valuation exceeds one million dollars but does not exceed one million five hundred [thousand] dollars; eight hundred dollars in counties where the assessed valuation exceeds one million five hundred thousand dollars but does not exceed two million dollars; nine hundred dollars in counties where the assessed valuation exceeds two million dollars but does not exceed three million dollars; one thousand dollars where the assessed valuation exceeds three million dollars but does not exceed three million five hundred thousand dollars; eleven hundred dollars where the assessed valuation exceeds three million five hundred thousand dollars but does not exceed four million dollars; twelve hundred dollars where the assessed valuation exceeds four million dollars but does not exceed five million dollars; thirteen hundred dollars where the assessed valuation exceeds five million dollars but does not exceed six million dollars; fourteen hundred dollars where the assessed valuation exceeds six million dollars but does not exceed seven million dollars; fifteen hundred dollars where the assessed valuation exceeds seven million dollars but does not exceed eight million dollars; sixteen hundred dollars where the assessed valuation exceeds eight million dollars but does not exceed nine million dollars, and in counties where the assessed valuation exceeds nine million dollars but does not exceed ten million dollars, the clerk shall receive the sum of eighteen hundred dollars, and in counties where the assessed valuation exceeds ten million dollars the clerk shall receive two thousand dollars; provided, that no clerk of the district [court] shall receive for his personal service an amount in excess of two thousand dollars in any one year, as provided by this article, to be paid monthly from the general county fund on the warrant of the county auditor. [1907, ch. 74; R. C. 1905, § 2580; 1889, ch. 64, § 1; R. C. 1899, § 2061.]

Provision as to compensation not in conflict with section 34 of article 5, nor section 6 of article 9, of state constitution. *Minnehaha County v. Thorne*, 6 S. D. 449, 61 N. W. 688.

§ 3495. Clerk to keep fee book. Monthly report to county auditor. Each clerk of the district court shall keep a book to be provided by the county and which shall be a part of the public records of his office, in which shall be entered each item of fees for services rendered and shall within three days after the close of each calendar month and also at the close of his term of office, file with the county auditor a statement under oath showing the amount of fees which he has received as such officer since the date of his last report, and shall within three days deposit with the county treasurer the total sum of such fees, which sum so deposited shall be placed to the credit of the salary fund. Any clerk of the district court who shall neglect or omit to charge or collect the fees charged in section 3498 to be charged and collected by him for services rendered, or shall fail or neglect to keep a record of the same, or to make a correct statement thereof to the county auditor, with intent to evade the provisions of this article, shall be deemed guilty of a misdemeanor. [R. C. 1905, § 2581; 1890, ch. 64, § 2; R. C. 1899, § 2062.]

Admissibility in evidence of books of account kept by clerks. 52 L.R.A. 570.

Liability on official bond for loss by bank failure. 22 L.R.A. 449.

§ 3496. Deputy clerk of the district court. If in the judgment of the board of county commissioners of any county in the state it shall be deemed necessary for the prompt and accurate dispatch of business in the office of the clerk of the district court that a deputy or clerks be employed therein, they shall, by resolution, fix the number of clerks to be employed and the compensation which they shall receive, which compensation shall be paid monthly from the general salary fund by warrant of the county auditor; provided,

that the officer in whose office such deputy or clerks are to be employed shall have the sole power of appointing the same and removing them at pleasure; provided, further, that any officer who shall receive and appropriate to his own use and benefit any part of the salary allowed any clerk employed under the provisions of this article, shall be deemed guilty of a misdemeanor. [R. C. 1905, § 2582; 1899, ch. 64, § 3; R. C. 1899, § 2063.]

In whose name acts by deputy officers to be performed. 19 L.R.A. 177; 43 L.R.A. (N.S.) 877.

Competency of women as deputy clerks. 13 L.R.A. 721; 27 L.R.A. (N.S.) 532.

Change of salary of deputy as violation of constitutional provision against change of salary of public officer during term of office. 37 L.R.A. (N.S.) 388.

§ 3497. Excess of fees, how disposed of. In case the fees paid into the county treasury in any calendar year by the clerk of the district court shall exceed the salary fixed herein, and the compensation of a deputy or clerks as herein provided, then and in that case the county treasurer and the county auditor of the county in which such excess shall have occurred shall within thirty days thereafter credit such excess to the general fund of the county. [R. C. 1905, § 2583; 1899, ch. 64, § 4; R. C. 1899, § 2064.]

§ 3498. Fees to be charged. Clerks of the district court shall charge and collect the following fees:

1. In actions for the recovery of money only, in which judgment is entered by default, for all services prior to execution, three dollars.

2. In all other actions in which judgment is entered by default, for services prior to execution, five dollars.

3. In special proceedings, for all services prior to appeal, five dollars.

4. In actions in which an issue of fact is tried, for all services prior to execution, seven dollars.

5. In actions in which only a question of law is tried, the fees shall be the same as on default in like actions.

6. In addition to the foregoing fees, for all services growing out of a provisional remedy, there shall be charged and paid at the time the remedy is applied for, for the first paper in connection therewith filed, two dollars and fifty cents.

7. For issuing execution in any action, one dollar.

8. For filing execution on return, fifty cents.

9. For filing and indexing a mechanic's lien, one dollar.

10. For filing and indexing any other paper authorized to be filed in his office, but not connected with any civil action or proceeding, fifty cents.

11. For making certified abstracts of any judgment, or certified copy of any judgment, order or other paper, filed or recorded in his office, for the first four folios, fifty cents; for each additional folio, ten cents.

12. For entering satisfaction of any judgment or lien, fifty cents.

13. For taking declaration of intention to become a citizen of the United States and making a certified copy of the record thereof, one dollar.

14. For final naturalization papers, including copy of the record thereof, one dollar.

15. For each additional copy of either of such citizen's papers, fifty cents.

16. For approving bond of a notary public, fifty cents.

17. For entering and indexing commission of notary public, fifty cents.

18. For taking an acknowledgment or administering an oath, twenty-five cents.

19. For recording and indexing any paper, not filed in an action or proceeding, for the first four folios, fifty cents; for each additional folio, ten cents.

20. For a certificate of the official capacity of a notary public, or other officer, fifty cents.

21. For certifying an abstract of real property as to judgments and liens, for each person named in the abstract as to whom search is made, ten cents.

22. For receiving, keeping and paying out money in pursuance of law or an order of court, one per cent of the amount, which shall be paid by the person receiving such money.

23. For issuing commission to take depositions, one dollar.

24. For certifying the record on appeal to the supreme court, or to the district court of any other county and transmitting the same, five dollars.

25. For all services on remittitur from supreme court, two dollars.

26. For taking depositions, per folio, ten cents.

27. For making certified transcripts of any judgment, one dollar.

28. For filing and docketing transcript of judgment from justice's court or from any other county, one dollar.

29. For filing and entering affidavit and other papers, for renewal of any judgment, two dollars. [R. C. 1905, § 2584; 1899, ch. 64, § 5; R. C. 1899, § 2065; 1901, ch. 92; 1903, ch. 55.]

Fees of clerks on filing record and docketing cause in federal supreme court. 66 L.R.A. 850.

Right of clerk on salary basis to retain fee for naturalization. 30 L.R.A. (N.S.) 810.

§ 3499. Deposit of fees to be required. No civil action, appeal or proceeding shall be entered in the clerk's office of said district court until the person desiring such entry shall deposit with the clerk the sum of five dollars on account of fees in the case, and out of which the clerk shall satisfy the fees due in such case as they accrue, and whenever said sum or any other deposit is exhausted, said clerk may require as a condition for further entries, or clerk's fees, an additional deposit of two dollars for the purpose and applications as aforesaid. Any balance remaining with said clerk after such application and the determination of the case shall be returned to the party disposing the same, his agent or attorney. [R. C. 1905, § 2585; 1899, ch. 64, § 6; R. C. 1899, § 2067.]

ARTICLE 3.—COUNTY JUDGES.

§ 3500. Salary of county judge. As compensation for his services the county judge shall be paid in all counties an annual salary based on the assessed valuation as follows:

In counties having a valuation under five hundred thousand dollars, five hundred dollars; over five hundred thousand dollars and under one million dollars, seven hundred dollars; over one million dollars and under two million dollars, nine hundred dollars; over two million dollars and under three million dollars, eleven hundred dollars; over three million dollars and under four million dollars, thirteen hundred dollars; over four million dollars and under five million dollars, fifteen hundred dollars; over five million dollars and under six million dollars, sixteen hundred dollars; over six million dollars and under seven million dollars, seventeen hundred dollars; over seven million dollars and under eight million dollars, eighteen hundred dollars; and in all counties having a valuation of over eight million dollars, two thousand dollars, and no more for his personal services. Provided, that the salary of county judge in counties having increased jurisdiction shall not be affected by the provisions of this article. [1911, ch. 218; R. C. 1905, § 2586; 1899, ch. 68; R. C. 1899, § 2068.]

Maximum salary of county judges in counties having increased jurisdiction is limited to \$2,500. *State ex rel. Davis v. Fabrick*, 18 N. D. 402, 121 N. W. 65.

§ 3501. Provision for deputies. Salaries. If in the judgment of the board of county commissioners of any county it is deemed necessary for the prompt and accurate dispatch of the business in the office of county judge that deputies or clerks be employed therein, it shall by resolution fix the number of clerks to be employed and amount of compensation to be paid such deputies or clerks, which compensation shall be paid monthly from the special salary fund, when the salary fund is exhausted then out of the general fund by warrant; provided, that the officer in whose office such deputies or clerks are employed shall have the sole power of appointing and removing them at

pleasure. In no case shall the county judge be allowed for clerk hire unless such services have been actually rendered. [R. C. 1905, § 2587; 1899, ch. 69; R. C. 1899, § 2069.]

§ 3502. Misappropriation of salary, misdemeanor. Any officer who shall receive and appropriate to his own use and benefit any part of the salary allowed to any such clerk or deputy shall be guilty of a misdemeanor. [R. C. 1905, § 2588; 1899, ch. 69; R. C. 1899, § 2069.]

§ 3503. County to be reimbursed, how. For the purpose of reimbursing the county for the salaries provided in the foregoing sections to be paid to judges of county courts each petitioner for letters testamentary, or administration or guardianship, before filing the same in the county court, shall pay or cause to be paid into the county treasury for the use and benefit of the county in whose county court proceedings are to be instituted to settle the estate of a deceased person or for the appointment of a guardian the sum of five dollars, and when the value of said estate has been ascertained by the court through the inventory and appraisement or upon hearing of the same, as legally required, within thirty days after the issuance of letters testamentary, administration or guardianship, the judge of said court shall require an additional fee to be paid from said estate into said county treasury of five dollars for each and every one thousand dollars or fraction thereof in excess of the first one thousand dollars in value therein found after deducting the amount of the liens or incumbrances against the property of said decedent, as shown by said inventory and appraisement, and in all cases in addition thereto, all sums necessarily expended in publishing or serving notices required by law. [1913, ch. 127; 1909, ch. 119; 1890, ch. 50, § 4; R. C. 1899, § 2071; 1903, ch. 66; 1905, ch. 87.]

This section takes the place of section 2589, Code of 1905, which was held unconstitutional in *Malin v. Lemoure County*, 27 N. D. —.

§ 3504. Payments to treasurer. Receipts. When the payments provided for in the foregoing sections are made to the treasurer of the proper county he shall execute therefor duplicate receipts, one of which shall be filed with the county auditor and one with the judge of the county court. [R. C. 1905, § 2590; 1890, ch. 50, § 5; R. C. 1899, § 2072.]

ARTICLE 4.— COUNTY AUDITORS.

§ 3505. Term of office commences, when. The term of office of the county auditor shall commence on the first Monday in April next succeeding his election. [R. C. 1905, § 2591; 1897, ch. 43; R. C. 1899, § 2072a; 1903, ch. 72.]

§ 3506. Salary of, how determined. The salary of the county auditor shall be regulated by the value of the property in his county as fixed by the state board of equalization for the preceding year as follows: Provided, that no county auditor shall receive more than one thousand two hundred dollars for his personal services in any one year in counties where the valuation of taxable property is less than one million five hundred thousand dollars; nor more than one thousand four hundred dollars in counties where the assessed valuation exceeds one million four hundred thousand dollars, but does not exceed two million dollars; nor more than one thousand five hundred dollars in counties where the assessed valuation exceeds two million dollars, but does not exceed three million dollars; nor more than one thousand six hundred dollars in counties where the assessed valuation exceeds three million dollars, but does not exceed four million dollars; nor more than one thousand seven hundred dollars in counties where the assessed valuation exceeds four million dollars, but does not exceed four million five hundred thousand dollars; nor more than one thousand eight hundred dollars in counties where the assessed valuation exceeds four million five hundred thousand dollars, but does not exceed five million dollars; nor more than one thousand nine hundred dollars in counties where the assessed valuation exceeds five million

dollars, but does not exceed six million dollars; nor more than two thousand dollars in counties where the assessed valuation exceeds six million dollars, but does not exceed seven million dollars; nor more than two thousand one hundred dollars in counties where the assessed valuation exceeds seven million dollars, but does not exceed eight million dollars; nor more than two thousand two hundred dollars in counties where the assessed valuation exceeds eight million dollars, but does not exceed nine million dollars; nor more than two thousand three hundred dollars in counties where the assessed valuation exceeds nine million dollars, but does not exceed ten million dollars; nor more than two thousand four hundred dollars in counties where the assessed valuation exceeds ten million dollars, but does not exceed eleven million dollars; nor more than two thousand five hundred dollars in counties where the assessed valuation exceeds twelve million dollars; and all moneys received as fees for certifying to abstracts or deeds in excess of the salary as limited by this article shall be paid by the county auditor at the end of each month into the revenue fund of the county. [1907, ch. 70; R. C. 1905, § 2592; 1899, ch. 56; R. C. 1899, § 2073.]

§ 3507. Provision for deputies. If in the judgment of the board of county commissioners of any county it is deemed necessary for the prompt and accurate dispatch of the business in the office of the county auditor, that clerks or deputies be employed therein, they shall authorize the same, and the allowance for such clerk hire shall be paid in the same manner as all other similar claims against the county, but in no case shall the auditor be allowed for clerk hire unless such services have been actually rendered. [R. C. 1905, § 2593; 1891, ch. 52, § 2; R. C. 1899, § 2074.]

Employment of deputies is within discretion of county. *Tillotson v. Potter County*, 13 S. D. 460, 83 N. W. 623; *Tillotson v. Potter County*, 10 S. D. 60, 71 N. W. 754.

ARTICLE 5.—REGISTER OF DEEDS.

§ 3508. Salary, how determined. As compensation for his services the register of deeds shall be paid in all counties an annual salary based on the assessed valuation as follows: In counties having a valuation under five hundred thousand dollars, five hundred dollars; over five hundred thousand dollars and under one million dollars, seven hundred and fifty dollars; over one million dollars and under one million five hundred thousand dollars, one thousand dollars; over one million five hundred thousand dollars and under two million dollars, twelve hundred dollars; over two million dollars and under three million dollars, fourteen hundred dollars; over three million dollars and under five million dollars, sixteen hundred dollars; over five million dollars and under eight million dollars, seventeen hundred dollars; over eight million dollars and under nine million dollars, eighteen hundred dollars; and in all counties having a valuation over nine million dollars, two thousand dollars and no more for his personal services. [R. C. 1905, § 2594; 1899, ch. 132; R. C. 1899, § 2075.]

§ 3509. Fee book to be kept. Monthly reports. Penalty. Each register of deeds shall keep a book provided by the county in which shall be entered each item of fees for services rendered and shall, within three days after the close of each calendar month and also at the end of his term of office, file with the county auditor a statement under oath showing the fees which he has received as such officer since the date of his last report, and also within three days deposit with the county treasurer the total sum of such fees, which sum so deposited shall be placed to the credit of the special salary fund. Any register of deeds, who shall neglect or omit to charge or collect the fees allowed by law for services rendered, or shall fail or neglect to keep a record of the same, or to make a correct statement thereof to the county auditor, with intent to evade the provisions of this section, shall be deemed

guilty of a misdemeanor. [R. C. 1905, § 2595; 1891, ch. 52, § 4; R. C. 1899, § 2076.]

Entitled only to fees collected by him. *Smithson v. Fall River County*, 15 S. D. 34, 87 N. W. 1.

May waive right to have fees paid in advance when not required to pay them to county. *Parrish v. Mahaney*, 10 S. D. 276, 73 N. W. 97, 65 Am. St. Rep. 715.

Monthly summary of fees collected by register of deeds, made up from memorandum of miscellaneous items and transferred to "reception register" is not competent evidence of fees collected. *Putnam v. Custer County*, 25 S. D. 542, 127 N. W. 641.

§ 3510. County commissioners may employ deputies. When. Compensation.

If in the judgment of the board of county commissioners, it shall be deemed necessary for the prompt and accurate dispatch of business in the office of the register of deeds that deputies or clerks be employed therein, it shall by resolution fix the number of clerks to be employed and the compensation which they shall receive, which compensation shall be paid monthly from the special salary fund, but when the salary fund is exhausted, then out of the general fund by warrant; provided, that the officers in whose office such deputies or clerks are employed shall have the sole power of appointing and removing them at pleasure; provided, further, that in counties having a population of less than fifteen thousand such amount so paid such register of deeds for salary and clerk hire shall not exceed the sum of five thousand dollars; and in counties having a population of more than fifteen thousand and less than twenty-five thousand, such amount so paid to such register of deeds for salary and clerk hire shall not exceed the sum of six thousand dollars; and in counties having a population of more than twenty-five thousand, such amount so paid to such register of deeds for salary and clerk hire shall not exceed the sum of twelve thousand dollars; provided, that if the amount of money that may be paid for clerk hire in any county in this state shall not be sufficient for the prompt and regular dispatch of business in such county, the judge of the district court of the district in which such county is situated, may upon application of the register of deeds of such county, and after proper showing, order the register of deeds to employ such extra clerks as may be necessary for the prompt dispatch of business in said office, whose compensation shall be paid out of the receipts of said office; provided, however, that all moneys received for compiling of the continuation of abstracts of title shall be turned over to the county treasurer, who shall credit the same to the county general fund. Any officer who shall receive and appropriate to his own use and benefit any part of the salary allowed to any such clerk or deputy shall be guilty of a misdemeanor. [1913, ch. 243; 1907, ch. 69; R. C. 1905, § 2596; 1891, ch. 52, § 6; R. C. 1899, § 2078; 1903, ch. 154.]

Entitled to amount of fees of office, only. *Smithson v. Fall River Co.*, 15 S. D. 34, 87 N. W. 1.

§ 3511. Fees. The register of deeds shall charge and collect the following fees:

1. For recording a deed, mortgage or other instrument and indexing for the first four hundred words, seventy-five cents; for each additional folio, ten cents.

2. Copy of record for each ten words, one cent.

3. Certificate and seal, twenty-five cents; provided that no charges for certificate and seal shall be made in filing or recording any instrument presented for record.

4. Making certified abstract of title, for the first deed or transfer, one dollar, and for each additional deed or transfer, twenty-five cents; making chattel mortgage abstract, for the first entry, one dollar, and for each additional entry, ten cents.

5. Whenever any person presents an abstract to the register of deeds who made the same for continuation of such abstract, it shall be his duty to continue the same and he shall be entitled to receive twenty-five cents for each new transfer, and twenty-five cents for his certificate thereto, and no more.

6. For indexing and recording a discharge of notice of lis pendens or satisfaction of real estate mortgage, fifty cents.

7. For recording marks and brands, each twenty-five cents.

8. For filing and indexing a satisfaction of mortgage on real estate chattel mortgage, or for filing and indexing a renewal of a chattel mortgage, twenty-five cents, but no fee shall be charged for releasing the same.

9. For filing and indexing other instruments not herein specified, authorized by law to be filed, twenty-five cents.

10. For recording a register's certificate from the register of any United States land office, fifty cents.

11. For recording a mortgage satisfaction, mortgage assignment, power of attorney to assign, satisfy or foreclose a mortgage, attorney's affidavit in mortgage foreclosure, and indexing where more than one mortgage is described in the same instrument, twenty-five cents, for indexing each additional mortgage so described in addition to the fee provided for in subdivisions 1 and 6 hereof.

12. Whenever any person demands a chattel mortgage abstract it is the duty of the register of deeds to forthwith prepare such abstract and he shall charge and collect ten cents for each mortgage appearing on said abstract. [1911, ch. 259; R. C. 1905, § 2597; 1897, ch. 124; R. C. 1899, § 2079.]

ARTICLE 6.—COUNTY TREASURER.

§ 3512. **Salary, how determined.** The county treasurer of each county shall be allowed at the time of his settlement all sums paid by him for printing such advertisements as he is required to have done, at the rates prescribed by law; and all sums paid by him for blank books and stationery necessarily used in his office, and shall receive for his services such sums as may be allowed by law for the collection and paying over all moneys collected or received by him for the leasing, sale or interest on school or other state lands, and all other public moneys by him collected or received as such county treasurer for each year's services as follows: Four and one-half cents on each dollar for the first ten thousand dollars; three cents on each dollar on the next twenty thousand dollars; and two cents on each dollar on all sums over thirty thousand dollars and less than sixty thousand dollars, and one cent on each dollar on sums over sixty thousand dollars, to be paid on the warrant of the county auditor out of the salary fund, and whenever the salary fund shall be exhausted the auditor shall draw his warrant on the general fund; provided, that no compensation shall be allowed the treasurer for any moneys received from his predecessor in office, or his legal representatives, nor on moneys received from the current school funds of the state arising from the lease or sale of such lands; provided, that no treasurer shall receive more than one thousand two hundred dollars for his personal services in any one year in counties where the valuation of taxable property is less than one million five hundred thousand dollars; nor more than one thousand four hundred dollars in counties where the assessed valuation exceeds one million four hundred thousand dollars but does not exceed two million dollars; nor more than one thousand five hundred dollars in counties where the assessed valuation exceeds two million dollars but does not exceed three million dollars; nor more than one thousand six hundred dollars in counties where the assessed valuation exceeds three million dollars but does not exceed four million dollars; nor more than one thousand seven hundred dollars in counties where the assessed valuation exceeds four million dollars but does not exceed four million five hundred thousand dollars; nor more than one thousand eight hundred dollars in counties where the assessed valuation exceeds four million five hundred thousand dollars but does not exceed five million dollars; nor more than one thousand nine hundred dollars in counties where the assessed valuation exceeds five million dollars but does not exceed six million

dollars; nor more than two thousand dollars in counties where the assessed valuation exceeds six million dollars but does not exceed seven million dollars; nor more than two thousand one hundred dollars in counties where the assessed valuation exceeds seven million dollars but does not exceed eight million dollars; nor more than two thousand two hundred dollars in counties where the assessed valuation exceeds eight million dollars but does not exceed nine million dollars; nor more than two thousand three hundred dollars in counties where the assessed valuation exceeds nine million dollars but does not exceed ten million dollars; nor more than two thousand four hundred dollars in counties where the assessed valuation exceeds ten million dollars but does not exceed eleven million dollars; nor more than two thousand five hundred dollars in counties where the assessed valuation exceeds twelve million dollars; and all moneys received as fees for certifying to abstracts in excess of the salary as limited by this article, shall be paid by the county treasurer at the end of each month into the revenue fund of the county; provided, further, that whenever the salary of the county treasurer is limited to a fixed sum by the second proviso of this section, such sum shall be paid in the manner provided above at the end of each month in twelve equal installments and no treasurer receiving pay for his services under said second proviso, whose salary cannot be certainly and exactly fixed at the beginning of his official year, shall receive more than one-twelfth of his annual salary at the end of each month, as carefully estimated and recorded by the board of county commissioners at its January meeting in each year; and the balance of the year's pay found to be due the treasurer shall be paid to him on the computation of such board of commissioners at its next January meeting. [R. C. 1905, § 2598; 1899, ch. 67; R. C. 1899, § 2080.]

No commission on money received on sale of court house bonds. *Sandager v. Walsh County*, 6 D. 1, 50 N. W. 196; *Territory v. Cavanaugh*, 3 D. 325, 19 N. W. 413.

Treasurer entitled to five per cent commission on sale of land for delinquent taxes. *Nichols v. Roberts*, 12 N. D. 193, 96 N. W. 298.

County treasurer entitled to one per cent commissions for collecting city and school tax. *Centerville v. Turner County*, 23 S. D. 424, 122 N. W. 350.

Salaried county treasurer is not entitled to commission on real estate sold to county nor to compensation for issuing tax sale certificates. *Campbell County v. Overby*, 20 S. D. 640, 108 N. W. 247.

Treasurer of county is not entitled to fees on bonds sold under section 975 in addition to salary. *Meier v. Sanborn County*, 28 S. D. 386, 133 N. W. 695.

§ 3513. Deputies, when appointed. Salaries. If in the judgment of the board of county commissioners of any county it shall be deemed necessary for the prompt and accurate dispatch of business in the office of the county treasurer, that a deputy or clerk be employed therein, it shall by resolution fix the number of deputies or clerks to be employed, and the length of time they shall be employed together with the compensation which they shall receive, which compensation shall be paid monthly, in the same manner as the salary of the county treasurer; but the officer in whose office such deputy or clerks are to be employed shall have the sole power of appointing and removing them at pleasure. Any county treasurer who shall receive and appropriate to his own use any part of the salary allowed any clerk or deputy in his office shall be deemed guilty of a misdemeanor. [R. C. 1905, § 2599; 1891, ch. 53, § 2; R. C. 1899, § 2081.]

Employment of deputy within discretion of county commissioners. *Tillotson v. Potter County*, 13 S. D. 460, 83 N. W. 623.

County treasurer cannot bind county for clerk hire. *Jacobson v. Ransom County*, 15 N. D. 6, 90 N. W. 1107.

ARTICLE 7.—SHERIFF.

§ 3514. Fees to be charged. The sheriff shall be entitled to charge and receive the following fees:

1. Serving *capias* with commitment of bail and return, two dollars.
2. For each search or search warrant, one dollar.

3. Arresting under search warrant, each defendant, one dollar.
4. Serving summons, warrant of attachment, order of replevin, injunctional order, citation or other mesne process and return thereon, sixty cents; each defendant besides the first, fifty cents.
5. Copy of summons or orders of attachment, twenty-five cents.
6. Copy of injunctional order, twenty-five cents.
7. Serving subpoena for witness, each person, twenty-five cents.
8. Taking and filing bond in claim and delivery, or other undertaking to be furnished to and approved by the sheriff, one dollar.
9. Traveling expenses for each mile actually and necessarily traveled, ten cents; provided, that when it is necessary to travel by team or automobile, the actual cost of the same may be charged in addition to such mileage. In no case, however, shall the cost of the livery or automobile exceed three dollars per day, the number of miles which constitute a day's travel to be reckoned as follows: When the distance traveled is twenty miles or under, a half a day shall be allowed for the same, and when the distance traveled is greater than twenty miles and not to exceed forty miles, a full day shall be allowed; this same ratio to prevail when the distance traveled exceeds forty miles.
10. Making copy of any process, bond or paper, other than herein provided, for each ten words, one cent.
11. Levying writ of execution and return thereof, one dollar.
12. Levying writ of possession with the aid of the county, two dollars and fifty cents.
13. Levying writ of possession without the aid of the county, two dollars.
14. Summoning grand jury, including mileage to be paid by the county, eight dollars.
15. Summoning petit jury, sixteen dollars, and ten cents per mile for each mile actually and necessarily traveled, to be paid by the county.
16. Summoning special jury, for each person empanelled, twenty-five cents.
17. Serving notice of motion or other notice or order of the court, fifty cents.
18. Executing writ of habeas corpus and return, one dollar and twenty-five cents.
19. Serving writ of restitution and return, one dollar and twenty-five cents.
20. Calling inquest to appraise any goods and chattels which he may be required to have appraised, sixty cents, and to each appraiser, to be taxed as costs, one dollar.
21. Advertising sale in newspaper, in addition to the publisher's fees, sixty cents.
22. Advertising in writing for sale of personal property, one dollar.
23. Executing writ or order of partition, two dollars.
24. Making deed for land sold on execution or order of sale, two dollars.
25. Committing prisoner to prison, or discharging therefrom, fifty cents.
26. Opening court and attending thereon, four dollars per day, to be paid by the county; and the sum of two dollars per day shall be allowed for attendance in justice's court in criminal actions, but this per diem shall not be construed to apply to deputies.
27. Commissions on all moneys received and disbursed by him on execution, order of sale, order of attachment, decree or on sale of real or personal property, shall be:
 - (a) For each dollar not exceeding four hundred dollars, three cents.
 - (b) For each dollar above four hundred dollars, and not exceeding one thousand dollars, two cents.
 - (c) For each dollar in excess of one thousand dollars, one cent.
28. In all cases in the district court where persons in whose favor the execution order of sale is issued, shall bid in the property sold on execution

or judgment, the sheriff or person making such sale shall receive the following compensation:

(a) When the amount for which the property is bid in does not exceed one thousand dollars, the sum of five dollars and no more.

(b) When the amount for which the property is bid in exceeds one thousand dollars, the sum of ten dollars and no more.

29. For services in case of redemption of property from sale under execution or mortgage foreclosure, for issuing certificate of redemption, one dollar.

30. For selling real property under foreclosure of mortgages by advertisement, the same fees as are allowed by law for the sale of real property under a judgment of foreclosure and sale of such property and no more.

31. For boarding prisoners, not exceeding seventy-five cents per day each, to be determined by the board of county commissioners.

32. For distributing ballot boxes to the various precincts, two dollars per day and mileage.

33. In all cases where personal property shall be taken by the sheriff on execution or under a warrant of attachment, and applied in satisfaction of the debt without sale, he shall be allowed the same percentage on the appraised value thereof as in case of sale.

34. For the expense of taking and keeping possession of and preserving property under attachment, execution or other process, such sum as the court may order, not to exceed the actual expense incurred, and no keeper must receive to exceed three dollars per day, nor must he be so employed, unless the property is of such character as to require the personal attention and supervision of a keeper. No property must be placed in charge of a keeper if it can be safely and securely stored, or when there is no reasonable danger of loss. [1909, ch. 120; R. C. 1905, § 2600; 1881, ch. 77, §§ 1, 2; 1885, ch. 56, § 1; 1897, ch. 100; R. C. 1899, § 2082; 1903, ch. 178; 1903, ch. 99.]

Compensation for summoning petit jury, \$16; grand jury, \$8; mileage, 5 cents (not 15 cents); nothing for making copies of venires. *Remer v. Lawrence County*, 13 S. D. 418, 83 N. W. 554; *Neher v. McCook County*, 11 S. D. 422, 78 N. W. 998.

Must collect fees from debtor in addition to amount called for in writ or chattel mortgage. *De Luce v. Root*, 12 S. D. 141, 80 N. W. 181.

Not entitled, under chapter 67, N. D. Laws 1897, to \$5 for each description of land sold to county for delinquent taxes. *Wilson v. Cass County*, 8 N. D. 456, 79 N. W. 985.

§ 3515. Fees for transportation of prisoners and patients. The necessary expenses and legal fees of sheriffs and other officers incurred in conveying prisoners to the penitentiary or reform school, or patients to the hospital for the insane, shall be audited as other accounts against the state are audited, and paid out of the state treasury. The auditor may allow for such expenses and fees the following rates:

1. Three dollars per day for the time of the sheriff or other officers necessarily spent in going to and returning from such penitentiary, reform school or hospital, by the nearest route.

2. Two dollars and fifty cents per day for each guard necessary for conveying prisoners to the penitentiary or reform school, and one dollar and fifty cents per day for each guard necessary for conveying patients to the hospital for the insane, and in either case actual traveling expenses.

Not more than one guard shall be allowed for one prisoner, and one additional guard for every two additional prisoners or patients. When conveyance by team is necessary, a team and driver may be employed at a rate of compensation not exceeding five dollars per day, but not less than forty miles per day shall be taken as a day's travel. All bills shall be in writing and fully itemized and verified by oath, and accompanied by the receipt of the warden of the penitentiary or superintendent of the reform school, or of the hospital for the insane for the delivery of such prisoner or patient. Such accounts shall first be approved by the board of county commissioners of the county from which the prisoner or patient is committed, and be entered in

the record of their official proceedings, which approval shall be indorsed thereon. [R. C. 1905, § 2602; 1879, ch. 23, § 41; 1885, ch. 57, § 1; 1885, ch. 58, § 1; 1895, ch. 111, § 1; R. C. 1899, § 2084; 1901, ch. 196.]

This section is R. C. 1905, § 2602, and important mention of it is made in three of the paragraphs in section 653g in this compilation.

§ 3516. Fees in county and justice's court. The sheriff, for performing the duties required by law to be performed by him in the county or justice's court, shall receive the same fees as are allowed for similar services in the district court, to be taxed against the proper party. [R. C. 1905, § 2603; R. C. 1899, § 2085.]

§ 3517. Fees to be indorsed on process. When any sheriff or other officer shall serve any summons, subpoena, bench warrant, venire or other process in any action to which this state or any county is a party, such officer shall be required to indorse upon such writ or process, or upon a paper attached thereto, at the time he makes his return of service thereon, a statement of his fees for such service, the number of miles traveled and the amount of his mileage, and in case he shall fail to make his return with such statement and file the same with the clerk of the court from which such process issued before judgment is rendered in the action to which such process relates, he shall receive no fees for such service, and the county commissioners of the county are prohibited from allowing the same. [R. C. 1905, § 2604; 1883, ch. 54, § 1; R. C. 1899, § 2086.]

Commissioners may allow fees and expenses for bringing back fugitive from justice, though no statement filed with examining magistrate. *Thomas v. Douglas County*, 13 S. D. 520, 83 N. W. 580.

§ 3518. Fees for boarding United States prisoners. The United States shall be liable to pay for the board of prisoners committed to any county jail in this state by authority of United States courts the same charges as are allowed for the board of prisoners committed under authority of this state; the United States shall also be liable to pay such sum for guard hire and board of guards as is actually expended by the sheriff; provided, that no sheriff shall employ more than one guard when the number of United States prisoners in his custody is less than six, and but one additional guard for each additional six prisoners or fractional number thereof; provided, further, that there shall not be paid to any guard a sum exceeding two dollars per day for his services for the time actually employed. [R. C. 1905, § 2605; R. C. 1895, § 2087.]

§ 3519. Liability of the United States. Whenever United States prisoners are committed to any county jail in this state, the United States shall be liable to pay to the county in which such jail is situated the sum of one dollar per day during the time such county jail is used for the keeping of United States prisoners. The jail rent provided in this section shall be exclusive of the charge for support of United States prisoners provided for in the preceding section. [R. C. 1905, § 2606; R. C. 1895, § 2088.]

§ 3520. Sheriff's salary. The salary of the sheriff shall be regulated by the population in his county, according to the last preceding official state or federal census, as follows: Provided, that no sheriff shall receive more than fifteen hundred dollars for his personal services in any one year in counties having a population of less than five thousand; sixteen hundred dollars in counties having a population of five thousand and not exceeding seven thousand; seventeen hundred and fifty dollars in counties having a population of seven thousand and not exceeding nine thousand; nineteen hundred dollars in counties having a population of nine thousand and not exceeding eleven thousand; two thousand dollars in counties having a population of eleven thousand and not exceeding thirteen thousand; twenty-one hundred dollars in counties having a population of thirteen thousand and not exceeding fifteen thousand; twenty-two hundred dollars in counties having a population of fifteen thousand and not exceeding seventeen thousand; twenty-three

hundred dollars in counties having a population of seventeen thousand and not exceeding nineteen thousand; twenty-four hundred dollars in counties having a population of nineteen thousand and not exceeding twenty-three thousand; twenty-five hundred dollars in counties having a population of twenty-three thousand and not exceeding twenty-four thousand; twenty-six hundred dollars in counties having a population of twenty-four thousand and not exceeding twenty-five thousand; twenty-seven hundred dollars in counties having a population of twenty-five thousand and not exceeding twenty-six thousand; twenty-eight hundred dollars in counties having a population of twenty-six thousand and not exceeding twenty-seven thousand; twenty-nine hundred dollars in counties having a population of twenty-seven thousand and not exceeding twenty-eight thousand; three thousand dollars in counties having a population of twenty-eight thousand and not exceeding twenty-nine thousand; thirty-one hundred dollars in counties having a population of twenty-nine thousand and not exceeding thirty thousand; thirty-two hundred dollars in counties having a population of thirty thousand and not exceeding thirty-one thousand; thirty-three hundred dollars in counties having a population of thirty-one thousand and not exceeding thirty-two thousand; thirty-four hundred dollars in counties having a population exceeding thirty-two thousand and not exceeding thirty-three thousand; thirty-five hundred dollars in counties exceeding thirty-three thousand; provided, that no sheriff within the state of North Dakota shall receive for his personal services more than thirty-five hundred dollars in one year. Provided, further, that in all counties having a population less than twenty-five thousand the county commissioners may raise the sheriff's salary not to exceed five per cent of the salary prescribed in this section, if the commissioners in their judgment find the salary prescribed to be inadequate. [1911, ch. 275, § 1.]

Sections 3520-3526 are Laws 1911, ch. 275, except the last section of that chapter reading as follows: "Provided, however, that the provisions of this act shall not apply to the present term of officers elected or appointed prior to the taking effect of this act."

§ 3521. Mileage. In addition to the salary prescribed by the preceding section the sheriff or his deputy or deputies shall be allowed ten cents per mile for each and every mile actually and necessarily traveled in the performance of any of their official duties. [1911, ch. 275, § 2.]

See note to section 3522.

§ 3522. Livery. The sheriff or his deputy or deputies shall be allowed as reimbursement for livery hire necessarily used in the performance of his or their official duties, the actual expenses of such livery or automobile hire which shall in no case exceed five dollars per day; forty miles or major fraction thereof shall be reckoned as one day's drive; twenty miles or less shall be reckoned as one-half day's drive; the same ratio shall apply to all drives extending over forty miles. [1911, ch. 275, § 3.]

The provisions in this and the preceding section do not control section 3515 — at least not until July 1, 1915. So stated in three paragraphs in section 653g.

§ 3523. Deputies. If in the judgment of the board of county commissioners of any county it shall be necessary for the prompt dispatch of business in the sheriff's office they shall by resolution provide for appointment by the sheriff of a deputy, or deputies, and clerks, and the time for which they shall be employed, and fix the compensation which they shall receive, which shall be paid monthly in the same manner as the salary of sheriff. Provided, that no such deputy or clerk shall receive less than sixty dollars nor more than one hundred dollars per month, except that in all counties having a population of more than thirty-three thousand according to the last census the chief deputy sheriff shall receive a salary of one hundred twenty-five dollars per month. Provided, that the sheriff shall appoint in each commissioner district of his county, except in commissioner districts where a salaried deputy is located, at least one deputy, whose compensation shall be such mileage and livery fees only as are now provided by law. [1913, ch. 270; 1911, ch. 275, § 4.]

§ 3524. **Sheriff may appoint.** In case of any emergency the sheriff shall have the authority to appoint and qualify special deputies in such numbers as in his judgment the conditions may require, and each of such special deputies shall receive as compensation for his services the sum of three dollars per day and the same mileage as allowed to regular deputies, to be paid by the county. The sheriff shall have the sole power of appointing and removing them at pleasure. Any sheriff who shall appropriate to his own use any part of the salary allowed any clerk or deputy in his office shall be deemed guilty of a misdemeanor. [1911, ch. 275, § 5.]

§ 3525. **Fees to be collected.** In all civil actions the fees shall be collected by the sheriff and shall be paid in advance, and at the expiration of each month he shall turn the fees so collected over to the county treasurer and make a report to the board of county commissioners showing all fees earned and collected. He shall also keep a complete record of all fees which may be due to his office for services rendered in criminal actions as now prescribed by law, and present his itemized statement for mileage and livery in connection with such criminal actions and file the same with the county auditor at the expiration of each month and receive his warrant for such mileage and livery. [1911, ch. 275, § 6.]

§ 3526. **Penalties.** At the expiration of each month the sheriff shall make report to the board of county commissioners of his county verified by affidavit of all fees collected and any sheriff who by neglect or otherwise fails to make out such a report shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not less than ten nor more than one hundred dollars, and any sheriff who by neglect or otherwise fails to collect the fees and turn same over to the county treasurer, as prescribed in section 3525, or makes a false report to the board of county commissioners, shall be guilty of a felony, and upon conviction thereof shall be punished as now prescribed by law. [1911, ch. 275, § 7.]

ARTICLE 8.—CORONER.

§ 3527. **Fees to be charged.** The coroner shall be entitled to charge and receive the following fees:

1. For a view of each body and taking and returning an inquest, five dollars (\$5).
2. For a view of each body and examination without inquest, three dollars (\$3).
3. For taking information, fifty cents (50c.).
4. For issuing subpoena, warrant or order for jury, fifty cents (50c.).
5. For qualifying an inquest, fifty cents (50c.).
6. For administering an oath or affirmation to witness, ten cents (10c.).
7. For each adjournment, fifty cents (50c.).
8. For taking depositions, drawing and returning inquisitions, for each ten words, one cent (1c.).
9. For each mile traveled to and returning from an examination or inquest, ten cents (10c.); provided, that when it is necessary to travel by team, the actual cost of the same may be charged in addition to such mileage not exceeding five dollars (\$5) per day.
10. For physician making post-mortem examination of dead body, ten dollars (\$10).
11. For other services rendered, the same fees are allowed for the sheriff, and mileage.
12. Such fees shall be paid out of the county treasury, and the bill for the same be filed by the county auditor with the county judge, but in all cases of murder or manslaughter, out of the goods, chattels, lands and tenements of the slayer, if he has any; otherwise, by the county, with mileage for

distance actually traveled to and from the place of securing the dead body. [1913, ch. 111; R. C. 1905, § 2607; 1881, ch. 75, § 1; R. C. 1899, § 2089.]

ARTICLE 9.—REFEREES.

§ 3528. Fees to be charged. Referees shall be entitled to charge and receive the following fees:

1. For copying any paper or instrument or taking testimony, for every ten words, one cent.
2. Swearing each witness, ten cents.
3. Making report of facts or conclusions of law, or upon exceptions, for every ten words, one cent.
4. And such additional fees as the court shall allow not exceeding in any one case the sum of ten dollars per day, except by agreement of the parties.
5. Certificate and seal, twenty-five cents.
6. Taking affidavit, twenty-five cents.
7. For all services pertaining to the sale of real estate, the same fees as are allowed by law to the sheriff in like cases. [R. C. 1905, § 2608; R. C. 1895, § 2090.]

ARTICLE 10.—NOTARIES PUBLIC.

§ 3529. Fees to be charged. Notaries public are entitled to charge and receive the following fees:

1. For each protest, one dollar and fifty cents.
2. For recording the same, fifty cents.
3. For taking affidavit and seal, twenty-five cents.
4. For administering an oath or affirmation, ten cents.
5. For taking a deposition, each ten words, one and one-half cents.
6. For each certificate and seal, twenty-five cents.
7. For taking proof of acknowledgment, twenty-five cents. [R. C. 1905, § 2609; R. C. 1899, § 2091.]

ARTICLE 11.—JUSTICES OF THE PEACE.

§ 3530. Fees to be charged. Justices of the peace shall be entitled to charge and receive the following fees:

1. Docketing each cause, twenty-five cents.
2. Taking affidavit, twenty-five cents.
3. Filing petition, bill of particulars or other paper necessary in a cause, ten cents.
4. Issuing summons, warrant, subpoena, order of arrest, or venire for jury, fifty cents.
5. Issuing execution, order of sale, or writ of attachment and entering return therein, fifty cents.
6. Issuing writ of restitution and entering return therein, one dollar.
7. Administering oath or affirmation to witness, ten cents.
8. Entering judgment in any cause, fifty cents.
9. Taking acknowledgment of deed or other instrument, twenty-five cents.
10. Swearing jury, twenty-five cents.
11. Copy of appeal, copy of pleadings or other papers for any purpose, for each ten words, one cent.
12. Taking depositions, for each ten words, one cent.
13. Certificate, twenty-five cents.
14. Taking information and complaint, fifty cents.
15. Discharge to jailer, twenty-five cents.
16. Dismissal, discontinuance or satisfaction, twenty-five cents.
17. Written notice to party, ten cents.
18. Filing notice and opening judgment for rehearing, fifty cents.

19. Each adjournment, fifty cents.
20. Performing marriage ceremony, three dollars.
21. Each day's attendance upon the trial of a cause after the first day, two dollars.
22. Taking and approving bail bond, twenty-five cents.
23. Entering voluntary appearance of defendant, twenty-five cents.
24. Issuing attachment, fifty cents.
25. Entering motion or order, ten cents.
26. Order of reference to arbitrators, fifty cents.
27. Entering award of arbitrators, twenty-five cents.
28. Commission on money collected on judgment without execution shall be one per cent on the amount. [R. C. 1905, § 2610; R. C. 1895, § 2092.]

ARTICLE 12.—CONSTABLES.

§ 3531. **Fees allowed.** Constables shall be allowed the same fees as are allowed to sheriffs for like services. [R. C. 1905, § 2611; R. C. 1899, § 2093.]

ARTICLE 13.—COUNTY SURVEYORS.

§ 3532. **Fees allowed.** County surveyors shall be allowed to charge and receive the following fees:

1. For time actually employed, four dollars per day and mileage.
2. For each lot laid out and platted in any city or village, twenty-five cents.
3. For each copy of plat and certificate, fifty cents.
4. Recording each survey, twenty-five cents.
5. For each mile actually and necessarily traveled in going to and returning from work, ten cents.
6. For establishing each corner, twenty-five cents.
7. For ascertaining the location of a city or village lot in old survey and measuring and marking the same, two dollars.
8. For surveying county roads, four dollars per day.
9. Expenses of necessary assistance shall in addition be paid by the person requiring the work to be done. [1907, ch. 73; R. C. 1905, § 2612; R. C. 1899, § 2094.]

ARTICLE 14.—COUNTY COMMISSIONERS.

§ 3533. **Compensation allowed. Office hours.** County commissioners shall each be allowed for the time they are necessarily employed in the duties of their office the sum of five dollars (\$5) per day and five cents (\$.05) per mile for the distance actually traveled in attending the meetings of the board and when engaged in other official duties, to be paid out of the general fund of the county, and their office hours shall not be less than from nine to twelve a. m. and two to six p. m. during regular or special session held by such board. [1911, ch. 119; R. C. 1905, § 2613; R. C. 1895, § 2095; 1901, ch. 53.]

May charge for use of term in addition to per diem and mileage fees. *State v. Bauer*, 1 N. D. 273, 47 N. W. 378.

Commissioners are not entitled to \$4 per day in addition to mileage for day to come to and return from meeting. *State v. Richardson*, 16 N. D. 1, 109 N. W. 1026.

ARTICLE 15.—JURORS.

§ 3534. **Fees allowed.** Jurors are entitled to receive:

1. For each day's attendance in district court as grand, petit or special juror, to be paid by the county, three dollars.
2. Traveling expenses for each mile actually and necessarily traveled each way, to be paid by the county, five cents.
3. For each day's attendance as juror in justice's court, one dollar.
4. For each day's attendance as juror at coroner's inquest, to be paid by

the county, one dollar. [R. C. 1905, § 2614; 1885, ch. 59, § 1; R. C. 1895, § 2096; 1903, ch. 117.]

ARTICLE 16.—WITNESSES.

§ 3535. Per diem and mileage. Witnesses are entitled to receive for each day's attendance before the district court, or before any other court, board or tribunal, in all civil and criminal cases, the sum of two dollars, and for each mile actually traveled, one way, ten cents; provided, that in all criminal cases witnesses' fees on the part of the state shall be paid out of the county treasury of the proper county. [R. C. 1905, § 2615; R. C. 1899, § 2097; 1905, ch. 88.]

Witness fees to persons under detention or recognizance. 20 L.R.A. 57.

Duty of state to advance fees of witnesses summoned on its behalf. 31 L.R.A.(N.S.) 781.

Right of state to require services of witness without compensation. 39 L.R.A. 116.

Validity of agreements to pay witnesses extra compensation. 30 L.R.A.(N.S.) 280.

Compensation of expert witnesses. 27 L.R.A. 669; 25 L.R.A.(N.S.) 1040; 33 L.R.A.(N.S.) 336.

§ 3536. Duplicate fees not permissible. A witness who is subpoenaed in two or more cases by the same party shall be entitled only to one compensation from such party for the same day's attendance or travel. [R. C. 1905, § 2616; 1890, ch. 194, § 1; R. C. 1899, § 2098.]

ARTICLE 17.—SALARIES OF DEPUTIES.

§ 3537. Salaries of deputies, how determined. In all counties having an assessed valuation of two million dollars or over there shall be allowed or paid to a deputy or clerk in the office of the county auditor, county treasurer and register of deeds not less than fifty dollars per month for work done by such deputy or clerk. [R. C. 1905, § 2617; 1905, ch. 79, § 1.]

Change of salary of deputy as violation of constitutional provision against change of salary of public officer during term of office. 37 L.R.A.(N.S.) 388.

§ 3538. Deputies and clerks allowed, when. In all counties under the classification given in section 3537 the county auditor may employ a deputy for the months of July, August, September, October and November, in each year. The county treasurer may employ a deputy during the months of November, December, January and February of each year, and the register of deeds may employ a deputy during the entire year. The salaries of such deputies and clerks shall be paid by the county as other salaries of county officers are paid; provided, that such deputies or clerks are not employed unless sufficient work is on hand to warrant such assistance. [R. C. 1905, § 2618; 1905, ch. 79, § 2.]

§ 3539. County commissioners may employ additional help. The provisions of this article shall in no wise deprive the board of county commissioners in the various counties of the state of any authority to furnish any additional help, beyond the limitations of this article, that may be required to properly do the business work of such officers and at salaries named by such board, but each county officer for whom a deputy or clerk is provided by the provisions of this article or by a board of county commissioners, shall be entitled to choose such deputy or clerk. [R. C. 1905, § 2619; 1905, ch. 79, § 3.]

ARTICLE 18.—PRINTERS.

§ 3540. Pay required. [In all cases where publication of legal notices of any kind is required or allowed by law, the person or officer desiring such publication shall be required to pay seven cents per counted line of nonpareil type for the first insertion and four cents per line of nonpareil for each subsequent insertion; or five cents per counted line of brevier type for the first insertion and three cents per line of brevier type for each subsequent insertion. All tabulated rule and figure matter shall be computed at double the

rates for straight matter. A line shall be construed to mean thirteen ems pica in length.] In all cases of publication of notices required by law, the plaintiff, except in divorce cases, may designate the legal newspaper published within the county in which such notice shall be published. [1909, ch. 178; R. C. 1905, § 2620; 1887, ch. 51, § 1; R. C. 1899, § 2099.]

The foregoing section constitutes Laws 1909, ch. 178, which amends R. C. 1905, § 2620, to read as above. All of section 3540, except the last sentence, is probably superseded by sections 3308, 3309, although the latter section seems to overlook the amendment in Laws 1909, above mentioned. Prior to that amendment, R. C. 1905, § 2620, read as follows: "In all cases where publication of legal notices of any kind is required or allowed by law, the person or officer desiring such publication shall be required to pay seventy-five cents per square of twelve lines of nonpareil type or its equivalent for the first insertion and fifty cents per square for each subsequent insertion. And in all cases of publication of notices in connection with sales upon execution the plaintiff, except in divorce cases, may designate the newspaper published within the county in which such notice shall be published; in all legal advertisements fractional parts of twelve lines shall be paid for at the rate of ten cents per line of nonpareil type or its equivalent."

ARTICLE 19.—FEES IN MATTERS OF ESTRAYS.

§ 3541. Fees allowed. The following fees are allowed in cases of estrays:

1. To justices of the peace, for issuing any warrant of appraisement, fifty cents.
2. For filing and entering in his docket the sworn report of appraisers, fifty cents.
3. Taking and entering the affidavit of the taking up of any estray, fifty cents.
4. For posting notices of estray and certifying to a copy of the sworn reports of the appraisers to the register of deeds, fifty cents.
5. Posting notices and selling an estray, two dollars.
6. Advertising an estray, if published in a newspaper, three dollars.
7. To each appraiser, twenty-five cents.
8. To the register of deeds for entering certified copy of sworn report of appraisers, twenty-five cents.
9. For each inspection of the estray register, ten cents. [R. C. 1905, § 2621; R. C. 1899, § 2100.]

ARTICLE 20.—OFFICIAL REPORTS OF COUNTY AND OTHER OFFICERS.

§ 3542. Penalty. Any county, city, village, civil township, school township or school district officer, who is required by law to make an official report to any other county, city, village, civil township, school township or school district officer, board, tribunal or state officer, and who willfully neglects to make such report, or fails to perform such official duties, shall forfeit and pay to the state a penalty of not less than ten nor more than two hundred dollars, to be recovered from such delinquent officer, or from him and the sureties upon his official bond, in a civil action to be brought by the state's attorney in any court of record having jurisdiction. [R. C. 1905, § 2622; 1891, ch. 98, § 1; R. C. 1899, § 306.]

§ 3543. Examination of records. State's attorney to prosecute. At the end of the term of office of each county officer, or at any time it may seem advisable, it shall be the duty and authority of the board of county commissioners to examine the records of his office to ascertain if they have been properly kept, or to secure such examination by the state examiner or other competent accountants. Any failure or irregularity discovered must be remedied, or it shall become the duty of the state's attorney to prosecute an officer guilty thereof for neglect as provided in the last section. It shall also be the duty of the city council, board of aldermen, village trustees, civil township supervisors, school township or school district board, as the case may be, to examine the records of their several officers in a like manner, or to employ a competent accountant to make such examination. Upon com-

plaint of irregularity by the proper board the state's attorney shall prosecute as provided in the last section. [1913, ch. 116; R. C. 1905, § 2623; 1891, ch. 98, § 2; R. C. 1899, § 307.]

§ 3544. Blanks to be furnished. It shall be the duty of the county, city, village, civil township, school township or school district officer to provide at the expense of the county, city, village, civil township, school township or school district such blanks and records as are necessary for making the proper record and the transaction of any official business connected with his office. [R. C. 1905, § 2624; 1891, ch. 98, § 3; R. C. 1899, § 308.]

ARTICLE 21.— MISCELLANEOUS PROVISIONS.

§ 3545. Fees for interpreters. Interpreters or translators may be allowed such compensation for their services as the court shall certify to be reasonable and just, to be paid and collected as other costs, but the same shall not exceed five dollars per day. [1907, ch. 89; R. C. 1905, § 2625; R. C. 1899, § 2101.]

§ 3546. Fees for acknowledgments. Officers authorized by law to take and certify acknowledgments of deeds and other instruments are entitled to charge and receive twenty-five cents each therefor, and for administering oaths and certifying the same, ten cents. [R. C. 1905, § 2626; R. C. 1899, § 2102.]

§ 3547. Taxing costs. In all actions, motions and proceedings in the supreme, district or justices' courts, the costs of the parties shall be taxed and entered on record separately. [R. C. 1905, § 2627; R. C. 1899, § 2103.]

§ 3548. Fees paid in advance or security given. The clerk of the supreme court and of each district court, the county judge, sheriff, justice of the peace, constable or register of deeds may in all cases require the party for whom any service is to be rendered to pay the fees in advance of the rendition of such service, or to give security for the same, to be approved by the officer. [R. C. 1905, § 2628; R. C. 1899, § 2104.]

§ 3549. Fee bill to be posted. Penalty. All officers whose fees are by this chapter determined are required to make a schedule of their respective fees and keep the same in their respective offices in a conspicuous place; and if any such officer shall neglect to do so, he shall for such neglect forfeit and pay the sum of five dollars, to be recovered by a civil action before any justice of the peace for the use of the county in which the offense was committed. [R. C. 1905, § 2629; R. C. 1899, § 2105.]

§ 3550. Bailiffs, compensation of. It shall be the duty of the district court at each term thereof to appoint a competent number of bailiffs to wait on the jury and court during the term, who shall be allowed for their services two dollars per day, to be paid by the county. [R. C. 1905, § 2630; R. C. 1895, § 2106.]

§ 3551. Per diem oath. Penalty. Each officer, whose salary is in the nature of a per diem, shall, before drawing any money on account of such salary, subscribe an oath or affirmation in the following form:

I, A. B., do solemnly swear (or affirm) that I have been days necessarily and diligently engaged in the duties of my office as (insert title of office).

..... (Officer's name.)

Any disbursing officer of this state, who shall pay any portion of the salary of any officer aforesaid before such oath or affirmation is taken and subscribed, shall forfeit to this state the sum of fifty dollars, which forfeiture may be sued for by any taxpayer. [R. C. 1905, § 2631; R. C. 1899, § 2107.]

County must pay for services of assistant clerk during term when appointed by court. *White v. Hughes County*, 9 S. D. 12, 67 N. W. 855.

CHAPTER 44.

CITIES.

- ARTICLE**
1. ORGANIZATION OF CITIES, §§ 3552-3564.
 2. ORGANIZATION OF VILLAGES, TOWNS, OR CITIES IN TERRITORY EM-
BRACING MORE THAN ONE COUNTY, §§ 3564a-3564e.
 3. THE MAYOR, §§ 3565-3580.
 4. CITY COUNCIL, §§ 3581-3598.
 5. POWERS OF THE CITY COUNCIL, §§ 3599-3606.
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 8. CITY AUDITOR, §§ 3624-3626.
 9. CLAIMS FOR INJURIES, §§ 3627-3629.
 10. CITY ATTORNEY, § 3630.
 11. CITY TREASURER, §§ 3631-3640.
 12. CITY ASSESSOR AND BOARD OF EQUALIZATION, §§ 3641-3646.
 13. POLICE MAGISTRATE AND CITY JUSTICE OF THE PEACE, §§ 3647-3662.
 14. CITY ENGINEER, § 3663.
 15. POLICE OFFICERS, §§ 3664, 3665.
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 17. FINANCE, §§ 3676-3684.
 18. OPENING OF STREETS, ALLEYS, ETC., §§ 3685-3688.
 19. SIDEWALKS, §§ 3689-3696.
 20. SEWERS, PAVING AND WATER MAINS, §§ 3697-3743b.
 21. SPECIAL STREET LIGHTING SYSTEM, §§ 3744-3746.
 22. IMPROVEMENT OF ROADS LEADING TO CITIES, §§ 3747-3766.
 23. CORPORATE LIMITS, §§ 3750-3756.
 24. MISCELLANEOUS, §§ 3757-3761.
 25. CORRECTION OF VILLAGE PLATS, §§ 3762-3766.
 26. VALIDATING CERTAIN CITY ORDINANCES, §§ 3767-3770.

ARTICLE 1.—ORGANIZATION OF CITIES.

§ 3552. Cities incorporated, how. Any city in this state, and any incorporated town or village therein, having a population of not less than five hundred inhabitants, may become incorporated, under this chapter, as a city in the manner following: Whenever one-twentieth of the legal voters of such city, or one-tenth of the legal voters of such incorporated town or village, voting at the last preceding general election, shall petition the mayor and council of such city, or the president and trustees of such incorporated town or village, to submit the question as to whether such city, incorporated town or village, shall become incorporated under this chapter, to a vote of the electors in such city, town or village, it shall be the duty of such mayor and council of such city, or president and trustees of such incorporated town or village, to submit such question accordingly, and to appoint a time and place or places at which such vote may be taken, and to designate the persons who shall act as judges and clerks at such election; but such question shall not be submitted oftener than once in two years. [R. C. 1905, § 2632; 1887, ch. 73, art. 1, § 1; R. C. 1899, § 2108; 1905, ch. 62, § 1.]

Special charter of city failing to organize under this chapter not repealed. *Tripp v. City of Yankton*, 10 S. D. 516, 74 N. W. 447.

City incorporated under special charter, which organizes under general act, governed by general school law; any special act providing for board of education ceases to be in force. *State v. Power*, 5 S. D. 627, 59 N. W. 1090.

§ 3553. Notice of election. The mayor of such city and president of such incorporated town or village shall give at least twenty days' notice of such election by publishing a notice thereof in one or more newspapers within such

city, incorporated town or village, but if no newspaper is published therein, then by posting at least five copies of such notice in each ward or voting precinct of such city, town or village, if divided into wards and precincts; if not, then within such city, town or village. [R. C. 1905, § 2633; 1887, ch. 73, art. 1, § 2; R. C. 1899, § 2109; 1905, ch. 62, § 2.]

§ 3554. Form of ballots. The ballots to be used at such election shall be in the following form:

“For city organization under general law, ☐.”
The electors to designate their choice by inserting the words “yes” or “no” within such square. The judges of such election shall make returns thereof to the city council of such city, or trustees of such incorporated town or village, whose duty it shall be to canvass such returns, and cause the result of such canvass to be entered upon the records of such city, town or village. If a majority of the votes cast at such election shall be for city organization under general law, such city shall thenceforth be deemed to be organized under this chapter; and the city, village or town officers then in office, shall thereupon exercise the powers conferred upon like officials by this chapter, until their successors shall be elected and qualified. [R. C. 1905, § 2634; 1887, ch. 73, art. 1, § 3; R. C. 1899, § 2110; 1905, ch. 62, § 3.]

Upon what basis majority essential to adoption of constitutional or other special proposition submitted at general election is to be computed. 22 L.R.A. (N.S.) 478.

§ 3555. Acts and proceedings, legalized. That in all cases where there has been an incorporation of a village into a city heretofore attempted under the provisions of article one (1) of chapter thirty (30) of the Revised Codes of North Dakota for the year 1905 [sections 3552-3554, 3556-3564 herein], and the laws amendatory thereof, such attempted incorporation of such village into a city, under the name assumed, shall be, and hereby is legalized in each and every case, and declared a valid and effective incorporation, and this shall be true notwithstanding the omission of any matter and thing by law required as a prerequisite to the incorporation of such village into a city, and notwithstanding any defect in the proceedings had for that purpose, and any election called by the officers of such incorporated city and had therein for any purpose and any by-law, resolution or ordinance heretofore adopted by such city, or corporate act of any character indulged in, is hereby legalized and declared valid; provided, that nothing herein contained shall affect any action or proceeding now pending. [1911, ch. 313.]

§ 3556. Organization of unorganized territory. Whenever any area of contiguous territory in this state not exceeding four square miles shall have residing thereon a population of not less than five hundred inhabitants, which shall not already be included within any incorporated town or city, the same may become incorporated as a city in manner following: Any fifty legal voters thereof may file in the office of the county auditor of the county in which such inhabitants reside a petition addressed to the board of commissioners of such county, and if the territory described in said petition shall be in more than one county, then the petition shall be addressed to the board of commissioners of the county where the greater part of such territory is situated, which petition shall define the boundaries of such proposed city, and state the number of inhabitants residing within such limits, and also state the name of such proposed city, and shall contain a prayer that the question be submitted to the legal voters residing within such limits, whether they will organize as a city under this chapter. It shall be the duty of the board to fix a time and place, within the boundaries of such proposed city, at which an election may be held to determine such question; and such commissioners shall name the persons to act as judges in holding such election, and shall give notice thereof by causing ten notices to be posted in public places within such proposed city, and section 3554 shall be applicable to such election; provided, that the returns of such election shall be made to, and

canvassed by, the board of county commissioners instead of the city council, and the result of such election shall be entered upon the records of such board of county commissioners. If a majority of the votes cast at such election shall be "for city organization under general law," the inhabitants of such territory described in such petition shall be deemed to be incorporated as a city under this chapter, and with the name stated in the petition. [R. C. 1905, § 2635; 1905, ch. 62, § 4.]

See sections 3564a-3564e.

Does not empower county commissioners to require submission of question of sale of liquor within city limits. *State ex rel. Cook v. Tripp County*, 29 S. D. 358, 137 N. W. 554.

§ 3557. Duty of mayor and council on change of organization. It shall be the duty of the mayor and city council of any city, or the president and board of trustees of any town or village, which shall have voted to change its organization to a city under this chapter, to call and give notice of an election to elect city officers and designate the time and places of holding the same. Such notice shall be published in a newspaper if there is one within the town or village, or if not, then posted in ten public places therein for at least twenty days before such election. The mayor and city council, or president and trustees, as the case may be, shall appoint the judges and clerks to hold such election, canvass the returns thereof, and cause the result to be entered upon the records of the city, town or village; and the provisions of this chapter relative to the election of city officers shall be applicable thereto; but at such election aldermen may be elected on a general ticket; provided, however, in case of cities organizing under section 3556, the county commissioners shall call and give notice of the election and perform the same duties relative thereto, as is above required to be performed by the mayor and city council or president and trustees of such cities, towns and villages. [R. C. 1905, § 2636; 1905, ch. 62, § 5.]

§ 3558. Term of officers. The city officers elected under either of the preceding sections shall hold their respective offices until the succeeding regular election for such offices respectively, and until their successors are elected as provided in this chapter. [R. C. 1905, § 2637; 1905, ch. 62, § 6.]

§ 3559. Special charter. Whenever any city in this state shall organize under this chapter any special charter that may have been granted to such city shall be null and void. [R. C. 1905, § 2638; 1905, ch. 62, § 7.]

§ 3560. Court take judicial notice. All courts in this state shall take judicial notice of the existence of cities organized under this chapter, and of the change of the organization of any city from its original organization to its organization under this chapter; and from the time of organization the provisions of this chapter shall be applicable to such city, and all laws in conflict herewith shall no longer be applicable. But all laws or parts of laws not inconsistent with the provisions of this chapter shall continue in force and be applicable to any such city the same as if such change had not taken place. [R. C. 1905, § 2639; 1887, ch. 73, art. 1, § 4; R. C. 1899, § 2111; 1905, ch. 62, § 8.]

§ 3561. Bodies corporate. Cities organized under this chapter shall be bodies politic and corporate under the name and style of "City of (name)," and under such name may sue and be sued, contract and be contracted with, acquire and hold real and personal property for corporate purposes, have a common seal and change the same at pleasure, and exercise all the powers hereinafter conferred. [R. C. 1905, § 2640; 1887, ch. 73, art. 1, § 5; R. C. 1899, § 2112; 1905, ch. 62, § 9.]

Who may maintain quo warranto to test validity of organization of municipal corporation or political subdivision of state. 21 L.R.A.(N.S.) 685.

§ 3562. Vested rights. All rights and property of every kind and description which were vested in any municipal corporation under its former organization, shall be deemed and held to be vested in the same municipal corpora-

tion upon its being incorporated under the provisions of this chapter, but no rights or liabilities, either in favor of or against such corporation, existing at the time of so becoming incorporated under this chapter, and no action or prosecution of any kind, shall be affected by such change, but the same shall stand and progress as if no change had been made; provided, that when a different remedy is given by this chapter, which may properly be made applicable to any right existing at the time of such city so becoming incorporated under this chapter, the same shall be deemed cumulative to the remedies before provided and used accordingly. [R. C. 1905, § 2641; 1887, ch. 73, art. 1, § 6; R. C. 1899, § 2113; 1905, ch. 62, § 10.]

§ 3563. Filing and recording proceedings. The corporate authorities of any city which may become organized under this chapter shall, within three months after organization hereunder, cause to be filed in the office of the register of deeds in the county in which such city is situated, a certified copy of the entry made upon such records of the city, as to the canvass of the votes, showing the result of such election, whereby such city became so organized, and such register of deeds shall record the same, and such corporate authorities shall also cause a like certificate to be filed in the office of the secretary of state, who shall file the same and keep a registry of cities organized under this chapter. [R. C. 1905, § 2642; 1887, ch. 73, art. 1, § 7; R. C. 1899, § 2114; 1905, ch. 62, § 11.]

§ 3564. Legal identity of cities not changed. All ordinances and resolutions in force in any city at the date of its organization under this chapter shall continue in full force and effect until repealed or amended, notwithstanding such change of organization, and such change of organization shall not change the legal identity of such city as a corporation. [R. C. 1905, § 2643; 1887, ch. 73, art. 1, § 8; R. C. 1899, § 2115; 1905, ch. 62, § 12.]

ARTICLE 2.—ORGANIZATION OF VILLAGES, TOWNS OR CITIES IN TERRITORY EMBRACING MORE THAN ONE COUNTY.

The act constituting this article concludes with an emergency section reciting that "there is now no law adequate for the organization of villages, towns or cities containing less than five hundred inhabitants, which territory is embraced in more than one county"—doubtless alluding to section 3556.

This article is probably superseded as to organization of villages by Laws 1911, ch. 314, constituting sections 3932-3941 herein.

§ 3564a. When organized. Whenever any area of contiguous territory in this state, not exceeding four square miles, shall have residing thereon a population of not less than one hundred inhabitants, which shall not already have been included within the corporate limits of any incorporated village, town or city, and which territory to be embraced in the limits of said village, town or city in more than one county, the same may become incorporated as a village, town or city in the manner provided in section 3556. [1907, ch. 266, § 1.]

§ 3564b. Other provisions applicable. Chapter thirty of the political code of North Dakota is hereby made applicable to the organization, power and duties of such village, town or city and its officers, except as herein otherwise especially provided. [1907, ch. 266, § 2.]

"Chapter 30 of political code" is comprised in sections 3552-3770 herein.

§ 3564c. Assessor appointed. There shall be appointed by the trustees or mayor of all villages, towns or cities incorporated under the provisions of this article, an assessor for the territory embraced in each of the counties in which said village, town or city is located, and which said assessor shall have the same power, and perform the same duties as assessors in villages, towns or cities embraced within the limits of a single county, and shall return to the trustees of such village, town or city council the assessment of property embraced within the portion of the city for which they are appointed. [1907, ch. 266, § 3.]

§ 3564d. **Proceedings of equalization board.** The village or town clerk or city auditor, after action by the village, town or city board of equalization, shall return a separate report to each of the county auditors of the counties in which any portion of said village, town or city is located, the equalization of the property contained in such county, and thereafter the board of county commissioners of each of the counties shall perform the same duties as to such assessment, levy and collection of taxes as if the whole village, town or city was embraced within the limits of said county. [1907, ch. 266, § 4.]

§ 3564e. **Duty of county treasurer.** The county treasurer of each county shall perform the same duties in relation to all property returned as assessed by said village, town or city in the county of which said treasurer is an officer, in the same manner and to the same extent as is now provided by law for the levy and collection of taxes. [1907, ch. 266, § 5.]

ARTICLE 3.—THE MAYOR.

§ 3565. **Mayor.** The chief executive officer of the city is the mayor, who shall be a qualified elector within the city, and who shall hold his office for two years and until his successor is elected and qualified. [R. C. 1905, § 2644; 1887, ch. 73, art. 2, § 1; R. C. 1899, § 2116; 1905, ch. 62, § 13.]

§ 3566. **Vacancy.** Whenever a vacancy occurs in the office of mayor and the unexpired term is one year or more from the date such vacancy occurs, it shall be filled by an election. [R. C. 1905, § 2645; 1887, ch. 73, art. 2, § 2; R. C. 1899, § 2117; 1905, ch. 62, § 14.]

§ 3567. **Vacancy.** If the vacancy is less than one year the city council shall elect one of its number to act as mayor, who shall possess all the rights and powers of the mayor until the next annual election and until a mayor is elected and qualified. [R. C. 1905, § 2646; 1887, ch. 73, art. 2, § 3; R. C. 1899, § 2118; 1905, ch. 62, § 15.]

§ 3568. **Removal.** If the mayor at any time during his term of office removes from the city, his office shall thereby become vacant. [R. C. 1905, § 2647; 1887, ch. 73, art. 2, § 5; R. C. 1899, § 2119; 1905, ch. 62, § 16.]

§ 3569. **Duties.** The mayor shall preside at all meetings of the city council, but shall not vote except in case of a tie, when he shall give the casting vote. [R. C. 1905, § 2648; 1887, ch. 73, art. 2, § 6; R. C. 1899, § 2120; 1905, ch. 62, § 17.]

§ 3570. **Power of removal.** The mayor shall have power to remove any officer appointed by him whenever he shall be of the opinion that the interests of the city demand such removal; but he shall report the reasons for such removal to the council at its regular meeting. [R. C. 1905, § 2649; 1887, ch. 73, art. 2, § 7; R. C. 1899, § 2121; 1905, ch. 62, § 18.]

Discretion of mayor as to removal of appointive officer. *State v. Williams*, 6 S. D. 119, 60 N. W. 410.

§ 3571. **Peace officer.** He may exercise within the city limits the powers conferred upon sheriffs to suppress disorder and keep the peace. [R. C. 1905, § 2650; 1887, ch. 73, art. 2, § 8; R. C. 1899, § 2122; 1905, ch. 62, § 19.]

§ 3572. **Release of prisoners.** He may release any person imprisoned for violation of any city ordinance, and shall report such release with the cause thereof, to the city council at its first session thereafter. [R. C. 1905, § 2651; 1887, ch. 73, art. 2, § 9; R. C. 1899, § 2123; 1905, ch. 62, § 20.]

§ 3573. **Enforcement of ordinances.** He shall perform all such duties as are or may be prescribed by law or by the city ordinances, and shall take care that the laws and ordinances are faithfully executed. [R. C. 1905, § 2652; 1887, ch. 73, art. 2, § 10; R. C. 1899, § 2124; 1905, ch. 62, § 21.]

§ 3574. **Inspection of records.** He shall have power at all times to examine and inspect the books, records and papers of any agent, employe or officer of the city. [R. C. 1905, § 2653; 1887, ch. 73, art. 2, § 11; R. C. 1899, § 2125; 1905, ch. 62, § 22.]

§ 3575. Messages to council. The mayor shall annually, and from time to time, give the council information relative to the affairs of the city, and shall recommend for its consideration such measures as he may deem expedient. [R. C. 1905, § 2654; 1887, ch. 73, art. 2, § 12; R. C. 1899, § 2126; 1905, ch. 62, § 23.]

§ 3576. Power to keep the peace. He shall have power when necessary to call on each male inhabitant of the city over the age of eighteen years to aid in enforcing the laws and ordinances, and to call out the militia to aid in suppressing riots and other disorderly conduct, or to carry into effect any law or ordinance, subject to the authority of the governor as commander in chief of the militia. [R. C. 1905, § 2655; 1887, ch. 73, art. 2, § 13; R. C. 1899, § 2127; 1905, ch. 62, § 24.]

§ 3577. Removal. In case the mayor or any other municipal officer shall at any time be guilty of a palpable omission of duty, or shall willfully and corruptly be guilty of oppression, malconduct or misfeasance in the discharge of the duties of his office, he shall be liable to be prosecuted criminally in any court of competent jurisdiction, and on conviction shall be fined in a sum not exceeding one thousand dollars, and the court in which such conviction shall be had shall enter an order removing such officer from office. [R. C. 1905, § 2656; 1887, ch. 73, art. 2, § 14; R. C. 1899, § 2128; 1905, ch. 62, § 25.]

§ 3578. Ordinances revised and passed. How. He may appoint by and with the advice and consent of the city council one or more competent persons to prepare and submit to the city council for its adoption or rejection, an ordinance for the revision of the enactment of new and additional ordinances and the amendment of existing ordinances of such city for the government thereof. The city attorney shall be appointed as one of the persons to prepare and submit such ordinances so revised, added to and amended, and the compensation of such reviser or revisers, including the city attorney, shall be determined and fixed by the city council and paid out of the city treasury. Such revision, additional ordinances and amendments may be passed as a single ordinance, and be published in pamphlet or book form, by and under the authority of the city council and shall be valid and effective without publication in a newspaper. [1913, ch. 77; R. C. 1905, § 2657; 1887, ch. 73, art. 2, § 15; R. C. 1899, § 2129; 1905, ch. 62, § 26.]

§ 3579. May sign or veto. He shall have power to sign or veto any ordinance or resolution passed by the council. [R. C. 1905, § 2658; 1887, ch. 73, art. 2, § 16; R. C. 1899, § 2130; 1905, ch. 62, § 27.]

Resolution for repaving of certain streets is subject to veto by mayor. *State ex rel. Kettle River Quarries Co. v. Duis*, 17 N. D. 319, 116 N. W. 751.

§ 3580. Appointment of policemen and chief. He shall have power to appoint any number of policemen which he and the city council may deem necessary to preserve the peace of the city, and shall appoint one of the number as chief of police, which appointment of chief shall be subject to the approval of the council. [R. C. 1905, § 2659; 1887, ch. 73, art. 2, § 17; R. C. 1899, § 2131; 1905, ch. 62, § 28.]

ARTICLE 4.—CITY COUNCIL.

§ 3581. City council. The city council shall be composed of the mayor and aldermen. [R. C. 1905, § 2660; 1887, ch. 73, art. 3, § 1; R. C. 1899, § 2132; 1905, ch. 62, § 29.]

§ 3582. Number of aldermen. The number of aldermen shall be as follows: In cities of six hundred inhabitants or less, four aldermen who shall be elected at large; exceeding six hundred but not exceeding two thousand inhabitants, six aldermen; exceeding two thousand but not exceeding four thousand, eight aldermen; exceeding four thousand but not exceeding ten thousand, twelve aldermen; exceeding ten thousand but not exceeding fifteen thousand, fourteen; and two additional aldermen for each ten thousand in-

habitants over fifteen thousand; provided, that in cities of over one hundred thousand inhabitants there shall be elected thirty-six aldermen and no more, the population to be determined by the last census; provided, however, if an official census has been taken by the federal government within one year it shall govern. [R. C. 1905, § 2661; 1897, ch. 40, § 1; R. C. 1899, § 2133; 1905, ch. 62, § 30.]

§ 3583. Term of office. Aldermen shall hold their office for two years and until their successors are elected and qualified. [R. C. 1905, § 2662; 1887, ch. 73, art. 3, § 3; R. C. 1899, § 2134; 1905, ch. 62, § 31.]

§ 3584. Vacancies. If a vacancy occurs in the office of alderman by death, resignation or otherwise, within six months prior to the next city election, the board of aldermen shall appoint a person to fill such vacancy from the ward from which the alderman previously holding was elected or appointed; if earlier then such vacancy shall be filled by election. [R. C. 1905, § 2663; 1887, ch. 73, art. 3, § 4; R. C. 1899, § 2135; 1905, ch. 62, § 32.]

Power of common council to expel members. 63 Am. Dec. 773.

§ 3585. Qualifications. No person shall be eligible to the office of alderman who is not a qualified elector of and resident within the ward for which he is elected; provided, that in cities where aldermen are elected at large, he shall be a qualified elector of and resident within such city, nor shall he be eligible if he is in arrears in the payment of any tax or other liability due to the city, nor shall he be eligible if he is directly or indirectly interested in any contract whatever to which the city is a party; nor shall he be eligible if he shall have been convicted of malfeasance, bribery or other corrupt practices or crimes; nor shall he be eligible to any office, the salary of which is payable out of the city treasury, if at the time of his appointment he shall be a member of city council; nor shall any member of the city council at the same time hold any other office under the city government; nor shall he either directly or indirectly, individually, or as a member of a firm engage in any business transaction, other than official, with such city through its mayor or any of its authorized boards, agents or attorneys, whereby any money is to be paid directly or indirectly out of the treasury to such member or firm. [R. C. 1905, § 2664; 1897, ch. 40, § 2; R. C. 1899, § 2136; 1905, ch. 62, § 33.]

Constitutionality of statute making residence within the district a qualification of a public officer. 32 L.R.A. (N.S.) 835.

§ 3586. Council judge of election and qualification of members. The city council shall be judge of the election and qualifications of its own members. [R. C. 1905, § 2665; 1887, ch. 73, art. 3, § 6; R. C. 1899, § 2137; 1905, ch. 62, § 34.]

As to similar provision in Starr & Curtis Ill. Stat. ¶ 35, see Hilligoss v. Grinslade, 32 Ill. App. 45; Marshall v. People, 40 Ill. App. 102.

§ 3587. Rules of procedure. It shall determine its rules of procedure, punish its members for disorderly conduct, and with the concurrence of two-thirds of the aldermen elect may expel a member, but not a second time for the same offense; provided, that any alderman who shall have been convicted of bribery shall thereby be deemed to have vacated his office. [R. C. 1905, § 2666; 1887, ch. 73, art. 3, § 7; R. C. 1899, § 2138; 1905, ch. 62, § 35.]

§ 3588. Quorum. A majority of the aldermen elected shall constitute a quorum to do business, but a smaller number may adjourn from time to time, and may compel the attendance of absentees under such penalties as may be prescribed by ordinance. [R. C. 1905, § 2667; 1887, ch. 73, art. 3, § 8; R. C. 1899, § 2139; 1905, ch. 62, § 36.]

§ 3589. Regular meetings. The city council shall hold its regular meetings on the first Monday of each and every month, and may prescribe by ordinance the manner in which special meetings may be called. The first meeting for organization shall be held on the third Tuesday in April of each year. [R. C. 1905, § 2668; 1887, ch. 73, art. 3, § 9; 1895, ch. 29, § 1; R. C. 1899, § 2140; 1905, ch. 62, § 37.]

§ 3590. President and vice-president. It shall at the first regular meeting after the annual election in each year proceed to elect from its own members a president and vice-president, who shall hold their respective offices for the municipal year. The president of the council shall, in the absence or temporary disability of the mayor, be presiding officer of the council and shall, during the absence of the mayor from the city or his temporary disability, be acting mayor and shall possess all the powers of the mayor. In the absence or disability of the mayor and president of the city council the vice-president shall perform the duties of the mayor and president of the council. [R. C. 1905, § 2669; 1887, ch. 73, art. 3, § 10; 1889, ch. 33, § 1; R. C. 1899, § 2141; 1905, ch. 62, § 37.]

§ 3591. Meetings and record of proceedings. It shall sit with open doors and shall keep a journal of its proceedings. [R. C. 1905, § 2670; 1887, ch. 73, art. 3, § 11; R. C. 1899, § 2142; 1905, ch. 62, § 39.]

Right of public to attend municipal council meetings. 1 B. R. C. 296.

§ 3592. Passage of ordinances. The yeas and nays shall be taken upon the passage of all ordinances and on all propositions to create any liability against the city or for the expenditure or appropriation of money, and in all other cases at the request of any member, which shall be entered on the journal of its proceedings, and the concurrence of a majority of all the members elected shall be necessary to the passage of any such ordinance or proposition. It shall require a two-thirds vote of all the aldermen elected to sell any city or school property; provided, all ordinances or amendments thereto which have been heretofore adopted and published by any of the cities of this state where the yeas and nays were not taken on the passage thereof, or were not entered on the journal of its proceedings, as provided herein, or where at least one week has not intervened between the first and second reading of said ordinance, as provided by this chapter, are hereby declared to be hereafter in full force and valid without re-enactment or republication; and all ordinances adopted by any of the cities of this state, which were not authorized by any of the authority conferred by law heretofore, but which would be authorized under the provisions of this chapter, are hereby declared to be in full force and effect, the same as if readopted and republished after the adoption of this chapter. [R. C. 1905, § 2671; 1887, ch. 73, art. 3, § 12; R. C. 1899, § 2143; 1905, ch. 62, § 40.]

Yeas and nays need not be taken upon passage of resolution levying general city tax. *Shattuck v. Smith*, 6 N. D. 56, 69 N. W. 5.

Journal entries must show vote of each member of city council on passage of ordinance. *Pickton v. City of Fargo*, 10 N. D. 469, 88 N. W. 90.

City charter; requirement that vote on ordinances be by yeas and nays mandatory. *O'Neil v. Tyler*, 3 N. D. 47, 53 N. W. 434.

Employment of attorney must be authorized or ratified by yea and nay vote of council to render city liable. *Boeard v. Grand Forks*, 13 N. D. 587, 102 N. W. 164.

Statute is mandatory and must be substantially complied with. *Milbank v. Western Surety Co.*, 21 S. D. 261, 111 N. W. 561.

Record which shows that all members of city council voted in favor of resolution is equivalent to showing "yea" vote. *Whittaker v. Deadwood*, 23 S. D. 538, 122 N. W. 590.

Injunction to prevent passage of municipal ordinance. 13 L.R.A. 844; 2 L.R.A. (N.S.) 152.

Vote of common council or similar body as affected by personal interest of members. 18 L.R.A. 367.

§ 3593. Reconsideration of vote. No vote of the city council shall be reconsidered or rescinded at a special meeting unless at such special meeting there is present as large a number of aldermen as were present when such vote was taken. [R. C. 1905, § 2672; 1887, ch. 73, art. 3, § 13; R. C. 1899, § 2144; 1905, ch. 62, § 41.]

§ 3594. Action on reports. Any report of a committee of the council shall be deferred for final action thereon to the next regular meeting of the council after the report is made, upon the request of any two aldermen present. [R. C. 1905, § 2673; 1887, ch. 73, art. 3, § 14; R. C. 1899, § 2145; 1905, ch. 62, § 42.]

§ 3595. Jurisdiction. The city council shall have jurisdiction in and over all places within one-half mile of the city limits, for the purpose of enforcing health and quarantine ordinances and regulations thereof. [R. C. 1905, § 2674; 1887, ch. 73, art. 3, § 15; R. C. 1899, § 2146; 1905, ch. 62, § 43.]

§ 3596. Procedure in passing ordinances. All ordinances shall be read twice and the second reading shall not be had in less than one week after such first reading, and after such first reading, before their final passage such ordinances may be amended and shall then be put upon their second reading and final passage, and if passed by the city council shall before they take effect, be deposited in the office of the city auditor for the approval of the mayor; and if the mayor approves thereof, he shall sign the same, and such as he shall not approve he shall return to the council with his objections thereto in writing at the next regular meeting of the council occurring not less than five days after the passage thereof. Such veto may extend to any one or more items or appropriations contained in any ordinance making an appropriation, or to the entire ordinance; and in case the veto only extends to a part of such ordinance the residue thereof shall take effect and be in force. But in case the mayor shall fail to return any ordinance with his objection thereto by the time aforesaid, he shall be deemed to have approved such ordinance and the same shall take effect accordingly; provided, that upon the return of any ordinance by the mayor, the vote by which the same was passed may be reconsidered by the council; and if after such reconsideration two-thirds of all the members elected to the city council shall agree by yeas and nays to pass the same, it shall go into effect, notwithstanding the mayor may refuse to approve thereof. The vote to pass the same over the mayor's veto shall be taken by yeas and nays and entered in the journal. All ordinances passed by the council and approved by the mayor, or passed over the mayor's veto, shall be published at least once in the official newspaper of the city, and shall become operative immediately upon such publication. The city auditor shall record in a book for that purpose, together with the affidavit of the publisher, all ordinances so passed and published; and such book or a certified copy of the ordinances as so recorded shall be received as evidence in all courts and places without further proof; or if printed in book or pamphlet form by the authority of the city council they shall be so received. All ordinances shall be styled, "Be it ordained by the city council." [R. C. 1905, § 2675; 1887, art. 3, ch. 73, § 16; R. C. 1899, § 2147; 1905, ch. 62, § 44.]

Specific objection on appeal to admission of city ordinance book in trial of action for injury at railway crossing cannot be interposed where only general objection was made below. *Merrill v. Minneapolis & St. L. R. Co.*, 27 S. D. 1, 129 N. W. 468.

Ordinance book of city is properly received in evidence to establish ordinance appearing in book. *Whaley v. Vidal*, 27 S. D. 627, 132 N. W. 242.

§ 3597. Publication by posting. Whenever any ordinance, notice or other instrument is required to be published, in any city where no newspaper is published, such publication and notice may be given and made by posting, in five public places within said city, for the period for which such publication is to be made; and all ordinances and notices so posted shall have the same force and effect as if published in a newspaper in said city, and such posting shall be proven by affidavit filed in the auditor's office. [R. C. 1905, § 2676; 1905, ch. 62, § 45.]

§ 3598. Official newspaper. The city council shall annually, by resolution, at its first meeting in May or as soon thereafter as practicable, designate some newspaper published in the city as the official newspaper of the city. [R. C. 1905, § 2677; 1905, ch. 62, § 46.]

ARTICLE 5.—POWERS OF THE CITY COUNCIL.

§ 3599. General powers of city council. The city council shall have power:

1. To control the finances and property of the corporation.

2. To appropriate money for corporate purposes only, and provide for the payment of debts and expenses of the corporation.

3. To levy and collect taxes for general and special purposes on real and personal property.

4. To fix the amount, terms and manner of issuing and revoking licenses.

5. To borrow money on the credits of the corporation for corporation purposes, and to issue bonds therefor, in such amounts and form, and on such conditions as it shall prescribe, but no such city shall become indebted in any manner or for any purpose to an amount, including existing indebtedness, exceeding five per cent of the taxable property therein, as determined by the last preceding city assessment; provided, that any incorporated city may, by a two-thirds vote at any special or general election increase such indebtedness to an amount equal to three per cent of such assessed valuation beyond said five per cent limit and may issue bonds therefor; provided, further, that any city, when authorized by a majority vote at a general or special election, may become indebted in any amount not exceeding four per cent of such assessed value without regard to the existing indebtedness of such city for the purpose of constructing or purchasing water works for the purpose of furnishing a supply of water to the inhabitants of such city, or for the purpose of constructing sewers, but for no other purpose whatever, and such city may issue bonds therefor; provided, further, that no bonds issued under the provisions of this section shall be sold for less than their par value, and the city issuing such bonds shall, at or before the time of issuing the same or incurring the indebtedness for which the same are to be issued, provide for the collection of a direct annual tax sufficient to pay the interest on such debt or such bonds when it falls due, and to pay and discharge the principal thereof when the same becomes due, and such provisions for the collection of such annual tax shall be irrevocable until such debt is paid; provided, further, that none of the hereinbefore mentioned bonds shall be issued either for special or general purposes, except as by law otherwise provided, unless at an election after twenty days' notice in a newspaper published in the city, stating the purpose for which said bonds are to be issued and the amount thereof, the legal voters of such city shall, by a majority vote, determine in favor of issuing such bonds; provided, further, that no bonds issued under the provisions of this chapter shall be issued for a longer period than twenty years.

6. To issue bonds in place of or to supply means to meet maturing bonds or for the consolidation or funding of the same or for the consolidation or funding of any floating indebtedness of such city.

7. To lay out, establish, open, alter, widen, grade, pave or otherwise improve streets, alleys, avenues, sidewalks, wharves, parks and public grounds and vacate the same.

8. To plant trees on the same.

9. To regulate the use of the same.

10. To prevent and remove obstructions and encroachments upon the same.

11. To provide for the lighting of the same, and to provide for the furnishing of lights to the inhabitants of the city.

12. To provide for the cleaning of the same.

13. To regulate the openings therein for the laying of gas or water mains and pipes, and the building and repairing of sewers, tunnels and drains, and erecting gas or electric lights; provided, however, that any company heretofore organized under the general laws of this state or any association of persons organized or which may be hereafter organized for the purpose of manufacturing illuminating gas or electricity, to supply cities, or the inhabitants thereof with the same, shall have the right, by the consent of the city council, subject to existing rights, to erect gas or electric light works and lay down pipes or string wires on poles in the streets or alleys of any city in this state, subject to such regulations as such city may by ordinance prescribe.

14. To regulate the use of sidewalks and all structures thereunder; and to require the owner or occupant of any premises to keep the sidewalks in front of or along the same, free from snow or other obstruction.

15. To regulate and prevent the throwing or depositing of ashes, offal, dirt, garbage or any other offensive matter in, and to prevent injury to any street, avenue, alley or public ground.

16. To provide for and regulate crosswalks, curb and gutters.

17. To regulate and prevent the use of streets, sidewalks and public grounds for signs, signposts, awnings, telegraph or telephone poles, horse troughs, racks, posting hand bills and advertisements.

18. To regulate and prohibit the exhibition or carrying of banners, placards, advertisements or hand bills in the streets or public grounds, or upon the sidewalks.

19. To regulate and prevent the flying of flags, banners or signs across the streets or from houses.

20. To regulate traffic and sales upon the streets, sidewalks and public places.

21. To regulate the speed of horses and other animals, vehicles, cars and locomotives within the limits of the corporation.

22. To regulate the numbering of houses and lots.

23. To name and change the name of any street, avenue, alley or other public place.

24. To permit, regulate or prohibit the locating, constructing or laying of a track of any horse or other street railway in any street, alley or public place; but such permission shall not be for a longer time than fifty years.

25. To provide for and change the location, grade and crossing of any railroad.

26. To require railroad companies to fence their respective railroads, or any portion of the same, and construct cattle guards, crossings of streets and public roads and keep the same in repair within the limits of the corporation.

27. To require railroad companies to keep flagmen at railroad crossings of streets, and provide protection against injury to persons and property; to compel railroads to raise or lower their tracks to conform to any grade which may at any time be established by such city, and where such tracks run lengthwise of such street, alley or highway, to keep their tracks on a level with the street surface and so that such tracks may be crossed at any place on such street, alley or highway; to compel and require railroad companies to make and keep open and to keep in repair, ditches, drains, sewers and culverts along and under their tracks, so that filthy and stagnant pools of water cannot stand on their grounds or right of way and so that the natural or artificial drainage of adjacent property shall not be impeded.

28. To construct and keep in repair bridges, viaducts and tunnels, and to regulate the use thereof.

29. To construct and keep in repair culverts, drains, sewers, catchbasins, manholes and cesspools and to regulate the use thereof.

30. To license, tax, regulate, suppress and prohibit fortune tellers, astrologers and all persons practicing palmistry, clairvoyancy, mesmerism and spiritualism, hawkers, peddlers, pawn brokers, keepers of ordinaries, theatricals and other exhibitions, shows and amusements, ticket scalpers and employment agencies, and to revoke such license at pleasure; provided, however, that the provisions of this section with reference to hawkers and peddlers shall not apply to persons selling or offering for sale the products raised or grown on lands within this state. [For par. 30: 1911, ch. 73; R. C. 1905, § 2678, par. 30.]

31. To license, tax and regulate hackmen, draymen, omnibus drivers, carters, cabmen, porters, expressmen, watermen, and all others pursuing like occupations, and to prescribe their compensation.

32. To license, regulate, tax and restrain runners for stages, cars, public houses or other things or persons.

33. To license, regulate, tax or prohibit and suppress billiard, bagatelle, pigeonhole, or any other tables or implements kept or used for a similar purpose in any place of public resort, pin alleys and ball alleys.

34. To license, tax and regulate plumbers and the business of plumbing, and to provide the manner in which plumbing shall be done, and for the inspection thereof, and the manner in which the connections thereof with the sewers and water mains of the city may be made.

35. To establish, purchase, erect, lease, rent, manage and maintain markets and market houses, municipal slaughter houses or abattoirs, and to provide for the regulation and use of. [For par. 35: 1913, ch. 83; R. C. 1905, § 2678, par. 35.]

36. To provide for the place and manner of sale of meats, poultry, fish, butter, cheese, lard, vegetables and all other provisions, and regulate the selling of the same.

37. To regulate the sale of bread in the city and prescribe the weight and quality of the bread in the loaf.

38. To provide for and regulate the inspection of meats, poultry, fish, butter, cheese, lard, vegetables, flour, meat and other provisions, and to license and regulate the sale of milk, provide for the inspection of the same, and of all dairies and premises wherever situated from which any milk is offered for sale in such city, and to prohibit the sale of impure or diseased milk.

39. To regulate the inspecting, weighing and measuring of lumber, firewood, coal, hay and other articles of merchandise, to establish or purchase one or more city scales, and to require dealers in hay, coal, firewood or any other commodity which in the judgment of the city council should be weighed upon the city scales, to use such scales in the sale of such commodity, and such city is authorized to charge a reasonable fee therefor. [For par. 39: 1913, ch. 81; 1911, ch. 79; R. C. 1905, § 2678, par. 39.]

40. To provide for the inspection and sealing of weights and measures.

41. To enforce the keeping and use of proper weights and measures by vendors.

42. To regulate the construction, repairs and use of vaults, cisterns, areas, hydrants, pumps, sewers and gutters.

43. To regulate places of amusement.

44. To prevent intoxication, fighting, quarreling, dog fights, cock fights and all disorderly conduct.

45. To regulate partition fences and party walls.

46. To prescribe the thickness, strength and manner of constructing stone, brick and other buildings and the construction of fire escapes therein, and to provide for the inspection of all buildings within the city limits.

47. To prescribe the limits within which wooden buildings shall not be erected or placed, or repaired without permission, and to direct that all and any buildings within said limits, which shall be known as the fire limits, when the same shall have been damaged by fire, decay or otherwise, to the extent of fifty per cent of the value, shall be torn down or removed and to prescribe the manner of ascertaining such damage and to provide for the removal of any structure or building erected contrary to such prescription, and to declare each day's continuance of such structure or building a separate offense, and prescribe penalties therefor; and define fire proof material and by ordinance provide for issuing building permits, and appointment of building inspectors.

48. To prevent the dangerous construction and condition of chimneys, fireplaces, hearths, stoves, stovepipes, ovens, boilers and apparatus used in and about any building or manufactory, and to cause the same to be removed or placed in a safe condition when considered dangerous; to regulate and prevent the carrying on of manufactories dangerous in causing and promoting fires; to prevent the deposit of ashes in unsafe places; and to cause all such

buildings and inclosures as may be in a dangerous state to be put in a safe condition.

49. To erect engine houses and provide fire engines, hose carts, hooks and ladders, and other implements for the prevention and extinguishment of fires, and provide for the use and management of the same by voluntary fire companies or otherwise.

50. To regulate and prevent the storage of gunpowder, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, petroleum or any of the products thereof, and other combustible or explosive material, and the use of lights in stables, shops and other places, and the building of bonfires; also to regulate and restrain the use of fireworks, firecrackers, torpedoes, roman candles, skyrocketes and other pyrotechnic displays.

51. To provide for the inspection of steam boilers.

52. To establish and erect a city jail, house of correction and work house for the confinement and reformation of disorderly persons convicted of violating any city ordinance, and make rules and regulations for the government of the same, and appoint necessary jailors and keepers.

53. To use the county jail for the confinement or punishment of offenders, subject to such conditions as are imposed by law and with the consent of the board of county commissioners; and to regulate the police of the city, and pass and enforce all necessary police ordinances.

54. To prevent and suppress riots, routs, affrays, noises, disturbances and disorderly assemblies in any public or private place.

55. To prohibit and punish cruelty to animals.

56. To restrain and punish vagrants, mendicants and prostitutes.

57. To declare what shall be a nuisance and abate the same, and impose fines upon persons who may create, continue or suffer nuisances to exist.

58. To erect and establish hospitals and medical dispensaries, and control and regulate the same, and provide and enforce quarantine regulations against all contagious and infectious diseases.

59. To do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.

60. To establish and regulate cemeteries within or without the corporation, and acquire lands therefor by purchase or otherwise, and cause cemeteries to be removed, and prohibit their establishment within one mile of the corporation.

61. To regulate, restrain and prevent the running at large of horses, mules, cattle, swine, sheep, goats and geese; and to provide for the establishment and maintenance of public grounds for the impounding of any such stock running at large or tethered in any street in the city in violation of its ordinances, and establish procedure for the impounding and discharging of stock so impounded and make the expenses thereof and fines imposed for the violation of ordinances passed under this subdivision, a lien upon such stock and provide for the sale thereof to satisfy such liens.

62. To license, regulate or prohibit the running at large of dogs, and injuries and annoyances therefrom, and to authorize their summary destruction when at large contrary to any such prohibition or regulation.

63. To direct the location and regulate the management and construction of packing houses, renderies, bone factories, slaughter houses, soap factories, foundries, livery stables and blacksmith shops within, or within one mile of the limits of the corporation.

64. To prohibit any offensive or unwholesome business or establishment within, or within one mile of the limits of the corporation.

65. To compel the owner of any grocery, cellar, stable, pigsty, privy, sewer or other unwholesome or nauseous house or place, to cleanse, abate or remove the same, and to regulate the location thereof.

66. To provide for the taking of the city census, but no city census shall be taken oftener than once in three years.

67. To provide for the erection and care of all public buildings necessary for the use of the city.

68. To extend, by condemnation or otherwise, any street, alley or highway, over or across, or to construct any sewer under or through any railroad tracks, right of way or land of any railroad company, within the corporate limits.

69. The city council shall have power to grant the use of, or right to lay down any railroad tracks in any street of the city to any railway company.

70. To tax, license and regulate auctioneers, lumber yards, public scales, money changers and brokers.

71. To prevent and regulate the rolling of hoops, playing of ball, flying of kites, or any other amusement or practice having a tendency to annoy persons passing in the streets or on the sidewalks, or to frighten teams or horses.

72. To regulate or prohibit the keeping of any lumber yard and the placing or piling or selling of any lumber, timber, wood or other combustible material within the fire limits of the city.

73. To provide by ordinance that all the paper, printing, stationery, blanks, fuel and all the supplies needed for the use of the city shall be furnished by contract let to the lowest responsible bidder.

74. To tax, license and regulate second hand and junk stores and to forbid their purchasing or receiving from minors, without the written consent of their parents or guardians, any article whatever, and to prescribe punishment for the violation thereof.

75. To purchase, erect, lease, rent, manage and maintain any system or part of system of water works, street sprinklers, hydrants and supply of water, fire and police signals, telephones and telephone lines, fire apparatus that may be of use in the prevention and extinguishment of fires, electric light and power plants or gas works, and to supply the same for municipal and commercial purposes, and to pass all ordinances, penal or otherwise, that shall be necessary for the full protection, maintenance, management and control of the property so leased, purchased or erected. [For par. 75: 1913, ch. 75; R. C. 1905, § 2678; 1 par. 75.]

See section 3582.

76. To redistrict the city into wards and prescribe the boundaries thereof, whenever a census of the city shall show the population to be large enough to require two aldermen more than are in the council at the time of making such census.

76a. The city council of any city in this state having less than two thousand population, shall have power to re-district the city into wards for the purpose of equalization of population; provided, that the number of such wards shall not be diminished nor increased. [For this par., 1907, ch. 48.]

77. To adopt such other ordinances, not repugnant to the constitution and laws of the state, as the general welfare of the city may demand.

78. To pass all ordinances, rules and make all regulations proper or necessary to carry into effect the powers granted cities, with such fines, penalties or forfeitures as the city council shall deem proper; provided, that no fine or penalty shall exceed one hundred dollars and no imprisonment shall exceed three months for one offense. [R. C. 1905, § 2678; 1899, ch. 40; R. C. 1899, § 2148; 1905, ch. 62, § 47.]

5. Bonds issued to fund debt of municipality not increase of indebtedness. *Hughes Co. v. Livingston*, 104 Fed. 306, 43 C. C. A. 541; *Lawrence Co. v. Jewell*, 100 Fed. 905, 41 C. C. A. 109; *City of Huron v. Savings Bank*, 86 Fed. 272, 30 C. C. A. 38.

Amount of bonds to be voted upon must be stated in notice of election. *Stern v. Fargo*, 18 N. D. 289, 26 L.R.A. (N.S.) 66, 122 N. W. 403.

Implied power of municipality to borrow money. 30 Am. Dec. 190.

What is indebtedness within meaning of prohibition against. 44 Am. St. Rep. 229.

Bonds of municipality and defenses thereto. 98 Am. Dec. 664.

—in the hands of bona fide holders. 51 Am. St. Rep. 822.

- Bonds and coupons of as negotiable instruments. 23 Am. Rep. 15.
6. Refunding bonds may be issued by city on discretion of council without action by electors. *Hyde v. Ewert*, 16 S. D. 133, 91 N. W. 474.
- Debt cannot be increased beyond constitutional limit even for purpose of refunding. *Birkolz v. Dinnie*, 6 N. D. 511, 72 N. W. 931.
- Bonds to refund existing indebtedness valid though exceeding debt limit. *Nat. Life Ins. Co. v. Mead*, 18 S. D. 37, 82 N. W. 78; *Hyde v. Ewert*, 16 S. D. 133, 91 N. W. 474.
7. Cities empowered to lay out and open streets and exercise right of eminent domain. *Lidgerwood v. Michalek*, 12 N. D. 348, 97 N. W. 541.
- As to power of city council to extend streets by condemnation. *Grafton v. St. Paul, M. & M. R. Co.*, 16 N. D. 313, 22 L.R.A.(N.S.) 1, 113 N. W. 598, 15 A. & E. Ann. Cas. 10.
- Delegation by city council of power to determine width, grade, material, etc., of street or sidewalk. 20 L.R.A. 653.
- Injunction against municipality to prevent removal of lateral or subjacent support of land in laying out street. 68 L.R.A. 698.
- Liability of municipality for defects in, and want of repair of streets. 24 Am. Rep. 25; 103 Am. St. Rep. 257; 108 Am. St. Rep. 136.
- for defective plan of street construction as distinguished from other defects. 67 L.R.A. 253; 37 L.R.A.(N.S.) 1150.
- for defects causing injury to, or by a runaway horse. 27 Am. Rep. 398.
- for defects or obstructions in street after closing. 20 L.R.A.(N.S.) 575.
- for acts and neglects of independent contractors. 27 Am. Rep. 647.
- for fire set by sparks from steam roller engaged in repairing street. 6 L.R.A.(N.S.) 1094; 20 L.R.A.(N.S.) 654.
- for injuries through unsafe conditions in parks or public grounds other than streets. 33 L.R.A.(N.S.) 523.
- for defects or obstructions in park strips, or sides of streets. 20 L.R.A.(N.S.) 593; 40 L.R.A.(N.S.) 94.
- for defects or obstructions in paths in parks. 20 L.R.A.(N.S.) 574.
- for injury from grading or regrading highway. 43 Am. Dec. 723; 30 Am. St. Rep. 835.
- for nuisance caused by change of highway grade. 1 L.R.A.(N.S.) 129.
- Criminal responsibility of municipality for nuisance resulting from nonrepair of highway. 39 L.R.A.(N.S.) 414.
- Compensation to be paid for change of grade. 4 Am. St. Rep. 401.
- Duty to erect barriers or fences along highway. 58 Am. Rep. 526.
- Duty to provide barriers against abandoned highway. 37 L.R.A.(N.S.) 1158.
- Power of city councils to vacate street. 26 L.R.A. 823.
- Vacation of streets, its effect and the remedies of parties prejudiced thereby. 46 Am. St. Rep. 493.
- Injury to abutting owner by vacation of highway. 26 L.R.A. 662; 39 L.R.A. 68.
- to easements of light, air and access. 14 L.R.A. 370.
- Right of abutting owner to compensation for vacation of highway. 36 L.R.A.(N.S.) 1115.
- where street is vacated and used for railroad purposes. 36 L.R.A.(N.S.) 790.
- Power of municipality as against abutting owner to vacate street or portion thereof and devote land to private purposes. 22 L.R.A.(N.S.) 530.
- Right of property owner whose means of access from one direction is shut off or interfered with by closing of adjoining street, or portion of street on which he is situated. 2 L.R.A.(N.S.) 269; 30 L.R.A.(N.S.) 637.
8. Right of municipal corporation to cut or trim trees within limits of highway. 20 L.R.A.(N.S.) 809; 31 L.R.A.(N.S.) 951.
- Authority of municipal officers to cut or trim tree on private property to facilitate use of street. 20 L.R.A.(N.S.) 814.
- Trees on street as a nuisance subject to municipal control. 39 L.R.A. 670.
- Municipal liability for injury by trees in street. 20 L.R.A.(N.S.) 607, 649; 39 L.R.A.(N.S.) 405.
9. Public traveling on sidewalk includes travel by bicycle. City liable only when sidewalks unsafe for pedestrians. *Gagnier v. City of Fargo*, 11 N. D. 73, 88 N. W. 1030.
- City franchise to telephone company creates vested right, not impairable by subsequent private grants. Removal of buildings, extraordinary use of streets, subject to public and vested rights. Mover of houses liable for damages to telephone lines. *N. W. Tel. Co. v. Anderson et al.*, 12 N. D. 585, 98 N. W. 706.
- Violating ordinance as to use of highway as ground of private action. 5 L.R.A.(N.S.) 257.
- Right of municipal corporation to place polling booth in street. 4 L.R.A.(N.S.) 571.
- to grant right to use streets for a private purpose. 125 Am. St. Rep. 343.
- to grant right to maintain scales in street. 25 L.R.A.(N.S.) 403.
- to authorize use of highway for private drain. 16 L.R.A. 715.
- to punish use of highway which is also an offense under state law. 17 L.R.A.(N.S.) 53.

- Right to collect tolls for use of highway. 42 L.R.A.(N.S.) 836.
- to prevent loitering in streets. 15 L.R.A.(N.S.) 973.
- to regulate weight of loads drawn in city streets. 31 L.R.A.(N.S.) 685.
- to regulate hitching of horses in streets. 11 L.R.A.(N.S.) 1080.
- to restrict use of highway by bicyclist. 47 L.R.A. 290.
- to prohibit automobiles from using public thoroughfares. 26 L.R.A.(N.S.) 502.
- Municipal regulations affecting motor cycles in streets. 42 L.R.A.(N.S.) 1068.
- License fee for use of streets by vehicles. 36 L.R.A. 413.
- Validity of license tax on vehicles used in business for which a general occupation tax is required. 21 L.R.A.(N.S.) 279.
- Applicability to vehicles owned by nonresidents of city ordinance imposing a license upon the use of vehicles. 23 L.R.A.(N.S.) 453.
- Privilege of using street for poles and wires as a contract within provision against impairing contract obligations. 50 L.R.A. 147.
- Duty of municipality to guard building material in street. 3 L.R.A.(N.S.) 386.
- Liability of municipality which permits or fails to prevent riding bicycles on sidewalk for injury caused thereby. 10 L.R.A.(N.S.) 785.
- Liability to persons injured by collision with others on the public streets. 35 Am. Rep. 781.
- Rights of children to protection against dangerous condition of highway. 22 L.R.A. 561.
- 10. Right of private persons temporarily to obstruct streets. 1 Am. St. Rep. 840.
- Obstruction of street in violation of police ordinance as ground for private action. 5 L.R.A.(N.S.) 257.
- Right of person using street for play to recover for injury by defect or obstruction therein. 20 L.R.A.(N.S.) 753.
- Duty toward children as to obstructions or defects in street. 6 L.R.A.(N.S.) 905; 20 L.R.A.(N.S.) 753; 34 L.R.A.(N.S.) 118.
- Duty as to condition of highway to persons entering or leaving private property. 37 L.R.A.(N.S.) 357.
- Municipal liability for obstruction or defect in street by abutting owner. 20 L.R.A.(N.S.) 553.
- for injury to traveler by uses permitted to abutting owner. 19 L.R.A.(N.S.) 509.
- for defects or obstructions by railroad occupying street. 20 L.R.A.(N.S.) 553.
- for injuries caused by horse becoming frightened at object in highway. 15 L.R.A. 865; 98 Am. Dec. 608.
- 11. Power of municipality to furnish light. 30 Am. St. Rep. 225.
- to own and operate electric light plant. 14 L.R.A. 268; 15 L.R.A.(N.S.) 711.
- to secure electric light plant by piecemeal to avoid constitutional debt limit. 12 L.R.A.(N.S.) 433.
- to profit by its lighting plant. 24 L.R.A.(N.S.) 290.
- to engage in business of supplying electrical fixtures. 31 L.R.A.(N.S.) 119.
- Liability for negligent operation of electric light plant. 5 L.R.A.(N.S.) 536.
- 13. Power of municipality to fix gas rates as incident of its power to authorize laying of gas mains. 18 L.R.A.(N.S.) 1197.
- Police regulation of electric companies. 31 L.R.A. 798.
- Municipal control over public nuisances upon streets and highways created by electrical companies. 39 L.R.A. 609.
- Electrical wires as a nuisance under municipal control. 38 L.R.A. 306; 39 L.R.A. 621.
- Right to require telegraph or telephone wires to be placed underground. 14 L.R.A.(N.S.) 654.
- to compel telegraph company engaged in interstate business to place wires underground. 24 L.R.A. 165.
- to require public service corporation to carry municipal wires on its poles. 32 L.R.A.(N.S.) 997.
- Duty of municipality to inspect electric wires maintained by others in its streets. 2 L.R.A.(N.S.) 475.
- Municipal liability for injuries by electric wires and appliances. 20 L.R.A.(N.S.) 648; 22 L.R.A.(N.S.) 1176; 1 B. R. C. 809.
- Liability for injuries due to excavations in streets. 17 Am. St. Rep. 735.
- 14. Empowers city council to regulate the use of sidewalks. *Gagnier v. Fargo*, 11 N. D. 73, 95 Am. St. Rep. 705.
- Grant by city of right to use sidewalks for a private purpose. 125 Am. St. Rep. 343.
- Municipal liability for defects and obstructions in sidewalks and crossings. 20 L.R.A.(N.S.) 632.
- for injury by excavation maintained beneath sidewalk by abutting owner. 61 L.R.A. 583; 7 L.R.A.(N.S.) 424; 20 L.R.A.(N.S.) 606.
- for permitting abutting owner to use areaways, hatchways, coalholes, etc. 19 L.R.A.(N.S.) 516.
- for injury by cellarways, stairways, and other projections. 20 L.R.A.(N.S.) 662, 635; 61 L.R.A. 583.

Municipal liability as to ice and snow on streets and sidewalks. 21 L.R.A. 263; 58 L.R.A. 321; 7 L.R.A.(N.S.) 933; 13 L.R.A.(N.S.) 1105; 20 L.R.A.(N.S.) 201; 20 L.R.A.(N.S.) 656.

Liability of abutting owner for permitting water to accumulate and freeze on sidewalk to injury of travelers. 58 L.R.A. 328.

—for injury caused by ice formed from water artificially turned across sidewalk. 9 L.R.A.(N.S.) 598; 28 L.R.A.(N.S.) 200.

Violation of police ordinance requiring removal of ice and snow as ground for private action. 5 L.R.A.(N.S.) 262; 6 L.R.A.(N.S.) 616.

When ice upon sidewalk constitutes a defect. 7 Am. Rep. 206.

Liability of landlord for condition of sidewalk. 23 L.R.A. 157; 26 L.R.A. 198.

15. Power of municipal corporation to grant exclusive right or create monopoly for removing substances inimical to health. 21 L.R.A.(N.S.) 830; 97 Am. St. Rep. 688.

Monopoly in contract for removal of garbage. 27 L.R.A. 540.

Municipal power over nuisance of garbage in street. 39 L.R.A. 653.

Injunction by municipality against nuisance of garbage. 41 L.R.A. 324.

Municipal liability for injuries resulting from use of dumping ground. 6 L.R.A.(N.S.) 1013.

—injuries inflicted by servant engaged in removing ashes or garbage. 5 L.R.A.(N.S.) 1005; 39 L.R.A.(N.S.) 649.

16. Duty to remove snow or ice from crosswalks. 20 L.R.A.(N.S.) 656; 30 L.R.A.(N.S.) 1167.

Liability of municipality for injuries from unevenness in crosswalk. 29 L.R.A.(N.S.) 180; 20 L.R.A.(N.S.) 513.

17. Exercise of police power for esthetic purposes. 34 L.R.A.(N.S.) 998.

Power of municipality to prevent use of property for advertising purposes. 132 Am. St. Rep. 92.

Grant of right to use streets or other public places for advertising purposes. 9 L.R.A.(N.S.) 455.

Power of city as to regulation of signs and billboards in street. 21 L.R.A.(N.S.) 735.

Signboards as a nuisance in street; municipal control over. 39 L.R.A. 661.

Power to make erection of signs conditional upon consent of neighbors. 8 L.R.A.(N.S.) 978.

Liability of municipal corporation for permitting signs and other objects overhanging street and liable to fall. 19 L.R.A.(N.S.) 517.

Municipal liability for injury by billboard. 20 L.R.A.(N.S.) 646.

Police regulation as to use of highways by electric companies. 31 L.R.A. 799.

Imposing license fee on telegraph or telephone company for use of streets. 1 L.R.A.(N.S.) 581.

Validity of license fee exacted of telegraph or telephone company as affected by amount. 27 L.R.A.(N.S.) 627.

Right to require telegraph or telephone wires to be placed underground. 31 L.R.A. 806; 14 L.R.A.(N.S.) 654.

Power of municipality in absence of express legislative authority to grant franchise to use street for electric lighting. 22 L.R.A.(N.S.) 933, 937.

Power of municipality in absence of express legislative authority to grant franchise to use street for telephone line. 22 L.R.A.(N.S.) 934, 939.

Municipal regulation of poles and wires as nuisances in street. 39 L.R.A. 619.

Municipal liability for injury by poles in highway. 20 L.R.A.(N.S.) 607.

Power of municipal corporation to compel removal of awnings encroaching on street. 20 L.R.A.(N.S.) 146.

Municipal regulation of awnings as nuisances. 39 L.R.A. 667.

Violating ordinance as to awnings as ground for private action. 5 L.R.A.(N.S.) 261.

Municipal liability for injury by overhanging awnings. 20 L.R.A.(N.S.) 645.

Municipal liability for injury by hitching post in street. 20 L.R.A.(N.S.) 607.

18. Delegation of power to regulate parades. 20 L.R.A. 721.

Municipal control over parades, as nuisance in street. 39 L.R.A. 672.

Validity of ordinances as to street parades. 25 L.R.A.(N.S.) 251.

Municipal liability for personal injury on account of exhibition permitted in public street. 9 L.R.A.(N.S.) 146.

20. Using street for market purposes. 14 L.R.A. 558.

Power of municipal corporation to grant or lease space on street or sidewalk for business purposes. 25 L.R.A.(N.S.) 400.

Market regulations as to sales on highway. 24 L.R.A. 584.

21. Validity of statutes or ordinances regulating horse-drawn vehicles in city streets. 31 L.R.A.(N.S.) 682.

Regulation of speed of vehicles on streets. 36 L.R.A. 305.

Public regulations as to speed of automobile. 1 L.R.A.(N.S.) 219.

Power of municipal corporation to regulate speed of, and signals from, trains at highway crossings. 17 L.R.A.(N.S.) 561.

Violation of ordinance as to speed of train as ground for private action. 5 L.R.A.(N.S.) 197, 218.

24. Power of municipality to impose conditions upon giving consent to railway in street. 36 L.R.A. 33.

—to make and enforce regulations respecting street railways for the protection of the public. 104 Am. St. Rep. 636.

—to compel change of grade of street railway in street. 70 L.R.A. 850.

—to compel street railway to sprinkle tracks. 36 L.R.A.(N.S.) 235.

—to prevent laying an additional street car track under a franchise originally granting the right to lay double tracks. 36 L.R.A.(N.S.) 850.

Estoppel of town or municipality to object to street railway in street by acquiescence or consent to its construction or use. 7 L.R.A.(N.S.) 1187.

Privilege of using street for street railway as a contract within provision against impairing obligation. 50 L.R.A. 143.

Liability of municipality in damages for repeal, or interference with enjoyment, of street franchise. 36 L.R.A.(N.S.) 861.

Effect of city's permitting use of street by railroad in such way as practically to exclude public to cause a reversion of the street to dedicators or abutting owners. 11 L.R.A.(N.S.) 589.

Municipal liability for injury by use of highway by street railway. 19 L.R.A.(N.S.) 521.

26. Constitutionality of statute requiring railroad company to build cattle guards. 31 L.R.A.(N.S.) 861.

27. Power of municipality to compel change of grade of railroad in street. 70 L.R.A. 850.

—to compel railroad company to light tracks in city. 41 L.R.A. 422; 19 L.R.A.(N.S.) 658.

—to require railroad company to keep highway in repair at overhead bridge. 18 L.R.A.(N.S.) 915.

—to require safety gates at railroad crossing. 3 L.R.A.(N.S.) 141.

Violation of police ordinance as to safety gates as ground for private action. 5 L.R.A.(N.S.) 246.

Violation of police ordinance as to flagman as ground for private action. 5 L.R.A.(N.S.) 245.

Municipal liability for injury by railways in streets. 20 L.R.A.(N.S.) 624.

28. Municipal control of bridges as a nuisance. 29 L.R.A. 681.

Right of taxpayer, in absence of statute, to enjoin unlawful expenditures by municipality for bridges. 36 L.R.A.(N.S.) 20.

Right of municipality without express power to permit construction of an overhead bridge across a public street for private purpose. 23 L.R.A.(N.S.) 158.

Duty of municipality to construct and maintain bridges in condition to sustain unusual weight. 27 L.R.A.(N.S.) 832.

Duty of county or town to maintain barriers along bridges. 42 L.R.A.(N.S.) 267.

Liability of town or municipality for injuries by interference with flow of water by bridge. 59 L.R.A. 856.

—for injury to abutting owner from approach to bridge under constitutional provision against "damaging" private property for public use without compensation. 36 L.R.A.(N.S.) 1198.

—for injury by defects or obstructions on bridge. 20 L.R.A.(N.S.) 571.

—for injury to travelers by defective bridges through defect in plan of construction. 67 L.R.A. 268.

—for negligence of bridge tender. 19 L.R.A.(N.S.) 1178.

29. Right and duty of municipality to provide drainage. 61 L.R.A. 673.

Power of municipality to authorize use of highway for private drain. 16 L.R.A. 715.

Municipal control of nuisances affecting drains and drainage. 38 L.R.A. 319; 20 L.R.A.(N.S.) 1050.

Liability of municipality for defects in, or want of repair of, sewers. 20 Am. St. Rep. 626; 29 Am. St. Rep. 737.

—for injuries to property by drains and sewers. 61 L.R.A. 701; 20 L.R.A.(N.S.) 627.

—for injuries to property from sewerage system not constructed according to any plan adopted by competent authorities, or constructed upon a defective plan. 1 L.R.A.(N.S.) 952.

—for changing course of drainage to injury of private property. 5 L.R.A.(N.S.) 831; 30 L.R.A.(N.S.) 619.

—for damages caused by overflow of sewers. 24 Am. Rep. 556.

—for obstruction of drains and sewers. 65 L.R.A. 275.

—for overflow of stream used by it as a sewer. 3 L.R.A.(N.S.) 1053.

—for death or sickness caused by sewage or drainage. 22 L.R.A.(N.S.) 940.

—for open drain rendering highway unsafe. 61 L.R.A. 706.

—for injury by holes, and openings in streets for sewer purposes. 20 L.R.A.(N.S.) 631.

—for pollution of water by sewers. 61 L.R.A. 703; 1 L.R.A.(N.S.) 124.

- Injunction against city's drainage into water course. 23 L.R.A. 301.
- Right of municipality to create nuisance by pollution at a point where its sewers discharge. 20 L.R.A.(N.S.) 1050.
- Prescriptive right of municipality to pollute streams with sewage or other harmful substance. 25 L.R.A.(N.S.) 589.
- Right of municipality held liable for pollution of stream to recover indemnity or contribution from one responsible therefor. 40 L.R.A.(N.S.) 1165.
- Rights and duties of municipality with respect to surface waters. 65 L.R.A. 250.
- for changing course of surface drainage. 5 L.R.A.(N.S.) 831; 30 L.R.A.(N.S.) 619.
- for injury to property rights by surface water due to defective plan of street construction. 67 L.R.A. 260.
- for damming back surface water by grading of streets. 65 L.R.A. 250; 29 L.R.A.(N.S.) 126.
- Measure of damages recoverable from municipality for overflow from defective sewer. 39 L.R.A.(N.S.) 860.
- Duty of municipality to guard drainage ditch along sidewalk. 27 L.R.A.(N.S.) 1169.
30. License or occupation taxes, constitutional limitation on the power to impose. 129 Am. St. Rep. 249.
- Power of municipality as well as state to punish for peddling. 17 L.R.A.(N.S.) 53.
- Validity of ordinance regulating hawking and peddling. 14 L.R.A. 100.
- Validity of ordinance regulating conduct of licensed street hucksters or peddlers. 8 L.R.A.(N.S.) 304.
- Validity of license or occupation tax on hawkers and peddlers and persons engaged in soliciting orders by sample or otherwise as an exercise of the police power. 19 L.R.A.(N.S.) 301; 28 L.R.A.(N.S.) 265.
- Validity of license tax so high as to be prohibitory in effect. 35 L.R.A.(N.S.) 1074.
- Discrimination against nonresidents by statute or ordinance as to license. 40 L.R.A.(N.S.) 286.
- Right to discriminate between harmless articles in legislation regulating peddlers. 21 L.R.A.(N.S.) 349; 35 L.R.A.(N.S.) 1079; 40 L.R.A.(N.S.) 1207.
- Municipal power to regulate traffic in second-hand goods, junk, etc. 24 L.R.A.(N.S.) 1168.
- Police power as exercised by municipalities over the business of pawnbrokers, junk dealers, and dealers in second-hand clothes. 32 L.R.A. 116.
- Municipal regulation of pawnbrokers. 32 L.R.A. 117.
- Municipal power over business of pawnbrokers as nuisance. 38 L.R.A. 657.
- Validity of license on business of lending money as affected by amount of license fee. 25 L.R.A.(N.S.) 583.
- Validity of ordinance requiring persons engaged in business of loaning money on chattel security or security of wages to file a record of loans made. 25 L.R.A.(N.S.) 686.
- Right of municipal corporation to require theater to pay for services of fireman or policeman, performed at the theater or place of exhibition. 11 L.R.A.(N.S.) 700.
- Validity of contract relating to unlicensed theater. 12 L.R.A.(N.S.) 617.
- Validity of legislation forbidding speculation in theater tickets. 5 L.R.A.(N.S.) 183.
- Constitutionality of anti-scalping legislation. 3 L.R.A.(N.S.) 558; 4 L.R.A.(N.S.) 480.
31. Power of municipal corporation to grant permit for hack stand on street or sidewalk. 25 L.R.A.(N.S.) 403.
- Power of municipality to establish exclusive hack stands. 33 L.R.A.(N.S.) 471.
- Validity of contract with unlicensed cartmen. 12 L.R.A.(N.S.) 617.
32. Discrimination as to hackmen, etc., at depots, wharves, etc. 13 L.R.A. 848; 16 L.R.A.(N.S.) 777.
- Exclusion of hackmen from railroad depot. 39 L.R.A.(N.S.) 126.
33. Municipal regulation of gambling as a nuisance. 39 L.R.A. 523.
- Operation of slot machine as gambling. 20 L.R.A.(N.S.) 239; 34 L.R.A.(N.S.) 573; 42 L.R.A.(N.S.) 720.
- Card game paraphernalia as a gambling device. 17 L.R.A.(N.S.) 1210.
- Right to compensation for destruction of gaming apparatus. 19 L.R.A. 197.
- Gambling device as property within constitutional protection. 12 L.R.A.(N.S.) 394.
34. Delegation of municipal power as to license of plumbers. 20 L.R.A. 724.
- Constitutionality of statute requiring plumbers to secure a license. 5 L.R.A.(N.S.) 674; 8 L.R.A.(N.S.) 1116; 27 L.R.A.(N.S.) 283.
- What constitutes a plumbing business within license statutes. 23 L.R.A.(N.S.) 677.
- Validity of contract with unlicensed plumber. 12 L.R.A.(N.S.) 617.
- Right of unlicensed plumber to recover for services rendered by licensed one. 2 L.R.A.(N.S.) 392; 21 L.R.A.(N.S.) 176.
- Who must procure plumbers' license. 44 L.R.A.(N.S.) 1072.
35. Power of municipality to establish and regulate markets. 43 Am. Rep. 473; 23 Am. St. Rep. 581.
- Power to limit or regulate markets by ordinance. 85 Am. Dec. 266.
- Implied power of municipality to purchase real estate on credit for establishment of markets. 4 L.R.A.(N.S.) 746.

- Delegation of municipal power as to markets. 20 L.R.A. 726.
 Market regulations restricting sales. 24 L.R.A. 584.
 Markets as additional burden on easement. 17 L.R.A. 480.
 Liability of municipality for obstruction or defect in street by market. 20 L.R.A. (N.S.) 614.
 Injunction against city as to nuisance of markets. 23 L.R.A. 303.
 Liability of municipal corporation for tort in connection with market house. 25 L.R.A. (N.S.) 95.
 36. Municipal regulation as to nuisance affecting food. 38 L.R.A. 335.
 Municipal power to regulate location or condition of bakeries. 26 L.R.A. (N.S.) 842.
 37. Legislative power to fix price of bread. 33 L.R.A. 182.
 Validity of regulations as to weight of loaf of bread. 44 L.R.A. (N.S.) 632.
 38. Requiring license for sale of milk. 1 L.R.A. (N.S.) 936; 27 L.R.A. (N.S.) 1151.
 Constitutionality of discriminations in statutory regulations as to milk. 34 L.R.A. (N.S.) 651.
 Police regulations prescribing standard of quality of milk. 1 L.R.A. (N.S.) 918.
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 Validity and construction of regulations as to infected milch cattle. 43 L.R.A. (N.S.) 1072.
 41. Power of municipality to regulate use of scales by merchants. 23 L.R.A. (N.S.) 266.
 42. Power of municipality to require removal of vaults in street. 32 L.R.A. (N.S.) 1034.
 Power of municipal corporation to exact fee or rental for vaults or areaways in street. 31 L.R.A. (N.S.) 868.
 Power of municipality to authorize use of highway for private drain. 16 L.R.A. 715.
 Permitting abutting owner to make sewer connection in street. 19 L.R.A. (N.S.) 512.
 43. Power of municipality to construct exhibition or amusement hall. 26 L.R.A. (N.S.) 425.
 Use of public school building for entertainment. 31 L.R.A. (N.S.) 589.
 Right of taxpayers to enjoin unlawful expenditures by municipality for amusements. 36 L.R.A. (N.S.) 2.
 Necessity of franchise for amusements. 37 L.R.A. 718.
 Municipal power to declare particular kinds of amusement nuisances per se. 31 L.R.A. (N.S.) 548.
 Municipal power over nuisance by public amusements. 39 L.R.A. 528.
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 Requiring license for dance hall or place where dancing is taught. 27 L.R.A. (N.S.) 357.
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 Regulations affecting moving pictures. 40 L.R.A. (N.S.) 193.
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 41 L.R.A. (N.S.) 407.
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 —for personal injury on account of exhibition permitted in public street. 9 L.R.A. (N.S.) 146.
 —for failure to prevent public exhibitions. 42 L.R.A. (N.S.) 864.
 —for failure to prevent display of fireworks in street. 23 L.R.A. (N.S.) 643.
 44. Municipal power over drunkenness as a nuisance. 39 L.R.A. 524.
 Municipal power over nuisances affecting public peace and good order. 39 L.R.A. 524.
 45. Constitutionality of party wall statutes. 67 L.R.A. 710.
 46. Constitutionality of police regulations concerning buildings. 16 L.R.A. 400.
 Constitutionality of statute limiting height of buildings. 23 L.R.A. (N.S.) 1160.
 Power to establish building line. 42 L.R.A. (N.S.) 1123.
 Delegation of municipal power as to buildings. 20 L.R.A. 725.
 Municipal power over buildings and other structures as nuisances. 38 L.R.A. 161.
 Injunction by municipality against nuisance as to buildings and other structures. 41 L.R.A. 328; 42 L.R.A. 822.

- Power of municipality to require permit to construct or repair buildings within its limits. 13 L.R.A.(N.S.) 737.
- Revocation of municipal license for buildings. 1 L.R.A.(N.S.) 458.
- Change of ordinance requiring fire escapes after compliance therewith. 2 L.R.A.(N.S.) 398.
- Conclusiveness of official certificate approving fire escapes. 1 L.R.A.(N.S.) 1091.
- Violating ordinance as to fire escapes as ground for private action. 5 L.R.A.(N.S.) 261.
47. Ordinance making decision of building inspector final without appeal, unconstitutional. *City of Sioux Falls v. Kirby*, 6 S. D. 62, 60 N. W. 156, 25 L.R.A. 621.
- As to effect of granting permission to erect wooden building within certain city limits. *Clark v. Deadwood*, 22 S. D. 233, 18 L.R.A.(N.S.) 402, 117 N. W. 131.
- Power of municipality to establish fire limits. 29 Am. Rep. 347.
- Municipal power over wooden and frame buildings. 38 L.R.A. 170.
- Injunction by municipality against wooden buildings. 41 L.R.A. 328.
- Power of municipality granting permission to build or repair wooden building within fire limits to limit the time of the continuance of the structure. 18 L.R.A.(N.S.) 402.
- What is a sufficient compliance with ordinance requiring buildings to be constructed of noncombustible material. 2 L.R.A.(N.S.) 483.
- Moving building within fire limits as violation of prohibition against erection within such limits. 24 L.R.A.(N.S.) 457.
- Power to require removal, or to prohibit repairs, of wooden building within fire limits when damaged or partially destroyed by fire. 21 L.R.A.(N.S.) 454.
- Remodeling, reconstructing, or augmenting building as construction or erection within fire-limit statute or ordinance. 26 L.P.A.(N.S.) 120.
- What constitutes repair, reconstruction, alteration, etc., of building within fire-limit statute or ordinance. 26 L.R.A.(N.S.) 124.
- Private action for violation of statute as to fire limits. 9 L.R.A.(N.S.) 381.
- Liability of city for destroying building to stop spread of fire. 19 L.R.A. 197.
- Liability for destruction of building as a nuisance. 19 L.R.A. 198.
- Limit of power of municipality to destroy building as a nuisance. 38 L.R.A. 166.
48. Power of municipal corporation to prohibit factories. 41 L.R.A.(N.S.) 177.
49. Municipal liability for acts or negligence of members of fire department. 15 L.R.A. 781; 4 L.R.A.(N.S.) 629; 32 Am. St. Rep. 618.
- Liability of municipal corporation for tort in connection with fire house. 25 L.R.A.(N.S.) 94.
- Liability of, for acts of officers in demolishing buildings to prevent the spread of fire. 47 Am. Dec. 208.
50. Validity of regulations for fire protection other than building regulations. 41 L.R.A.(N.S.) 456.
- The effect of city ordinances on negligence in the manufacture and storage of gunpowder, nitroglycerin, dynamite, and other explosives. 29 L.R.A. 721.
- Municipal regulation of explosives, as a nuisance. 38 L.R.A. 306.
- Violating ordinance as to explosives as ground for private action. 5 L.R.A.(N.S.) 261; 48 L.R.A.(N.S.) 876.
- Municipal liability for authorizing dangerous nuisance, such as fireworks. 16 L.R.A. 395.
- Liability of municipality for failure to prevent display of fireworks in street. 23 L.R.A.(N.S.) 643.
- Municipal liability for failure to prevent use of explosives in street. 23 L.R.A.(N.S.) 643; 42 L.R.A.(N.S.) 863.
52. Liability of county or municipality for injury to one employed in or about a jail, prison, or other house of detention maintained by it. 23 L.R.A.(N.S.) 910.
- Liability of municipality for tort in connection with jails and prisons. 25 L.R.A.(N.S.) 98.
- for personal injury by unfit condition of prison. 36 L.R.A. 293; 2 L.R.A.(N.S.) 95.
- for negligence or other tort of keeper or inmate of municipal prison. 25 L.R.A.(N.S.) 180.
- for injury to neighboring property from maintenance of prison. 34 L.R.A.(N.S.) 461.
- for false imprisonment and unlawful arrest. 14 L.R.A. 792; 44 L.R.A. 795; 47 L.R.A. 593.
54. Liability for injuries committed by mobs. 56 Am. Dec. 589; 88 Am. Dec. 266.
- Municipal liability for property destroyed by mobs. 24 L.R.A. 592.
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55. Cruelty to animals. 41 L.R.A.(N.S.) 436.
56. Power of municipality to punish vagrancy, which is also an offense under state law. 17 L.R.A.(N.S.) 52.
- Municipal regulation of nuisance of disorderly houses. 39 L.R.A. 521.
57. Power of municipality to define, prevent, and abate nuisance. 36 L.R.A. 593; 27 Am. Dec. 98; 120 Am. St. Rep. 372.

- Power of municipality as well as state to punish for nuisance. 17 L.R.A.(N.S.) 53.
 Derivation of municipal power over nuisances. 36 L.R.A. 593.
 Right of municipality to sue to enjoin or abate public nuisance. 51 L.R.A. 657.
 Municipal power over nuisances affecting highways and waters. 39 L.R.A. 649.
 —over public nuisances upon public streets and highways created by railroads and other electrical companies. 39 L.R.A. 609.
 —over nuisances affecting public morals, decency, peace, and good order. 39 L.R.A. 520.
 —over buildings and other structures as nuisances. 38 L.R.A. 161.
 —over nuisances affecting safety, health, and personal comfort. 38 L.R.A. 305.
 —over smoke as a public nuisance. 39 L.R.A. 551; 18 L.R.A.(N.S.) 156; 32 L.R.A.(N.S.) 554.
 —over nuisances relating to trade or business. 38 L.R.A. 641; 25 L.R.A.(N.S.) 247; 28 L.R.A.(N.S.) 122; 40 L.R.A.(N.S.) 898.
 —to prohibit the opening or working of a quarry. 2 L.R.A.(N.S.) 796.
 —to prohibit the keeping, standing, or exhibiting of stallions and jacks. 11 L.R.A.(N.S.) 736.
 Right of municipality to establish contagious disease hospital beyond city limits. 5 L.R.A.(N.S.) 1028; 18 L.R.A.(N.S.) 260; 25 L.R.A.(N.S.) 228.
 Especial powers of municipalities in time of epidemics. 26 L.R.A. 727.
 58. Quarantine and health laws and regulations and their validity. 47 Am. St. Rep. 533.
 Quarantine regulations by health authorities. 26 L.R.A. 484.
 Authority of municipalities to prevent the spread of contagious diseases. 92 Am. Dec. 79.
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 Power of municipalities to establish and to compel the removal of sick persons to pesthouses. 92 Am. Dec. 76.
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 Municipal liability for spreading contagious disease by method of caring for patients. 13 L.R.A.(N.S.) 1190.
 59. Health laws and regulations and their validity. 47 Am. St. Rep. 541.
 Use of public funds to protect health. 14 L.R.A. 476.
 Municipal power over nuisances affecting health. 38 L.R.A. 311.
 Validity of ordinance for destruction of food products below prescribed standard or unfit for use. 29 L.R.A.(N.S.) 260.
 Power of municipality to grant exclusive right or create monopoly for removal of substances inimical to health. 21 L.R.A.(N.S.) 830.
 —to regulate disposition of dead animals. 38 L.R.A. 330; 9 L.R.A.(N.S.) 1197; 48 L.R.A.(N.S.) 979.
 Power of health authorities to forbid the use of a polluted water supply. 23 L.R.A.(N.S.) 766.
 Liability of municipal corporation for destroying infected house. 22 L.R.A.(N.S.) 1128.
 —for failure to enforce health ordinance. 12 L.R.A.(N.S.) 638.
 60. Power of municipality to regulate burials and cemeteries. 38 L.R.A. 327; 27 L.R.A.(N.S.) 262; 87 Am. St. Rep. 678.
 Abandonment or sale by municipality of ground for cemetery. 42 L.R.A.(N.S.) 1216.
 61. Municipal regulation as to nuisance of keeping animals. 38 L.R.A. 332.
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 Constitutionality of statutes authorizing seizure of animals by humane officers. 15 L.R.A.(N.S.) 554.
 62. License and tax laws as to dogs. 40 L.R.A. 520; 17 L.R.A.(N.S.) 855; 39 L.R.A.(N.S.) 155.
 Right to kill dogs. 15 L.R.A. 249; 40 L.R.A. 510; 19 L.R.A.(N.S.) 835; 28 L.R.A.(N.S.) 673.
 63. Municipal power over stock yards as nuisances. 38 L.R.A. 655.
 —over slaughter houses. 38 L.R.A. 646.
 Sanitary regulations as to stables. 38 L.R.A. 653; 45 L.R.A.(N.S.) 575.
 64. Power of municipal corporation to prevent stock yards within corporate limits. 28 L.R.A.(N.S.) 122.
 Right of municipality to prohibit the keeping, standing, or exhibiting of stallions and jacks. 11 L.R.A.(N.S.) 736.
 65. Municipal power over nuisances with respect to offensive and unwholesome smells. 38 L.R.A. 322.

67. Power of municipality to construct assembly, convention, exhibition, or amusement hall. 26 L.R.A.(N.S.) 425.

Right of municipality to permit the use of, or to lease, its public buildings for private purposes. 31 L.R.A.(N.S.) 580.

Liability of municipality for neglect to repair premises. 63 Am. Dec. 350.

68. Power of municipality in absence of express legislative authority, to grant street franchise for railroad. 22 L.R.A.(N.S.) 925, 927, 935.

Who may question validity of street franchise granted by municipality. 22 L.R.A.(N.S.) 939.

Power of municipality to prevent laying an additional track under a franchise originally granting the right to lay double tracks. 36 L.R.A.(N.S.) 850.

Liability of municipality in damages for repeal or interference with enjoyment of street franchise. 36 L.R.A.(N.S.) 861.

Effect of acquiescence or consent by a town or municipality to construction or use of railroad in street or highway, to estop it from objecting thereto. 7 L.R.A.(N.S.) 1187.

Effect of city's permitting use of street by railroad in such a way as practically to exclude public to cause a reversion of the street to dedicators or abutting owners. 11 L.R.A.(N.S.) 589.

70. Delegation of municipal power as to license of auctioneers. 20 L.R.A. 724.

Discrimination against nonresidents by statute or ordinance imposing license tax on auctioneers. 40 L.R.A.(N.S.) 290.

Validity of license on business of lending money as affected by amount of license fee. 25 L.R.A.(N.S.) 583.

Are persons engaged in loaning their own money loan brokers within license regulations. 25 L.R.A.(N.S.) 748.

Effect of loan agent's failure to procure license. 1 L.R.A.(N.S.) 1159.

Validity of contract by unlicensed money lender. 12 L.R.A.(N.S.) 616.

Validity of statute or ordinance requiring persons engaged in business of loaning money on chattel security or security of wages to file a record of loans made. 25 L.R.A.(N.S.) 686.

71. Municipal power as to nuisance by sliding in the streets. 39 L.R.A. 679.

72. Regulation of storage of lumber for purpose of fire protection. 41 L.R.A.(N.S.) 457.

74. Municipal power over business of dealers in second-hand goods, junk, etc., as nuisance. 38 L.R.A. 657.

Police power as exercised by municipalities over the business of pawnbrokers, junk dealers, and dealers in second-hand clothes. 32 L. R. A. 116.

75. City having power to construct waterworks need not pass ordinance before contracting for their construction. *National Tube Works v. Chamberlain*, 5 D. 54, 37 N. W. 761.

Power to construct waterworks not necessary incident of incorporation. *Huron Waterworks Co. v. City of Huron*, 7 S. D. 9, 62 N. W. 975, 30 L.R.A. 848, 58 Am. St. Rep. 817.

Contract to purchase plant for municipal water supply. 61 L.R.A. 46.

Is power conferred upon a municipality to provide waterworks limited to establishment of a municipal plant. 19 L.R.A.(N.S.) 183.

Power of legislature to compel a municipality to establish water plant or to purchase existing plant. 44 L.R.A.(N.S.) 1189.

Effect of limitation of municipal indebtedness upon the acquisition of a water supply. 59 L.R.A. 604.

Right of taxpayer to enjoin unlawful expenditures for waterworks. 36 L.R.A.(N.S.) 20.

Liabilities and duties of municipal corporations, acting as water companies. 81 Am. St. Rep. 486.

Municipal liability for tort in connection with waterworks system. 61 L.R.A. 58; 25 L.R.A.(N.S.) 239.

Liability of municipality for lack of water to extinguish fire. 23 L.R.A. 146; 61 L.R.A. 95; 25 L.R.A.(N.S.) 239; 36 L.R.A.(N.S.) 1045.

77. City liable for injuries caused by negligent acts of its officials or others acting for it or under its authority. *Ludlow v. City of Fargo*, 3 N. D. 485, 57 N. W. 506.

Agents and officers cannot bind a municipal corporation by any act which transcends their lawful powers. *Treadway v. Schnauber*, 1 D. 227, 46 N. W. 464.

When a city contracts without an ordinance, the irregularity is not a defense where city received and retained benefits under the contract. *McGuire v. Rapid City*, 6 Dak. 346, 43 N. W. 706.

Acts which may be declared criminal by ordinances. 78 Am. St. Rep. 271.

Effect of ordinances, and the territory affected by. 16 Am. Dec. 191.

General limitations upon power to enact ordinances. 34 Am. Dec. 627.

Injunction against void ordinances. 118 Am. St. Rep. 372.

Test of validity of ordinances as denying equal protection of the laws. 123 Am. St. Rep. 36.

Grants of exclusive privileges by municipality. 22 Am. St. Rep. 797; 27 L.R.A. 540; 21 L.R.A.(N.S.) 830; 33 L.R.A.(N.S.) 471.

Discrimination by municipality between its own residents and other residents of the same state. 16 L.R.A. 49.

Right of municipality to discriminate in favor of organized labor. 23 L.R.A.(N.S.) 815.

Right of taxpayer in absence of statute to enjoin favoritism in contracts. 36 L.R.A.(N.S.) 10.

78. Power of municipality to legislate on subjects covered by state laws. 1 L.R.A.(N.S.) 382.

—to punish what is also an offense under state law. 17 L.R.A.(N.S.) 49; 110 Am. St. Rep. 149.

—to extend exercise of taxing or licensing power beyond the corporate limits. 15 L.R.A.(N.S.) 294.

—to make constituent elements or operations of a business independent subjects of license tax. 5 L.R.A.(N.S.) 619.

—to regulate electricians and installation of electrical work. 36 L.R.A.(N.S.) 78.

—to make right to transact certain business dependent upon consent of municipal authorities. 9 L.R.A.(N.S.) 659.

—to make use of property for particular purpose or in a particular manner, conditional upon consent of neighbors. 8 L.R.A.(N.S.) 978.

Exercise of police power for esthetic purposes. 34 L.R.A.(N.S.) 998.

Validity of ordinance vesting in officers discretion as to subject matter. 1 L.R.A.(N.S.) 940.

May a municipal corporation question the validity of an ordinance or license under which a business is being conducted, in a prosecution for carrying on such business. 21 L.R.A.(N.S.) 299.

Liability of municipality for attempting to enforce void ordinance regulating business or conduct of those within its limits. 18 L.R.A.(N.S.) 400; 34 L.R.A.(N.S.) 141.

Liability of municipality in tort for acts beyond the scope of its powers. 42 L.R.A.(N.S.) 908; 34 Am. St. Rep. 25.

—for damages occasioned in the execution of governmental or sovereign powers. 66 Am. Dec. 434.

—for false imprisonment and unlawful arrest under invalid ordinance. 47 L.R.A. 593.

Distinction between public and private functions of municipal corporations in respect to liability for negligence. 19 L.R.A. 452; 1 L.R.A.(N.S.) 665.

Repudiation of distinction between public and private functions in determining liability for torts in connection with building used. 25 L.R.A.(N.S.) 97.

Liability of municipality for death caused by negligence in the performance of a governmental function. 38 L.R.A.(N.S.) 151.

§ 3600. Power to enforce charter by ordinance. When by this chapter the power is conferred upon the city council to do and perform any act or thing and the manner of exercising the same is not specifically pointed out, the city council may provide by ordinance the details necessary for the full exercise of such power. [R. C. 1905, § 2679; 1905, ch. 62, § 48.]

City council has no power to pass ordinance which imposes penalty of imprisonment at hard labor. *City of Lead v. Klatt*, 13 S. D. 140, 82 N. W. 391.

Actions brought to enforce ordinances are not criminal. *City of Sioux Falls v. Kirby*, 6 S. D. 62, 60 N. W. 156; *City of Madison v. Horner*, 15 S. D. 359, 89 N. W. 474; *City of Huron v. Carter*, 5 S. D. 4, 57 N. W. 947.

§ 3601. Power of council to define additional duties for city officers. The duties, powers and privileges of all officers of every character in any way connected with the city government, not herein defined, shall be defined by the city council, and the defining by this chapter of the duties of the city officers shall not preclude the city council from defining, by ordinance, further and additional duties to be performed by any such officer. [R. C. 1905, § 2680; 1905, ch. 62, § 49.]

§ 3602. Actions for violating ordinances. All actions brought to recover any fine or to enforce any penalty under or punish any violation of any ordinance of any city shall be brought in the corporate name of the city as plaintiff, and no prosecution, recovery or acquittal for the violation of any such ordinance shall constitute a defense to any other prosecution of the same person for any other violation of any such ordinance, although the different causes of action existed at the same time, and if united would not exceed the jurisdiction of the court or justice of the peace. [R. C. 1905, § 2681; 1887, ch. 73, art. 4, § 2; R. C. 1899, § 2149; 1905, ch. 62, § 50.]

Actions for violation of city ordinances are not criminal. *City of Madison v. Horner*, 15 S. D. 359, 89 N. W. 474; *City of Huron v. Carter*, 5 S. D. 4, 57 N. W. 947; *City of*

Sioux Falls v. Kirby, 6 S. D. 62, 60 N. W. 156, 25 L.R.A. 621; *City of Lead v. Klatt*, 11 S. D. 109, 75 N. W. 896.

§ 3603. Fines and licenses paid to the city treasurer. All fines and forfeitures for the violation of ordinances, when collected, and all moneys collected for licenses or otherwise, shall be paid into the city treasury at such time and in such manner as may be prescribed by ordinance. [R. C. 1905, § 2682; 1887, ch. 73, art. 4, § 3; R. C. 1895, § 2150; 1905, ch. 62, § 51.]

§ 3604. Summons. Affidavit. Punishment. In all actions for the violation of any ordinance the first process shall be a summons; provided, that a warrant for the arrest of the offender may issue in the first instance upon the sworn complaint of any person that any such ordinance has been violated and that the person making the complaint has reasonable grounds to believe the person charged is guilty thereof; and any person arrested under this warrant shall without unnecessary delay be taken before the proper officer to be tried for the alleged offense. Any person upon whom any fine or penalty shall be imposed may, upon the order of the court before whom the conviction is had, be committed to the county jail, city prison, workhouse, house of correction or other place provided by the city for the incarceration of offenders, until such fine, penalty and costs shall be fully paid; provided, that no such imprisonment shall exceed three months for any one offense. The city council shall have power to provide by ordinance, that each person so committed shall be required to work for the city at such labor as his strength will permit, not exceeding ten hours each working day; and for such work the person so employed shall be allowed, exclusive of his board, one dollar and twenty-five cents for each day's work on account of such fine and costs. [R. C. 1905, § 2683; 1887, ch. 73, art. 4, § 4; R. C. 1899, § 2151; 1905, ch. 62, § 52.]

City council cannot by ordinance impose penalty of imprisonment at hard labor. *City of Lead v. Klatt*, 13 S. D. 140, 82 N. W. 391.

§ 3605. Jurisdiction of police magistrate. The police magistrate shall have exclusive jurisdiction in all cases arising under the provisions of this chapter or any ordinance passed in pursuance thereof. [R. C. 1905, § 2684; 1887, ch. 73, art. 4, § 5; R. C. 1899, § 2152; 1905, ch. 62, § 53.]

§ 3606. Who may serve process. Any constable or sheriff of the county may serve any process or make any arrests authorized to be made by any city officer. [R. C. 1905, § 2685; 1887, ch. 73, art. 4, § 6; R. C. 1899, § 2153; 1905, ch. 62, § 54.]

ARTICLE 6.—REGULATION OF RATES FOR PUBLIC SERVICE OR UTILITY.

This article consists of Laws 1911, ch. 71. In the session laws for that year it is printed without any heading except the title which reads as follows: "An act authorizing cities incorporated under the laws of this state to regulate and fix the rate to be charged by persons, firms or corporations furnishing water, light, or other public service or utility to such cities and the inhabitants thereof." The chapter has no repealing section or provision, but an emergency section recites that "there is no law in the state touching the subject matter hereof." See notes to sections 3607, 3608.

§ 3607. Powers of city council or commission. Maximum rates and charges for public services or utility. The city council or commission of any city now or hereafter incorporated under the laws of this state, in which city any person, firm or corporation now is or hereafter may be exercising a franchise, right or license or privilege in or to any street, highway, alley or public place of such city for the furnishing of water, light or other public service or utility, to such city and the inhabitants thereof, is hereby empowered to prescribe by ordinance, maximum rates and charges for the service, commodity or utility so furnished, and to provide for the enforcement of such ordinance by suitable penalties; provided, that the rates and charges so fixed shall be just and reasonable, and when fixed, shall not be altered by the municipality oftener than once in five years; provided, further, that such rates and charges shall be fixed by the city council or commission after notice to the person, firm or corporation whose rates and charges are to be affected, and after rea-

sonable opportunity to such person, firm or corporation to appear and be heard in relation to such matter in such manner as the city council or commission may by resolution determine, and on such hearing such city council or commission or its committee appointed for such purpose may by resolution require the production before it of all books of account, records and vouchers of such person, firm or corporation pertaining to the business, rates and charges under investigation; provided, further, that the provisions of this article shall not apply to any person furnishing any public service or utility, the rates or charges for which may now or hereafter be placed under the control of the board of railroad commissioners. [1911, ch. 71, § 1.]

This section evidently supplants Laws 1909, ch. 55, § 1, which reads as follows: "The city council of any city now or hereafter incorporated under the laws of this state, in which city any person, firm or corporation now is or hereafter may be exercising a franchise, right, license or privilege in or to any street, highway, alley or public place of such city for the furnishing of manufactured gas for lighting and heating purposes to such city and the inhabitants thereof, is hereby empowered to prescribe by ordinance maximum rates and charges for the service, commodity or utility so furnished, and to provide for the enforcement of such ordinance by suitable penalties; provided, that the rates and charges so fixed shall be just and reasonable, and when fixed, shall not be altered by the municipality oftener than once in five years; provided, further, that such rates and charges shall be fixed by the city council after notice to the person, firm or corporation whose rates and charges are to be affected, and after reasonable opportunity to such person, firm or corporation to appear and be heard in relation to such matter in such manner as the city council may by resolution determine, and on such hearing such city council or its committee appointed for such purpose may by resolution require the production before it of all books of account, records and vouchers of such person, firm or corporation pertaining to the business, rates and charges under investigation."

Power of municipality apart from contract, to regulate the rates to be charged by public service corporations. 33 L.R.A.(N.S.) 759; 43 L.R.A.(N.S.) 994.

Kinds of business affected with a public interest subjecting them to regulation and control in respect to rates or prices. 6 L.R.A.(N.S.) 834.

Allowance for depreciation in plant in fixing rates for public service corporations. 38 L.R.A.(N.S.) 1209.

Valuation of property of public service corporations for rate making purposes. 48 L.R.A.(N.S.) 1037, 1063, 1092, 1146, 1196.

§ 3608. Fixed rates prima facie, just and reasonable. Court determine reasonableness. Appeal. All rates and charges fixed hereunder shall, if the validity thereof be contested, be held to be prima facie just and reasonable, but any person, firm or corporation aggrieved by any rate or charge fixed or established under the provisions of this article may by suit in the district court of the county have the reasonableness of such rate or charge adjudicated, and may appeal from the decision of such court to the supreme court in the manner provided by law; [provided, that no appeal from such rates or charges fixed by the city council or commission pursuant to this article shall be taken by any person, firm or corporation aggrieved thereby, nor shall any action or suit to annul such rates or charges or to enjoin their enforcement or otherwise be brought or maintained by any such person, firm or corporation in any court, if such person, firm or corporation has failed or neglected to comply with any demand made hereunder by the city council or commission or its committee, for the production and inspection by the city council or its committee of the books of account, papers, vouchers and records of such person, firm or corporation]. [1911, ch. 71, § 2.]

This section is a repetition ipsissimis verbis of Laws 1909, ch. 55, § 2.

The provision enclosed in brackets was vetoed, Laws 1911, ch. 71, p. 120, the veto message declaring it to be "clearly a violation of section 22 of the Constitution," and citing on that point, *Southern Pac. R. Co. v. R. R. Comm.*, 18 Fed. 236; *Ex Young*, 209 U. S. 715; *Regan v. F. L. & T. Co.*, 154 U. S. 1023. In the same message, however, it is said: "Under the rule of construction it is an independent provision that may be dropped if that which is left is fully operative as a law" — citing *Regan v. F. L. & T. Co.*, 154 U. S. 1023.

§ 3609. May employ legal counsel and assistance. When. The city council or commission in exercising the right and powers hereby granted, may, by resolution, employ such legal counsel and other assistance as it may deem expedient. [1911, ch. 71, § 3.]

This section is a repetition *ipsisimis verbis* of Laws 1909, ch. 55, § 3, except that the words "or commission" have been inserted.

ARTICLE 7.—POWERS AND DUTIES OF OFFICERS.

§ 3610. **Election of officers.** There shall be elected in each city organized under this chapter the following officers: A mayor, two aldermen from each ward, a city treasurer, a police magistrate and a city justice of the peace; provided, that in the cities of six hundred inhabitants or less there shall be elected four aldermen at large; provided, that at the first election held hereafter in the cities heretofore organized under this chapter in which the number of aldermen is reduced to four, there shall be elected four aldermen who shall be divided into classes as provided in section 2661. [R. C. 1905, § 2686; 1897, ch. 40, § 2; R. C. 1899, § 2154; 1905, ch. 62, § 55.]

§ 3611. **Term of office.** The elective officers of a city shall hold their respective offices for two years and until their successors are elected and qualified. [R. C. 1905, § 2687; 1887, ch. 73, art. 5, § 2; R. C. 1899, § 2155; 1905, ch. 62, § 56.]

§ 3612. **Appointive officers.** There shall be appointed by the mayor, with the approval of the city council, a city auditor, a city assessor, a city attorney and a city engineer, and such other officers as may by the city council be deemed necessary or expedient. [R. C. 1905, § 2688; 1887, ch. 73, art. 5, § 3; R. C. 1899, § 2156; 1905, ch. 62, § 57.]

§ 3613. **Additional assessors.** The mayor of any city incorporated under the provisions of this chapter and containing a population of five thousand inhabitants may appoint one or two additional city assessors; provided, that the city council shall by resolution declare their appointment necessary. [R. C. 1905, § 2689; 1889, ch. 28, § 1; R. C. 1899, § 2157; 1905, ch. 62, § 58.]

§ 3614. **Term of office.** The appointive officers of a city shall hold their respective offices for two years and until their successors are appointed and qualified. [R. C. 1905, § 2690; 1887, ch. 73, art. 5, § 4; R. C. 1899, § 2158; 1905, ch. 62, § 59.]

§ 3615. **Oath. Bond.** All officers of any city, whether elected or appointed, shall, before entering upon the duties of their respective offices, take and subscribe the following oath or affirmation:

I do solemnly swear (or affirm as the case may be) that I will support the constitution of the United States and the constitution of the state of North Dakota, and that I will faithfully discharge the duties of the office of according to the best of my ability.

Such oath or affirmation so subscribed shall be filed in the office of the city auditor; and all such officers, except the mayor and aldermen, shall before entering upon the duties of their respective offices execute a bond with sureties to be approved by the city council, payable to the city, in such penal sum as may by resolution or ordinance be directed, conditioned for the faithful performance of the duties of the office, and the payment of all moneys received by such officer according to law and the ordinances of said city; provided, that in no case shall the treasurer's bond be fixed at a less sum than the amount of the estimated tax and special assessments for the current year; which bonds shall be filed with the city auditor, except the bond of the city auditor, which shall be filed with the city treasurer. [R. C. 1905, § 2691; 1887, ch. 73, art. 5, § 5; R. C. 1895, § 2159; 1905, ch. 62, § 60.]

§ 3616. **Certificate of appointment.** Delivery of books to successor. All officers elected or appointed under this chapter, except the city auditor, aldermen and mayor, shall be commissioned by warrant under the corporate seal, signed by the auditor and mayor, or president of the city council; the mayor shall issue a certificate of appointment, under the seal of the corporation, to the auditor thereof; and any person having been an officer of the city shall within five days after notification and request, deliver to his successor in office

all property, books and effects of every description in his possession, belonging to the city or appertaining to his office; and upon his refusal to do so shall be liable for all damages caused thereby, and to such penalty as may by ordinance be prescribed. [R. C. 1905, § 2692; 1887, ch. 73, art. 5, § 6; R. C. 1899, § 2160; 1905, ch. 62, § 61.]

§ 3617. Qualifications of officers. No person shall be eligible to election to any office who is not a qualified elector of the city, and who shall not have resided there at least nine months last preceding election, and no person shall be eligible to hold any office by appointment unless he is a citizen of the United States; nor shall any person be eligible to any office who is a defaulter to the corporation. [1913, ch. 76; R. C. 1905, § 2693; 1887, ch. 73, art. 5, § 7; R. C. 1899, § 2161; 1905, ch. 62, § 62.]

Constitutionality of statute making residence within the district a qualification of a public officer. 32 L.R.A.(N.S.) 835.

§ 3618. Officer not to be interested in contracts. No officer shall be directly or indirectly interested in any contract, work or business of the city, or the sale of any article, the expense, price or consideration of which is paid from the treasury or by any assessment levied by any act or ordinance; nor in the purchase of any real estate or other property belonging to the corporation or which shall be sold for taxes or assessments, or by virtue of any process at the suit of the corporation, mayor or other person. [R. C. 1905, § 2694; 1887, ch. 73, art. 5, § 8; R. C. 1899, § 2162; 1905, ch. 62, § 63.]

Power of officer to make contract (not involving conflict of interests) with public body or municipality. 15 L.R.A. 521.

Power of municipal board or committee to employ one of its own members as counsel or to render other special services. 3 L.R.A.(N.S.) 849.

Obligation of municipality to pay for property purchased from an officer or member of board intrusted with the duty of making purchases. 9 L.R.A.(N.S.) 1014.

Liability of municipality or other public corporation on contract invalid because executed with officer of municipality. 27 L.R.A.(N.S.) 1123.

Obligation of public corporation to pay for services rendered under contract in which officer is personally interested. 34 L.R.A.(N.S.) 129.

§ 3619. Not to hold other office. No mayor, alderman, city auditor or treasurer shall hold any other office under the city government during his term of office. [R. C. 1905, § 2695; 1887, ch. 73, art. 5, § 9; R. C. 1899, § 2163; 1905, ch. 62, § 64.]

§ 3620. Compensation of mayor. The mayor shall receive such compensation as the city council may by ordinance direct; but his compensation shall not be changed during his term of office. [R. C. 1905, § 2696; 1887, ch. 73, art. 5, § 10; R. C. 1899, § 2164; 1905, ch. 62, § 65.]

§ 3621. Compensation of aldermen. The aldermen may receive such compensation for their services as shall be fixed by ordinance; provided, that such compensation shall not exceed two dollars to each alderman for each meeting of the city council actually attended by him, and no other compensation than for attendance upon such meetings, shall be allowed to any alderman for any services whatsoever; such compensation shall not be changed after it has been once established so as to take effect, as to any alderman voting for such change during his term of office. [R. C. 1905, § 2697; 1887, ch. 73, art. 5, § 11; R. C. 1899, § 2165; 1905, ch. 62, § 66.]

§ 3622. Police magistrate. Compensation of other officers not diminished during term. All other officers may receive a salary, fees or other compensation to be fixed by ordinance, and after the same has been once fixed such fees or compensation shall not be diminished to take effect during the term for which any such officer was elected or appointed; provided, that in any city incorporated under the general laws of the state and in which the police magistrate thereof is allowed and paid a salary, such police magistrate shall not be entitled to receive fees of any kind or in any amount whatever from such city, and such police magistrate shall be entitled to, and it shall be his duty to collect in all criminal actions and in all actions instituted under any

ordinances of the city, the same fees that are now allowed by law to justices of the peace, and all fees collected by him in criminal actions, and in actions instituted under any ordinance of the city, shall be by him paid over to the city treasurer at the end of each month, and he shall at the same time make and file with the city auditor a report in writing under oath, showing an account of all fees collected by him during the preceding month in such actions, and showing the actions in which the same were collected. The police magistrate shall, before entering upon the discharge of his duties, give to the city a bond in such amount as the city council may prescribe, not less than five hundred dollars, conditioned that he will faithfully discharge the duties of his office and pay over all moneys that may come into his hands belonging to the city, and such police magistrate shall not be entitled to receive, nor shall his salary be paid to him until he has fully complied with the provisions of this section. [R. C. 1905, § 2698; 1887, ch. 73, art. 5, § 12; 1893, ch. 35, § 1; R. C. 1895, § 2166; 1905, ch. 62, § 67.]

§ 3623. **May administer oaths.** The mayor and auditor of each city shall have power to administer oaths and affirmations. [R. C. 1905, § 2699; 1887, ch. 73, art. 5, § 13; R. C. 1899, § 2167; 1905, ch. 62, § 68.]

ARTICLE 8.—CITY AUDITOR.

§ 3624. **To attend meetings of council and keep records, etc.** The city auditor shall keep his office at the place of meeting of the city council or such other place convenient thereto as the council may direct. He shall keep the corporate seal and all papers and records of the city, and keep a record of the proceedings of the city council, whose meetings it shall be his duty to attend. Copies of all papers filed in his office and transcripts of all records of the city council certified by him under the corporate seal, shall be competent evidence in all courts. He shall draw and countersign all orders on the treasury in pursuance of any order or resolution of the city council, and keep a full and accurate account thereof in books provided for that purpose, and shall present to the city council for its consideration all communications, claims and other matters filed in his office for that purpose at their next meeting after the same are so filed. [R. C. 1905, § 2700; 1887, ch. 73, art. 6, § 1; R. C. 1899, § 2168; 1905, ch. 62, § 69.]

§ 3625. **Reports.** The city auditor shall report to the city council on the first days of March and September of each year, the receipts and expenses and financial condition of the city, which report shall be published within thirty days thereafter in the official paper of the city, or such other paper as the council may direct. He shall make and keep a list of outstanding city bonds, to whom issued, for what purpose, when and where payable, and the rate of interest they respectively bear, and recommend such action to the city council as will secure the punctual payment of the principal and interest of such bonds. He shall report annually on or before the first day of September to the city council, an estimate of the expenses of the city, and likewise the revenue necessary to be raised for the current year. [R. C. 1905, § 2701; 1887, ch. 73, art. 6, § 2; R. C. 1899, § 2169; 1905, ch. 62, § 70.]

§ 3626. **General duties.** He shall countersign all contracts made in behalf of the city, and certificates of work authorized by any committee of the city council, or of any city officer; and each contract made in behalf of the city or to which the city is a party shall be void unless countersigned by the auditor. The city auditor shall keep regular books of account in which he shall enter all indebtedness of the city and which shall at all times show the financial condition of the city; the amount of bonds, orders, certificates or other evidences of indebtedness issued by the city council, the amount of all bonds, orders, certificates or other evidences of indebtedness, which have been redeemed, and the amount of each outstanding. He shall countersign all bonds, orders or other evidence of indebtedness of the city, and keep accurate

account thereof stating to whom and for what purpose issued and the amount thereof. He shall keep accounts with all receiving and disbursing officers of the city showing the amount they have received from the different sources of revenue, and the amount which they have disbursed under the direction of the city council. He shall keep a list of all certificates issued for work, or any other purpose. If before the first day of June of any year the amount expended or to be expended chargeable to any city fund, adding thereto the current expenses estimated for the remainder of the fiscal year and chargeable to such fund, shall be equal to three-fourths of the tax authorized to be raised or revenue estimated for such fund, he shall report the same at once to the city council, and he shall not countersign any contract chargeable to such fund until the amount of taxes actually collected is ascertained; and during the remainder of the fiscal year he shall not countersign any contract, the expense of which shall exceed the revenue actually collected for the fund to which such expenses are properly chargeable. The auditor shall examine all reports, books, papers, vouchers and accounts of the city treasurer and from time to time perform such other duties as the city council may direct. All claims and demands against the city, before they are allowed by the city council, shall be filed with the auditor and shall be audited and adjusted by the proper committee of the city council. The auditor shall keep a record of his acts and doings, and keep a book in which he shall enter all contracts, with an index thereto, which book shall be open to the inspection of all persons interested. [R. C. 1905, § 2702; 1887, ch. 73, art. 6, § 3; R. C. 1899, § 2170; 1905, ch. 62, § 71.]

Schedule of estimate must be made and filed by city auditor before special assessments are made. *Whittaker v. Deadwood*, 23 S. D. 538, 122 N. W. 590.

ARTICLE 9.—CLAIMS FOR INJURIES.

§ 3627. **Claims for damages.** All claims against cities for damages or injuries alleged to have arisen from the defective, unsafe, dangerous or obstructed condition of any street, crosswalk, sidewalk, culvert or bridge of any city, or from the negligence of the city authorities in respect to any such street, crosswalk, sidewalk, culvert or bridge shall, within thirty days from the happening of such injury, be filed in the office of the city auditor, signed and properly verified by the claimant, describing the time, place, cause and extent of the damages or injury, and the amount of damages claimed therefor, and upon the trial of an action for the recovery of damages by reason of such injury, the claimant shall not be permitted to prove any different time, place, cause or manner or extent of the injury complained of, or any greater amount of damages. In case it appears by the affidavit of a reputable physician which shall be prima facie evidence of the fact that the person injured was, by the injury complained of, rendered mentally incapable of making such statement during the time herein provided, such statement may be made within thirty days after such complainant becomes competent to make the same, but such affidavit may be controverted on the trial of an action for such damages, and in case of the death of the person injured prior to his becoming competent to make such statement, the same may be made within thirty days after his death, by any person having knowledge of the facts, and the person making such statement shall set forth therein specifically the facts relating to such injury as aforesaid, of which he has personal knowledge, and shall positively verify such statement and shall verify the facts therein stated of which he has no personal knowledge, to the best of his knowledge, information and belief. [R. C. 1905, § 2703; 1893, ch. 31, § 2; R. C. 1899, § 2172; 1905, ch. 62, § 72.]

Sufficiency of presentment of claim for damages against city. *Pyke v. Jamestown*, 15 N. D. 157, 107 N. W. 359.

Sufficiency of notice to city of injury on street. *Johnson v. Fargo*, 15 N. D. 525, 108 N. W. 243.

The filing with the auditor of a claim for personal injuries received on a defective street within sixty days after the injury is a sufficient presentation of the claim. *City of Grand Forks v. Allman*, 83 C. C. A. 554, 153 Fed. 532.

Cause of action for damages to abutting property occasioned by construction of street grade is not such claim as is enumerated in this and the following section. *Gaustad v. Enderlin*, 23 N. D. 526, 137 N. W. 613.

Where notice filed contained all information required by this and following section it is sufficient, and filing of two separate papers was not necessary. *Wells v. Lisbon*, 21 N. D. 34, 128 N. W. 308.

Necessity of written notice as to defect as condition of liability of municipal corporation for injuries due to positive act of its officers or servants. 23 L.R.A.(N.S.) 282.

Sufficiency of description of injury in notice to municipality. 20 L.R.A.(N.S.) 804.

§ 3628. No action unless claim is filed. No action shall be maintained against any city as aforesaid for injury to person or property, unless it appears that the claim for which the action was brought was filed in the office of the city auditor as aforesaid, with an abstract of the facts out of which the cause of action arose, duly verified by the claimant, and that the city council did not, within sixty days thereafter, audit and allow the same, and such abstract of facts must be signed and verified as provided in the preceding section, and all provisions of such section with reference to such verification shall be applicable to such abstract of facts, and no action shall be maintained unless the plaintiff therein shall plead and prove the filing of such claim and abstract as hereinbefore provided. [R. C. 1905, § 2704; 1893, ch. 31, § 3; R. C. 1899, § 2173; 1905, ch. 62, § 73.]

Construed. *Coleman v. Fargo*, 8 N. D. 69, 76 N. W. 1051.

Validity of requirement of notice of injury as condition of municipal liability. 36 L.R.A.(N.S.) 1136.

Applicability of rule requiring notice of injury as condition of municipal liability for personal injury on street or highway in case of injury to municipal employee. 28 L.R.A.(N.S.) 533.

Mental incompetency as excuse for failure to give notice of injury required as a condition of municipal liability. 32 L.R.A.(N.S.) 350.

§ 3629. Limitation of actions. No action shall be maintained upon any claim mentioned in section 3627, unless the same shall be brought within six months after the filing of the claim therefor, in the office of the city auditor as hereinbefore provided. [R. C. 1905, § 2705; 1893, ch. 31, § 4; R. C. 1899, § 2174; 1905, ch. 62, § 74.]

Cause of action for damages to abutting property occasioned by construction of street grade is not such claim as is enumerated in section 3627. *Gaustad v. Enderlin*, 23 N. D. 526, 137 N. W. 613.

ARTICLE 10.—CITY ATTORNEY.

§ 3630. Duties of. The city attorney shall perform all professional services incident to his office and when required shall furnish his opinion upon any subject submitted to him by the city council or its committees. [R. C. 1905, § 2706; 1887, ch. 73, art. 7, § 1; R. C. 1899, § 2175; 1905, ch. 62, § 75.]

ARTICLE 11.—CITY TREASURER.

§ 3631. Duties of. Vacancies, how filled. Salary. The city treasurer shall receive all moneys belonging to the city, including all taxes, license money, fines and special assessments, and keep accurate and detailed accounts thereof, in the manner provided in this chapter, or as the city council may from time to time direct. He shall have a settlement with the auditor at the end of each month and turn over all warrants, interest coupons, bonds or other evidences of indebtedness of the city, which may have been redeemed by him during the month, taking the receipt of the auditor therefor, and all such warrants, orders or other evidences of indebtedness shall be cancelled by him, and have written or stamped thereon the date of their payment or redemption. When, for any cause, a vacancy occurs in the office of the city treasurer, the same shall be filled by appointment, which shall be made by the mayor, by and with the consent of the city council, and the person so appointed, by lawfully qualifying for such office, shall be entitled to hold the same until

his successor is elected and qualified. Such successor must be elected at the next succeeding regular city election. The salary of the city treasurer shall be fixed by the mayor and city council within their respective cities. [R. C. 1905, § 2707; 1897, ch. 102; R. C. 1899, § 2176; 1903, ch. 53; 1905, ch. 62, § 76.]

§ 3632. Funds. How disbursed. Under no circumstances shall any money be paid out or disbursed by the city treasurer, except upon the warrant of the mayor, countersigned by the city auditor; but this provision shall not prevent the payment of city bonds and interest coupons or either when due, and presented for payment, and the city treasurer shall pay said last mentioned obligations on presentation at maturity, and in case they are payable without the city issuing them, then in that event the money for their payment shall be by the city treasurer remitted to such place of payment in time to reach that point on or before the date of maturity of said obligations. [R. C. 1905, § 2708; 1887, ch. 73, art. 8, § 2; R. C. 1899, § 2177; 1905, ch. 62, § 77.]

§ 3633. Warrants, how paid. All warrants shall be paid in the order in which they are presented, from the fund upon which they are drawn, and the treasurer shall note on the back of each warrant presented to him the date of such presentation and, when payment is made, the date of such payment, and in case any warrant is not paid for want of funds, the city treasurer shall so state on such warrant and the same shall thereupon bear interest until paid. [R. C. 1905, § 2709; 1887, ch. 73, art. 8, § 3; R. C. 1899, § 2178; 1905, ch. 62, § 78.]

City cannot pay out money from general fund for current expenses while outstanding general fund warrants are unpaid. *Blackman v. City of Hotsprings*, 14 S. D. 497, 85 N. W. 996.

Warrants paid in order issued, although issued for indebtedness of prior year. *State v. Campbell*, 7 S. D. 568, 64 N. W. 1125.

As to duty of city treasurer to register and pay warrants. *Red River Valley Nat. Bank v. Fargo*, 14 N. D. 88, 103 N. W. 390.

Paying out of taxes collected after issuance of warrant will not prevent recovery. *Shannon v. City of Huron*, 9 S. D. 356, 69 N. W. 598.

Treasurer who fails to pay a warrant in the order of its registration is civilly liable upon his official bond. *State v. Campbell*, 7 S. D. 568, 64 N. W. 1125.

§ 3634. City treasurer to keep separate account of each particular city fund. The city treasurer shall keep a separate and accurate account of each city fund, which shall show the debits and credits of said fund in chronological order. [R. C. 1905, § 2710; 1887, ch. 73, art. 8, § 4; R. C. 1899, § 2179; 1905, ch. 62, § 79.]

Failure of treasurer to register warrant does not defeat right of holder presenting it in good faith. *Freeman v. City of Huron*, 10 S. D. 368, 73 N. W. 260.

Payment out of any fund remaining after payment of current expenses does not violate Constitution. *Howard v. City of Huron*, 6 S. D. 180, 60 N. W. 803.

§ 3635. Treasurer to give duplicate receipts. The city treasurer shall give to each person paying money in to the city treasury a duplicate receipt therefor, specifying the date and amount of payment, and upon what account paid, and he shall at least once a month file with the city auditor his duplicate of such receipt. [R. C. 1905, § 2711; 1887, ch. 73, art. 8, § 5; R. C. 1899, § 2180; 1905, ch. 62, § 80.]

§ 3636. Treasurer prohibited from using city moneys. Penalty. Office declared vacant. The city treasurer shall keep the city's moneys paid to or received by him, separate from his or other's moneys; and under no circumstances shall it be lawful for him to directly or indirectly use the corporation's money or warrants, or other obligations, in his custody and keeping, for his own use and benefit or that of any other person or persons whomsoever. Upon conviction of a violation of this provision the same shall work a forfeiture of his office and said office shall become vacant. [R. C. 1905, § 2712; 1887, ch. 73, art. 8, § 6; R. C. 1899, § 2181; 1905, ch. 62, § 81.]

§ 3637. Treasurer's report. Warrant register. He shall report to the city council at such time as may be prescribed by ordinance, giving a full and detailed account of all receipts and expenditures during and since his last

report, and the state of the treasury. He shall also keep a register of all warrants redeemed and paid during the year, describing such warrants, their date, amount, number, the fund from which paid and person to whom paid, specifying also the time of payment; and all such warrants shall be examined by the finance committee of the council at the time of making such report. [R. C. 1905, § 2713; 1887, ch. 73, art. 8, § 7; R. C. 1899, § 2182; 1905, ch. 62, § 82.]

§ 3638. Moneys received from special assessments. All moneys received on any special assessment shall be held by the treasurer as a special fund to be applied to the payment of the improvements for which the assessment was made; and said money shall be used for no other purpose whatever. [R. C. 1905, § 2714; 1887, ch. 73, art. 8, § 8; R. C. 1899, § 2183; 1905, ch. 62, § 83.]

City may reimburse itself out of special improvement fund, after advancing money for special improvement. *Pine Tree Lumber Co. v. Fargo*, 12 N. D. 360, 96 N. W. 357.

As to money derived from special assessment being used only for payment of obligation for which it was raised. *Red River Valley Nat. Bank v. Fargo*, 14 N. D. 88, 103 N. W. 390.

§ 3639. Additional bond of city treasurer. The city council of any city incorporated under this chapter may require the city treasurer to give additional sureties whenever in the opinion of the city council the existing security shall have become insufficient; and such city council is authorized and empowered to require from the city treasurer an additional bond as required by law, with good and sufficient sureties in such sums as it may direct, whenever in their opinion more money shall have passed or is about to pass into the hands of such treasurer than is or would be recovered by the penalty in the previous bond. [R. C. 1905, § 2715; 1901, ch. 42, § 1.]

This is R. C. 1905, § 2715. As to the words "this chapter" at the beginning of this section, it is to be observed that §§ 3564a-3564e had not been enacted when § 2715 was originally enacted in Laws 1901, ch. 42, § 1, nor were they part of the chapter when the latter was printed in R. C. 1905.

§ 3640. Failure to give additional bond. Effect. If any city treasurer shall fail or refuse to give such additional bond or sureties for twenty days from and after the day on which such city council shall require him so to do, his office shall become vacant and the city council shall appoint another treasurer to fill such vacancy, who shall hold his office until his successor has been elected and qualified. [R. C. 1905, § 2716; 1901, ch. 42, § 2.]

ARTICLE 12.—CITY ASSESSOR AND BOARD OF EQUALIZATION.

§ 3641. Term of office of city assessor. Duties. Compensation. The city assessor shall perform all duties necessary for the assessing of property within the city limits for the purpose of levying city, county, school and state taxes. Upon the completion of the assessment roll he shall return it to the city auditor within the time in this chapter provided and said auditor shall deliver the same to the city board of equalization at its regular meeting first thereafter held. [R. C. 1905, § 2717; 1887, ch. 73, art. 9, § 1; R. C. 1899, § 2184; 1905, ch. 62, § 84.]

§ 3642. Assessor's appointment. Assessment roll. The assessor shall be appointed at the first meeting of the city council in September in each odd numbered year, and shall be governed by the same laws and regulations as county and township assessors, except that he may list any real estate or personal property for assessment on or after the first day of January in the year in which the same is subject to assessment, and for that purpose the county auditor shall furnish him with assessment books prior to said first day of January; and he shall on the first day of April in each year commence the assessment of property assessable for such year, and shall return his assessment roll to the city auditor on or before the first day of June in each year. Such assessment roll shall be open to the inspection of all persons interested until the meeting of the city board of equalization. [R. C. 1905, § 2718; 1887, ch. 73, art. 9, § 2; 1893, ch. 33, § 1; R. C. 1899, § 2185; 1905, ch. 62, § 85.]

As to necessity of city assessor's affidavit to assessment roll. *Douglas v. Fargo*, 13 N. D. 467, 101 N. W. 919.

§ 3643. Board of equalization. Meeting. Compensation. The board of equalization shall be composed of the mayor and city council, and the auditor who shall act as clerk to the same, and shall meet on the second Tuesday of June in each year. In the absence of the mayor the council shall elect one of its own number to preside. The city auditor shall keep an accurate record of all changes made in the valuation and of all other proceedings. It may adjourn from day to day until its work is completed and a majority of the whole board shall constitute a quorum to transact business. If no quorum is present the clerk may adjourn from day to day and publicly announce the time to which the meeting is adjourned; the compensation of the board shall be three dollars per day while in actual session. [R. C. 1905, § 2719; 1887, ch. 73, art. 9, § 3; R. C. 1899, § 2186; 1905, ch. 62, § 86.]

§ 3644. Duties of the board. The board of equalization shall meet at the usual place of meeting of the city council, and shall proceed to equalize and correct such assessment roll. It may change the valuation and assessment of any real or personal property upon the roll by increasing or diminishing the assessed valuation thereof as shall be reasonable and just to render taxation uniform; provided, that the valuation of any personal property as returned by the assessor shall not be increased more than twenty-five per cent without first giving the owner or his agent notice of the intention of the board so to increase it. Such notice shall be by personal notice served upon the owner or his agent, or by leaving a copy at his place of business or last place of residence, and shall state the time when the board will be in session to act upon the matter. [R. C. 1905, § 2720; 1887, ch. 73, art. 9, § 4; R. C. 1899, § 2187; 1905, ch. 62, § 87.]

Right of appeal not extended to parties other than those specified. *Grigsby v. Minnehaha County*, 6 S. D. 492, 62 N. W. 105.

Owner not compelled to pay taxes on greater valuation than was fixed by board of equalization. *Dakota Loan & Trust Co. v. Codington Co.*, 9 S. D. 159, 68 N. W. 314.

§ 3645. Other duties. Tax not to be abated or reduced. The board of equalization must place upon and add to the assessment roll any property, real or personal, subject to taxation, which has been omitted therefrom by the owner or by the assessor, and enter the same at a valuation so that it will bear an equal and just proportion of taxation. During the session of said board any person or his attorney or agent, feeling aggrieved by anything in the assessment roll, may apply to the board for the correction of any alleged errors in the listing or valuation of his property, whether real or personal, and the board may correct the same as it may deem just; or, if the board has reason to believe that any person has failed to return to the assessor all personal property required by law to be returned, or if any person refuses to swear to the returns so made, the board shall notify the person who has so failed to make return or refused to swear to the return in the same manner as prescribed in the last section, and may examine each person under oath in regard to his property; or if he refuses to appear, it may fix such valuation at a sum which it may deem just. After the adjournment of said board of equalization in each year, neither it nor the city council shall change or alter, or recommend the changing or alteration of any assessment or assessments to the county commissioners, or otherwise; and neither said city council nor said board of equalization shall reduce or rebate or authorize the reduction or abatement, or rebatement of any taxes levied upon such assessments for any cause, excepting that the property assessed was not subject to taxation at the time such assessment was levied. [R. C. 1905, § 2721; 1887, ch. 73, art. 9, § 5; R. C. 1899, § 2188; 1905, ch. 62, § 88.]

County commissioners, sitting as board of county commissioners, have no power to reduce individual assessments, or abate individual taxes, except in certain instances. *Minot v. Amundson*, 22 N. D. 236, 133 N. W. 551.

§ 3646. Duty of city auditor. Within ten days after the completion of the equalization of the assessment as herein provided, the city auditor shall deliver

the same to the county auditor of the county in which such city is situated, with his certificate that the same is correct as equalized by said board of equalization, and the same shall be accepted by the board of county commissioners of such county in lieu of all other assessment rolls for said property in said city, and the board of equalization of such county may increase or diminish the valuation therein placed on any class of property so as to make such valuation uniform with the valuation of the same class of property throughout such county, but no individual assessment shall be otherwise changed, and a failure of any county or city board of equalization to hold its meetings, shall not vitiate or invalidate any assessment or tax except as to the excess of valuation, or tax thereon, shown to have been unjustly made or levied. [R. C. 1905, § 2722; 1887, ch. 73, art. 9, § 6; 1893, ch. 33, § 2; R. C. 1899, § 2189; 1905, ch. 62, § 89.]

Individual assessments as returned by city board of equalization cannot be changed by county board. *First Nat. Bank v. Lewis*, 18 N. D. 390, 121 N. W. 836.

ARTICLE 13.—POLICE MAGISTRATE AND CITY JUSTICE OF THE PEACE.

§ 3647. Jurisdiction of police magistrate. The police magistrate shall have exclusive jurisdiction of, and it shall be his duty to hear, try and determine all offenses against the ordinances of the city; and he shall have concurrent jurisdiction with the justices of the peace of the county in all other actions, civil and criminal. All fines, penalties and forfeitures for the violation of any city ordinance shall, when collected, be paid by the officer receiving the same to the city treasurer of such city. [R. C. 1905, § 2723; 1887, ch. 73, art. 10, § 1; 1899, ch. 33, § 5; R. C. 1899, § 2193; 1905, ch. 62, § 90.]

Decision of city justice within his jurisdiction, final, unless provision made for appeal. *City of Huron v. Carter*, 5 S. D. 4, 57 N. W. 947.

One charged with violation of city ordinance is entitled to change of venue on account of prejudice of police justice. *Sioux Falls v. Neeb*, 20 S. D. 244, 105 N. W. 735.

§ 3648. When magistrate shall issue warrants. Whenever complaint shall be made to the police magistrate upon oath or affirmation of any person competent to testify against the accused, that an offense has been committed of which the police magistrate has jurisdiction, such magistrate shall forthwith issue a warrant for the arrest of the offender, which warrant shall be served by the chief of police or the sheriff or any constable of the county, or some person specially appointed by said magistrate for such purpose. [R. C. 1905, § 2724; 1887, ch. 73, art. 10, § 2; R. C. 1899, § 2194; 1905, ch. 62, § 91.]

§ 3649. Magistrate, when to hear complaint. When any person shall be brought before such magistrate upon a warrant, it shall be his duty to hear and determine the complaint alleged against the defendant. [R. C. 1905, § 2725; 1887, ch. 73, art. 10, § 3; R. C. 1899, § 2195; 1905, ch. 62, § 92.]

§ 3650. Postponement of trials. Upon good cause shown such magistrate may postpone the trial of the case to a day certain in which case he shall require the defendant to enter into an undertaking with sufficient surety conditioned that he will appear before such magistrate at the time and place appointed, and then and there answer the complaint alleged against him. [R. C. 1905, § 2726; 1887, ch. 73, art. 10, § 4; R. C. 1899, § 2196; 1905, ch. 62, § 93.]

§ 3651. To summon witnesses. It shall be the duty of such magistrate to subpoena all persons whose testimony may be deemed material as witnesses on the trial, and enforce their attendance by attachment, if necessary, and when a trial shall be continued by said magistrate he may verbally notify such witnesses as may be present to attend before him at the time to which the action is continued to testify therein and such verbal notice shall be as valid as a subpoena. [R. C. 1905, § 2727; 1887, ch. 73, art. 10, § 5; R. C. 1899, § 2197; 1905, ch. 62, § 94.]

§ 3652. Trials, how governed. All trials before said magistrate for misdemeanors arising under the laws of the state shall be governed by the criminal procedure applicable to justices' courts in like cases. [R. C. 1905, § 2728; 1887, ch. 73, art. 10, § 6; R. C. 1899, § 2198; 1905, ch. 62, § 95.]

§ 3653. Concerning judgment of conviction. In all trials for offenses under the ordinances of the city, if the defendant is found guilty the magistrate shall render judgment accordingly. It shall be a part of the judgment that the defendant stand committed until such judgment is complied with, in no case to exceed one day for every one dollar and twenty-five cents of fine and costs assessed against said defendant. [R. C. 1905, § 2729; 1887, ch. 73, art. 10, § 7; R. C. 1899, § 2199; 1905, ch. 62, § 96.]

§ 3654. Court open every day except Sunday. Said magistrate shall be a conservator of peace and his court shall be open every day except Sunday to hear and determine any and all cases cognizable before him; and shall have power to bring persons forthwith before him for trial, and no act shall be performed by him on Sunday, except to receive complaints, issue process and take bail and receive verdicts. [R. C. 1905, § 2730; 1887, ch. 73, art. 10, § 8; R. C. 1899, § 2200; 1905, ch. 62, § 97.]

§ 3655. Appeals. In all actions before such magistrate arising under the ordinances of the city, an appeal may be made by the defendant to the district court of the county; but no appeal shall be allowed unless such defendant shall within ten days in case of fine, and within twenty-four hours in case of imprisonment, enter into an undertaking with sufficient surety to be approved by the magistrate, conditioned in case of fine for the payment of said fine and costs and costs of appeal, and in case of judgment for imprisonment, that he will render himself in execution thereof if it should be determined against the appellant. [R. C. 1905, § 2731; 1887, ch. 73, art. 10, § 9; R. C. 1899, § 2201; 1905, ch. 62, § 98.]

Recognizance which does not provide for payment of fine and costs, and costs of appeal, is ineffectual. *Centerville v. Olson*, 16 S. D. 526, 94 N. W. 414.

One convicted by jury of violating ordinance against keeping house of ill fame, may appeal. *Mannie v. Hatfield*, 22 S. D. 475, 118 N. W. 817.

Oral notice of appeal from judgment of police justice in proceedings for violation of ordinance is sufficient. *Centerville v. Olson*, 16 S. D. 526, 94 N. W. 414.

§ 3656. Not to remit fines. Any person convicted before such magistrate of an offense against the ordinances of the city shall be punished by a fine and imprisonment as may be regulated by ordinance, and under no circumstances shall such magistrate remit fines or penalties or payment of costs or otherwise. [R. C. 1905, § 2732; 1887, ch. 73, art. 10, § 10; R. C. 1899, § 2202; 1905, ch. 62, § 99.]

§ 3657. City justice of the peace. Jurisdiction. The city justice of the peace shall have the same jurisdiction as justices of the peace within said county in all civil and criminal actions, and within the jurisdiction hereby conferred the power of said justice as a committing magistrate, and in trial of actions shall be the same as is now or may hereafter be provided by law for justices of the peace, and the process and proceedings of said court shall be governed by the laws regulating proceedings in justices' court; and in all cases tried in said court, an appeal may be taken to the district court in the same manner and upon the same conditions as provided by law in cases of appeal from justices of the peace, and on such appeal the district court shall have the same powers as in such cases. [R. C. 1905, § 2733; 1889, ch. 33, § 6; R. C. 1899, § 2203; 1905, ch. 62, § 100.]

One charged with violation of city ordinance is entitled to change of venue on account of prejudice of police justice. *Sioux Falls v. Neeb*, 20 S. D. 244, 105 N. W. 735.

§ 3658. Vacancy. In case of a vacancy in the office of police magistrate or city justice of the peace by death, resignation or otherwise, the same shall be filled by an appointment by the mayor, to be confirmed by the council, and such appointees shall qualify as in other cases and hold their offices until the next annual city election and until their successors are elected and qualified,

and in case of the temporary absence, interest or disability of such magistrate it shall be the duty of the city justice of the peace to act as police magistrate during such vacancy, absence or disability in the trial of causes cognizable before said police magistrate. [R. C. 1905, § 2734; 1889, ch. 33, § 7; R. C. 1899, § 2204; 1905, ch. 62, § 101.]

§ 3659. Duty of magistrate when prosecution malicious. If upon any trial under the provisions of this article it shall appear to the satisfaction of the police magistrate or the jury in cases arising under the laws of the state, that the prosecution was commenced without probable cause, or from malicious motives, the jury or magistrate trying the action shall state the name of the complaining witness in the findings, and shall impose the costs of the prosecution upon him, and judgment shall be rendered against such complaining witness that he pay such costs, and stand committed until the same are paid. [R. C. 1905, § 2735; 1887, ch. 73, art. 10, § 12; 1889, ch. 33, § 5; R. C. 1899, § 2205; 1905, ch. 62, § 102.]

§ 3660. Power of magistrate. Jury. The police magistrate shall have power to enforce due obedience to all orders and judgments made by him, and he may fine or imprison for contempt offered to him while holding his court, or to process issued or orders made by him, in the same manner and to the same extent as provided in justices' courts. Appeals may be taken to the district court from all decisions of said court in the same manner as is provided for taking appeals from justices' courts, and the district court shall, on such appeals, take judicial notice of all the ordinances of said city. Actions before the police magistrate arising under the city ordinances shall be tried and determined by the magistrate without the intervention of a jury except in cases where, under the provisions of the ordinances of the city, imprisonment for a longer period than ten days is made a part of the penalty, or the maximum fine shall be over twenty dollars, and the defendant shall demand a trial by jury before the commencement of said trial; and when a demand shall be so made it shall be the duty of said magistrate to write down the names of eighteen persons, residents of the city and having the qualifications of jurors in the district court, and the defendant and the attorney for the city shall each strike off three names, or in case the defendant shall neglect or refuse to do so then the police magistrate, with the attorney for the city, shall strike off such names, and the magistrate shall at once issue his venire to the chief of police, commanding him to summon the twelve persons whose names remain upon the list as jurors. And in all trials by jury in said court challenges shall be allowed in the same manner and for the same causes as in the district court in cases of misdemeanor; and in case the number shall be reduced below twelve by such challenges, or any portion of said number should fail to attend, then the chief of police shall summon a sufficient number of talesmen having the qualifications of jurors to complete the panel, which shall, in all cases, consist of twelve jurors. If either party objects to the competency of a juror the question thereon must be tried in a summary manner by the magistrate, who may examine the juror or other witnesses under oath. Each person summoned as a juror in any case shall be entitled to a fee of fifty cents, and in case of conviction such fees shall be taxed against the defendant as a part of the costs of the case. [R. C. 1905, § 2736; 1887, ch. 73, art. 10, § 13; 1889, ch. 33, § 5; R. C. 1899, § 2206; 1905, ch. 62, § 103.]

One charged with violation of city ordinance is entitled to change of venue on account of prejudice of police justice. *Sioux Falls v. Neeb*, 20 S. D. 244, 105 N. W. 735.

§ 3661. Proceedings, how governed. In all cases not herein specially provided for, the process and proceeding of said court shall be governed by the laws regulating proceedings in justices' courts in criminal cases. [R. C. 1905, § 2737; 1887, ch. 73, art. 10, § 14; R. C. 1899, § 2207; 1905, ch. 62, § 104.]

Oral notice of appeal from judgment of police justice in proceedings for violation of ordinance is sufficient. *Centerville v. Olson*, 16 S. D. 526, 94 N. W. 414.

§ 3662. Office hours of magistrate. Said magistrate shall be in attendance at his office for the transaction of business at such reasonable hours as the city council may prescribe, and complaints may be made to, and writs and process issued by him, at all times in court or otherwise. [R. C. 1905, § 2738; 1887, ch. 73, art. 10, § 15; R. C. 1899, § 2208; 1905, ch. 62, § 105.]

ARTICLE 14.—CITY ENGINEER.

§ 3663. Qualifications. The city engineer shall be a practical surveyor and engineer. He shall keep his office in some convenient place in such city, and the council shall by ordinance prescribe his duties, and fix his compensation for services performed for the city. All surveys, profiles, plans or estimates made by him for the city shall be the property of the city, and shall be carefully preserved in the office of the engineer, open to inspection of all persons interested, and the same, together with all books and papers appertaining to said office, shall be delivered over by the engineer at the expiration of his term of office, to his successor, or to the city council. [R. C. 1905, § 2739; 1887, ch. 73, art. 11, § 1; R. C. 1899, § 2248; 1905, ch. 62, § 106.]

ARTICLE 15.—POLICE OFFICERS.

§ 3664. Powers of police officers. The chief of police shall perform such duties as shall be prescribed by the city council for the preservation of the peace. All police officers and watchmen of a city shall, within the city limits and for a distance of one and one-half miles in all directions within the state next outside the city limits, perform the duties and exercise the power of peace officers as defined and prescribed by the laws of the state; and shall also have power, and it shall be their duty to serve and execute any warrants, writs, process, order or notice issued to them by a police magistrate or city justices or justice of the peace within said city in any civil or criminal action or proceeding for or on account of a violation of any city ordinances, or in any action or proceeding in which the city is a party or beneficially considered; and in addition thereto shall perform such duties as shall be prescribed by the ordinances of the city, and shall also have power within said limits to serve and execute all writs and process whatsoever issued by said justices in civil actions. [1907, ch. 46, § 1; R. C. 1905, § 2740; 1887, ch. 73, art. 12, § 1; R. C. 1899, § 2249; 1905, ch. 62, § 107.]

Policemen as public officers. 36 L.R.A.(N.S.) 881.

Liability of policeman for injury after making arrest. 1 L.R.A.(N.S.) 1024; 3 L.R.A.(N.S.) 508.

Liability of chief of police for detaining person improperly arrested. 42 L.R.A.(N.S.) 74.

§ 3665. Warrants. All warrants issued by the police magistrate or city justice for the violation of any general law of this state shall run to the sheriff or any constable of the county or to the chief of police or any policeman of the city; but no chief of police or policeman, when he goes outside of the city to make an arrest, shall receive any fees therefor unless the commissioners of the county are satisfied that a delay in obtaining the sheriff or his deputy, or a constable to make the arrest might endanger an escape. [R. C. 1905, § 2741; 1887, ch. 73, art. 12, § 2; R. C. 1899, § 2250; 1905, ch. 62, § 108.]

ARTICLE 16.—ELECTIONS.

§ 3666. Time and place of election. There shall be an annual election for elective officers herein provided, held on the first Monday in April of each year, at such place or places in each ward as the council shall designate; except in cities where aldermen are elected at large, the council shall designate one polling place only. The polls shall be kept open continually from eight o'clock in the forenoon until five o'clock in the afternoon, and no longer, and ten days' previous notice shall be given by the council of the time and

place of holding such election, by publication in at least two of the city papers published in said city, if two shall be published therein. [R. C. 1905, § 2742; 1897, ch. 40, § 4; R. C. 1899, § 2251; 1905, ch. 62, § 109.]

As to the time for all city elections in presidential years, see the concluding sentence in section 915.

§ 3667. Election districts and precincts. Each city in which aldermen are elected at large shall constitute an election district, and in all other cities each ward shall constitute an election district; but whenever the number of legal voters in any ward shall exceed three hundred, the council may by ordinance divide such ward into two or more precincts for voting purposes, and whenever the number of legal voters in any two or more contiguous wards shall not exceed one hundred as determined by the last annual election, the council may, by ordinance, consolidate such two or more wards into one precinct for voting purposes; or if the council so elects, in any city of less than four hundred voters as determined by the last annual election, the council may by ordinance consolidate all the wards of such city into one precinct for voting purposes; provided, however, that in city elections separate ballot boxes and poll books shall be provided and kept for each ward; provided, that such ordinance shall be passed and take effect before the time of giving notice of an election; and such wards and precincts shall constitute election districts for all state, county, city and school elections. [1911, ch. 65; R. C. 1905, § 2743; 1897, ch. 40, § 5; R. C. 1899, § 2252; 1905, ch. 62, § 110.]

As to voting precincts within the city of Bismarck being measured by ward lines. State ex rel. Byrne v. Wilcox, 11 N. D. 329, 91 N. W. 955.

§ 3668. Qualified voters. Registration. Every legal voter of the county in which such city is situated, who shall have been a resident of the city ninety days next preceding a city election is declared a citizen of said city, and shall be entitled to vote at all city elections; provided, that the city council shall provide for the registration of all voters as required by the laws of the state in all cities of more than four hundred voters as determined by the last annual election, and in cities of four hundred voters or less, the city council may provide for the registration of all voters in accordance with the laws of the state at one polling place, and separate registration lists shall be provided and kept for each ward, and no person shall be entitled to vote in any other place than the ward or precinct where he resides, except where otherwise provided by law. [1911, ch. 66; R. C. 1905, § 2744; 1887, ch. 73, art. 13, § 3; Const., § 121; R. C. 1899, § 2253; 1905, ch. 62, § 111.]

§ 3669. Effect of election. This chapter shall in no case affect the term of office of any officer heretofore elected or appointed in any city, but all such officers shall hold their offices during the term for which they were originally elected or appointed. [R. C. 1905, § 2745; 1887, ch. 73, art. 13, § 4; R. C. 1899, § 2254; 1905, ch. 62, § 112.]

§ 3670. Oath and duties of judges and clerks of election. The manner of conducting and voting at elections to be held under this chapter, and contesting the same, the keeping of poll lists, and canvassing the votes, shall be the same, as nearly as may be, as in the case of the election of county officers under the general laws of this state. The judges of election shall appoint clerks when necessary to fill vacancies, and the judges and clerks shall take the same oath and have the same powers and authority as the judges and clerks of general state elections. After the closing of the polls the ballots shall be counted, and the returns made out, and returned under seal to the city auditor, within two days after the election, and thereupon the city council shall examine and canvass the same, and declare the result of the election and cause a statement thereof to be entered on its journal. [R. C. 1905, § 2746; 1887, ch. 73, art. 13, § 5; R. C. 1899, § 2255; 1905, ch. 62, § 113.]

Municipal elections shall be conducted in same manner as general election. Treat v. Morris, 25 S. D. 615, 127 N. W. 554.

§ 3671. What elects. Tie, how decided. The person having the highest number of votes for any office shall be declared elected. In case of a tie in the election of any city officer, it shall be determined by lot, in the presence of the city council, in such manner as it shall direct, which candidate or candidates shall hold office. [R. C. 1905, § 2747; 1887, ch. 73, art. 13, § 7; R. C. 1899, § 2256; 1905, ch. 62, § 114.]

§ 3672. City auditor to notify officers elected or appointed. It shall be the duty of the city auditor, within five days after the result of the election is declared or appointment made, to notify all persons elected or appointed to office of their election or appointment, and unless such persons shall respectively qualify within ten days after such notice, the office shall become vacant. [R. C. 1905, § 2748; 1887, ch. 73, art. 13, § 8; R. C. 1899, § 2257; 1905, ch. 62, § 115.]

As to time for qualification of officers elected in presidential years, see the concluding sentence in section 915.

§ 3673. New election on failure to qualify. If there is a failure to elect an officer herein required to be elected, or the person elected should fail to qualify, or for any other cause that may arise, the city council may forthwith order a new election therefor, and in all cases, when necessary for the purposes of this chapter, may call special elections, canvass the returns thereof, and provide by ordinance for the mode of conducting the same; and shall give notice of such special elections, in which shall be stated the questions to be voted upon, and cause such notices to be published for the same length of time, and in the same manner as is required in the case of regular annual elections in such city, unless herein otherwise provided. [R. C. 1905, § 2749; 1887, ch. 73, art. 13, § 9; R. C. 1899, § 2258; 1905, ch. 62, § 116.]

§ 3674. When term of office commences. The term of each officer elected under this chapter shall commence on the third Tuesday of April of the year for which he was elected. [R. C. 1905, § 2750; 1887, ch. 73, art. 13, § 10; R. C. 1899, § 2259; 1905, ch. 62, § 117.]

§ 3675. When office deemed vacant. Any officer removing from the city or ward for which he is elected, or any officer who shall refuse or neglect for ten days after notice of his election or appointment to enter upon the discharge of the duties of his office, shall be deemed to have vacated his office and the city council shall proceed to fill the vacancy as herein prescribed. [R. C. 1905, § 2751; 1887, ch. 73, art. 13, § 11; R. C. 1899, § 2260; 1905, ch. 62, § 118.]

ARTICLE 17.—FINANCE.

§ 3676. Fiscal year. The fiscal year of each city organized under the general laws of this state shall commence on the first day of September of each year. [R. C. 1905, § 2752; 1887, ch. 73, art. 14, § 1; R. C. 1899, § 2261; 1905, ch. 62, § 119.]

§ 3677. Appropriation for general expenses, how made. The city council shall, at its regular meeting in September or within ten days thereafter pass an ordinance to be termed the annual appropriation bill, in which it may appropriate such sums of money as may be deemed necessary to defray all necessary expenses and liabilities of such corporation, during the ensuing fiscal year, and such ordinance shall specify the purpose for which such appropriations are made, and the amount appropriated for each purpose, and the city council may, in addition to such specific appropriations, appropriate a sum not exceeding five per cent of the total amount so specifically appropriated for general purposes in such appropriation bill, for contingent expenses not otherwise provided for. No further appropriations shall be made for any of the expenses or liabilities of such fiscal year, unless the provision to make such appropriation has been first sanctioned by a majority of the legal voters of such city, either by a petition signed by them or by special election called for that purpose. Any balance of any appropriation

for general purposes, remaining unexpended at the close of the fiscal year, shall be deemed a part of the general fund of the city, and shall be reappropriated to such general purposes as the city council may deem best. [R. C. 1905, § 2753; 1887, ch. 73, art. 14, § 2; R. C. 1899, § 2262; 1905, ch. 62, § 120.]

Contract requiring expenditure of money without an appropriation therefor is ultra vires and void. *Roberts v. City of Fargo et al.*, 10 N. D. 230, 86 N. W. 726.

Failure to pass appropriating ordinance does not affect validity of tax levied thereafter. *Henderson v. Hughes County*, 13 S. D. 576, 83 N. W. 682.

An appropriation bill should be passed before the levy of a tax. *Engstad v. Dinnie*, 8 N. D. 1, 76 N. W. 292.

Inapplicable to expense of street improvement. *Pine Tree Lumber Co. v. Fargo*, 12 N. D. 360, 96 N. W. 357.

As to appropriation for land taken for public street. *Fargo v. Keeney*, 11 N. D. 484, 92 N. W. 836.

§ 3678. Special appropriation for improvements, how made. Neither the city council, nor any department or officer of the corporation, shall add to the corporation expenditures in any one year, anything over and above the amount provided for in the annual appropriation bill of that year, except as herein otherwise specially provided; and no expenditure for an improvement to be paid for out of the general fund of the corporation shall exceed in any one year the amount provided for such improvement in the annual appropriation bill; provided, that nothing herein contained shall prevent the city council from ordering by a two-thirds vote, any improvement, the necessity of which is caused by any casualty or accident happening after such annual appropriation is made, and the expense of such improvement may be paid wholly or in part from the appropriation for contingent expenses, or whenever the city shall not have reached its constitutional debt limit, the city council may order the mayor and finance committee to borrow a sufficient amount to provide for the expense necessary to be incurred in making any improvement, the necessity of which has arisen, as is last above mentioned, for a space of time not exceeding the close of the fiscal year, which sum and interest shall be added to the amount authorized to be raised in the next general tax levy, and embraced therein. [R. C. 1905, § 2754; 1887, ch. 73, art. 14, § 3; R. C. 1899, § 2263; 1905, ch. 62, § 121.]

As to power of city to make improvements and reimburse itself through special assessments. *Pine Tree Lumber Co. v. Fargo*, 12 N. D. 360, 96 N. W. 357.

As to appropriation for land taken for public street. *Fargo v. Keeney*, 11 N. D. 484, 92 N. W. 836.

§ 3679. Contracts prior to appropriation forbidden. No contract shall be made by the city council and no expense shall be incurred by any officer or department of the corporation, whether the object of the expenditure shall have been ordered by the city council or not, unless an appropriation shall have been previously made concerning such expense, except as herein otherwise provided; provided, however, that the city council is authorized to enter into contracts with persons, associations or corporations for the furnishing of water for fire protection to the city, and in case such contract shall extend over a term of years, then and in that case it shall not be necessary that an appropriation shall have been previously made concerning such expense, except sufficient to cover the amounts payable under such contract for the first year thereof; provided, further, that such contract shall not be made for a longer period than twenty years. [R. C. 1905, § 2755; 1887, ch. 73, art. 4, § 3; R. C. 1899, § 2264; 1905, ch. 62, § 122.]

Provisions mandatory and prohibitive. No contract nor expense can be incurred unless an appropriation made to cover. *Roberts v. City of Fargo*, 10 N. D. 230, 86 N. W. 726.

Ordinance need not be passed before entering into a contract unless required by charter. *Nat. Tube Works v. Chamberlain*, 5 D. 54, 37 N. W. 761.

City cannot incur indebtedness to secure its selection as state capital. *Shannon v. City of Huron*, 9 S. D. 356, 69 N. W. 598.

City empowered to render itself generally liable upon paving contract. *Pine Tree Lumber Co. v. Fargo*, 12 N. D. 360, 96 N. W. 357.

§ 3680. Tax levy, how and when made. The city council shall, at its first regular meeting in September, or within ten days thereafter, levy a tax

for general purposes sufficient to meet the expenses of the fiscal year, and not exceeding twenty mills on the dollar of the assessed valuation of property in the city, based upon, and itemized as in the annual appropriation bill for the year, and in addition thereto, shall levy a tax for interest and sinking fund as required by this chapter, and also a sufficient tax for the payment of any final judgment that may have been recovered against the city, and such levy shall be forthwith, and not later than September twentieth, certified by the city auditor, with any levy made by the board of education of such city for school purposes, to the auditor of the county in which such city is situated. Such levy shall be made in specific amounts, and the county auditor of such county shall extend the same upon the tax lists of the county for the current year, in the same manner and with the same effect as other taxes are extended, except that the city taxes may be included in one amount, and the school taxes in one amount, for each person or lot, or parcel of land. The levy herein provided for may be made at the same meeting at which the annual appropriation bill is finally passed, and the provisions of law fixing the time at or within which any act or proceeding in the assessment or levy of any taxes shall be done or taken, shall be deemed and held to be directory and not mandatory. [R. C. 1905, § 2756; 1905, ch. 62, § 123.]

Valid tax levy must be made by ordinance. *Engstad v. Dinnie*, 8 N. D. 1, 76 N. W. 292.

Town lots should be assessed separately. *Salmer v. Lathrop*, 10 S. D. 216, 72 N. W. 570; *O'Neil v. Tyler*, 3 N. D. 47, 53 N. W. 434.

Description which is unintelligible is insufficient. *Stokes v. Allen*, 15 S. D. 421, 89 N. W. 1023.

§ 3681. Additional tax levy to pay final judgments. When any final judgment shall be obtained against any city within the state of North Dakota, the city council of such city may by resolution provide for the levy and collection of an annual tax upon all the taxable property of such city, not exceeding the amount of ten mills on the dollar in any one year which shall be used in payment of such judgment. The county auditor shall make out, charge and extend upon the tax list against each description of real property and against all personal property of the city all such taxes for cities and judgments he is so notified have been levied by the city in which the property is situated and taxable in the same manner in which the county and state tax list is prepared, and deliver it to the county treasurer at the same time. The taxes so levied for the payment of any final judgment against such city may be levied in addition to such other taxes as are now or may hereafter be provided by law, and this section shall in no manner be construed as depriving the city council of any city in this state from levying all such other taxes in such amounts as they are now permitted to levy under existing laws for other purposes. [1911, ch. 69.]

§ 3682. County treasurer to collect taxes and pay over to city treasurer. The county treasurer of such county shall collect and enforce the collection of the city and school tax with and in the same manner as other taxes, and shall pay over to the city treasurer on the first of every month on demand, all such taxes so collected during the preceding month, with interest and penalties collected thereon, and shall forthwith notify the city auditor of the amount so paid over. He shall take duplicate receipts for all such amounts so paid to the city treasurer, one of which shall be forthwith sent to the city auditor. [R. C. 1905, § 2757; 1905, ch. 62, § 124.]

This section as originally enacted was held unconstitutional as class legislation. *State ex rel. Mitchell v. Mayo*, 15 N. D. 327, 108 N. W. 36.

County treasurer entitled to one per cent commissions for collecting city and school tax. *Centerville v. Turner County*, 23 S. D. 424, 122 N. W. 350.

Limitations ran against each amount retained by county as commission for collection of city taxes beyond legal amount from date of each settlement with city. *Centerville v. Turner County*, 25 S. D. 300, 126 N. W. 605.

§ 3683. Money paid to the city treasurer, how proportioned. The city treasurer and auditor shall each proportion said amounts so received by the city treasurer and credit each fund with its proportion or share according

to the levy made by the council, and the county treasurer at the time of paying over such funds shall furnish the city treasurer and auditor with a statement of the amount collected for each year separately, and the same shall be credited to the proper fund for the year for which it was collected. All money received by the city treasurer for licenses, license or occupation taxes and fines shall be credited to, and become a part of the contingent fund of the city, and shall be used for the payment of such liabilities and necessary expenses of the city as are not otherwise specially provided for in the annual appropriation bill. [R. C. 1905, § 2758; 1905, ch. 62, § 125.]

§ 3684. Provisions not applicable to cities operating under general law. The provisions of sections 3616, 4038, 4039, 4040, 4041, 4042, 4043, 4044, 4045, 4047, 4048 and 4049 do not apply to any city organized under the general laws of the state for the incorporation of cities, and when any of the provisions of this chapter are inconsistent with any other provisions of the revised codes, or of any other law heretofore enacted, the provisions of this chapter shall be deemed to supersede all others. [R. C. 1905, § 2759; 1905, ch. 62, § 125½.]

ARTICLE 18.—OPENING OF STREETS, ALLEYS, ETC.

§ 3685. Surveys. Whenever the city council shall deem it necessary to open, lay out, widen or enlarge any street or alley or public place within the city, it shall cause an accurate survey and plat of the same to be made by the city engineer, with an estimate of the probable cost of the improvement, and the city engineer shall file the same in the office of the city auditor, and retain a copy in his office. [R. C. 1905, § 2760; 1887, ch. 73, art. 15, § 12; R. C. 1899, § 2276; 1905, ch. 62, § 126.]

§ 3686. Taking private property. Whenever it shall be necessary to take private property in order to open, lay out, widen or enlarge any street or alley or any public place in any city, the same shall be done by purchase, or under the provisions of the code of civil procedure providing for the exercise of the right of eminent domain; and, whenever any judgment for damages to property so taken for any such improvement shall be entered, the city council shall cause special assessments to be levied upon the property benefited thereby to pay such judgments; provided, that not more than one-fourth thereof may be paid by the levy of a general tax upon all taxable property in the city. [R. C. 1905, § 2761; 1895, ch. 62, § 127.]

§ 3687. Fixing grades. The city council may by ordinance establish the grade of all streets, alleys and sidewalks in the city as the convenience of the inhabitants may require, and a record of the same shall be kept, together with a profile thereof in the office of the city engineer; provided, that after the grade of any street has been established as provided in this section, the city shall, if it change the grade, be liable to the abutting property owners for any damage they may sustain by reason of any permanent improvements having been made by them to conform to the grade as first established. [R. C. 1905, § 2762; 1905, ch. 62, § 128.]

§ 3688. Vacation of streets and alleys. Petition. Appeal. No public grounds, streets or alleys, or parts thereof, over, under or through which shall have been constructed, lengthwise, sewers or watermains of the city, or watermains, gas, steam or other pipes, or telephone or telegraph lines by the city's grantees of the right of way therefor shall be vacated unless such sewers or watermains had been abandoned and are not in use, and no other public grounds, streets or alleys, or parts thereof, within the city shall be vacated or discontinued by the city council except upon a petition of a majority of the owners of the property on the line of such public grounds, streets or alleys, resident within the city. Such petition shall set forth the facts and reasons for such vacation, accompanied by a plat of such public grounds, streets or alleys proposed to be vacated, and shall be verified by the oath of at least

two of the petitioners, and the consent in writing of all the owners of the property adjoining the plat to be so vacated. The city council shall thereupon, if they deem it expedient that the matter should be proceeded with, order the petition to be filed with the city auditor, who shall give notice of publication in the official newspaper of the city for four weeks, at least once in each week, to the effect that such petition has been filed as aforesaid, and stating in brief its objects, and that said petition will be heard and considered by the council, or a committee thereof, on a certain day therein specified, not less than thirty days after the first publication of such notice. The city council, or such committee as may be appointed by it for the purpose, at the time and place appointed, shall investigate and consider the matter, and shall hear the testimony and evidence of persons interested. The city council thereupon after hearing the same, or upon the report of such committee favoring the granting of such petition, may, by resolution passed by a two-thirds vote of all of the members elect, declare such public grounds, streets or alleys or highways, vacated; which resolution, before the same shall go into effect, shall be published as in the case of ordinances, and thereupon a transcript of such resolution, duly certified by the city auditor, shall be filed for record and duly recorded in the office of the register of deeds of the county, and shall have the effect to convey to the abutting property owners, all the right and title of the city to the property so vacated. Any person aggrieved thereby may, within twenty days after publication of such resolution, appeal to the district court of the county, under the same regulations as in the case of opening streets and alleys, and the judgment of the court therein shall be final. All expenses incurred in vacating any such public grounds, streets or alleys must be paid by the petitioners, who shall deposit with the city treasurer, such sum as may be necessary therefor, before any such expense is incurred, and the amount so to be deposited shall be determined by the city council, and any part thereof not used for such expenses shall be returned. [1911, ch. 78; R. C. 1905, § 2763; 1887, ch. 73, art. 15, § 13; R. C. 1899, § 2277; 1905, ch. 62, § 129.]

Resolution must specifically designate improvement to be made. Statute authorizing improvements strictly construed. *McLaurin v. Grand Forks*, 6 Dak. 397, 43 N. W. 710; *McGuire v. Rapid City*, 6 Dak. 346, 43 N. W. 706; *Mason v. City of Sioux Falls*, 2 S. D. 640, 51 N. W. 770.

ARTICLE 19.—SIDEWALKS.

Powers conferred upon the city council in this article are given to the boards of trustees of incorporated villages. See section 3862.

§ 3689. Specifications for sidewalks. The city council shall by ordinance prescribe the width of sidewalks and may establish different widths in different locations, and shall determine and prescribe the kind and quality of material of which, and the manner in which, they shall be constructed, having regard to the business and amount of travel in the vicinity of each, and such ordinance shall be specific, and all contracts for the construction of sidewalks shall be let with reference to the same. [R. C. 1905, § 2764; 1905, ch. 62, § 130.]

Ordinance providing for sidewalks on several streets, where same were to be constructed of same material and same width, was not invalid for embracing walks on several streets in one proceeding. *Wood v. Hurley*, 29 S. D. 269, 136 N. W. 107.

§ 3690. Notice to build or repair. Whenever the city council shall deem it necessary to construct, rebuild or repair, except as hereinafter provided, any sidewalk in the city, it shall notify each owner and occupant of any lot or parcel of land adjoining such sidewalk, to construct, rebuild or repair the same at his own expense, and subject to the approval of the street commissioner, within the time designated in such notice, by the publication in the official newspaper of the city twice, once in each week for two successive weeks, of a notice to said owner or occupant, setting forth what work is to be done, and the character of the same as specified in the ordinance provided for in the preceding section, and the time within which he is required to do the same. Such notice may be general as to the owner, but must be specific

as to the description of the lot or parcel of ground in front of which such sidewalk is to be built, and a copy thereof shall also be served in the manner provided in section 3693. [R. C. 1905, § 2765; 1905, ch. 62, § 130½.]

§ 3691. Building by city. If such work is not done and the sidewalk is not built, repaired or rebuilt, in the manner and within the time prescribed in said notice, the city council shall order the same to be done by such person as they may have contracted with therefor, under the direction of the city engineer, or street commissioner in cities having no city engineer, at the expense of the lot or parcel of land adjoining each sidewalk, and such expense, including the expenses of all notices in connection with such work and the assessment therefor, and any other expense incurred for such work, shall be assessed upon the lot or parcel of land properly chargeable therewith, by the city engineer, or by the street commissioner in cities having no city engineer; and such assessment shall be returned by him, and filed in the office of the city auditor, and the city auditor shall cause to be published the said assessment, together with a notice of the time and place when and where the city council will meet to approve the same, and said notice shall be published once in the official newspaper of the city at least ten days prior to the meeting of the city council to approve such assessment. [R. C. 1905, § 2766; 1905, ch. 62, § 131.]

§ 3692. Letting contracts for sidewalks. The city auditor shall, on or before the fifteenth day of March in each year, advertise in the official newspaper of the city twice, once in each week for two consecutive weeks, for bids for the construction of the various kinds of sidewalks in the city during the ensuing year, in accordance with the specifications of the ordinance provided for in section 3689, and such bid shall be received and opened and if accompanied by a check and bond as hereinafter provided, such contract shall be awarded to the lowest bidder, at the regular meeting of the city council in April and contracts may be awarded to different bidders for the different kinds of sidewalks required. But if the city auditor shall have failed to advertise for bids as aforesaid before the fifteenth day of March, and if the city council shall have failed to award contracts at their regular meeting in April, upon such showing being made and published together with notice for bids for two consecutive weeks prior to any regular meeting of the city council, the city council may thereupon at any such regular meeting after such publication, award such contracts to the best bidders for the different kinds of sidewalks required. [1911, ch. 68; R. C. 1905, § 2767; 1905, ch. 62, § 132.]

Rights and remedies of lowest bidders on public contracts. 26 L.R.A. 707; 30 L.R.A. (N.S.) 126.

Construction of words "to lowest bidder." 38 L.R.A. (N.S.) 654.

§ 3693. Repairs. Whenever the necessary repair of sidewalks will not, in the judgment of the street commissioner, exceed in cost the sum of ten dollars for each twenty-five feet in front of land belonging to the same owner, he shall notify the city auditor thereof, and the city auditor shall forthwith prepare a notice in writing, which may be general as to the owner of the lot or parcel of land, but describing it specifically, requiring him to repair such sidewalk to the satisfaction of the street commissioner, within a time to be fixed in such notice not exceeding three days. The auditor shall deliver such notice to the street commissioner, who shall forthwith serve it by delivering a copy thereof to the occupant or owner of the parcel of land, if the same is occupied, or by leaving such notice at the dwelling house upon such lot or parcel of land with some person over the age of fourteen years residing therein, or if such lot or parcel of land is not occupied, by posting a copy of such notice in a conspicuous place thereon or immediately in front thereof, and if such sidewalk is not so repaired within the time fixed in such notice, the street commissioner shall, as soon as practicable, repair the same and certify the cost thereof, with his return of service of such notice to the city auditor; and

the cost of such repairs shall be paid out of the "sidewalk special assessment fund." [1911, ch. 64; R. C. 1905, § 2768; 1905, ch. 62, § 133.]

§ 3694. Duty of auditor. The city auditor shall keep in his office a book called "sidewalk repair special assessment book," and shall enter such cost so certified by the street commissioner therein, as a special assessment against the lot or parcel of land adjoining such sidewalk, with the name of the owner, if known to him; and at its regular meeting in September of each year, the city council shall review all assessments and hear all complaints against the same, and approve the same as finally adjusted. [1907, ch. 46, § 8; R. C. 1905, § 2769; 1905, ch. 62, § 134.]

See the connection in which this section is cited in note to section 3740.

§ 3695. Sidewalk special assessment fund. All moneys collected from special assessments for building or repairing sidewalks shall be kept in a fund to be called "sidewalk special fund" and warrants shall be drawn on such fund for the payment of the costs of building and repairing all sidewalks, and the city shall in no case be liable on any contract for the building or repairing of sidewalks in any sum whatsoever, to be paid by moneys raised by general taxation.

All such sidewalk special assessment warrants shall be payable as specified and in such amounts as in the judgment of the city council the taxes and assessments will provide for, which said warrants shall bear interest at the rate of not to exceed seven per cent, per annum, payable annually, and may have coupons attached representing each year's interest. Such warrants shall state upon their faces for what purpose they are issued and the further fact from which fund they are payable and shall be signed by the mayor and countersigned by the city auditor under the seal of the city and be in denominations of not more than one thousand dollars each. Such warrants may be used in making payment on contracts for making such improvements or be sold for cash at not less than par value thereof and the proceeds thereof credited to such fund, and used for paying such improvements. It shall be the duty of the city treasurer to pay such warrants and interest coupons as they mature and are presented for payment out of the sidewalk special assessment fund, and to cancel the same when paid. [1913, ch. 82, § 1; 1907, ch. 46; R. C. 1905, § 2770; 1905, ch. 62, § 135.]

In action against city for damages for injury caused by defective sidewalks, charter of city is properly received in evidence. *Jackson v. Grand Forks*, 24 N. D. 601, 45 L.R.A. (N.S.) 175, 140 N. W. 718.

§ 3696. Assessment for removing snow and ice from sidewalks. In all cases where snow and ice are not removed from sidewalks within the time and in the manner that is now and hereinafter may be provided by the ordinances of any city, the same may be removed by or under the direction of the street commissioner, and the necessary expense thereof shall be chargeable against the abutting property. On or before May first in each year the street commissioner shall make and file in the office of the city auditor a list of the property chargeable and assessed against each lot and tract separately, and stating the owner's name, so far as known to him. The city auditor shall give notice by publication in the official newspaper of the hearing and confirmation of such report and assessment at the regular June council meeting, notifying all persons objecting thereto to appear and present their objections, such notice to be published twice, once in each week for two consecutive weeks, the last publication to be not less than eight days before the time fixed for the hearing. At the June council meeting or at such later meeting as the hearing and confirmation of such assessment may be adjourned to, the council shall take up and consider said assessment and shall hear any objection thereto or to any part thereof, and after revising and correcting the same, if necessary so to do, shall approve and confirm the same. The city auditor shall thereupon attach to such list his certificate that the same is correct as confirmed by the city council and shall thereupon file such assessment list in his office; and such

assessment, with interest and penalties thereon, shall be and remain a permanent lien upon the property upon which such assessment is levied, from the time such assessment list is approved by the city council, and shall remain a lien thereupon until fully paid, and shall have precedence over all other liens except ordinary taxes to which it shall be subject, and such lien shall not be divested by any judicial sale, and no mistake in the description of the property or in the name of the owner shall obviate such lien, provided the property assessed can be identified by the description in such assessment list. Such assessment shall be certified to the county auditor by the city auditor at the same time and in the same manner that sidewalk assessments are certified by him under the provisions of section 2804, Revised Codes of 1905. [1913, ch. 82, § 2; 1907, ch. 46.]

See the connection in which this section is cited in note to section 3740.

ARTICLE 20.—SEWERS, PAVING AND WATER MAINS.

Powers conferred upon the city council in this article are given to the boards of trustees of incorporated villages. See section 3862.

§ 3697. System of sewerage. The city council shall have power to establish and maintain at any time a general system of sewerage for the city, in such manner and under such regulations as the council shall deem expedient, and to alter or change the same from time to time as the council may deem proper; provided, that no action shall be taken for the establishment of a system of sewerage except upon the affirmative vote of two-thirds of the members of the city council; and provided, further, that when such system of sewerage is established, all measures necessary for the construction of sewers, as a part of that system, may be taken by a vote of the majority of the city council; and provided, further, that when it shall be necessary to conduct the sewerage beyond the city limits, the city council shall have power, by purchase or condemnation proceedings, to acquire private property over which to construct such sewer, and the cost thereof and of building such sewer over the same shall be included in the cost of such system of sewerage and in the special assessment levied therefor; and provided, further, that any city may empty or discharge its sewerage into any river, but where a dam on such river is located within the corporate limits of any city, the sewerage shall in such cases be discharged below such dam; and provided, further, that in case there is no river accessible into which to discharge such system of sewerage, the same may be discharged into a lake, coulee or slough, and in any of the latter cases a septic tank system shall be employed for sewerage from closets, kitchen-sinks or anything carrying objectionable matter, prior to discharging same into the lake, coulee, slough or other outlet, but that any drainage from basements, cellars or surface may be discharged direct into the lake, coulee, slough or other outlet, prior to emptying into the main sewer system, but that any drainage from basements, cellars or surface may be admitted direct into the main sewer system without first passing through the septic tank system. [1907, ch. 229; R. C. 1905, § 2771; 1905, ch. 62, § 136.]

In absence of charter or statutory requirements, municipal contracts need not be let under competitive bidding. *Price v. Fargo*, 24 N. D. 440, 139 N. W. 1054.

Applies to cities organized under special charters and under the general law. *Heyler v. Watertown*, 16 S. D. 25, 91 N. W. 334.

Does not apply to municipal contracts for erection of filtration plants and similar buildings. *Price v. Fargo*, 24 N. D. 440, 139 N. W. 1054.

Right and duty to provide drainage. 61 L.R.A. 673.

Institution of proceedings for establishment of drains and sewers. 60 L.R.A. 166.

Effect of municipal indebtedness on acquisition of sewer system. 59 L.R.A. 604.

§ 3698. To create improvement districts. Any city shall have power to create sewer, paving and water main districts and water works districts, for the purpose of constructing a water works system, including the construction and erection of a pumping station, settling basins, filtration plant, stand pipes and water towers, reservoirs and other contrivances and structures necessary

for a complete water works system, and for the purpose of laying, extending, improving, enlarging, relaying or replacing water mains and districts, for the purpose of grading, graveling, curbing, planting trees, constructing grass plots, sowing grass seed, constructing gutters, or for the purpose of making any one or more of the improvements herein mentioned and maintaining the same within the limits of such city, which districts shall be consecutively numbered. [1913, ch. 74, § 1; 1911, ch. 70, § 1; R. C. 1905, § 2772; 1905, ch. 62, § 137.]

§ 3699. Size and form of sewer districts. Such sewer districts shall be of such size and form as the city council, after consultation with the city engineer, shall decide most practicable for the purpose of the drainage of such portion of such city as may be included in the respective districts as established by the city council. [R. C. 1905, § 2773; 1905, ch. 62, § 138.]

§ 3700. Form of paving districts. Such paving districts shall be in compact form as nearly as practicable, and include all streets within their respective boundaries, and nothing in this article contained shall be construed as authorizing and empowering the city council to create one street, by length, as a district, except when it shall be necessary to repave any street which shall not, when originally paved, have been included in any paving district. [R. C. 1905, § 2774; 1905, ch. 62, § 139.]

§ 3701. Water main and water works districts. Such water main districts and water works districts for the purpose of constructing a water works system, including the construction and erection of a pumping station, settling basin, filtration plant, stand pipes and water towers, reservoirs and other contrivances and structures necessary for a complete water works system and for the purpose of laying, extending, improving, enlarging, relaying or replacing water mains and districts for the purpose of grading, graveling, curbing, planting trees, constructing grass plots, sowing grass seeds and constructing gutters, shall be of such size and number as the city council, after consultation with the city engineer, shall decide most practicable. [1913, ch. 74, § 2; 1911, ch. 70, § 2; R. C. 1905, § 2775; 1905, ch. 62, § 140.]

§ 3702. Power to make improvements. All cities shall have power to grade, curb, pave, replace, gravel, macadamize or gutter any street, highway, avenue, alley or public place in such city, and to plant trees, construct grass plots or to sow grass seed thereon, and to maintain and preserve any one or more of such improvements by causing such trees or grass to be watered, the grass cut and trees trimmed, or otherwise maintaining and preserving the same, as the city council shall deem suitable and proper, and any city shall have power to create sewer, paving and water main districts and water works districts for the purpose of constructing a water works system, including the construction and erection of a pumping station, settling basins, filtration plant, stand pipes and water towers, reservoirs and other contrivances and structures necessary for a complete water works system, and for the purpose of laying, extending, improving, enlarging, relaying or replacing water mains and districts, and to defray the expense of all such work as hereinafter provided. [1913, ch. 74, § 3; 1911, ch. 70, § 3; R. C. 1905, § 2776; 1905, ch. 62, § 141.]

Assessment of damages before change of grade. Searle v. City of Lead, 10 S. D. 312, 73 N. W. 101; Whittaker v. City of Deadwood, 12 S. D. 608, 82 N. W. 202.

Grade must be established before passage of ordinance to grade. Whittaker v. City of Deadwood, 12 S. D. 608, 82 N. W. 202.

§ 3703. Plans, specifications and estimates. When the city council shall deem it necessary to construct or alter any sewer or to open, widen, extend, grade, curb, pave, repave, gravel, macadamize or gutter any street, highway, avenue, alley, lane or other public ground within the city limits or to plant trees, construct grass plots, or sow grass seed thereon or to construct a water works system, including the construction and erection of pumping stations, settling basins, filtration plants, stand pipes, water towers, reservoirs and other contrivances and structures necessary for a complete water works system, the

city council shall direct the city engineer, or in case the city has no competent city engineer, shall employ a competent engineer, to prepare plans and specifications for such work, including the grading of the street if not already established, if such grade is deemed necessary by such engineer, and all details of the work to be done, and make an estimate of its probable cost, which plans, specifications and estimates shall be approved by resolution of the city council, which approval shall be deemed to establish the grade of the street as shown in such plans and specifications, if the grade of the street has not previously been established by ordinance, providing such grade has been included in such plans and specifications. In case the improvement shall consist in paving or repaving any street, alley or public place, the city council may require such plans, specifications and estimates to be made of such different kinds of pavement as they may deem advisable. In case the improvement shall consist of planting trees, constructing grass plots, sowing grass seed thereon, or otherwise parking or beautifying any of the streets, highways, avenues, alleys, lanes or other public grounds within the city limits, the said city may require plans, specifications and estimates to be made of the probable cost of making, constructing or maintaining such improvements or any of them. Such plans, specifications and estimates shall be the property of the city and be filed in the office of the city auditor and remain on file in his office subject to inspection of all persons. The city engineer shall retain a copy of such plans, specifications and estimates, and file the same in his office, and shall furnish to any person applying therefor copies of the same, and may charge and receive for such copies at the rate of one dollar an hour for the time necessarily employed in making the same. [1913, ch. 74, § 4; 1911, ch. 70, § 4; R. C. 1905, § 2777; 1905, ch. 62, § 142.]

§ 3704. Resolution declaring work necessary. After the plans, specifications and estimates mentioned in the preceding section shall have been filed in the office of the city auditor and approved as provided in the preceding section the city council shall by resolution declare such work or improvement (except the construction or alteration of sewers) necessary to be done, such resolution shall refer intelligently to the plans, specifications and estimates therefor, and shall be published twice, once in each week for two consecutive weeks in the official newspaper of the city. If the owners of a majority of the property liable to be specially assessed for such proposed improvement shall not, within fifteen days after the first publication of such resolution, file with the city auditor a written protest against such improvement, then the majority of such owners shall be deemed to have consented thereto. At the next regular meeting of the city council after the expiration of the time for filing protests against such improvement, the council shall hear and determine the sufficiency and validity of such protests, and if two-thirds of the council shall decide that such protests are insufficient or not well taken, then the city council shall have power to cause such improvement to be made and to contract therefor, and to levy and collect assessments therefor as herein-after provided, and all such work shall be let by contract to the responsible bidder whose bid is the lowest therefor. In case the work to be done consist of paving or repaving, the city council shall not in its resolution declaring such improvement necessary determine which of the kinds of paving or paving material shall be adopted; but in the call for bids bidders shall be invited to submit bids for one or more of the several kinds of paving or paving material for which the city engineer shall have been directed to file plans and specifications. When the bids shall have been opened and made public they shall be entered on the minutes of the meeting and be carefully preserved by the city auditor, and action on the same shall be deferred for a period of at least five days, and another meeting of the council shall be held at least five days after the opening of the bids for the purpose of considering and acting on the same. Notice of the time and place of such future meeting shall be

published by the city auditor at least once in the official newspaper of the city at least five days before the date fixed for such meeting. If, after the opening of the bids and before the meeting of the council to consider the same, the owners of a majority of the property liable to be specially assessed for such paving or repaving, shall file with the city auditor a written petition (which may consist of a single petition or several separate petitions signed by the owners of a majority of the property liable to be specially assessed for such improvement, or their authorized agents) indicating that such petitioners are agreed in a preference for any one of the kinds of paving or paving materials for which bids have been invited, then it shall be obligatory upon the city council to cause the paving or repaving to be constructed of the kind of paving material indicated in such petition. [1907, ch. 46, § 3; R. C. 1905, § 2778; 1905, ch. 62, § 143.]

See the connection in which this section is cited in note to section 3740.

Resolution of city council levying special assessment for cost of grading street must reasonably inform property owner that he is to be assessed and must describe generally nature and extent of improvement. *State ex rel. Bowen v. Sioux Falls*, 125 S. D. 3, 124 N. W. 963.

Ordinance providing for sidewalks on several streets, where same were to be constructed of same material and same width, was not invalid for embracing walks on several streets in one proceeding. *Wood v. Hurley*, 29 S. D. 269, 136 N. W. 107.

§ 3705. Duty of council. The city council shall then cause proposals for said work to be advertised for in the official paper of such city twice, once in each week for two consecutive weeks, which advertisement shall specify the work to be done according to the plans and specifications therefor on file in the auditor's office and shall call for bids therefor upon a basis of cash payment for said work, and state the time within which such bids will be received, and within which such work is to be completed. The city council may also require bidders to state the rate of interest the warrants shall bear (not exceeding seven per cent per annum), which are to be received and accepted by them at par in payment for such work. In case of pavement such proposals may call for bids for one or more kinds of pavement. Bids for such work shall be forwarded to the city auditor of such city securely sealed so as to prevent their being opened without detection, and shall have indorsed upon the outside thereof a statement of what work such proposals are for. Such bids shall be opened by the city council at the expiration of the time limited in said advertisement for receiving the same, which shall be not less than fifteen days after the first publication of said advertisement, or at such other time as the city council may appoint therefor, and if accompanied by a check and bond hereinafter provided for shall be considered, and if not accompanied by such check and bond shall be rejected. [1907, ch. 46, § 5; R. C. 1905, § 2780; 1905, ch. 62, § 145.]

See the connection in which this section is cited in note to section 3740.

In absence of charter or statutory requirement municipal contracts need not be let under competitive bidding. *Price v. Fargo*, 24 N. D. 440, 139 N. W. 1054.

§ 3706. Bids. Each bid for any work to be done under the provisions of this article shall be accompanied by a certified check, in case of sidewalks for the sum of fifty dollars, and in the case of other work for the sum of five hundred dollars, indorsed or payable to the mayor, as a guarantee that the bidder will enter into a contract for the performance of such work in case such contract is awarded to him, and in case any bidder to whom such contract shall be awarded, fails or refuses to enter into such contract when requested so to do, such check accompanying his bid shall be retained by the city, and be deemed liquidated damages for such failure, and shall be delivered to the city treasurer and credited by him to the fund from which the consideration for such work is payable. [R. C. 1905, § 2781; 1905, ch. 62, § 146.]

§ 3707. Bonds. Each bid for any such work shall also be accompanied by a bond running to the city. In case of all improvements except sidewalks, paving and repaving the amount of bidder's bond shall be a sum equal to

the full amount of the bid. In case of paving or repaving, the amount of the bond to be required on each bid for different kinds of paving or repaving shall be fixed at a sum equal to at least five per cent of the amount of the bid or such additional sum as the city council may by resolution determine at the time bids are called for; provided, however, that in the case of contracts for the construction of sidewalks the amount of the bond shall be five hundred dollars. Such bidder's bond shall be executed by the bidder or contractor as principal and by a surety company authorized to do business in this state, or by two or more freeholders resident of this state; and if executed by individuals as sureties such sureties must attach to such bond an affidavit of justification, showing that they possess the qualifications required of sureties in arrest and bail and are worth in the aggregate in property within this state a sum equal to twice the penalty of the bond over and above their exemptions; such bonds shall be made payable to the city and shall be conditioned as follows: That if the principal's bid shall be accepted and the contract for the work of improvement awarded to him, he will, within ten days after the acceptance of his bid or within such further time as the city council shall grant, enter into and execute a contract bond in a sum equal to the amount of the bid and a contract in writing to and with the city, to well and faithfully perform and complete the work for which his bid was accepted in accordance with the plans and specifications therefor and the terms of his bid and within the time required by the terms of such contract; that he will pay for all labor and materials used in such work. Such bonds shall be for the benefit of the city. In case the bidder shall fail to execute a contract bond and a contract as aforesaid for the completion of the work bid for within ten days or such further time as the city council may grant after the acceptance of the bid, then the city council shall be authorized the same as if the bid or bond contained an expressed stipulation to that effect, to cause such work to be done or completed, the work, or contract, with some other contractor to do or complete the work, and in such case may recover in a suit on the defaulting bidder's bond the difference between actual cost to the city of such improvements and the sum which it would cost if the defaulting bidder had complied with his bid. The successful bidder shall, within the time fixed by the city council for executing the contract, file a contract bond in a sum equal to the full amount of the contract with the city auditor. Such contract shall be executed by the bidder or contractor as principal and a surety company authorized to do business in this state, as surety or by two or more freeholders resident of this state, and if executed by individuals as sureties such sureties must attach to such bond an affidavit of justification showing that they possess the qualifications required of sureties in arrest and bail, and are worth in the aggregate in property within this state a sum equal to twice the penalty of the bond over and above their exemptions; such bond shall be made payable to the city and shall be conditioned that he will well and faithfully perform the work bid for in accordance with the terms of and within the time provided for in such contract, and pursuant to the plans and specifications for such work on file in the city auditor's office, and pay for all labor and material used in such work, and that in case of default on the part of the bidder or contractor to perform such work as provided in this contract, the sum named in the bond shall be taken and held to be fixed and liquidated damages in favor of said city, and that the full amount thereof may be recovered from said bidder and his sureties in an action by the city against them on said bonds. Such bonds shall be approved by the city council and shall thereupon be and remain in full force and effect. Upon the execution of the contract and approval of the contract bond the bidding bond shall be returned. A sufficiency of any bond filed by a bidder shall be determined by the city council at the time of considering bids. If the council shall at any time deem the bond of a contractor insufficient, either in

form or sufficiency of sureties, it may require the successful bidder or contractor to furnish a new bond to be approved by the mayor and the city council, within such reasonable time as the council may fix, and if the bidder or contractor shall fail to furnish such new bond within the time required after notice to him to do so his contract may be cancelled and in that event the contractor's bond shall be liable the same as if the contractor had failed to perform his contract. [1907, ch. 46, § 6; R. C. 1905, § 2782; 1905, ch. 62, § 147.]

See the connection in which this section is cited in note to section 3740.

§ 3708. Council or commission may reject bids and have work performed by the city. The city council or city commission shall have the right to reject any and all bids for work to be done under this article, if, in its opinion, the interests of the city will be best subserved by so doing, and such work may be performed directly by the city by the employment of labor and purchase of material, or in any other manner in which the city council or city commission may deem proper in each particular case, and payment for the construction thereof may be provided for by special assessment in the same manner as if said work had been performed by contract, or the city council, or the city commission may readvertise for other bids, but if such bids are not rejected the contract shall then be awarded to the responsible bidder, whose bid is the lowest, upon the basis of cash payment therefor, providing said bidder shall have complied with the foregoing requirement; provided, further, that in case the contemplated improvements consist of paving or repaving the city council or city commission may, after opening and considering the bids, by resolution, determine the kind or kinds of pavement to be laid, and may then proceed to award a contract or contracts therefor; provided, that the city council or city commission shall, before adopting or rejecting any bids, require the city engineer, or may employ a competent engineer to make a careful and detailed statement of the estimated cost of such work. [1913, ch. 70; 1907, ch. 46, § 7; R. C. 1905, § 2783; 1905, ch. 62, § 148.]

See the connection in which this section is cited in note to section 3740.

§ 3709. Contracts. All contracts entered into for any work provided for in this article, shall be entered into in the name of the city, and shall be executed on the part of the city, by the mayor thereof, and countersigned by the auditor with the corporate seal of the city affixed, and when signed by the contractor shall be filed in the office of the city auditor. Such contract shall require the work to be done thereunder, to be done pursuant to the plans and specifications therefor on file in the office of the city auditor, or in case of sidewalks, pursuant to the specifications of the ordinance provided for by section 3689 and subject to the approval of the city engineer, who shall personally supervise and inspect such work during its progress, and there shall be reserved in each contract the right of the city council, in case of the improper construction of such work, to suspend work thereon at any time, and to relet the contract therefor, or order a reconstruction of said work on any part thereof improperly done. Each contract so entered into shall state the time on or before which such work must be completed, and must state from what fund the amount to be paid thereon by the city is to be paid, and that the consideration of such contract is payable only in warrants drawn on such fund, and that such city assumes and incurs no general liability under such contract. [R. C. 1905, § 2784; 1905, ch. 62, § 149.]

Certificate of city engineer that work has been completed is essential before city can levy assessments against individual property for payment of costs of sewer. *Baker v. La Moure*, 21 N. D. 140, 129 N. W. 464.

§ 3710. Contractor, how paid. In case the contractor to whom any such contract shall be let shall properly perform the work therein designated, the city council may, from time to time in its discretion, as the work progresses, pay to such contractor upon an estimate made by the city engineer of the amount already earned thereunder, eighty-five per cent of the amount

shown by such estimate to have been so earned, in warrants drawn on the fund from which the same is to be paid. [R. C. 1905, § 2785; 1905, ch. 62, § 150.]

§ 3711. **Special assessment funds. Warrants.** All special assessments levied under the provisions of this article shall constitute a fund for the payment of the cost of the improvement for the payment of which they are levied, and shall be diverted to no other purpose, and those for the payment of sewer improvement shall be designated respectively "sewer district no. fund," and such funds shall be numbered according to the number of the sewer district in which it is raised. Those collected for paving improvements shall be designated as "paving district no. fund," and such fund shall be numbered according to the paving district in which it is raised; and those levied for the payment of water mains shall be known as "water main district no. fund," and such fund shall be numbered according to the number of the water main district in which it is raised, those levied for water works improvements shall be designated as "water works district no. fund," and such fund shall be numbered according to the number of the water works district; and those levied for the payment of grading, curbing, graveling, macadamizing or guttering of any street, highway, alley, lane or public place in such city, or of planting trees, constructing grass plots or sowing grass seed thereon, or of maintaining and preserving any one or more of such improvements, shall be known as "improvement district no. fund," and such fund shall be numbered according to the number of the improvement district in which it is raised; and in anticipation of the levy and collection of such special assessments, the city may, at any time after the making of a contract for any such improvements, issue warrants, on such funds, payable at specified times, and in such amounts as, in the judgment of the city council, the taxes and assessments will provide for, which warrants shall bear interest at the rate of not to exceed seven per cent per annum, payable annually, and may have coupons attached representing each year's interest, provided that special assessments levied for maintaining grass plots or trees, parking or other improvements for the beautifying of the city streets, shall be payable in a single amount. Such warrants shall state upon their face for what purpose they are issued, and the fund from which they are payable, and shall be signed by the mayor and countersigned by the city auditor, under the seal of the city, and be in denominations of not more than one thousand dollars each. Such warrants may be used in making payments on contracts for making such improvements or may be sold for cash, at not less than the par value thereof, and the proceeds thereof credited to such fund, and used for paying such improvements. It shall be the duty of the city treasurer to pay such warrants and interest coupons as they mature and are presented for payment out of the district funds on which they are drawn, and to cancel the same when paid. [1913, ch. 74, § 5; 1911, ch. 70, § 5; R. C. 1905, § 2786; 1905, ch. 62, § 151.]

Invalidity of special assessment for local improvements where authorities fail to proceed in accordance with statute. *Haggart v. Alton*, 29 S. D. 509, 137 N. W. 372.

Warrants and interest coupons payable out of special assessment funds draw interest from maturity, at seven per cent per annum where no rate is specified in the instruments. *Drexel State Bank v. City of La. Moure*, 207 Fed. 702.

Special assessments against land may be paid in full at any time with interest thereon to date of payment. *State ex rel. Bithulitic & Contracting Co. v. Murphy*, 20 N. D. 427, 128 N. W. 303.

Accrued interest as part of par value within prohibition against sale of bonds at less than par. 35 L.R.A. (N.S.) 789.

§ 3712. **Errors and mistakes.** In case errors or mistakes in making an assessment, in respect to the total cost of such improvements, or otherwise, occur, or in case of any deficiency in any assessment or otherwise, the city council shall have power, and it shall be their duty from time to time, to cause additional assessments to be made in the manner hereinafter provided, to

supply such deficiencies, or correct such errors or mistakes; the total of such assessments not to exceed the benefit to such property, and any such assessment shall be a lien upon the lots and lands on which it is levied as herein provided for the original assessments, and shall be payable in the same manner, and in the same installments, and shall draw interest at the same rate, and shall be enforced in the same manner as herein provided with respect to the original assessment. [R. C. 1905, § 2787; 1905, ch. 62, § 152.]

Fact that supervising engineer was appointed by council to superintend building of sewer, there being no city engineer, does not affect application of statute. *Baker v. La Moure*, 21 N. D. 140, 129 N. W. 464.

§ 3713. Reassessment. In all cases where any assessment, or any part thereof, as to any lot, lots or parcels of land assessed under any of the provisions of this article, or of any law of any city prior to this article, for any cause whatever, whether jurisdictional or otherwise, shall be set aside, or declared void by any court, the city council shall, without unnecessary delay, cause a reassessment or new assessment to defray the expense of such improvement to be made, whether such improvement was made under this article or under any law of any city prior to this article, and such reassessment or new assessment shall be made as nearly as may be, as herein provided for making the assessment therefor in the first instance; and may bear interest from the date of the approval of such assessment so set aside, and when the same shall have been made and confirmed by the city council, it shall be enforced and collected in the same manner that other assessments are enforced and collected under this article, and in all cases where judgment shall hereafter be refused or denied by any court for the collection or enforcement of any special assessment, or where any court shall hereafter set aside or declare void any assessment upon any lot or parcel of land for any cause, the said lot or parcel of land may be reassessed or newly assessed from time to time, until each separate lot, piece or parcel of land has paid its proportionate part of the costs and expenses of such improvement, as near as may be; provided, that when any special assessment shall be declared void, or set aside by judgment of the supreme court, for a cause affecting other like assessments, all assessments so affected may be vacated by resolution of the city council, and thereupon a reassessment of the property affected thereby shall be made as herein provided, and may bear interest as hereinbefore provided. [R. C. 1905, § 2788; 1905, ch. 62, § 153.]

§ 3714. Error or omission shall not vitiate. No error or omission which may be made in the proceedings of the city council, or of any officer of said city in referring, reporting upon, ordering or otherwise acting concerning any local improvement provided for in this article, or in making or certifying any assessment, shall vitiate or in any way affect any such assessment, but if it shall appear that by reason of such error or omission substantial injury has been done to the party or parties claiming to be aggrieved, the court shall alter such assessment as may be just and the same shall then be enforced. [R. C. 1905, § 2789; 1905, ch. 62, § 154.]

Power to assess for local improvement extinguished by sale of property therefor; power to reassess cannot be given by subsequent statute. *Budge v. Grand Forks*, 1 N. D. 309, 47 N. W. 390, 10 L.R.A. 165.

Legislature may authorize reassessment for local improvements. *Phillips v. City of Sioux Falls*, 5 S. D. 524, 59 N. W. 881.

Effect of running of limitations since original assessment upon a reassessment order because of invalidity of original. 28 L.R.A.(N.S.) 735.

General liability of municipality on failure to make reassessment after failure to enforce assessment. 32 L.R.A.(N.S.) 176.

§ 3715. Action to avoid tax judgment. Whenever any action or proceeding shall be commenced and maintained before any court to prevent or restrain the collection of any special assessment or part thereof, made or levied by the officers of any city for any purpose authorized by law, and whenever any action or proceeding shall be commenced and maintained as aforesaid to

vacate or set aside any sale of real estate for such special assessment, or to cancel any tax certificate or deed given under such sale, and such assessment shall be held to be void by reason of noncompliance with this article, the court shall determine the true and just amount which the property attempted to be so assessed by said special assessment should pay, to make the same uniform with other special assessments for the same purpose, and the amount of such assessments as the same appears on the assessment list thereof, shall be prima facie evidence of such true and just amount, and judgment must be rendered and given therefor against the party liable for such special assessment, without regard to the proceedings had for the levy thereof, and such judgment shall be a lien upon the property upon which a special assessment shall have been levied, of equal force and effect as the lien of special assessments, and the lien of such special judgment shall be enforced by the court in such action; provided, that no action for either of said purposes shall be maintained unless it is commenced within six months after such special assessment is approved, and in case of such assessment heretofore approved, within six months after this article takes effect. [R. C. 1905, § 2790; 1905, ch. 62, § 155.]

No action can be maintained to set aside assessment after expiration of six months from date of confirmation of special assessment by city council. *McKone v. Fargo*, 24 N. D. 53, 138 N. W. 967.

As to similar provision in Wis. Laws 1880, ch. 309, § 3, see *Prentice v. Ashland Co.*, 56 Wis. 345, 14 N. W. 297; *Ruggles v. Fond du Lac County*, 63 Wis. 209, 23 N. W. 416; *Oberreich v. Fond du Lac County*, 63 Wis. 216, 23 N. W. 421; *Urquhart v. Wescott*, 65 Wis. 135, 26 N. W. 552; *Morris v. Carmichael*, 68 Wis. 133, 31 N. W. 483.

§ 3716. Payment of deficiency. Whenever all special assessments levied for a specific improvement shall have been collected and applied in payment of the warrants issued for such improvement, and a deficiency remains, the city council shall levy a tax upon all the taxable property in the city for the payment of such deficiency, and in case of a balance of such special assessments remaining unexpended, it may be used for repairs of such improvement. [R. C. 1905, § 2791; 1905, ch. 62, § 156.]

§ 3717. Sewer assessments extended twenty (20) years. The special assessments herein provided for the payment of the cost of constructing any sewer shall be payable in equal annual amounts extending over a period not exceeding twenty (20) years, and shall bear interest at a rate not to exceed seven per cent (7%) per annum on the total amount of such assessments remaining from time to time unpaid; provided, however, that in all cities in this state having less than two thousand (2,000) inhabitants, the city council may by ordinance or resolution provide that any such special assessment, which has heretofore or may hereafter be levied, shall be extended over a period of less than twenty (20) years; and the city council is authorized by ordinance or resolution to fix the period over which such assessments shall be extended not exceeding, however, in all twenty (20) years. [1913, ch. 84, § 1; R. C. 1905, § 2792; 1905, ch. 62, § 157.]

§ 3718. Water main assessments extended ten (10) years. The special assessments herein provided for the payment of the cost of any water mains, shall be payable in equal annual amounts, extending over a period of not exceeding ten (10) years, and shall bear interest at a rate not to exceed seven per cent (7%) per annum on the total amount of such assessments remaining from time to time unpaid; provided, however, that in all cities having less than two thousand (2,000) inhabitants, the city council may by ordinance or resolution provide that any such special assessment, which has heretofore or may hereafter be levied, shall be extended over a period of less than (10) years; and the city council is authorized by ordinance or resolution to fix the period over which such assessments shall be extended, not exceeding, however, in all ten (10) years. [1913, ch. 84, § 2; R. C. 1905, § 2793; 1905, ch. 62, § 158.]

§ 3719. Paving assessments extended ten to thirty years. The special assessments herein provided for the payment of the cost of paving and repaving

shall be payable in equal annual amounts, and in case such paving shall be made on a perishable foundation of wood, such amounts shall be extended over a period not to exceed ten years, and in case such pavement shall be constructed with a concrete or other permanent foundation, such amount shall be extended over a period not exceeding twenty years; provided, that whenever the city council shall determine to pave upon such permanent foundation, otherwise than with ordinary wooden pavement, such amounts may, in the discretion of the city council, be extended over a period not to exceed thirty years, and the said assessment shall bear interest at the rate of not exceeding seven per cent per annum on the total amount thereof remaining from time to time unpaid, and the rate to be fixed by the city council. [R. C. 1905, § 2794; 1905, ch. 62, § 159.]

City may stipulate in paving warrants payable in installments that city may pay warrants before maturity and stop interest. *State ex rel. Bithulitic & Contracting Co. v. Murphy*, 20 N. D. 427, 128 N. W. 303.

§ 3720. Special assessments by cities, and fixing the time of payment thereof. All special assessments for sidewalks and for the expense of opening, widening, grading or extending streets shall be payable in equal annual amounts extending over a period of not exceeding ten years and shall bear interest at the rate not to exceed seven per cent per annum on the total amount of such assessment remaining from time to time unpaid; providing, however, that any one who chooses to pay such special assessment in one single payment, may do so, and any one who has paid one or more annual installments may pay the balance in one single payment. [1909, ch. 57; R. C. 1905, § 2795; 1905, ch. 62, § 160.]

§ 3721. Certain assessments collected by suit. Whenever by reason of the exemption of any real property from special assessments, or when any real property cannot be specially assessed as herein provided, in any improvement district, by reason of the title thereof being in the United States, or from other cause, and such real property would otherwise be assessable for any improvements provided for herein, an assessment may be levied against such property and collected from the owner or person enjoying the beneficial use of such property, by suit in any court in this state. [R. C. 1905, § 2796; 1905, ch. 62, § 161.]

§ 3722. Special assessments due. Interest. All special assessments levied under the provisions of this article shall become due and payable ten days after the same shall have been approved by the city council, and shall thereafter bear interest at the rate of seven per cent per annum. [R. C. 1905, § 2797; 1905, ch. 62, § 162.]

Special assessments against land may be paid in full at any time with interest thereon to date of payment. *State ex rel. Bithulitic & Contracting Co. v. Murphy*, 20 N. D. 427, 128 N. W. 303.

§ 3723. Payment of one-fifth by general taxation. Any city which shall have power under the debt limit provisions of the constitution to create valid obligations to that extent, may, at the option of the city council, provide for the payment of not exceeding one-fifth of the cost of any work hereinbefore provided for other than sidewalks, opening and widening streets and sewer and water connections from main to curb line, by general taxation of all taxable property in such city, and may contract with reference thereto, and make appropriations and levy taxes therefor in installments annually and extending over the same period as provided for the special assessments for such improvement. Such appropriation and tax levy, if not heretofore included in the annual appropriation ordinance, may be made at any time as the occasion may require and be included in the next annual appropriation and tax levy. Such appropriation and levy, whether made as part of the regular annual appropriation ordinance and tax levy, or made thereafter, shall state the specific improvement for which such tax is levied, and the district in which such improvement is made, and the amount thereof shall be

credited to and the taxes collected thereunder be turned into and be deemed a part of the district fund upon which the warrants issued in payment of the improvement are to be drawn. [1907, ch. 46, § 9; R. C. 1905, § 2798; 1905, ch. 62, § 163.]

See the connection in which this section is cited in note to section 3740.

§ 3724. Special assessment commission. The mayor of each city shall, as soon as practicable after this article takes effect, appoint a commission, to be composed of three reputable residents and freeholders of the city, to be known as the "special assessment commission." Such commission shall hold their offices for the terms of two, four and six years, respectively, such terms to be designated by the mayor in making such appointment, and thereafter the mayor shall, in each odd numbered year at the first meeting of the city council in April, or as soon thereafter as practicable, appoint one member of such commission to fill the vacancy occasioned by the expiration of such term, who shall hold his office six years, and vacancies occurring in said commission by removal, resignation or death shall be filled by like appointment, to be made as soon as practicable after such vacancy occurs. All such appointments herein provided for shall be subject to the confirmation of the city council. Each member of such commission shall, upon his appointment and confirmation as aforesaid, file with the city auditor a written acceptance of such appointment, and shall take and subscribe the oath provided by section 3615, which oath shall be filed with the city auditor; and the member of such commission having the shortest time to serve shall act as chairman thereof, and no member of such commission shall hold any other city office during the term for which he is so appointed. The city engineer, city auditor and city attorney shall each at all times give to such commission such information, advice or assistance as he may be requested by such commission to give. Each member of such commission shall receive as compensation for his services while actually engaged in the duties of such commission, the sum of five dollars per day. Any member of such commission may be removed by the mayor, with the consent of the majority of the members of the city council, for neglect or refusal to perform the duties of his office or for misconduct in office. [R. C. 1905, § 2799; 1905, ch. 62, § 164.]

§ 3725. Notice to commission. Whenever the work for which a special assessment shall be required to be made by such commission shall have been completed, and approved by the city engineer, and the total cost of such work shall have been ascertained as near as practicable, the city auditor shall notify the chairman of such commission of the completion of such work, and shall certify to him the items of the total cost thereof, to be paid by special assessments, so far as the same have been ascertained, and the chairman of such commission shall thereupon immediately call a meeting of such commission, and such commission shall thereupon as expeditiously as possible proceed to make and return such special assessment as hereinafter provided. [R. C. 1905, § 2800; 1905, ch. 62, § 165.]

Certificate of city engineer that work has been completed is essential before city can levy assessments against individual property for payment of costs of sewer. *Baker v. La Moure*, 21 N. D. 140, 129 N. W. 464.

§ 3726. Special assessments, how made. Review. It shall be the duty of such commission, whenever required under the provisions of this article to make any special assessment, to personally inspect any and all lots and parcels of land which may be subject to such special assessment and determine from such inspection the particular lots and parcels of land which will in the opinion of such commission be especially benefited by the construction of the work for which such assessment is to be made and thereupon determine the amount in which each of said lots and parcels of land will be especially benefited by the construction of the work for which such special assessment is to be made and thereupon assess against such of said lots and parcels of land such sum, not exceeding such benefits, as shall be necessary to pay its just proportion of the

total cost of such work, or part thereof as is to be paid by special assessment, including all expenses incurred in making such assessment, and publishing necessary notices with reference thereto, including the per diem of such commission; and such commission shall thereupon make or cause to be made a complete list of such benefits and assessments, setting forth each lot or tract of land assessed, and the amount each lot is benefited by the improvement, and the amount assessed against each, and shall attach to such lists a certificate signed by a majority of the members of such commission, certifying that the same is a true and correct assessment of the property therein described to the best of their judgment, and stating the several items of expense, included in such assessment, and shall thereupon cause the same to be published twice, once in each week for two consecutive weeks in the official newspaper of the city, together with a notice of the time and place when and where such commission will meet to hear objections which may be made to any such assessment, by any person therein interested, or his agent or attorney, which time shall not be less than fifteen days after the first publication of such notice; and such commission may thereupon alter the same as may in their opinion be just or as may be necessary to correct any errors therein, and they may increase or diminish any such assessment as may be just and as is necessary to make the aggregate of all such assessments equal to the total special assessment to be made for the cost of the work for which they are made; provided, that no assessment shall exceed the benefits of the parcel of land assessed, as determined by the commission. Such commission shall thereupon confirm such list and attach thereto their further certificate certifying that the same is correct as confirmed by them. Such commission shall thereupon file such assessment list in the city auditor's office. Provided, however, that property belonging to the government of the United States shall be exempt from such assessment. [1913, ch. 85; R. C. 1905, § 2801; 1905, ch. 62, § 166.]

Limitation of assessment for local improvements. *Webster v. City of Fargo*, 9 N. D. 208, 82 N. W. 732; *Rolph v. City of Fargo*, 7 N. D. 640, 76 N. W. 242.

Publication of statutory notice mandatory. *McLaurin v. Grand Forks*, 6 Dak. 397, 43 N. W. 710.

Tax for street improvements upon abutting property invalid unless authorized by law. *Pickton v. City of Fargo*, 10 N. D. 469, 88 N. W. 90.

Presumption of regularity of proceedings to improve streets and levy tax. *Philips v. City of Sioux Falls*, 5 S. D. 524, 59 N. W. 881.

Assessment full cost improvement to abutting property is constitutional. *Webster v. City of Fargo*, 9 N. D. 208, 82 N. W. 732; *Rolph v. City of Fargo*, 7 N. D. 640, 76 N. W. 242; *Roberts v. Bank*, 8 N. D. 504, 79 N. W. 1049; *Tripp v. City of Yankton*, 10 S. D. 516, 74 N. W. 447.

Notice under this section alone is insufficient to confer jurisdiction to assess property. *Haggart v. Alton*, 29 S. D. 509, 137 N. W. 372.

Judgment vacating and annulling proceedings of board of commissioners taken for purpose of levying special assessment and ordering auditor to make assessment in accordance with this section, is void. *State ex rel. Bowen v. Sioux Falls*, 25 S. D. 3, 124 N. W. 963.

May a personal liability be created for assessments for local improvements. 133 Am. St. Rep. 929.

Assessment for local improvements against public property. 33 Am. St. Rep. 400.

Exemption of cemeteries from assessments for street work. 39 Am. Rep. 735.

Special assessment as tax. 3 L.R.A.(N.S.) 837.

Defects in work as defense to assessment for public improvement. 56 L.R.A. 905; 27 L.R.A.(N.S.) 1086.

Delegation by city council of power with respect to pavement assessment. 20 L.R.A. 656.

May an assessment of benefits rest upon prospective action in completing improvement. 28 L.R.A.(N.S.) 669.

Implied right to interest on assessment for public improvement. 6 L.R.A.(N.S.) 694.

Assessment for improvements made before property was included within the improvement district. 39 L.R.A.(N.S.) 543.

Persons and property liable for drainage assessments. 58 L.R.A. 353; 26 L.R.A.(N.S.) 973.

Estoppel to attack assessment for special benefits upon the ground that property is not benefited. 36 L.R.A. (N.S.) 39.

Estoppel to contest assessment for sewer. 60 L.R.A. 247.

§ 3727. Publication of notice of assessment list. The city auditor shall thereupon publish once, in the official newspaper of the city, a notice stating that such assessment list has been confirmed by the special assessment (commission) and filed in his office, and is open to public inspection, and shall state in said notice the time and place when and where the city council will act upon such assessment list; and in case such notice shall have been given more than fifteen days prior to the next regular meeting of the city council, such assessment list shall be acted upon by such council at its next regular meeting; and in case such notice shall not have been published more than fifteen days prior to the first regular meeting of the city council thereafter, such assessment list shall be acted upon by the city council at its second regular meeting, after the publication of such notice. Any person aggrieved may appeal from the action of such commission by filing with the city auditor prior to the meeting at which the city council will act upon such assessment, a written notice of such appeal, and stating therein the grounds upon which the same are based. [1909, ch. 53; R. C. 1905, § 2802; 1905, ch. 62, § 166.]

§ 3728. Hearing of appeals from commission. At the regular meeting of the city council at which such assessment list is to be acted upon, any person aggrieved by the determination of such commission in regard to any such assessment, and who has appealed therefrom, as hereinbefore provided, may appear before the city council and present his reasons why the action of such commission should not be confirmed by the city council, and the city council shall then hear and determine such appeals and objections, if any, and may alter and increase or diminish any of such assessments as they may deem just; provided, that the aggregate amount of all such assessments as returned by the commission shall not be changed; and provided, further, that no assessment as so adjusted shall exceed the benefits to the parcel of land on which it is assessed as determined by the assessment commission, and shall thereupon confirm such assessment list, and the city auditor shall thereupon attach to such list his certificate that the same is correct as confirmed by the city council, and shall thereupon file such assessment list in his office; and such assessment with interest and penalties accruing thereon shall be and remain a paramount lien upon the property upon which such assessment is levied, from the time such assessment list is approved by the city council, and shall remain a lien thereon until fully paid and shall have precedence over all other liens except ordinary taxes to which it shall be subject, and such lien shall not be divested by any judicial sale, and no mistake in the description of the property, or in the name of the owner, shall obviate such lien, provided the property assessed can be identified by the description in such assessment list. [R. C. 1905, § 2803; 1905, ch. 62, § 167.]

Owner of tax sale certificates may pay subsequent delinquent general taxes, without paying subsequent special assessments, and receipts for such taxes constitute additional lien. State ex rel. Moore v. Furstenau, 20 N. D. 542, 129 N. W. 81.

Superiority of lien of local assessment over prior lien. 35 L.R.A. 372; 30 L.R.A. (N.S.) 761.

Superiority as between successive special assessments. 30 L.R.A. (N.S.) 767.

§ 3729. Auditor shall certify assessments. The city auditor shall, annually, at the time he certifies to the county auditor the amount of the city taxes to be levied for the current year, also certify to such auditor all sidewalk, and all sidewalk repair assessments, and all assessments for opening or widening streets, remaining in his office uncertified, and shall also certify to such county auditor a list of the lots and tracts of land specially assessed for any other purpose as hereinbefore provided, designating the purpose of such assessment, and the fund to which it belongs, with the proportion of such assessment for such year against each lot, and shall add thereto one per cent (1%) of all such assessments, so certified; and the county auditor shall thereupon extend the same upon the tax list for the current year, and

the amount, with all interest and penalties, shall be collected and paid over to the city treasurer in the same manner as other city taxes, and when so paid over shall be credited by the city treasurer and city auditor to the fund for which it was collected; provided, however, that in all cities having less than two thousand (2,000) inhabitants, the city council may by resolution direct and authorize the city auditor to certify at one time any and all special assessments of said city for any purpose; and that when so directed by the city council the city auditor shall certify to the county auditor a list of the lots and tracts of land specially assessed for any purpose, designating the purpose of such assessment, and the fund to which it belongs, with the proportion of such assessment for each and every year when such special assessment will become payable in the future, including interest; and said city auditor shall also add to the assessment payable one per cent (1%) of the amount payable on such assessments for each year; such assessments so certified shall be accompanied by a certified copy of the resolution of the city council directing the assessment to be certified in this manner; and when any special assessment has been certified in the manner last described, then the city auditor shall not be required to certify any installment of such assessment annually, but the county auditor shall each year extend the amount so certified against each tract of land upon the tax list for the year when the same becomes payable according to the certificate of the city auditor, and the amount, with all interest and penalties, shall be collected and paid over to the said city treasurer in the same manner as other city taxes, and when so paid over shall be credited by the city treasurer and the city auditor to the fund for which it was collected; provided, further, that the county auditor shall have in his office a book entitled, "special assessment record," and when any city causes to be certified the special assessments for a period of more than one year, that then the county auditor shall cause said special assessments so certified to be duly recorded in said book for the respective years, and amounts shown in the certificate of the city auditor; provided, further, that whenever special assessments of any kind whatsoever, hereafter certified to the county auditor by the city auditors of cities incorporated under the general laws of this state or under the commission form of government, shall be paid to the county treasurer, it shall be the duty of the said county treasurer, at the time set by law for the payment to the city treasurer of all taxes and special assessments collected by the said county treasurer during the preceding month, to certify the amounts of such special assessments so collected in duplicate, one copy to be certified to the city treasurer, and one copy to be certified to the city auditor; such certificate to state specifically the lot, or known subdivision thereof, as appears upon the tax books of the county treasurer, the block, addition, amount collected and credited to each lot or known subdivision thereof, and the year for which said sum was so collected. [1913, ch. 84, § 3; R. C. 1905, § 2804; 1905, ch. 62, § 168.]

§ 3730. Warrants may be issued to pay assessments. Any matured special assessment warrants or interest coupons may be used in the payment of special assessments levied for the payment of the improvement for which such warrants or interest coupons were issued, and such warrants or coupons so used shall be canceled and retired by the city treasurer. [R. C. 1905, § 2805; 1905, ch. 62, § 169.]

§ 3731. Right of property owners to pay assessments. The owner of any property against which an assessment shall have been made for the cost of any improvement under this article shall have the right to pay the same, or any part thereof remaining unpaid, in full, with the unpaid interest thereon, and such payment in full shall constitute a discharge of the lien of such assessment upon his property. Such payment may be made to the county treasurer upon all installments of such assessments which have been certified

to the county auditor, and may be made to the city treasurer upon all portions of such assessments which have not been so certified. The person desiring to pay any portion of such assessment of the city treasurer shall obtain from the city auditor a certificate of the amount due upon such assessment which has not been certified to the county auditor, and shall thereupon present such certificate to the city treasurer, and the city treasurer shall thereupon receive and collect such amount, and issue duplicate receipts therefor, one of which he shall deliver to the party paying such assessment, and thereupon deposit the other in the office of the city auditor, and the city auditor shall thereupon note upon his records the payment of such assessment. [R. C. 1905, § 2806; 1905, ch. 62, § 170.]

City may stipulate in paying warrants payable in installments that city may pay warrants before maturity and stop interest. *State ex rel. Bithulitic & Contracting Co. v. Murphy*, 20 N. D. 427, 128 N. W. 303.

§ 3732. Penalties to be added. The county treasurer shall add to all such special assessments the same interest and penalties that are provided to be added in the case of general taxes, and at the same time, and shall collect such interest and penalties with such special assessments, and shall pay over to the city treasurer all such interest and penalties. [R. C. 1905, § 2807; 1905, ch. 62, § 171.]

Interest and penalty may be collected on special assessments for city purposes. *State ex rel. Viking Twp. v. Mikkelson*, 24 N. D. 175, 139 N. W. 525.

§ 3733. Delinquent special assessment taxes. If the real property against which any assessment is levied is sold to enforce the collection of a special assessment which has become delinquent, the sale shall be made by the same officer, and upon like notice and subject to the same provisions in relation to redemption, and the same record thereof shall be kept by the officer making the sale, as in cases of real property for delinquent taxes; but if any real property is subject to sale at the same time for delinquent taxes, and also for delinquent special assessments it shall be sold separately for each, and a separate certificate of sale shall be issued upon each of said sales, although both sales are made to the same person, and the certificates issued upon the sale for special assessments shall so state and if no redemption is made from such sale, a deed shall be issued to the purchaser or his assigns, which shall be, as nearly as practicable, in the same form as deeds issued upon sales for general taxes, except that it shall state that such sale was made for special assessments; and in case the sale for special assessments is made to a different purchaser from the sale for general taxes, such purchaser may redeem said premises from the purchaser of the same for delinquent general taxes, and upon such redemption shall be subrogated to all the rights of such purchaser from whom such redemption is made. [R. C. 1905, § 2808; 1905, ch. 62, § 172.]

§ 3734. Certificate of redemption. Such redemption shall be made at the office of the county auditor, and the auditor shall issue to the redemptioner a certificate of such redemption, which shall state that such redemption is made by the holder of a certificate of sale of the premises for delinquent special assessment and that the person to whom such certificate is issued or his assigns, is subrogated to all the rights of the original purchaser, and such certificate shall entitle the holder to a tax deed of said premises under such sale for delinquent general taxes, subject to the same conditions, and at the same time as the original certificate of sale. [R. C. 1905, § 2809; 1905, ch. 62, § 172.]

§ 3735. When no bidders. Whenever any parcel of land shall be offered for sale for a special assessment, as provided in section 3733, and there shall be no bidder therefor, the county auditor shall strike off such parcel of land to the city, making such assessment, and issue a certificate of sale therefor to such city, which certificate shall be assignable as hereinafter provided, and, if no redemption be made from such sale, or such certificate be not assigned within three years from the date of such certificate of sale, the

piece or parcel of land so bid off shall become the absolute property of the city at the expiration of said three years, without any further act upon its part, and may be disposed of by the city at public or private sale, as may be provided by the city council and the city may redeem any parcel of land from a purchaser thereof under a sale for general taxes as is hereinbefore provided for such redemption in other cases, and any assignee of the city's certificate of sale may likewise, and in like manner redeem any such parcel of land from any such sale for delinquent general taxes, and such redemption shall have the same force and effect as provided in the two preceding sections. The city may at any time before its title to said land becomes absolute, by resolution of the city council, assign said certificate of sale to any person except the city auditor and city treasurer, their deputies and clerks, who shall pay the amount for which the same shall have been bid in, and the amount of all subsequent special assessments thereon then due, and all penalties, interest and costs upon the same, and the city auditor shall thereupon execute to the purchaser of such certificate of sale an assignment thereof, substantially as provided in section 1588. [R. C. 1905, § 2810; 1905, ch. 62, § 173.]

§ 3736. Tax deed. In case such lands are not redeemed from such sale, and any amount paid by the city for the redemption of such premises from sale for general delinquent taxes with interest thereon at the date of such assessment, the county auditor shall, at the expiration of the period of redemption, issue a deed thereof to such city if such certificate has not been assigned by it, and if so assigned, then to the holder of such certificate; provided, that no deed shall be issued on any such certificate except to the city, until notice of expiration of the period of redemption has been given as provided for sales for general taxes. [R. C. 1905, § 2811; 1905, ch. 62, § 173.]

Omission of seal to signature of city treasurer will not render deed by city defective. Kirby v. Waterman, 17 S. D. 314, 96 N. W. 129.

§ 3737. Vacation of judgment in condemnation proceedings. Whenever any property is to be taken under this article by condemnation proceedings, the court shall upon request by resolution of the city council call a special term of court for the purpose of the trial upon such proceedings and may summon a jury for such trial whenever necessary and such proceedings shall be determined as speedily as practicable, and any appeal from the judgment in such action shall be taken within sixty days after the entry of such judgment and such appeal may be determined at either a special or regular term of the supreme court and shall be given precedence of all other civil causes before the court, except election contests, and in case any judgment which shall be rendered in condemnation proceedings, for damages to property used by any city for street, sewer or other purposes, is entered, it shall not be vacated or set aside; provided, the city council shall within three months after its entry, levy special assessments for its payment in whole or in part, and shall at the time of the next annual tax levy, levy a general tax for the payment of such part of the same as is not to be paid by special assessment; and provided, further, that upon failure of the city council to make such assessments and levy as hereinbefore stated, said judgment may then be vacated. [R. C. 1905, § 2812; 1905, ch. 62, § 174.]

§ 3738. Records. Duty of auditor. It shall be the duty of the city auditor to keep in his office a complete record of all proceedings taken in the matter of making any improvements under this article, including all reports and the confirmation thereof, and all petitions, orders, appointment of commissioners, notices and proofs of publications and orders and resolutions of the city council. Such record or certified transcript thereof or the original papers, proofs of publication, orders or resolutions on file in his office, shall be admitted in evidence without further proof, as evidence of the fact therein contained, in any court or place in this state. [R. C. 1905, § 2813; 1905, ch. 62, § 175.]

§ 3739. Abbreviations. In all proceedings taken for the levy and collection of any special assessments, abbreviations, letters and figures may be used to denote lots, lands and blocks, sections, townships, ranges and parts thereof, years, days of the month and amounts of money. [R. C. 1905, § 2814; 1905, ch. 62, § 176.]

§ 3740. Connections with sewer and other mains. Whenever the city council shall determine to pave or repave any street, avenue or alley in which water mains, gas mains, sewers, steam pipes or other pipes, or either of them, shall have been previously laid and constructed, they may, by resolution, require the owners of all property abutting on the said street to cause sewer, water, gas, steam and other service pipes to be first constructed and laid in such street, avenue or alley at the cost of the property fronting thereon, from the sewer, water, gas, steam or other mains in said street, avenue or alley to a point two feet inside of the curb line on either side of such street, avenue or alley at such intervals along the whole length of such street, avenue or alley as shall be necessary to supply and serve each lot, part of lot or parcel of land in accordance with the city ordinance governing the construction of such connections. Upon the adoption of such resolution the city auditor shall publish in the official newspaper of the city twice, once in each week for two successive weeks, a notice to said owner or occupant, setting forth what work is to be done and the time within which he is required to do the same. Such notice may be general as to the owner, but must be specific as to the description of the lot or parcel of land in front of which the improvement is to be made. If such work is not done in the manner and within the time prescribed in said notice the city council shall order the same to be done by such person as they may have contracted with therefor, under the direction of the city engineer or street commissioner, in cities having no city engineer, at the expense of the lot or parcel of land adjoining such improvement, and such expense, including the expenses of all notices in connection with such work and the assessment therefor, and any other expenses incurred for such work, shall be assessed upon the lot or parcel of land properly chargeable therewith, by the city engineer or by the street commissioner in cities having no city engineer; and such assessment shall be returned by him and filed in the office of the city auditor, and the city auditor shall cause to be published the said assessment, together with a notice of the time and place when and where the city council will meet to approve the same, and said notice shall be published once in the official newspaper of the city at least ten days prior to the meeting of the city council to approve such assessment. The city council after the adoption of such resolution declaring the necessity of making the service connections above referred to, shall, by resolution, direct the city engineer to prepare plans and specifications for same and file with the city auditor and shall direct the city auditor to advertise for bids for the construction of such connections in accordance with the plans and specifications for the construction of the same, which plans and specifications shall be filed with the city auditor by the city engineer; and such bids shall each be accompanied by a certified check in the sum of \$500 to guarantee the entering into the contract should same be awarded to him. Bids shall be received by the city council and the contract awarded to the lowest responsible bidder. The successful bidder shall give a surety bond in the sum of \$1,000 executed by such bidder and a surety company as surety or by two freeholders of the state, who shall justify as required in arrest and bail, and the aggregate of such justification shall equal the amount of such bond, and such bond shall be conditioned that in case such bid is accepted and such contract awarded to such bidder he will well and faithfully perform the work bid for in accordance with the terms of and within the time provided for in such contract, and pursuant to the plans and specifications for such work on file in the auditor's office,

and pay for all labor and material used in such work, and that in case of default on the part of such bidder to perform such work as provided in his contract the sum named in said bond shall be taken and held to be fixed and liquidated damages in favor of said city; and that the full amount thereof may be recovered from such bidder and his sureties in an action by the city against them on such bond. Such bond shall be approved by the city council and filed in the office of the city auditor, and shall thereupon be and remain in full force and effect. Upon the award of the contract the checks of all unsuccessful bidders shall be returned to them, and upon the filing of such bond the check of the successful bidder shall be returned to him. The city council shall have the right to reject any and all bids for work to be done under this section if, in its opinion, the interests of the city will be best subserved by so doing, and readvertise for further bids, but if all such bids are not rejected the contract shall then be awarded to the responsible bidder whose bid is the lowest upon the basis of cash payment therefor; provided, such bidder shall have complied with the foregoing requirements and furnished the bond hereinbefore provided for. All contracts entered into for any work provided for in this section shall be entered in the name of the city and shall be executed on the part of the city by the mayor thereof, and countersigned by the auditor with the corporate seal of the city affixed, and when signed by the contractor shall be filed in the office of the city auditor. Such contract shall require the work to be done thereunder to be done pursuant to the plans and specifications therefor on file in the office of the city auditor, and subject to the approval of the city engineer, who shall supervise and inspect such work during its progress, and there shall be reserved in each contract the right of the city council, in case of an improper construction of such work, to suspend work thereon at any time, and to relet the contract therefor, or order a reconstruction of said work or any part thereof improperly done. Each contract so entered into shall state the time on or before which such work must be completed, and must state from what fund the amount to be paid thereon by the city is to be paid, and that the consideration of such contract is payable only in warrants drawn on such fund, and that such city assumes and incurs no general liability under such contract. In case the contractor to whom any such contract shall be let shall properly perform the work therein designated, the city council may from time to time in its discretion, as the work progresses, pay to such contractor upon an estimate made by the city engineer of the amount already earned thereunder, eighty-five per cent of the amount shown by such estimate to have been so earned, in warrants drawn on the fund from which the same is to be paid. All money collected from special assessments for building and constructing sewer and water and other connections shall be kept in a fund called "sewer and water connections special assessment fund," and warrants shall be drawn on such fund for the payment of the costs of all such connections. All such sewer and water special assessments shall be paid in a single amount. [1907, ch. 46, § 10; R. C. 1905, § 2815; 1905, ch. 62, § 177.]

This is R. C. 1905, § 2815, as amended by Laws 1907, ch. 46, § 10, which chapter also amends R. C. 1905, § 2740 (section 3664 herein), enacts a new R. C. § 2770a (as amended, section 3696 herein), and amends R. C. 1905, §§ 2778 (section 3704 herein), 2780 (section 3705 herein), 2782 (section 3707 herein), 2783 (as amended again, section 3708 herein), 2769 (section 3694 herein), and 2798 (section 3723 herein). Laws 1907, ch. 46, above cited, concludes with a section 11 reading as follows: "This act shall not affect any contract let and commenced under this act which it amends, but all such contracts shall be conducted and concluded under the terms of said act,"—which may perhaps refer only to the immediately preceding section 10, being section 3740 herein.

§ 3741. Proceedings heretofore commenced, how completed. Any special assessment or other proceeding hereinbefore provided for, which shall have been commenced by any city officer or committee appointed under the laws heretofore existing, may be completed by such officer or committee in the manner provided by such law, and shall have the same force, effect and

validity as though taken or completed under this article, but all future steps and proceedings not so commenced, taken for any purpose hereinbefore provided for, shall be taken under the provisions of this article, and no special assessment or other proceeding heretofore had with reference to any improvement or assessment hereinbefore provided for, shall be in any manner affected by the provisions of this article. [R. C. 1905, § 2816; 1905, ch. 62, § 178.]

§ 3742. Water main provisions, applicable when. The provisions of this article with reference to water mains shall apply only to cities which own a system of water works and water mains. [R. C. 1905, § 2817; 1905, ch. 62, § 179.]

§ 3743. Special assessments. Lien between vendor and vendee. As between vendor and vendee, all special assessments upon real property for local improvements shall become and be a lien upon the real property upon which the same are assessed, from and after the first day of December, next after such assessments shall have been certified and returned to the county auditor, to the amount so certified and returned, and no more. [R. C. 1905, § 2818; 1905, ch. 62, § 180.]

§ 3743a. Special assessments, validated. Every special assessment or part thereof made or levied by the officers of any cities for any purpose authorized by law, heretofore and since the year 1903; and all taxes levied therefor by any board or officer authorized by law to make the same, is hereby legalized and made valid in all respects and purposes, without regard to any defects, errors or omissions in the proceedings therefor, the same as if in all things made in conformity to the laws then in force. [1911, ch. 72, § 1.]

The title of the act constituting this and the next section is as follows: "An act validating special assessments and taxes made or levied in cities and villages since 1903 and establishing certain rules of evidence relating thereto."

§ 3743b. Conclusive evidence. What is. In any action or proceedings where the legality or validity of any of the said taxes, assessments or the warrants issued thereon, is called into question, the production of evidence that any such special assessment was duly approved and confirmed by the city council or board of village trustees, shall be deemed conclusive evidence that every step in the proceedings therefor has been duly and regularly made in the manner and form provided by law. [1911, ch. 72, § 1.]

ARTICLE 21.—SPECIAL STREET LIGHTING SYSTEM.

§ 3744. Special system authorized. All cities shall have power and authority to install upon any of the streets thereof any special system or systems of street lighting, and to defray the expenses and cost thereof as hereinafter provided. [1909, ch. 56, § 1.]

§ 3745. Procedure to install. Whenever the owners of a majority of the property abutting on any street or streets of any city shall petition the city council, asking that there be installed upon such street lighting, to be therein and by said petition described in general terms, such city council may, at any time within sixty days after the filing of such petition with the city auditor, require plans, specifications and estimates of the probable cost of such improvement to be prepared by the city engineer, or such other person as shall, upon motion or resolution, be designated, and thereafter, and upon the return and filing of such plans, specifications and estimates and probable cost, such city may proceed to provide for the construction of such improvement and to assess the cost thereof against the abutting property in the same manner and with the same notice and according to the same forms and procedure as now provided by statute for the construction and assessment of street paving; and upon such proceedings being taken and completed, the cost of such construction or such part thereof as the council shall deem proper, be assessed against the abutting property in the same manner and according to the same form as now provided by law for the assessment of the cost of street paving. [1909, ch. 56, § 2.]

§ 3746. Assessment for cost. In conducting proceedings under this act, it shall not be necessary to establish any separate lighting or improvement districts, and, in assessing the benefits, no assessment shall be made against any property other than that immediately contiguous to the streets or avenues where such improvement is made. [1909, ch. 56, § 3.]

ARTICLE 22.—IMPROVEMENT OF ROADS LEADING TO CITIES.

§ 3747. Roads leading to cities, how improved. Whenever ten per cent of the electors, as shown by the last municipal election, of any city, shall petition the city council to call an election for the purpose of raising money or the issuing of bonds to repair or construct any road or bridge within such city, or approaching or leading thereto, whether the same is adjacent thereto or not, or to pay for any bridge heretofore constructed or built on any such road or highway; and if such petition shall state first, the purpose of raising such money and the object for which the same is to be expended; second, the amount thereof, it shall be the duty of such city council to call an election in said city for the purpose of submitting to the electors therein the question of raising the money and the amount thereof as stated in the petition, and which election may be called at any regular or special meeting of such city council, and such city council shall cause notice of such election to be published twice in the official paper of the city, once in each week for two consecutive weeks, and such election shall not be held until at least twenty days after the first publication of such notice. Such notice shall state:

1. The purpose of raising such money.
2. The object for which the same is to be expended.
3. The amount thereof.

4. The amount thereof that shall be raised by the issuing of bonds in payment thereof, or by the customary and usual method of raising money by assessment and levy, as such electors may designate on their ballots at such election. [R. C. 1905, § 2819; 1905, ch. 62, § 181.]

§ 3748. Funds for improvement, how raised. If at such election a two-thirds majority of all the electors voting shall vote in favor of raising such sum of money, and a majority of the electors voting at such election shall vote in favor of raising such money by the issuing of bonds therefor, then the city council is authorized to issue and negotiate the sale of such bonds without any other election; but if a two-thirds majority of the electors voting at such election shall vote in favor of raising such sum of money, and a majority of the electors voting at said election shall vote in favor of raising the same by levy and assessment, then the same shall be raised by levy and assessment as in other cases provided by the law governing cities. [R. C. 1905, § 2820; 1905, ch. 62, § 181.]

§ 3749. Money, how expended. Such money, when so raised, shall be used and expended by the city council for the purpose stated in the notice of election, and for no other; provided, however, that any money coming into the city treasury from the county treasury, on account of road taxes collected from residents of any incorporated city and all road taxes collected on account of real or personal property situated within an incorporated city, or which may come into the city treasury from the bridge fund of such county from any such taxes, levied, assessed and collected from persons and property in such city, may be, at the discretion of the city council, expended in the repair or construction of any such road within such city, or approaching or leading thereto, or for the repair or building of any bridge thereon, or any bridge heretofore constructed thereon whether the same is adjacent to such city or not. [R. C. 1905, § 2821; 1905, ch. 62, § 181.]

ARTICLE 23.—CORPORATE LIMITS.

§ 3750. Power to extend city limits. Any city in this state that shall become incorporated under this article may extend its corporate limits in the manner hereinafter provided. [R. C. 1905, § 2822; 1887, ch. 73, art. 17, § 1; R. C. 1899, § 2327; 1905, ch. 62, § 182.]

Notice of proceedings for extension of limits of city boundaries as designated by legislature cannot be changed by city council, and notice in accordance with legislative act is sufficient. *State ex rel. Johnson v. Clark*, 21 N. D. 517, 131 N. W. 715.

Power of legislature to annex territory to municipality. 27 L.R.A. 737.

§ 3751. How. When a majority of the property owners adjacent to the corporate limits of any city in this state petition the mayor and city council to have any of their property included within the corporate limits of said city, it shall be the duty of the city council to publish such petition in the official paper of the city for four consecutive weeks, and unless a written protest signed by at least twenty-five property owners of said city is filed with the mayor opposing such proposed annexation, within ten days after the publication of said petition, such proposed annexation shall be included in and become a part of said city. [R. C. 1905, § 2823; 1887, ch. 73, art. 17, § 2; R. C. 1899, § 2328; 1905, ch. 62, § 183.]

One signing petition for extension of city so as to include his property, and paying taxes for three years, estopped to question proceeding. *State v. City of Pierre*, 15 S. D. 559, 90 N. W. 1047.

§ 3752. Plat of city to be recorded. The mayor of any city incorporated under this chapter shall cause to be filed in the office of the register of deeds in the county wherein said city is located a plat showing the corporate limits and boundaries of his city at the time of its incorporation under this chapter, and any change in said city limits made subsequent to its incorporation under this chapter. [R. C. 1905, § 2824; 1887, ch. 73, art. 17, § 3; R. C. 1899, § 2329; 1905, ch. 62, § 184.]

§ 3753. Extension of limits. Any city of this state, whether organized under the general law or under a special charter, and without regard of the number of its inhabitants, may so extend its boundaries as to increase the territory within the corporate limits not to exceed one-half of its present area, by a resolution of the city council passed by two-thirds of the entire members-elect, particularly describing the land proposed to be incorporated within the city limits, setting forth the boundaries of the territory proposed to be incorporated; and provided, further, that whenever any city in this state is or shall be separated into two parts, not contiguous at any point, the strip of unincorporated territory so separating and lying between such parts, if the same does not exceed one-fourth of the present limits of such city, may be so incorporated within such limits by the passage of a resolution as is hereinbefore provided for the extension of limits. [1909, ch. 58, § 1; 1907, ch. 47; R. C. 1905, § 2825; 1889, ch. 32, § 1; R. C. 1899, § 2330; 1905, ch. 62, § 185.]

Incorporation of territory into municipality as affecting prior rights as to use of highway. 47 L.R.A. (N.S.) 607.

Municipal liability for defects or obstructions in streets in annexed territory. 20 L.R.A. (N.S.) 575.

Liability of annexed territory to pay proportionate share of existing debts. 27 L.R.A. (N.S.) 1147.

§ 3754. Publication of resolution. The resolution of the city council shall be published in the official newspaper of the city three times, once in each week's issue for three successive weeks, and printed or typewritten copies of said resolution shall also be posted in five of the most conspicuous places within the territory proposed to be annexed, and unless a written protest signed by a majority of the property owners of said proposed extension is filed with the city clerk or auditor within ten days after the last publication of such resolution, the territory described in the resolution shall be included within and become a part of said city. But in the event such written protest is filed, then the city council shall hear the testimony offered for or against

such annexation, and if after hearing such testimony and after a personal inspection has been made of the territory proposed to be annexed, such city council is of the opinion that such territory ought to be annexed and if such city council by a resolution of the city council, passed by two-thirds of the entire members-elect thereof, orders that such territory shall be so included within the corporate limits of such city, it shall then make and cause an order to be made and entered, describing the territory so annexed, and the territory described in such resolution shall be included within and become a part of said city; provided, however, if the greater portion of said territory proposed to be annexed consists of lands used for farming or pasturing purposes, then said territory shall not be annexed. [1911, ch. 74; 1909, ch. 58, § 2; R. C. 1905, § 2826; 1889, ch. 32, § 2; R. C. 1899, § 2331; 1905, ch. 62, § 186.]

§ 3755. Record to be kept. Upon written demand filed with the city council at or prior to the hearing of any of the parties affected thereby all proceedings, and the testimony submitted shall be reduced to writing and shall be filed with the city auditor, and shall remain on file in the office of said city auditor. [1909, ch. 58, § 3.]

§ 3756. Plat filed. When the city limits of any city have been extended, as provided by sections 3753, 3754, the mayor shall forthwith cause to be filed in the office of the register of deeds in the county wherein said city is located, a plat showing the corporate limits and boundaries of the city. [R. C. 1905, § 2827; 1889, ch. 32, § 3; R. C. 1899, § 2332; 1905, ch. 62, § 187.]

ARTICLE 24.— MISCELLANEOUS.

§ 3757. Mayor and auditor to sign bonds and contracts. All bonds of the city and all contracts and conveyances, except as herein otherwise provided, shall be signed by the mayor and countersigned by the auditor, who shall affix the seal of the city thereto, and shall keep an accurate record of all bonds issued in a book to be provided for that purpose. [R. C. 1905, § 2828; R. C. 1899, § 2333; 1905, ch. 62, § 188.]

City retaining benefit of contract estopped to assert necessity of preceding ordinance. Nat. Tube Works v. City of Chamberlain, 5 D. 54, 37 N. W. 761; McGuire v. Rapid City, 6 D. 346, 43 N. W. 706, 5 L.R.A. 752.

§ 3758. Property of city exempt from taxation and sale on execution. Lands, houses, moneys, debts due the city and property and assets of every kind and description belonging to the city shall be exempt from taxation and from sale on execution. [R. C. 1905, § 2829; 1887, ch. 73, art. 18, § 3; R. C. 1899, § 2335; 1905, ch. 62, § 189.]

Exemption from taxation of lands owned by governmental bodies or in which they have an interest. 132 Am. St. Rep. 291.

§ 3759. Fines, penalties and forfeitures. All fines, penalties and forfeitures collected for offenses against the ordinances of the city and all fines, penalties and forfeitures collected within the city for misdemeanors against the laws of the state, shall be paid to the officer entitled by law to receive the same. [R. C. 1905, § 2830; 1887, ch. 73, art. 18, § 4; R. C. 1899, § 2336; 1905, ch. 62, § 190.]

§ 3760. Penalty for being interested in contract. Any officer of the city or member of the city council who shall by himself or agent become a party to or in any way interested in any contract work or letting under the authority of the city, or who shall either directly or indirectly by himself or other parties accept or receive any valuable consideration or promise for his influence or vote, shall be fined in a sum not exceeding one thousand dollars, one-half of which shall go to the informer and the balance be paid into the city treasury by the officer collecting or receiving the same, and the said contract shall be null and void. [R. C. 1905, § 2831; 1887, ch. 73, art. 18, § 5; R. C. 1899, § 2337; 1905, ch. 62, § 191.]

Power of municipal board or committee to employ one of its own members as counsel or to render other special services. 3 L.R.A.(N.S.) 849.

Municipal liability for labors performed or services accepted by it on contract invalid because made with officer of municipality. 27 L.R.A.(N.S.) 1127.

Obligation of municipality to pay for property purchased from an officer or member of board intrusted with the duty of making purchases. 9 L.R.A.(N.S.) 1014.

Obligation of public corporation to pay for services rendered under contract in which officer is personally interested. 34 L.R.A.(N.S.) 129.

§ 3761. Construing act. The provisions of this chapter, so far as they are the same as existing statutes, must be construed as continuations thereof and not as new enactments. [R. C. 1905, § 2832; 1905, ch. 62, § 192.]

The words "this chapter," as here used, mean Laws 1905, ch. 62.

ARTICLE 25.—CORRECTION OF VILLAGE PLATS.

§ 3762. District court empowered to correct errors. The district court is authorized and empowered on application made by the trustees of any village, or the mayor or aldermen of any city to correct errors that may have been incurred in any town, village or city plat. [R. C. 1905, § 2833; 1905, ch. 64, § 1.]

§ 3763. Officers of village or city may make application for correction. The trustees of any village or the mayor or aldermen of any city may make application to the district court of the county in which such village or city may be located to correct errors in the plat of such village or city. Said trustees, mayor or aldermen shall give notice in writing of such intended application, in a newspaper printed and published in the county wherein such village or city may be situated, at least forty days prior to the sitting of the court to which such application shall be presented, and to all persons directly affected by the proposed corrections notice shall be given and served in the manner provided by law for the service of summons in district court. [R. C. 1905, §§ 2834, 2835; 1905, ch. 64, § 2.]

§ 3764. Persons having adverse interests may intervene. Any person or persons having an adverse interest or who would be affected by such proposed correction, alteration or change in said plat shall have the right to intervene and appear in person or by attorney and make defense in such manner as in civil actions. [R. C. 1905, § 2836; 1905, ch. 64, § 3.]

§ 3765. Procedure by court. If satisfactory proof shall be produced to the court that the notice required by the preceding section has been given, the court shall proceed to hear and determine such petition, and the defense made thereto may correct the error in the plat of the village or city set forth in said application and order the proceedings thereon to be recorded by the clerk with the records of the court, and a certified copy of the judgment correcting such error recorded in the office of the register of deeds of the proper county. [R. C. 1905, § 2837; 1905, ch. 64, § 4.]

§ 3766. Validating city ordinances. All ordinances and resolutions heretofore enacted or adopted by the city council of any city in this state, under and pursuant to which any work of local improvements has been undertaken and completed in such, are hereby declared to be valid, notwithstanding any irregularity in the enactment or adoption of such ordinance or resolution. [R. C. 1905, § 2838; 1903, ch. 54, § 1.]

ARTICLE 26.—VALIDATING CERTAIN CITY ORDINANCES.

§ 3767. Contracts and obligations valid. All contracts heretofore made, and all obligations heretofore incurred, and evidences of debt issued thereunder, by any city in this state, for the execution of any work of local improvement in such city, which work has been completed, are hereby declared to be valid, notwithstanding any irregularity in the proceedings relative to such special improvement, or omission by any officer or officers, of any act required to be done by such officer or officers, under the law pursuant to which the local improvement was ordered done, and notwithstanding the in-

validity of the ordinance or resolution providing for such local improvement. [R. C. 1905, § 2839; 1905, ch. 54, § 2.]

§ 3768. Courts to determine amount of assessment in actions testing validity. In all actions now pending or hereafter commenced in any of the courts of this state, in which the validity of any assessment for local improvements in any city comes in question, the courts shall, if the proceedings relative to the local improvement are found to be irregular, ascertain the true amount for which the property involved in said action is liable for such improvement. In order to ascertain the amount for which any lot or tract is liable, the court shall hear the evidence and ascertain the total cost of the improvement and the several lots or tracts liable to assessment therefor under the laws pursuant to which the work was done, and shall thereupon ascertain and determine the amount for which the lots or tracts in question should properly be assessed, according to the provisions of the law prescribing the method of paying for such local improvement. [R. C. 1905, § 2840; 1903, ch. 54, § 3.]

§ 3769. Lien on land. The amount so ascertained, together with interest thereon at the rate of seven per cent per annum from the date on which interest would attach, had the assessment been valid from the beginning, shall be adjudged to be a lien upon the lot or tract affected by such action, and shall be collected in the same manner as other taxes of like nature are collected under the laws in force and at the time the judgment is entered. [R. C. 1905, § 2841; 1903, ch. 54, § 3.]

§ 3770. Action to test validity, commenced when. No person shall be heard to object to the validity of any assessment heretofore made for local improvements in any city of this state, unless the action or proceeding in which the validity of such assessment comes in question shall be commenced before the first day of January, 1904. [R. C. 1905, § 2842; 1903, ch. 54, § 4.]

CHAPTER 45.

COMMISSION SYSTEM OF GOVERNMENT.

This chapter clearly supersedes Laws 1907, ch. 45.

§ 3771. Cities incorporated, how. Any city in this state and any incorporated town or village therein having a population of not less than five hundred inhabitants may become incorporated under this chapter as a city, in the manner following:

Whenever one-tenth of the legal voters of such city, or one-tenth of the legal voters of such incorporated town or village, voting at the last preceding general election, shall petition the mayor and council of such city, or the president and trustees of such incorporated town or village to submit the question as to whether such city, incorporated town or village shall become incorporated under this chapter, to a vote of the electors in such city, town or village it shall be the duty of such mayor and council in such city, or the president and trustees of such incorporated town or village, to forthwith submit such question accordingly, and to appoint a time and place or places at which such vote may be taken, and to designate the persons who shall act as judges and clerks at such election; but such question shall not be submitted hereafter oftener than once in four years.

Provided, that cities, towns or villages in this state which have heretofore voted upon and rejected the commission system of government shall not again vote upon the question within a period of three years after such rejection. [1913, ch. 72; 1911, ch. 77, § 1; 1907, ch. 45, § 1.]

Constitutionality of commission form of government. 35 L.R.A.(N.S.) 802; 41 L.R.A.(N.S.) 111.

§ 3772. Notice of election. The mayor of such city or president of such incorporated town or village shall give at least twenty days' notice of such election by publishing a notice thereof in one or more newspapers within such city, incorporated town or village, but if no newspaper is published therein,

then by posting at least five copies of such notice in each ward or voting precinct of such city, town or village, if divided into wards and precincts; if not, then within such city, town or village. [1911, ch. 77, § 2; 1907, ch. 45, § 2.]

§ 3773. Form of ballots. The ballots to be used at such election shall be in the following form:

“For city charter under commission system of government, ☐ ;”
 “Against city charter under commission system of government, ☐ ;” the elector to designate his choice by placing a cross in the square opposite his choice. The judges of such election shall make returns thereof to the city council of such city, and trustees of such incorporated town or village, whose duty it shall be to canvass such returns, and cause the result of such canvass to be entered upon the records of such city, town or village.

If a majority of the votes cast at such election shall be for city organization under commission system, such city shall henceforth be deemed to be organized under this chapter, and the city, village or town officers then in office shall thereupon exercise the powers conferred upon like officials by this chapter, until their successors shall be elected and qualified. [1911, ch. 77, § 3; 1907, ch. 45, § 3.]

§ 3774. Call for special election of city commissioners. Within twenty days after the issuance of patent incorporating any city under the provisions of this chapter, it shall be the duty of the mayor or president of the city, town or village voting such incorporation to call a special election for the purpose of electing the first board of city commissioners provided for herein, such election to be held as provided in section 3784. [1911, ch. 77, § 4; 1907, ch. 45, § 4.]

§ 3775. Court takes judicial notice. All courts in this state shall take judicial notice of the existence of cities organized under this chapter, and of the change of the organization of any city from its former organization to its organization under this chapter, and from the time of such organization the provisions of this chapter shall be applicable to such city; and all laws in conflict herewith shall no longer be applicable; but all laws or parts of laws not inconsistent with the provisions of this chapter shall continue in force and be applicable to any such city the same as if such change had not taken place. [1911, ch. 77, § 5; 1907, ch. 45, § 5.]

§ 3776. Bodies corporate. Cities organized under this chapter shall be bodies politic and corporate under the name and style of “city of (name)” and under such name may sue and be sued, contract and be contracted with, acquire and hold real and personal property for corporate purposes, have a common seal and change the same at pleasure, and exercise all the powers hereinafter conferred. [1911, ch. 77, § 6; 1907, ch. 45, § 6.]

§ 3777. Vested rights. All rights and property of every kind and description which were vested in any municipal corporation under its former organization, shall be deemed and held to be vested in the same municipal corporation upon its being incorporated under the provisions of this chapter, but no rights or liabilities, either in favor or against such corporation, existing at the time of so becoming incorporated under this chapter, and no action or prosecution of any kind shall be affected by such change, but the same shall stand and progress as if no change had been made; provided, that when a different remedy is given by this chapter, which may properly be made applicable to any right existing at the time of such city so becoming incorporated under this chapter the same shall be deemed cumulative to the remedies before provided and used accordingly. [1911, ch. 77, § 7; 1907, ch. 45, § 7.]

§ 3778. Legal identity of cities not changed. All ordinances and resolutions in force in any city at the date of its organization under this chapter shall continue in full force and effect until repealed or amended, notwithstanding such change of organization, and such change of organization shall not change the legal identity of such city as a corporation. [1911, ch. 77, § 8; 1907, ch. 45, § 8.]

§ 3779. Result of election. Returns of. If a majority of all the votes cast at such election shall be for a commission system, then said city shall adopt the form herein provided for. The result of the election as canvassed by the judges shall be returned to the town, city or village clerk, as the case may be, and if a majority of all the votes cast are in favor of a commission system of government said clerk shall certify the fact to the secretary of state, together with the result of the census taken, if any, and thereupon a patent shall be issued as hereinafter provided, which shall specify the boundaries of such city and the number and boundaries of the wards thereof. [1911, ch. 77, § 9; 1907, ch. 45, § 9.]

§ 3780. Certified to secretary of state. If said commission system of government be accepted the result shall be certified under the corporate seal of the city to the secretary of state, together with a copy of the proceedings relating thereto; thereupon the governor shall issue letters patent under the great seal, reciting the facts, defining the boundaries of the city, and constituting the same a body corporate and politic by the name of the city of..... (specifying the name of such city) and declaring that the same shall be governed by the provisions of this chapter. [1911, ch. 77, § 10; 1907, ch. 45, § 10.]

§ 3781. Patent, where recorded. Any patent issued under the provisions of this chapter shall be recorded in the office of the secretary of state in a book kept for that purpose. Any patent so issued and recorded, the record thereof or a certified copy of such record shall be conclusive evidence in all courts and places of the due incorporation of the city mentioned and of all the facts therein recited. [1911, ch. 77, § 11; 1907, ch. 45, § 11.]

§ 3782. Boundaries of wards. The number and the boundaries of the wards of any city organized under the provisions of this chapter may be changed by ordinance adopted by a majority vote of the city commissioners, provided said ordinance must be introduced at a regular meeting of the city commissioners in May and before final action is taken thereon shall be published in the official paper of the city, if any, otherwise in a newspaper designated by such ordinance, once in each week for four successive weeks, and when the boundaries of any wards are fixed by any ordinance the number of wards and boundaries thereof or of any of said wards shall not be again changed for a period of two years, except by adding thereto such territory as may at any time be added to the city limits; provided, further, that the territory of the wards shall be contiguous and compact and that no ward having a population of less than one hundred shall be created. [1911, ch. 77, § 12; 1907, ch. 45, § 12.]

§ 3783. Officers. The officers of cities incorporated under this act shall be a president of the board of city commissioners and four city commissioners who, together, shall be known as the board of city commissioners of the city of; a treasurer, auditor, attorney, a police magistrate, one or more justices of the peace, one or more assessors, a physician, street commissioner, chief of fire department, city engineer, chief of police, a board of public works, one or more policemen, and such other officers or boards as the board of city commissioners may deem necessary; provided, that the board of city commissioners by a majority vote may dispense with the offices of street commissioner, engineer and board of public works, and provide that the duties thereof be performed by other officers or boards, by the board of city commissioners or a committee thereof. [1911, ch. 77, § 13; 1907, ch. 45, § 13.]

§ 3784. Elections biennial. Biennial municipal elections in all cities shall be held on the first Tuesday in April at such place or places as the board of city commissioners shall designate. The polls of such election shall be opened at eight o'clock a. m. and close at five o'clock p. m. Ten days' previous notice of the time and place of such election and of the officers to be elected shall be given by the city auditor by publication in the official city paper and by

posting written or printed notices in three public places in the city; but the failure to give such notice shall not invalidate such election. In all other respects such elections shall be conducted as prescribed by general election laws, and for all general and special elections held under the provisions of this act in the city, for city officers and for other purposes, the board of city commissioners shall, at least ten days before any election is held, appoint in each precinct established in the city, one inspector and two judges of election. [1911, ch. 77, § 14; 1907, ch. 45, § 14.]

§ 3785. Commissioners. How elected. The president of the board of city commissioners and four city commissioners shall be elected by the legal and qualified voters in the city, in the following manner: The president of the board of city commissioners and the four city commissioners shall be elected at large and not by wards. Each voter shall be allowed to cast but one vote for the candidate for the office of president of the board of city commissioners. Each voter shall be allowed as many votes for the candidates of the office of city commissioners as there are commissioners to be elected, such votes to be distributed among the candidates as the voter shall see fit, but no voter shall be allowed to cast more votes than candidates to be elected. [1911, ch. 77, § 15; 1907, ch. 45, § 15.]

Cumulative voting in election of city commissioners is not authorized. State ex rel. Shaw v. Thompson, 21 N. D. 426, 131 N. W. 231.

It is duty of city auditor to furnish ballots for election of city commissioners. State ex rel. Shaw v. Thompson, 21 N. D. 426, 131 N. W. 231.

§ 3786. Terms of office. Each of said four commissioners and the president of the board shall hold office for four years from and after the date of his qualification and until his successor shall have been duly elected and qualified, except in the first board the two commissioners who received the highest number of votes shall hold four years, the two receiving the next highest for two years; provided, that the president or any other member of the commission may resign their office by filing with the city auditor their resignation in writing, which the city auditor shall lay before the city commission at its next regular meeting, or at a special meeting called for the consideration of such resignation, and when such resignation is accepted by the city commission it shall become effective. [1913, ch. 78; 1911, ch. 77, § 16; 1907, ch. 45, § 16.]

§ 3787. Eligibility of officers. No person shall be eligible to hold an elective office created by the provisions of this chapter who is not at the time of his election a citizen of the United States and of this state and resident elector of the city. [1911, ch. 77, § 17; 1907, ch. 45, § 17.]

§ 3788. Terms begin when. The term of office of the president and members of the board of city commissioners shall commence on the third Tuesday of April succeeding their election and qualification except in the case of their first election when their term of office shall commence within ten days succeeding such election. The term of all other officers shall commence on the first day of May succeeding their appointment unless otherwise provided by ordinance, and they shall hold for such term as has been provided for each respectively and until their respective successors are qualified. [1911, ch. 77, § 18; 1907, ch. 45, § 18.]

§ 3789. Succession. The first president and the other members of the first board of commissioners appointed and elected under this act, shall be held and deemed, in law and in fact, the successors of the mayor and aldermen of said city, and upon the qualification of said president and other members of said board of commissioners, all the powers, rights and duties of the mayor and board of aldermen of said city shall cease; and whenever the said city has heretofore, under the decree of judgment of any court, or under any law, ordinance or resolution, been entitled to representation through the mayor of said city and one or more of the aldermen thereof, on the board of directors of any incorporated company in which the city may own stock or be interested, it shall hereafter be represented on any such board of directors by

the president of said board of commissioners, and by two other members of said board, to be selected by said board. [1911, ch. 77, § 19; 1907, ch. 45, § 19.]

§ 3790. Style of commission. Salary. Said commissioners shall collectively constitute and be known as the "board of commissioners of the city of". They shall take an oath to faithfully perform the duties of their respective offices. The salary of the city commissioner shall be determined by the number of inhabitants found to be therein by the state or federal census last taken. In cities having a population of over five hundred and not exceeding two thousand, each commissioner shall receive a monthly salary of not to exceed ten dollars; in cities having a population of over two thousand and not exceeding four thousand, each commissioner shall receive a monthly salary of not to exceed twenty dollars; in cities having a population of over four thousand and not exceeding six thousand, each commissioner shall receive a monthly salary of not to exceed forty dollars; in cities having a population of over six thousand and not exceeding eight thousand, each commissioner shall receive a monthly salary of not to exceed fifty dollars; in cities having a population of over eight thousand and not exceeding twelve thousand, each commissioner shall receive a monthly salary of not to exceed seventy-five dollars; in cities having a population of over twelve thousand, each commissioner shall receive a monthly salary of not to exceed one hundred dollars. [1913, ch. 80, § 1; 1911, ch. 77, § 20; 1907, ch. 45, § 20.]

§ 3791. Official bonds. Appointment of subordinate officers. Each commissioner, before entering upon the duties of his office, shall give bond payable to the governor of the state, for the use and benefit of said city, in the sum of three thousand dollars, for the faithful discharge of his duty, with two or more good and sufficient sureties to be approved by the judge of the county, and shall in addition to taking the oath prescribed by the constitution of the state, also take an oath that he is not under any direct or indirect obligation to appoint or elect any person to the office of policeman or fireman, or any other office, position or employment, under said government. The said commissioners shall by a majority vote of all the commissioners elected under this chapter have the power to appoint all officers and subordinates in all of the departments of said city, and to suspend and to discharge the same at will under the limitations hereinafter provided. Each commissioner elected under the provisions of this chapter shall qualify as provided by this section within ten days after the delivery to him of the certificate of his election. [1911, ch. 77, § 21; 1907, ch. 45, § 21.]

§ 3792. Powers of commission. The president of said board shall have the right to vote as a member thereof, on all questions which may arise, but no right of veto. Said board of commissioners shall have the power to summon and compel the attendance of witnesses, and the production of books and papers before them, whenever it may be necessary for the more effective discharge of their duties; and shall have the power to punish for contempt of said board with the same fines and penalties as the county judge may punish for contempt of the county court. All process necessary to enforce the powers conferred by this section shall be signed by the president of the board, and attested by the city auditor thereof, and shall be served by any member of the police force of said city. [1911, ch. 77, § 22; 1907, ch. 45, § 22.]

§ 3793. Control over departments. Said board of commissioners so constituted shall have control and supervision over all the departments of such city and to that end shall have the power to make all such rules as they may see fit and proper, concerning the organization, management and operation of such departments; and shall have power, under such rules and regulations as they shall make, to appoint, and for cause which to said board shall seem sufficient, and after an opportunity to be heard, to discharge all employees, including the chiefs of the departments respectively. Said commissioners shall

have sole authority to pass and adopt all such rules and regulations concerning all of the departments of such city and the other agencies created by them for the administration of its affairs. [1911, ch. 77, § 23; 1907, ch. 45, § 23.]

§ 3794. Departments of administration. In addition to the powers aforesaid, the said commissioners shall have the right, and it shall be their duty, by a majority vote of all the said commissioners elected, to designate from among their members one commissioner, who shall be known as "police and fire commissioner," and who shall have under his special charge the enforcement of all police regulations of such city and general supervision over the fire department of such city, and one commissioner to be known as the "commissioner of streets and of improvements," who shall have under his special charge the supervision of streets and alleys of such city, and be charged with the duty of lighting such streets and keeping the said streets and alleys in clean and sanitary condition, and with the enforcement of all rules and regulations necessary to that end, for the preservation of the health of the inhabitants of such city, and who shall also have under his special charge the supervision of all public improvements, and shall see that all contracts therefor are faithfully complied with, and that the conditions of any grant of any franchise or privilege are faithfully complied with and performed, and one commissioner to be known as the "water works and sewerage commissioner," who shall have under his special charge the water works and sewerage department of such city, and shall see to the enforcement of all regulations with respect to said departments, and with respect to all the revenues pertaining thereto, and one commissioner who shall be known as the "commissioner of finance and revenue," who shall have under his special charge the enforcement of all laws for the assessment and collection of taxes of every kind and the collection of all revenues belonging to such city, from whatever source the same may be derived; and who shall also examine into and keep informed as to the finances of such city. Provided that by a majority vote of the commissioners the duties assigned in this section may be otherwise distributed. [1911, ch. 77, § 24; 1907, ch. 45, § 24.]

§ 3795. Executive officers. Financial statement, published, when. The president of said board of commissioners shall be the executive officer of said city and shall see that all the laws thereof are enforced. The commissioner named at the head of each department shall audit all accounts against it, but before payment, they shall be acted upon and approved by at least three members of said board of commissioners. Said board shall require a statement to be published in September, December, March and June of each year, in the official newspaper of said city, showing a full, clear and complete statement of all the taxes and other revenues collected and expended, indicating the respective sources from which the moneys are derived, and also the disposition made thereof. All legislative sessions of said board, whether regular or called, shall be open to the public. [1911, ch. 77, § 25; 1907, ch. 45, § 25.]

§ 3796. Special police. Authority to appoint. Whenever the president of the board of city commissioners shall deem it necessary, in order to enforce the laws of the city, or to avert danger, or protect life or property, in case of a riot or any outbreak, or calamity or public disturbance, or when he has reason to fear any serious violation of law or order, or any outbreak, or any other danger to said city or the inhabitants thereof, he shall summon into service, as a special police force, all, or as many of the citizens as in his judgment and discretion may be necessary and proper; and summons may be by proclamation or order, addressed to the citizens generally or those of any ward of the city or subdivision thereof, or such summons may be by personal notification. Such special police, while in service, shall be subject to the orders of the president of the board of city commissioners, shall perform such duties as he may require, and shall have the same power while on duty as the regular police force of said city, and any person so summoned, and failing to obey or

appearing and failing to perform any duty that may be required by this chapter, shall be fined in any sum not exceeding one hundred dollars. [1911, ch. 77, § 26; 1907, ch. 45, § 26.]

§ 3797. Disability of president of commission. Procedure. At the first meeting of the commissioners after each biennial election they shall elect one of their number as vice-president, and such vice-president shall in case of the absence or inability of the president to act, perform all the duties of the office of president, and in case of the absence or inability to act of both president and vice-president the commissioners shall elect one of their number who shall be known as acting president, who shall during such absence or disability have all the powers and perform all the duties of the president. [1911, ch. 77, § 27; 1907, ch. 45, § 27.]

§ 3798. Regular meetings. Said board of commissioners shall meet at least once every week in regular meeting, at such time as shall be fixed by said board, at the city hall or other designated place in such city, to consider and take under advisement and act upon such business as may come before them. A majority of such board as appointed and elected shall constitute a quorum for the transaction of all business, but no action of said commissioners shall be effective unless upon a vote of a majority of such quorum; and no final action shall be taken in any matter concerning the special department of any absent commissioner unless such business has been made a special order of the day, or such action is taken at a regular meeting of the board. Special meeting may be called by the president of such board, or by any two members thereof, at any time, to consider such matters as shall be mentioned in the call of such meeting, and written notice thereof shall be given to each member of said board. [1911, ch. 77, § 28; 1907, ch. 45, § 28.]

§ 3799. Ordinances. The board of city commissioners of such city shall be vested with the power and charged with the duty of making all laws or ordinances not inconsistent with the constitution and laws of this state, touching every object, matter and subject within the local government instituted by this chapter. Every ordinance imposing any penalty, fine, imprisonment or forfeiture for a violation of its provisions shall, after the passage thereof, be published in one issue of the official paper and proof of such publication by the printer or publisher of such newspaper, made before any officer authorized to administer oaths, and filed with the clerk of the board of commissioners or any other competent proof of such publication shall in all courts be conclusive evidence of the legal publication and promulgation of such ordinances. Ordinances passed by the board of commissioners and requiring publication, shall take effect and be in force from and after publication thereof, unless it be otherwise expressly provided for in such ordinance. Ordinances passed by the board of commissioners and not requiring publication, shall take effect and be in force from and after their passage unless it shall therein otherwise expressly be provided. [1911, ch. 77, § 29; 1907, ch. 45, § 29.]

§ 3800. Enacting clause. The style of all ordinances shall be "Be it ordained by the board of city commissioners of the city of," but said caption may be omitted when such ordinances are published in book form or are revised and digested. [1911, ch. 77, § 30; 1907, ch. 45, § 30.]

§ 3801. Officers. Appointment of. The board of city commissioners in all cities, at their first meeting after their qualification or as soon thereafter as possible, shall appoint the following officers, to wit: A treasurer, auditor, attorney, one or more assessors, a physician, street commissioner, chief of the fire department, a board of public works, one or more policemen, and such other officers or boards as the board of city commissioners may deem necessary; provided, that the board of city commissioners, by a majority vote, may dispense with the offices which in its judgment are unnecessary. [1911, ch. 77, § 31; 1907, ch. 45, § 31.]

§ 3802. Salaries, how fixed. The board of city commissioners shall by resolution provide such salary or compensation for the officers and employes of

the city as it shall deem proper. All salaries heretofore fixed or established by law shall be and remain the salaries of such officers until the board of city commissioners shall otherwise determine. [1911, ch. 77, § 32; 1907, ch. 45, § 32.]

§ 3803. Vacancies. When any officer shall remove from the city or any such officer shall refuse or neglect for ten days after official notification of his appointment to qualify and enter upon the discharge of the duties of his office the office shall be deemed vacant. Whenever a vacancy shall occur in any office to be filled by appointment the same proceedings shall be had to fill such vacancy as are provided for in case of an appointment in the first instance. [1911, ch. 77, § 33; 1907, ch. 45, § 33.]

§ 3804. Vacancies. Elections to fill. Special elections to fill vacancies or for any other purpose shall be held and conducted by the inspectors and judges of election of the several precincts in the same manner and the returns thereof shall be made in the same form and manner as of the general municipal elections, and within such time as is prescribed by law. [1911, ch. 77, § 34; 1907, ch. 45, § 34.]

§ 3805. Tenure of office. Every person elected or appointed to fill a vacancy shall hold his office and discharge the duties thereof for the unexpired term. [1911, ch. 77, § 35; 1907, ch. 45, § 35.]

§ 3806. Oath of office. Every person elected or appointed to any office shall, before he enters upon the discharge of the duties thereof, take and subscribe the oath of office provided for by the constitution and file the same with the city auditor within ten days after notice of his election or appointment; and in case of his failure to do either the office shall be deemed vacant. [1911, ch. 77, § 36; 1907, ch. 45, § 36.]

§ 3807. Bonds. What officers give. The treasurer, auditor, city or village justice of the peace, and such other officers as the board of city commissioners may direct shall, before entering upon the discharge of the duties of their respective offices, execute and deliver to the city a bond in such sum as the board of city commissioners may determine, with two or more sureties, conditioned for the faithful discharge of the duties of their respective offices, and with such other conditions as the board of city commissioners may prescribe. The board of city commissioners may at any time require new and additional bonds of any officer; provided, that in no case shall the treasurer's bond be fixed at a less sum than the amount of the estimated tax and special assessments for the current year.

All bonds must be approved by the president of the board of city commissioners, and when so approved shall be filed in the office of the city auditor within ten days after the officer executing the same shall have been notified of his appointment, and when so approved and filed shall be recovered by the city auditor in a book kept for that purpose; such auditor shall annex to each such record a certificate that the same is a true copy of the original, and such record shall be prima facie evidence of the contents of such bond and in the absence of the original may be used as evidence in all courts. [1911, ch. 77, § 37; 1907, ch. 45, § 37.]

§ 3808. Amendment. Removal from office. Every person appointed to any office may be removed therefrom by a majority of votes of all the members of the board of city commissioners, but no such officer shall be removed except for cause nor unless charges are preferred against him and an opportunity given him to be heard in his defense. The board of city commissioners may compel the attendance of witnesses and the production of papers when necessary for the purpose of such hearing, and shall proceed within ten days after the charges are filed with the city auditor to hear and determine the case upon its merits. The president of the board of city commissioners may suspend any officer against whom charges have been preferred until the disposition of the same, and appoint any officer to fill the vacancy temporarily until the charges have been disposed of. Any officer appointed by the president of the board of

city commissioners without confirmation under the provisions of this chapter may be removed by him when he deems it for the best interests of the city. [1913, ch. 80, § 2; 1911, ch. 77, § 38; 1907, ch. 45, § 38.]

§ 3809. City auditor. Powers and duties. The city auditor shall have the care and custody of the corporate seal and all papers and records of the city. It shall be his duty to attend all meetings of the board of city commissioners and keep a full record of their proceedings; to record all ordinances and bonds in a book kept for that purpose; to keep a record of all licenses granted, which record shall at all reasonable times be open to inspection by the public; to carefully preserve all receipts filed with him and draw and sign all orders upon the treasury, except as otherwise herein provided, in pursuance of an order or resolution of the board of city commissioners, and keep a full and correct account thereof in books provided for that purpose. He shall have such power and authority and perform such duties as auditors of cities and villages may be required to perform under the general laws. He shall keep an accurate account with the treasurer and charge him with all tax lists presented to him for collection and all sums of money paid into the treasury. He shall be ex-officio secretary of the board of public works and shall perform such duties as may be required of him by the board of city commissioners. Within thirty days after the close of each fiscal year he shall make and cause to be published in the city official paper a financial statement showing the receipts and disbursements on account of each fund during the last preceding year. Copies of any and all books, papers, documents or instruments duly filed and kept in his office and transcripts from the records of the proceedings of the board of city commissioners certified by him under the corporate seal of the city, shall be evidence in all courts and places in like manner and with the same force and effect as if the originals were produced. He shall also have power to administer oaths and affirmations authorized to be taken by and under these statutes. Every such auditor may with the consent and approval of the board of city commissioners in writing appoint a deputy and shall file such appointment in his office; such deputy shall aid in the performance of the duties under his direction and in case of his absence or disability or of a vacancy in his office shall perform all such duties during such absence, disability or the continuance of such vacancy; and every such auditor and his sureties shall be liable upon his official bond for the acts of such deputy. [1911, ch. 77, § 39; 1907, ch. 45, § 39.]

It is duty of city auditor to furnish ballots for election of city commissioners. *State ex rel. Shaw v. Thompson*, 21 N. D. 426, 131 N. W. 231.

§ 3810. City attorney. Assistant. The city attorney shall conduct all the law business of the city and of the departments thereof and all law business in which the city shall be interested; he shall, when requested, furnish written opinions upon the subjects submitted to him by the board of city commissioners of any other department. He shall keep a docket of all the cases to which the city may be party in any court of record, in which shall be briefly entered all steps taken in such cause, which docket shall at all reasonable hours be open to public inspection. It shall also be his duty to draft all ordinances, bonds, contracts, leases, conveyances and such other instruments as may be required by the officers of the city; to examine and inspect tax and assessment rolls and all other proceedings in reference to the levying and collection of taxes and to perform such other duties as may be prescribed by the board of ordinances. He may, with the consent and approval of the board of commissioners, appoint an assistant who shall have power to do all the acts required by law of the city attorney; provided, that he shall be responsible to the city for the acts of such assistant, and that the city shall not be liable for nor have any authority to pay compensation to such assistant, provided that special counsel may be employed by the city commissioners when necessary. [1911, ch. 77, § 40; 1907, ch. 45, § 40.]

§ 3811. Treasurer. Powers and duties. The city treasurer shall receive all moneys belonging to the city, keep an accurate account of the same in suitable books prepared for that purpose, and pay over the money in his hands according to the law. He shall keep a detailed account of the money received and disbursed by him in such manner as the board of city commissioners shall direct; his books shall at all reasonable times be open to inspection by any voter of the city; he shall make a report to the board of city commissioners each month and as much oftener as required, which report shall embrace a statement of the receipts and disbursements in his office, and ten days preceding every biennial election he shall make and file in the city clerk's office a full and minute report of all moneys received and disbursed by him, of all tax certificates, vouchers and other effects of pecuniary value in his possession and of all other transactions relating to his office from the date of the like report of his predecessor to the date of the report required to be made out by him. He shall keep an accurate account of each of the separate funds in his custody. Except as herein otherwise provided he shall have such power and authority and perform such duties as treasurers in villages, cities and towns are required to perform under these statutes. He shall receive no fees or per diem except the salary fixed by the board of city commissioners prior to his election, but all fees collected by him shall be paid into the city treasury at the end of each month. [1911, ch. 77, § 41; 1907, ch. 45, § 41.]

§ 3812. Additional duties of auditor. The auditor shall, on or before the first day of September of each year, file with the president of the board a detailed statement of the expenses of the city and the wards thereof during the last fiscal year, and such statement shall also contain an estimate of the expenses of the fiscal year and the income for that year from sources other than taxation. He shall countersign all contracts made with the city if the necessary funds shall have been provided to pay the liability that may be incurred thereunder and no such contract shall be valid until so countersigned. He shall make a list of all certificates for the payment of which special taxes are to be levied in each year in time for the same to be inserted in the tax roll in the form of a schedule of special taxes, and certify the correctness of the same, and such certified schedule shall be prima facie evidence of the legality and regularity of the taxes levied in pursuance thereof; but no irregularity in the making of such lists shall invalidate any such special tax. He shall report monthly, in writing, to the board of city commissioners the condition of the several funds of the city and of the condition of all outstanding contracts and claims which may be payable out of such fund. He shall examine and countersign all city orders before the same shall be valid, but shall not countersign any order before the money is in the treasury to pay the same. He shall examine all claims presented against the city, whether founded on contract or otherwise and determine as to each whether it is properly itemized and sworn to; if on contract, whether the items charged are correct, whether such claim was incurred by proper authority and generally determine its correctness. For the above purposes he may swear witnesses to take testimony. If he does not find any objection to any claim he shall mark his approval thereon, if he disapproves or approves in part or disapproves in part, he shall report to the board of city commissioners his reasons therefor and in all cases shall report the evidence taken by him. No claim shall be considered by the board of city commissioners until it shall have been thus examined and reported on by the auditor. He shall examine each month the treasurer's accounts as reported and kept by him and report as to the correctness of the same, and also any violation by the treasurer of his duties in the manner of keeping his accounts or disbursing moneys. The auditor shall procure a claim book at the expense of the city in which all claims against it shall be entered as fast as the same are filed; said books shall be provided with an index and be in such form as to provide for the entry of the name of the claimant, number of the claim, date of filing, amount claimed, date of the

report of the auditor, whether approved, and for how much, date of allowance or disallowance by the board of city commissioners, amount allowed, date of the order issued to pay the same, number of such order and date of the cancellation of the same. The auditor shall perform the duties of a member of the board of public works and such other duties as are required of him under the provisions of this chapter or by the board of city commissioners. In case the office of auditor is dispensed with, the duties pertaining thereunto shall be discharged by such officer or officers or board as the board of city commissioners shall designate by resolution or ordinance. [1911, ch. 77, § 42; 1907, ch. 45, § 42.]

§ 3813. **Official newspapers.** The board of city commissioners, at its first meeting or as soon thereafter as may be, shall designate one newspaper printed in the city in which shall be published all the ordinances, notices and all other proceedings by law to be published and said board of city commissioners may establish by ordinance such rates for printing and publishing as to them may seem just and proper, provided, that the price of such printing shall not exceed the legal rate for like work as the same now is or may be established by law. [1911, ch. 77, § 43; 1907, ch. 45, § 43.]

§ 3814. **Certificate of official publication.** When any ordinance, notice, resolution or other proceeding shall have been published, a copy of such publication together with the affidavit of the printer or his foreman stating the length of time the same has been published, shall be filed with the city clerk and such affidavit shall be conclusive evidence of the publication thereof and the bill for such publication shall not be audited until such affidavit is so filed. [1911, ch. 77, § 44; 1907, ch. 45, § 44.]

§ 3815. **Duties of officers generally.** All other officers elected or appointed under and by virtue of the authority of this chapter shall perform such duties as are required to be performed by like officers under these statutes and also such as are prescribed by the board of city commissioners. [1911, ch. 77, § 45; 1907, ch. 45, § 45.]

§ 3816. **Rules of commissioners. Quorum, confirmations.** The board of city commissioners shall determine the rules of its own proceedings. A majority of the members thereof shall constitute a quorum, but a smaller number may adjourn; their sessions shall be open to the public; the ayes and nays may be required by any member; and on the adoption of any ordinance or resolution assessing or levying taxes or for the appropriation or disbursement of money or creating any liability or charge against the city or any fund thereof, the vote shall be taken by ayes and nays, and every such vote shall be entered at length upon the journal. The board of city commissioners shall be the judges of the election and qualifications of its own members, and may punish them or any persons present by fine for disorderly behavior; may compel the attendance of its members upon its meetings and may employ the police of the city for that purpose; may fine or expel any member for neglect of duty as such member, or for unnecessary absence from sessions of the board of city commissioners. [1911, ch. 77, § 46; 1907, ch. 45, § 46.]

§ 3817. **Control of the finances. Authority of commissioners.** The board of city commissioners shall have the management and control of the finances and of all the property of the city, except as herein otherwise provided, and shall likewise, in addition to all other powers herein and elsewhere in these statutes vested in them, have full power and authority to enact, ordain, establish, publish, enforce, alter, modify, amend and repeal all such rules, by-laws and regulations for the government and the good order of the city, for the benefit of its trade and commerce, and health of the inhabitants thereof, for the prevention of crime and for carrying into effect the powers vested in said board as they shall deem expedient; such board shall have the power to declare and impose penalties and enforce the same against any person or persons who may violate any of the provisions of such ordinances, by-laws or regula-

tions; and such ordinances, rules, by-laws, and regulations shall have the force of law, provided that they be not repugnant to the constitution of the United States or of this state or of the laws thereof, and for the aforesaid purposes such board of city commissioners shall have authority by ordinance, resolution, by-law or regulation. [1911, ch. 77, § 47; 1907, ch. 45, § 47.]

§ 3818. **General powers of commissioners.** The board of city commissioners shall have power:

1. To control the finances and property of the corporation, to appropriate money for corporate purposes only, and provide for the payment of debts and expenses of the corporation.

2. To levy and collect taxes for general and special purposes on real and personal property.

3. To fix the amount, terms and manner of issuing and revoking licenses.

4. To borrow money on the credits of the corporation for corporation purposes, and to issue bonds therefor in such amounts and form and on such conditions as it shall prescribe, but no city shall become indebted in any manner or for any purpose to an amount, including existing indebtedness, exceeding five per cent of the taxable property therein, as determined by the last preceding assessment; provided that any incorporated city may, by a two-thirds vote at any special or general election increase such indebtedness to an amount equal to three per cent of such assessed valuation, beyond said five per cent limit and may issue bonds therefor; provided, further, that any city, when authorized by a majority vote at a general or special election, may become indebted in any amount not exceeding four per cent of such assessed value without regard to the existing indebtedness of such city, for the purpose of constructing or purchasing water works for the purpose of furnishing a supply of water to the inhabitants of such city, or for the purpose of constructing sewers, but for no other purpose whatever, and such city may issue bonds therefor; provided, further, that no bonds issued under the provisions of this section shall be sold for less than their par value, and the city issuing such bonds shall, at or before the time of issuing the same or incurring the indebtedness for which the same are to be issued, provide for the collection of a direct annual tax sufficient to pay the interest on such debt or such bond when it falls due, and to pay and discharge the principal thereof when the same becomes due, and such provision for the collection of such annual tax shall be irrevocable until such debt is paid; provided, further, that none of the hereinbefore mentioned bonds shall be issued either for special or general purposes, except as by law otherwise provided, unless at an election after twenty days' notice in a newspaper published in the city, stating the purpose for which said bonds are to be issued and the amount thereof, the legal voters of the city shall, by a majority vote, determine in favor of issuing such bonds; provided, further, that no bonds issued under the provisions of this chapter shall be issued for a longer period than twenty years.

See note to section 3599, paragraph 5.

5. To lay out, open, alter, establish, widen, grade, pave, park or otherwise improve streets, alleys, avenues, sidewalks, wharves, parks and public grounds and vacate the same, and to regulate the planting of trees thereon; to prevent and remove obstructions and encroachments upon the same; to provide for the lighting of the same, and to provide for the furnishing of lights to the inhabitants of the city.

See note to section 3599, paragraphs 7-11.

6. To provide for the cleaning and health of the city.

7. To regulate the laying of gas or water mains and pipes, and the building, laying or repairing of sewers, tunnels and drains, and erecting gas or electric light plants; provided, however, that any company heretofore organized under the general laws of this state or any association of persons organized or which may hereafter be organized for the purpose of manufacturing illuminating gas or electricity, to supply cities or the inhabitants thereof with

the same, shall have the right, by the consent of the board of city commissioners, subject to existing rights, to erect gas or electric light works and lay down pipes or string wires on poles in streets or alleys of any city in this state, subject to such regulations as such city may by ordinance prescribe.

See note to section 3599, paragraph 13.

8. To regulate the use of sidewalks and all structures thereunder, and to require the owner or occupant of any premises to keep the sidewalks in front of or along the same free from snow or other obstruction.

See note to section 3599, paragraph 14.

9. To regulate and prevent the throwing or depositing of ashes, offal, dirt, garbage or any other offensive matter, in, and to prevent injury to any street, avenue, alley or public ground.

See note to section 3599, paragraph 15.

10. To provide for and regulate crosswalks, curbs and gutters.

See note to section 3599, paragraph 16.

11. To regulate and prevent the use of streets, sidewalks and public grounds for signs, signposts, awnings, telegraph or telephone poles, horse troughs, racks, posting hand bills and advertisements.

See note to section 3599, paragraph 17.

12. To regulate and prohibit the exhibition or carrying of banners, placards, advertisements or hand bills in the streets or public grounds or upon the sidewalks.

See note to section 3599, paragraph 18.

13. To regulate and prevent the flying of flags, banners or signs across the streets or from houses.

14. To regulate traffic and sales upon the streets, sidewalks and public places.

See note to section 3599, paragraph 20.

15. To regulate the speed of horses and other animals, vehicles, cars and locomotives within the limits of the corporation.

See note to section 3599, paragraph 21.

16. To regulate the numbering of houses and lots.

17. To name and change the name of any street, avenue, alley or other public place.

18. To permit, regulate or prohibit the locating, constructing or laying of a track of any horse or other street railway in any street, alley or public place; but such permission shall not be for a longer time than fifty years.

See note to section 3599, paragraph 24.

19. To provide for and change the location, grade and crossing of any railroad.

20. To require railroad companies to fence their respective railroads or any portion of the same and construct cattle guards, crossings of streets and public roads and keep the same in repair within the limits of the corporation.

See note to section 3599, paragraph 26.

21. To require railroad companies to keep flagmen at railroad crossings of streets and provide protection against injury to persons and property; to compel railroads to raise or lower their tracks to conform to any grade which may at any time be established by such city, and where such tracks run lengthwise of such street, alley or highway, to keep their tracks on a level with the street surface and so that such tracks may be crossed at any place on such street, alley or highway; to compel and require railroad companies to make and keep open and to keep in repair ditches, drains, sewers and culverts along and under their tracks so that filthy and stagnant pools of water cannot stand on their grounds or right-of-way and so that the natural or artificial drainage of adjacent property shall not be impeded.

See note to section 3599, paragraph 27.

22. To construct and keep in repair, bridges, viaducts and tunnels and to regulate the use thereof.

See note to section 3599, paragraph 28.

23. To license, tax, regulate, suppress and prohibit hawkers, peddlers, pawn brokers, keepers of ordinaries, theatricals and other exhibitions, shows and amusements, ticket scalpers and employment agencies, and to revoke such license at pleasure; provided, however, that the provisions of this section with reference to hawkers and peddlers shall not apply to persons selling or offering for sale the products raised or grown on lands within this state.

See note to section 3599, paragraph 30.

24. To license, tax and regulate hackmen, draymen, omnibus drivers, carters, cabmen, porters, expressmen, watermen and all others pursuing like occupations, and to prescribe their compensation.

See note to section 3599, paragraph 31.

25. To license, tax, regulate and restrain runners for stages, cars, public houses or other things or persons.

See note to section 3599, paragraph 32.

26. To license, regulate, tax or prohibit and suppress billiard, bagatelle, pigeonhole, pin alleys, ball alleys, or any other tables or implements kept or used for a similar purpose in any place of public resort.

See note to section 3599, paragraph 33.

27. To license, tax and regulate plumbers and the business of plumbing and to provide the manner in which the plumbing shall be done, and for the inspection thereof, and the manner in which the connections thereof with the sewers and the water mains of the city may be made.

See note to section 3599, paragraph 34.

28. To establish markets and market houses, and to provide for the regulation and the use thereof.

See note to section 3599, paragraph 35.

29. To provide for the place and manner of sale of meats, poultry, fish, butter, cheese, lard, vegetables, flour, meat and other provisions and to regulate the selling thereof.

See note to section 3599, paragraph 36.

30. To regulate the sale of bread in the city and prescribe the weight and quality of the bread in the loaf.

See note to section 3599, paragraph 37.

31. To provide for and regulate the inspection of meats, poultry, fish, butter, cheese, lard, vegetables, flour, meat and other provisions, and to license and regulate the sale of milk, provide for the inspection of same, and all dairies and premises wherever situated, from which any milk is offered for sale in such city, and to prohibit the sale of impure and diseased milk.

See note to section 3599, paragraph 38.

32. To regulate the inspection, weighing and measuring of lumber, firewood, coal, hay and any articles of merchandise.

33. To provide for the inspection and sealing of weights and measures.

34. To enforce the keeping and use of proper weights and measures by venders.

See note to section 3599, paragraph 41.

35. To regulate the construction, repairs and use of vaults, cisterns, areas, hydrants, pumps, sewers and gutters.

See note to section 3599, paragraph 42.

36. To regulate places of amusement.

See note to section 3599, paragraph 43.

37. To prevent intoxication, fighting, quarreling, dog fights, cock fights and all disorderly conduct.

See note to section 3599, paragraph 44.

38. To regulate partition fences and party walls.

See note to section 3599, paragraph 45.

39. To prescribe the thickness, strength and manner of constructing stone, brick and other buildings and for the construction of fire escapes therein, and to provide for the inspection of all buildings within the city limits.

See note to section 3599, paragraph 46.

40. To prescribe the limits within which wooden buildings shall not be placed or erected or repaired without permission, and to direct that all and any buildings within said limits which shall be known as the fire limits, when the same shall have been damaged by fire, decay or otherwise, to the extent of fifty per cent of the value, shall be torn down or removed, and to prescribe the manner of ascertaining such damages, and to provide for the removal of any structure or building erected contrary to such prescription, and to declare each day's continuance of such structure or building a separate offense, and to prescribe penalties therefor; and define fire proof material and by ordinance provide for issuing building permits and appointment of building inspectors.

See note to section 3599, paragraph 47.

41. To prevent the dangerous construction and condition of chimneys, fire places, hearths, stoves, stovepipes, ovens, boilers and apparatus used in and about any building or manufactory, and to cause the same to be removed or placed in a safe condition when considered dangerous.

See note to section 3599, paragraph 48.

42. To regulate and prevent the carrying on of manufactories dangerous in causing and promoting fires.

43. To prevent the deposit of ashes in unsafe places and to cause all such buildings and inclosures as may be in a dangerous state to be put in a safe condition.

44. To erect engine houses and to provide fire engines, hose carts, hooks and ladders and other implements for the prevention and extinguishment of fires, and to provide for the use and management of the same by voluntary fire companies or otherwise.

See note to section 3599, paragraph 49.

45. To regulate and prevent the storage of gun powder, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, petroleum or any of the products thereof, and other combustible or explosive material and the use of lights in stables, shops, and other places, and the building of bonfires; also to regulate and restrain the use of fireworks, firecrackers, torpedoes, roman candles, sky rockets and other pyrotechnic display.

See note to section 3599, paragraph 50.

46. To provide for the inspection of steam boilers.

47. To establish and erect a city jail, house of correction and work house for the confinement and reformation of disorderly persons convicted of violating any city ordinance, and make rules and regulations for the government of the same, and appoint necessary jailers and keepers.

See note to section 3599, paragraph 52.

48. To use the county jail for the confinement or punishment of offenders, subject to such conditions as are imposed by law and with the consent of the board of county commissioners; and to regulate the police of the city and pass and enforce all necessary police ordinances.

49. To prevent and suppress riots, routs, affrays, noises, disturbances and disorderly assemblies in any public or private place.

See note to section 3599, paragraph 54.

50. To prohibit and punish cruelty to animals.

See note to section 3599, paragraph 55.

51. To restrain and punish vagrants, mendicants and prostitutes.

See note to section 3599, paragraph 56.

52. To declare what shall be nuisance and abate the same, and impose fines upon persons who may create, continue or suffer nuisances to exist.

See note to section 3599, paragraph 57.

53. To erect and establish hospitals and medical dispensaries and control and regulate the same, and provide and enforce quarantine regulations against all contagious and infectious diseases.

See note to section 3599, paragraph 58.

54. To do all acts and make all regulations which may be necessary or expedient for the promotion of health or for the suppression of disease.

See note to section 3599, paragraph 59.

55. To establish and regulate cemeteries within or without the corporation, and acquire lands therefor by purchase or otherwise and cause cemeteries to be removed, and prohibit their establishment within one mile of the corporation.

See note to section 3599, paragraph 60.

56. To regulate, restrain and prevent the running at large of horses, mules, cattle, swine, sheep, goats and geese; and provide for the establishment and maintenance of public pounds for the impounding of any stock running at large or tethered in any street in the city in violation of its ordinances, and establish procedure for the impounding and discharging of stock so impounded and make the expenses thereof and fines imposed for the violation of ordinances passed under this subdivision, a lien upon such stock, and provide for the sale thereof to satisfy such liens.

See note to section 3599, paragraph 61.

57. To license, regulate or prohibit the running at large of dogs and injuries and annoyances therefrom, and to authorize their summary destruction when at large, contrary to any such prohibition or regulation.

See note to section 3599, paragraph 62.

58. To direct and locate and regulate the management and construction of packing houses, renderies, bone factories, slaughter houses, soap factories, livery stables and blacksmith shops within, or within one mile of the city limits of the corporation.

See note to section 3599, paragraph 63.

59. To prohibit any offensive or unwholesome business or establishment within, or within one mile of the limits of the corporation.

See note to section 3599, paragraph 64.

60. To compel the owner of any grocery, cellar, stable, pig-sty, privy, sewer or other unwholesome or nauseous house or place, to cleanse, abate or remove the same, and to regulate the location thereof.

See note to section 3599, paragraph 65.

61. To provide for the taking of the city census, but no city census shall be taken oftener than once in three years.

62. To provide for the erection and care of all public buildings necessary for the use of the city.

See note to section 3599, paragraph 67.

63. To extend by condemnation or otherwise any street, alley or highway over or across or to construct any sewer under or through any railroad, tracks, right-of-way, or land of any railroad company within the corporate limits.

64. The city commissioners shall have the power to allow the use of or right to lay down any railroad tracks in any street of the city to any railroad company.

See note to section 3599, paragraph 69.

65. To tax, license and regulate auctioneers, lumber yards, public scales, money changers and brokers.

See note to section 3599, paragraph 70.

66. To prevent and regulate the rolling of hoops, playing of ball, flying of kites, or any other amusements or practice having a tendency to annoy persons passing in the streets or on the sidewalks, or to frighten teams or horses.

See note to section 3599, paragraph 71.

67. To regulate or prohibit the keeping of any lumber yard and the placing or piling or selling of any lumber, timber, wood or other combustible material within fire limits of the city.

See note to section 3599, paragraph 72.

68. To provide by ordinance that all the paper, printing, stationery, blanks, fuel and other supplies needed for the use of the city shall be furnished by contract let to the lowest responsible bidder.

69. To tax, license and regulate second hand and junk stores and to forbid their purchasing or receiving from minors without the written consent of their

parents or guardians, any article whatever, and to prescribe punishment for the violation thereof.

See note to section 3599, paragraph 74.

70. To purchase, erect, lease, rent, manage, and maintain any system or part of system of water works, hydrants and supply of water, telegraphing, fire signals or fire apparatus that may be of use in the prevention and extinguishment of fires, and to pass all ordinances, penal or otherwise, that shall be necessary for the full protection, maintenance, management and control of the property so leased, purchased or erected and to fix and regulate the rates, use and sale of water.

See note to section 3599, paragraph 75.

71. To redistrict the city into wards and prescribe the boundaries thereof.

72. To adopt such other ordinances, not repugnant to the constitution and laws of the state, as the general welfare of the city may demand.

See note to section 3599, paragraph 77.

73. To pass all ordinances, rules and regulations proper or necessary to carry into effect the powers granted to cities, with such fines, penalties or forfeitures as the city commissioners may deem proper; provided that no fine or penalty shall exceed one hundred dollars and no imprisonment shall exceed three months for one offense.

See note to section 3599, paragraph 78.

74. To submit to a vote of the electors propositions for the issuing of bonds within the debt limit provided by law, for the erection of a municipal auditorium, public play grounds, a public gymnasium, public baths or other places or means of public amusement or entertainment, and in case a majority of the electors voting on any such proposition vote for the same at any regular election, or any special election called for that purpose, it shall be the duty of the board of city commissioners forthwith to issue said bonds and proceed to carry out said proposition so submitted.

This paragraph 74 is evidently superseded by the provisions in section 4016.

75. To regulate the location of junk shops, coal yards, garages, machine shops, power laundries, hospitals and undertaking establishments, also to fix and establish building lines within said cities fixing the distance from the property line at which buildings may be erected. [1911, ch. 77, § 48; 1907, ch. 45, § 48.]

Power to regulate traffic in junk and second-hand articles. 32 L.R.A. 116; 24 L.R.A. (N.S.) 1168.

Power to require separate license for each kind of second-hand goods dealt in. 5 L.R.A. (N.S.) 620.

Power to establish building line. 42 L.R.A. (N.S.) 1123.

§ 3819. **Exercise of power through ordinances.** When by this chapter the power is conferred upon the board of commissioners to do and perform any act or thing, and the manner of exercising the same is not specifically pointed out, the board of commissioners may provide by ordinance the details necessary for the full exercise of such power. [1911, ch. 77, § 49; 1907, ch. 45, § 49.]

§ 3820. **Powers of commissioner of public health.** The commissioner of public health shall have all the power and authority heretofore given or which hereafter may be given to boards of health by any general law and it shall be his duty to provide such additional rules and regulations as shall be proper and necessary for the preservation of the health of the people of the city, to prevent the spread of contagious diseases and to cause the removal of all objects detrimental to the health of such people and to enforce such rules and regulations as are hereinafter provided. [1911, ch. 77, § 50; 1907, ch. 45, § 50.]

§ 3821. **Health regulations.** All rules and regulations prepared by such commissioner shall be by him reported to the board of city commissioners, and if the board of city commissioners shall approve the same by a vote of the majority of its members, such rules and regulations shall have the force and effect of ordinances, and the violation thereof may be prosecuted and punished as in the case of ordinances. [1911, ch. 77, § 51; 1907, ch. 45, § 51.]

§ 3822. Sanitary recommendations. The commissioner of public health shall also, from time to time, recommend to the board of city commissioners such sanitary measures to be executed at the public expense as shall seem to him to be necessary for the preservation of the public health. [1911, ch. 77, § 52; 1907, ch. 45, § 52.]

§ 3823. Salary of commissioner of public health. Assistants. It shall be the duty of the board of city commissioners to fix the salary of said commissioner, which shall be paid out of the city treasury. The commissioner may appoint, subject to confirmation by the president of the board of city commissioners, such assistants as may be necessary, and all such appointees shall receive such salary or compensation as the board of city commissioners may fix. [1911, ch. 77, § 53; 1907, ch. 45, § 53.]

§ 3824. Authority to inspect premises. The commissioner of public health or any person acting under him shall have authority to enter into and examine at any time all buildings, lots and places of any description within the city for the purpose of ascertaining the condition thereof, so far as the public health may be affected thereby, and any person refusing to allow entrance into or upon his premises at reasonable hours for such purpose, shall, on conviction thereof, be fined not less than ten dollars nor more than one hundred dollars; and in all cases in which the commissioner shall deem it necessary for the protection of the health of the city to abate or remove any nuisance, source of filth, or cause of sickness which shall be found on private property, he shall cause a notice to be served on the owner or occupant thereof, requiring him to remove the same at his own expense within a reasonable time, not less than twenty-four hours; and if said owner or occupant shall refuse or neglect to comply with such notice, or if such nuisance, source of filth or cause of sickness exist on the property of nonresident owners or upon property the owners of which cannot be found, the commissioner shall cause the removal of such nuisance, source of filth or cause of sickness under his direction at the expense of the city, and the costs thereof shall be charged against the lots, pieces or parcels of land upon which said work has been done, and shall be assessed against said property in the manner provided for the assessment and certificate of sidewalk assessments. [1911, ch. 77, § 54; 1907, ch. 45, § 54.]

§ 3825. Contagious diseases. Duties of physicians. It shall be the duty of every physician practicing in any city which has adopted this charter to report in writing to the commissioner of public health every patient he shall have who is sick with smallpox, scarlet fever, diphtheria, typhoid fever, asiatic cholera or any other dangerous contagious disease within twenty-four hours after he shall ascertain or suspect the nature of such disease. The report shall be in such form as may be prescribed by the state board of health and shall state the name, sex, age and place of residence of the person whose sickness is reported, the nature of the disease and such additional facts as said board may prescribe. Any practicing physician who shall neglect or refuse to perform the duties required of him by this section or who shall make a false return of the facts required shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars for each offense or by imprisonment in the county jail for a period of not exceeding sixty days, or by both fine and imprisonment. [1911, ch. 77, § 55; 1907, ch. 45, § 55.]

§ 3826. Reports to state board of health. The commissioner of public health shall also discharge such duties not herein enumerated, as may from time to time be imposed upon him by the board of city commissioners by ordinance or resolution, and shall make such reports to the state board of health and generally perform such duties as are or may be required of health officers by these statutes. [1911, ch. 77, § 56; 1907, ch. 45, § 56.]

§ 3827. Duties of peace officers, as to health regulations. It shall be the duty of the members of the police force of the city and all magistrates and other civil officers and all citizens to aid to the utmost of their power the commissioner of public health in the discharge of his duties, and on his requisition it shall be the duty of the chief of police to serve or detail one or more of the policemen to serve the notices issued by said commissioner and to perform such other duties as he may require. [1911, ch. 77, § 57; 1907, ch. 45, § 57.]

§ 3828. City funds. Control of. All funds in the city treasury, except school funds, funds created and set apart for the payment of interest and principal of the debt of the city, and funds collected on special assessments, shall be under the control of the board of city commissioners and be drawn out on the order of the president of the board of city commissioners, duly countersigned by the auditor, when authorized by a vote of the board of city commissioners. All orders drawn upon the treasurer shall specify the purposes for which they are drawn, and be payable out of the funds in the treasury on which they are drawn and shall be payable to the persons in whose favor they are drawn and may be transferred by indorsement. [1911, ch. 77, § 58; 1907, ch. 45, § 58.]

§ 3829. Treasurer's liability. The city treasurer shall not pay out the funds in his hands which shall be appropriated by law for any special purpose except for the purpose for which such funds are appropriated, any direction of the board of city commissioners to the contrary notwithstanding. [1911, ch. 77, § 59; 1907, ch. 45, § 59.]

§ 3830. Treasurer's statement. The treasurer shall, on the first day of each month, deliver to the city auditor a statement showing the condition of the treasury at the close of the preceding month and a statement of all disbursements since the last report. [1911, ch. 77, § 60; 1907, ch. 45, § 60.]

§ 3831. Depositary of funds. The board of city commissioners may designate by resolution the bank or banks where the money belonging to the city shall be deposited, and the security, to be approved by the president of the board of city commissioners and auditor to be given by such bank or banks, and when the money is so deposited the treasurer and his bondsmen shall not be liable for the loss thereof by reason of the failure of such bank or banks, and the interest arising therefrom shall be paid into the treasury; provided, such money shall not be deposited in any bank without this state. [1911, ch. 77, § 61; 1907, ch. 45, § 61.]

§ 3832. Interest on deposits. The board of city commissioners may contract with a bank receiving the city deposits for the payment of interest thereon. [1911, ch. 77, § 62; 1907, ch. 45, § 62.]

§ 3833. Meaning of phrases. Whenever, in the laws not repealed by this act, the words "town council, city council, or village board" appear, it shall mean board of city commissioners; the word "mayor" or "president" shall mean president of the board of city commissioners. Whenever the words "city commissioners" are used in this chapter they shall be construed to mean and include village commissioners. [1911, ch. 77, § 63; 1907, ch. 45, § 63.]

§ 3834. Succession of powers. All the provisions of law now in force or which may hereafter be passed by the legislative assembly in relation to the powers, duties or privileges of the president of boards of trustees of towns or villages, or mayors of cities, are hereby granted to the president of the board of city commissioners, and except where inapplicable all the provisions of law now in force or hereafter passed by the legislative assembly in relation to the powers, duties or privileges of town or village trustees, or other municipal boards thereof, or the powers, duties or privileges of city councils are hereby granted to the board of city commissioners provided for in this chapter; provided, cities incorporated under this chapter shall for all purposes according to their respective population retain the classification otherwise provided by law. [1911, ch. 77, § 64; 1907, ch. 45, § 64.]

CHAPTER 46.

CITIES UNDER COMMISSION FORM OF GOVERNMENT.

This chapter clearly supersedes Laws 1911, ch. 67, and is substantially identical in terms with the latter. An emergency section recites that "a doubt exists of there being any law governing said recall commission form of government." It is quite probable that the doubt arose from the fact that Laws 1911, ch. 67, §§ 1 and 5 refer to "chapter 45 of the Laws of 1907," whereas the latter chapter was undoubtedly repealed by Laws 1911, ch. 77.

§ 3835. Recall. The holder of any elective office in cities which may adopt or have adopted the commission plan of government under any of the laws of this state applicable thereto may be removed at any time by the electors qualified to vote for a successor of such incumbent. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least thirty per centum of the entire vote for all candidates for the office of president of the city commission cast at the last preceding general municipal election, demanding an election of a successor of the person sought to be removed, shall be filed with the city auditor, which petition shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving the street and number. One of the signers of each such paper shall make oath before an officer, competent to administer oaths, that the statements therein made are true as he believes, and that each signature to the paper appended is the genuine signature of the person whose name it purports to be. Within ten days from the date of filing such petition the city auditor shall examine, and from the voter's register ascertain whether or not said petition is signed by the requisite number of qualified electors, and if necessary, the board of city commissioners shall allow extra help for that purpose, and he shall attach to said petition his certificate showing the result of said examination. If, by the auditor's certificate, the petition is shown to be insufficient it may be amended within ten days from the date of said certificate. The auditor shall, within ten days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same; without prejudice, however, to the filing of a new petition of the same effect. If the petition shall be deemed to be sufficient, the auditor shall submit the same to the board of city commissioners without delay. If the petition shall be found to be sufficient, the board of city commissioners shall order and fix a date for holding the said election, not less than thirty days nor more than forty days from the date of the auditor's certificate to the board of city commissioners, that a sufficient petition is filed. The board of city commissioners shall make, or cause to be made, publication of notice and all arrangements for holding such election, and the same shall be conducted, returned and the result thereof declared in all respects as are other city elections. The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and unless he requests otherwise in writing, the clerk shall place his name on the official ballot without nomination. In any such removal election, the candidate receiving the highest number of votes shall be declared elected. At such election if some other person than the incumbent receives the highest number of votes, the incumbent shall thereupon be deemed removed from the office upon qualification of his successor. In case the party who receives the highest number of votes should

fail to qualify within ten days after receiving notification of election, the office shall be deemed vacant. If the incumbent receives the highest number of votes, he shall continue in office. This said method of removal shall be cumulative and additional to the methods heretofore provided by law. [1913, ch. 29, § 1; 1911, ch. 67, § 1.]

§ 3836. Initiative. Any proposed ordinance may be submitted to the board of city commissioners by petition signed by electors of the city equal in number to the percentage hereinafter required. The signatures, verification, authentication, inspection, certification, amendment and submission of such petition shall be the same as provided for petition under section 3835. If the petition accompanying the proposed ordinance be signed by electors equal in number to fifteen per centum of the votes cast for all candidates for president of the city commission at the last preceding general municipal election and contains a request that the said ordinance be submitted to a vote of the people if not passed by the board of city commissioners, such board of city commissioners shall either

(a) Pass said ordinance, without alteration, within twenty days after attachment of the auditor's certificate to the accompanying petition, or,

(b) Forthwith, after the auditor shall attach to the petition accompanying such ordinance his certificate of sufficiency, the board of city commissioners shall call a special election, unless a general municipal election is fixed within ninety days thereafter, and at such special or general municipal election, if one is so fixed, such ordinance shall be submitted without alteration to the vote of the electors of said city. But if the petition is signed by not less than twenty-five per centum of the electors, as above defined, then the board of city commissioners shall, within twenty days, pass said ordinance without change, or submit the same at the next general city election occurring not more than thirty days after the auditor's certificate of sufficiency is attached to said petition. The ballots used when voting upon said ordinance shall contain these words: "For the ordinance" (stating the nature of the proposed ordinance), and "Against the ordinance" (stating the nature of the proposed ordinance). If a majority of the qualified electors voting on the proposed ordinance shall vote in favor thereof, such ordinance shall thereupon become a valid and binding ordinance of the city, and any ordinance proposed by petition and which shall be adopted by vote of the people, cannot be repealed or amended except by a vote of the people as long as the city is under the commission form of government.

Any number of proposed ordinances may be voted upon at the same election, in accordance with the provisions of this section, but there shall not be more than one special election in any period of six months for such purposes.

The board of city commissioners may submit a proposition for the repeal of any such ordinance, or for amendments thereto, to be voted upon at any succeeding general city election; and should such proposition so submitted receive a majority of the votes cast thereon at such election, such ordinance shall be thereby repealed or amended accordingly. Whenever any ordinance or proposition is required by this chapter to be submitted to the voters of the city at any election, the city auditor shall cause such ordinance or proposition to be published once in each of the daily newspapers published in said city; such publication to be not more than twenty or less than five days before the submission of such proposition or ordinance to be voted on. [1913, ch. 79, § 2; 1911, ch. 67, § 2.]

Initiative and referendum. 11 L.R.A.(N.S.) 1092; 33 L.R.A.(N.S.) 969.

§ 3837. Referendum. No ordinance passed by the board of city commissioners, except when otherwise required by the general laws of the state or by the provisions of this chapter, except an ordinance for the immediate preservation of the public peace, health or safety, which contains a statement of its urgency and is passed by a four-fifths vote of the board of city com-

missioners, shall go into effect before ten days from the time of its final passage; and if during said ten days a petition signed by electors of the city equal in number to at least ten per centum of the entire votes cast for all candidates for president of the city commission at the last preceding general municipal election at which a president of the city commission was elected, protesting against the passage of such ordinance, be presented to the board of city commissioners, the same shall thereupon be suspended from going into operation, and it shall be the duty of the board of city commissioners to reconsider such ordinance, and if the same is not entirely repealed, the board of city commissioners shall submit the ordinance as is provided by subsection (b) of section 3836, to the vote of the electors of the city, either at the general election or at a special municipal election to be called for that purpose; and such ordinance shall not go into effect or become operative unless a majority of the qualified electors voting on the same shall vote in favor thereof. Said petition shall be in all respects in accordance with the provisions of said section 3836, except as to the percentage of signers, and be examined and certified to by the auditor in all respects as therein provided. [1913, ch. 79, § 3; 1911, ch. 67, § 3.]

§ 3838. Form of petition. Petitions provided for in this chapter shall be signed by none but legal voters of the city. Each petition shall contain, in addition to the names of the petitioners, the street and house number in which the petitioner resides, his age and length of residence in the city. It shall also be accompanied by the affidavit of one or more legal voters of the city, stating that the signers thereof were, at the time of signing, legal voters of said city, and the number of signers at the time the affidavit was made. [1913, ch. 79, § 4; 1911, ch. 67, § 4.]

§ 3839. Return to former system. Any city which shall have operated for more than six years under the provisions of this chapter may abandon such organization hereunder and accept the provisions of the general law of the state then applicable to cities of its population, or if now organized under special charter, may resume said special charter by proceeding as follows:

Upon petition of not less than forty per centum of the electors of such city a special election shall be called at which the following propositions only shall be submitted: " Shall the city (name of city) abandon its organization under the commission system and become a city under the general law governing cities of like population? " If a majority of the votes cast at such special election be in favor of such proposition, the officers elected at the next biennial election shall be those then prescribed by the general law of the state for cities of like population and upon the qualification of such officers such city shall become a city under such general law of the state; but such change shall not in any manner or degree affect the property, rights or liabilities of any nature of such city, but shall merely extend to such change in its form of government.

The sufficiency of such petition shall be determined, the election ordered and conducted, and the result declared generally as provided by section 3835 in so far as the provisions thereof are applicable. [1913, ch. 79, § 5; 1911, ch. 67, § 5.]

CHAPTER 47.

VILLAGES.

- ARTICLE 1. INCORPORATION OF VILLAGES, §§ 3840-3860.
2. POWERS OF THE BOARD OF TRUSTEES, §§ 3861-3864.
 3. AUDITING AND PAYMENT OF ACCOUNTS, §§ 3865-3867.
 4. CORPORATE INDEBTEDNESS, § 3868.
 5. QUALIFICATION OF OFFICERS, §§ 3869, 3870.
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 7. SPECIAL VILLAGE TAXES, § 3880.
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 10. POWER AND DUTIES OF OFFICERS, §§ 3889-3895.
 11. SIDEWALKS AND STREETS, §§ 3896, 3897.
 12. EXTENSION OF CORPORATE LIMITS, §§ 3898-3901.
 13. DIVISION OF VILLAGE AND TOWNSHIP FUNDS, § 3902.
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 15. VILLAGE SIDEWALKS, §§ 3905, 3906.
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 17. MISCELLANEOUS, §§ 3914-3916.
 18. PROCEDURE IN VILLAGE JUSTICE'S COURT, §§ 3917-3930.
 19. ORDINANCES, §§ 3932-3941.

ARTICLE 1.—INCORPORATION OF VILLAGES.

§ 3840. **Townsite to be surveyed and platted.** Persons intending to make application for the incorporation of a village as hereinafter provided shall cause an accurate survey and map to be made of the territory intended to be embraced within the limits of such village; such survey shall be made by a practical surveyor, and show the courses and distances of the boundaries thereof, and the quantity of land contained therein, the accuracy of which survey and map shall be verified by the affidavit of such surveyor written thereon or annexed thereto. [R. C. 1905, § 2843; R. C. 1895, § 2344.]

Incorporated towns distinguished from towns or townships. *Town of Dell Rapids v. Irving*, 7 S. D. 310, 64 N. W. 149, 29 L.R.A. 861.

A town has no authority to assess abutting property for laying water mains. *Lee v. Town of Mellette*, 15 S. D. 586, 90 N. W. 353.

Who may maintain quo warranto to test validity of organization of village. 21 L.R.A. (N.S.) 685.

§ 3841. **Census to be taken.** Such persons shall cause an accurate census to be taken of the resident population of such territory as it may be, on some day not more than sixty days previous to the time of presenting such application to the board of county commissioners, as hereinafter provided; which census shall exhibit the name of every head of a family residing within such territory on such day and the number of persons then belonging to such family; and it shall be verified by the affidavit of the person taking the same. [R. C. 1905, § 2844; 1897, ch. 150; R. C. 1899, § 2345.]

§ 3842. **Survey, map and census subject to examination.** Such survey, map and census when completed and verified as aforesaid shall be left at some convenient place within said territory for examination by those having an interest in such application, for a period of not less than thirty days. [R. C. 1905, § 2845; R. C. 1899, § 2346.]

§ 3843. **Petition for incorporation.** Such application shall be by petition subscribed by the applicants, and also by not less than one-third of the whole number of qualified voters residing within such territory; and such petition shall set forth the boundaries thereof, the quantity of land embraced according to the survey, and the resident population therein contained according to such

census, and such petition shall have attached thereto or written thereupon affidavits verifying the facts alleged therein, and it shall be presented at the time indicated in the notice of such application or as soon thereafter as the board can receive and consider the same. [R. C. 1905, § 2846; R. C. 1899, § 2347.]

§ 3844. Commissioners to make order of incorporation. The board of county commissioners on hearing such application shall first require proof either by affidavit or by oral examination of witnesses before them that the said survey, map and census were subject to examination in the manner and for the period required by section 3842; and if the board is satisfied that the requirements of this chapter have been fully complied with, it shall then make an order declaring that such territory shall with the assent of the qualified voters thereof as hereinafter provided be an incorporated village by the name specified in the application aforesaid, which name shall be different from that of every other town in this state, and it shall also include in such order a notice for a meeting of the qualified voters resident in said proposed village at a convenient place therein to be by them named, on some day within one month therefrom, to determine whether such territory shall be an incorporated village. [R. C. 1905, § 2847; R. C. 1895, § 2348.]

§ 3845. Notice of meeting to be given. The board shall cause ten days' notice to be given of such meeting by publication in a newspaper if one is published in the county, and by posting not less than ten copies of such notice in the most public places in said proposed incorporated village. [R. C. 1905, § 2848; R. C. 1895, § 2349.]

§ 3846. Opening of polls. At the meeting of the qualified voters as herein provided the polls shall be opened at nine o'clock in the forenoon of such day and shall be kept open until four o'clock in the afternoon, when they shall be closed. [R. C. 1905, § 2849; R. C. 1899, § 2350.]

§ 3847. Election of inspectors. The voters at such meeting shall first proceed to the election of three inspectors who, after being duly chosen and qualified and one of their number elected clerk, shall without delay proclaim to the meeting that the polls are now opened and that they are ready to receive the ballots of the voters. [R. C. 1905, § 2850; R. C. 1899, § 2351.]

§ 3848. Manner of voting. The qualified voters of said proposed incorporated village shall vote by ballot, having thereon the words, "for incorporation, yes," or the words "for incorporation, no;" and if a majority of the votes given at such meeting shall have thereon the word "no," the voters of such proposed village shall be deemed not to have assented to the incorporation thereof as a village and no further proceedings shall be had in reference thereto, but if a majority of such ballots shall have thereon the word "yes," such territory shall from that time be deemed an incorporated village and shall thereafter, for all purposes except the payment of any prior bonded indebtedness, be separate and disconnected from any civil township of which it theretofore formed a part and to have continuance thereafter by the name and style specified in the order made by the board of county commissioners as hereinbefore provided; and the inspectors of such election shall make a statement showing the whole number of ballots cast at such election, the number having the word "yes" thereon, and the number having the word "no" thereon, which statement shall be verified by the affidavit of such inspectors and shall be returned to the board of county commissioners at its next session which, if satisfied of the legality of such election, shall make an order declaring that said village has been incorporated by the name adopted, which order shall be conclusive of such incorporation in all suits by or against such corporation; and the existence of such corporation by the name and style aforesaid shall thereafter be judicially taken notice of in all courts in this state without specially pleading or alleging the same. [R. C. 1905, § 2851; 1893, ch. 129, § 1; R. C. 1895, § 2352.]

§ 3849. **Division of village into districts.** Such inspectors, when they shall have returned the statement as aforesaid, shall next proceed to divide said village into not less than three nor more than seven districts, having due regard to the equitable apportionment of the population among the same, and the convenience and contiguity of such districts. [R. C. 1905, § 2852; R. C. 1895, § 2353.]

§ 3850. **Notice of election.** They shall also give ten days' notice by publication in a newspaper if one is published in such village and by posting such notices in five public places therein, of an election to be held in such village for the purpose of electing officers thereof, naming the place therein and the day upon which the same will be held, but the day named shall be within twenty days from the posting of such notices. Notice of each subsequent election shall be given in like manner by the clerk of said village. [R. C. 1905, § 2853; R. C. 1895, § 2354.]

Mandamus from circuit court to compel president to call election when none held on regular election day. *State v. Young*, 6 S. D. 406, 61 N. W. 165.

§ 3851. **Annual election, when held.** An election for officers of said village, after the first election, shall be held annually on the third Tuesday of March of each year, and at every such election the preceding board of trustees or any of them shall act as inspectors thereof. [R. C. 1905, § 2854; R. C. 1895, § 2355; 1903, ch. 93, § 1.]

Failure to call annual election; mandamus proper remedy. *State ex rel. McGregor v. Young*, 6 S. D. 406, 61 N. W. 165.

§ 3852. **How long polls shall remain open.** At all elections in said village the polls shall be open at nine o'clock in the forenoon and shall not be finally closed until four o'clock in the afternoon of said day. [R. C. 1905, § 2855; R. C. 1895, § 2356.]

§ 3853. **Inspectors to be judges of election.** Such inspectors shall preside at such first election and be the inspectors thereof, and in the receiving and canvassing of votes shall be governed by the laws then existing, so far as they are applicable, for the election of county officers. [R. C. 1905, § 2856; R. C. 1899, § 2357.]

§ 3854. **What village officers to be elected.** There shall be elected at the first and at each subsequent election one trustee from each district in said village, and also a clerk, assessor, treasurer, marshal and justice of the peace, who shall respectively hold their offices until the third Tuesday in March next following or until their successors are elected and qualified; provided, however, that nothing herein contained shall prevent the respective offices of clerk, treasurer, assessor and marshal from being held by one and the same person. [R. C. 1905, § 2857; R. C. 1899, § 2358; 1903, ch. 93, § 2.]

§ 3855. **Highest number of votes elects. Duty of inspectors.** The persons receiving the highest number of votes for the office of trustee shall be declared elected as such trustees, and the persons receiving the highest number of votes respectively for clerk, marshal, assessor, treasurer and justice of the peace, as designated by the ballot for such office, shall be declared elected; and if two or more shall receive an equal and the highest number of votes, and there is no choice, the inspectors of such election shall forthwith determine by lot which shall be deemed elected; and it shall further be the duty of such inspectors to make a certified statement over their own signatures, of the persons elected to fill the several offices in said village, and file the same with the county auditor of the county within ten days after the date of such election; and no act or ordinance of any board of trustees chosen at such election shall be valid until the provisions of this section are substantially complied with. [R. C. 1905, § 2858; R. C. 1895, § 2359.]

Failure of election officers to make certified statement of result of election will not render election void. *State ex rel. Walkin v. Shanks*, 25 S. D. 55, 125 N. W. 122.

§ 3856. **County auditor to make record of statement.** It shall be the duty of the county auditor of the proper county to make a record of such certified

statement, for which services there shall be paid the same fee as is allowed for similar services in other cases. [R. C. 1905, § 2859; R. C. 1899, § 2360.]

§ 3857. **Vacancy in board of trustees, how filled.** A vacancy occurring in the board of trustees or in any corporation office shall be filled by appointment at a special meeting of the trustees called for that purpose, but such appointment shall be made from the district if a trustee is appointed, and shall in no case extend beyond the annual election provided for in this chapter. [R. C. 1905, § 2860; R. C. 1899, § 2361.]

§ 3858. **Oath of officers.** The board of trustees chosen as aforesaid shall elect a president from its own body, and such president, trustees and all other officers-elect shall within five days after such election take and subscribe before some person authorized to administer the same the usual oath or affirmation for the faithful performance of the duties of their respective offices. [R. C. 1905, § 2861; R. C. 1899, § 2362.]

§ 3859. **Board of trustees a body corporate.** The president and trustees of such village and their successors in office shall constitute a body politic and corporate, by the name of the "village of," and may prosecute and defend suits to which they are a party. [R. C. 1905, § 2862; R. C. 1895, § 2363.]

§ 3860. **Notice of special meetings.** Special meetings of the qualified voters may be called by the clerk by order of the trustees of said village, by giving ten days' notice thereof in a newspaper if any is printed in such village, otherwise by posting such notices in five public places therein, and such notice shall state the object for which such meeting is called. [R. C. 1905, § 2863; R. C. 1895, § 2364.]

ARTICLE 2.—POWERS OF THE BOARD OF TRUSTEES.

§ 3861. **General powers.** The boards of trustees shall have the following powers:

1. To have a common seal and alter the same.
2. To purchase, hold or convey any estate, real or personal, for the use of the corporation, so far as such purchase may be necessary, to carry out the objects contemplated by this chapter, to provide for the erection and care of all public buildings necessary for the use of the village, to purchase such real estate as they may determine shall be necessary for the purposes of streets, alleys, parks and public grounds, and to sell and dispose of the same when the necessity therefor no longer exists, and to control the finances and property of the corporation.
3. To organize fire companies, hook and ladder companies, to regulate their government and the times and manner of their exercise; to provide all necessary apparatus for the extinguishment of fires; to make owners of buildings provide ladders and fire buckets, which are hereby declared to be appurtenances to the real estate and exempt from execution, seizure or sale; and if the owner shall refuse to procure suitable ladders or fire buckets after reasonable notice, the trustees may procure and deliver the same to him; and in default of payment thereof may recover of said owner the value of said ladder and fire buckets, by suit before the justice of the peace of the village, and the costs accruing thereby; to regulate the storage of gunpowder and other material; to direct the construction of a place for the safe deposit of ashes; and may under any order by it entered upon the proper book of the board, visit or appoint one or more fire wardens to visit, and examine, at all reasonable hours, dwelling houses, lots, yards, inclosures and buildings of every description, discover if any of them are in a dangerous condition, and provide proper remedies for such dangers; to regulate the manner of putting up stoves and stovepipes; to prevent out-fires and the use of fireworks and the discharge of firearms within the limits of said corporation, or such parts thereof as it may think proper; to compel the inhabitants of such village to

aid in extinguishment of fire and prevent its communication to other buildings, under such penalties as are in this chapter provided; to construct and preserve reservoirs, wells, pumps and other waterworks, and to regulate the use thereof and, generally, to establish other measures of prudence for the prevention or extinguishment of fires as it shall deem proper.

4. To construct and keep in repair culverts, drains, sewers, catch basins, manholes and cesspools, and to regulate the use thereof, and to regulate the construction and use of any culvert, drain, sewer, catch basin, manhole or cesspool within the corporate limits and to declare what shall constitute a nuisance, and to abate and remove the same, and impose fines upon persons who may create, continue or suffer nuisances to exist, and take such other measures for the preservation of the public health as it shall deem necessary; to license, tax, regulate, suppress and prohibit hawkers, peddlers, salesmen, pawnbrokers, keepers of ordinaries and other exhibitions, shows and amusements within the corporation.

5. To regulate, restrain and prohibit the running at large of horses, cattle, swine, sheep, goats, geese and dogs, and to impose a tax or license on dogs, not to exceed two dollars on each male dog and three dollars on each female dog owned or kept within such village.

6. To license, regulate, tax or prohibit and suppress pool, billiards, bagatelle, pigeonhole or any other tables or implements kept or used for a similar purpose in any place of public resort, pin alleys and ball alleys; to restrain, suppress and prohibit gambling and gambling houses, and other disorderly conduct and places, lotteries and all fraudulent devices and practices for the purpose of gambling or obtaining money or property, and to prohibit the sale or exhibition of obscene or immoral publications, print, pictures or illustrations, and authorize the seizure and destruction of gambling apparatus; to suppress bawdy and disorderly houses, houses of ill fame or assignation within the limits of the village, and within one mile of the outer boundaries of the village.

7. To license, regulate or restrain auction establishments, traveling peddlers and public exhibitions within the corporation.

8. To establish and regulate markets and build market houses.

9. To lay out, open, grade and otherwise improve the streets, alleys, sewers, sidewalks and crossings, and to keep them in repair, and to vacate the same.

10. To appoint street commissioners and also fire wardens, not exceeding three.

11. To regulate the building and use of sidewalks and all structures thereunder; to require the owner or occupant of any premises to keep sidewalks in front of or along the same free from snow and other obstructions, and to prohibit the riding or driving thereon, except to cross the same; to provide for the building, use and regulation of crosswalks, curbs and gutters; to regulate and prevent the use of streets, alleys, sidewalks and public grounds for signs, signposts, awnings, telegraph and telephone poles, horse troughs, scales, racks, posting handbills and advertisements; to regulate and prevent the throwing or depositing of ashes, offal, manure, dirt, garbage or anything offensive in, and to prevent injury to any street, avenue, alley or public ground; to regulate and prohibit the exhibition or carrying of banners, placards, advertisements or handbills in the streets or public grounds or upon the sidewalk; to regulate and prevent the flying of flags, banners or signs across the street or from houses; to regulate traffic and sales upon the streets, sidewalks and public places; to regulate the speed of horses and other animals, vehicles, bicycles, motorcycles, automobiles, cars, locomotives and traction engines within the limits of the corporation.

12. To establish and erect a jail for the confinement of disorderly persons, vagrants, tramps and idle persons, and persons convicted of violating any village ordinance, and make rules and regulations for the government of the

same, and appoint necessary jailers and keepers; to prevent and suppress riots, routs, affrays, noises, disturbances and disorderly assemblies in any public or private place.

13. To insure the public property of such village.

14. To establish and regulate cemeteries within, or within one mile of the corporation, and acquire lands therefor by purchase or otherwise, and cause cemeteries to be removed and prohibit their establishment within one mile of the corporation.

15. To plant trees upon public grounds and along the streets of such village, and to provide for their culture and preservation, and to enclose any public square or other public grounds within said corporation.

16. To levy and collect annual taxes, not exceeding twenty mills on the dollar, assessed valuation.

17. To direct the location and regulate the management and construction of packing houses, smoke houses, renderies and slaughter houses; and prohibit any offensive or unwholesome business or establishment within, or within one mile of the limits of the corporation; to compel the owner of any grocery, cellar, stable, pigsty, sewer or other unwholesome or nauseous house or place; to cleanse, abate or remove the same, and regulate the location thereof.

18. To make and establish by-laws, ordinances and regulations not repugnant to the laws of this state as may be necessary to carry into effect the provisions of this chapter, and to repeal, alter or amend the same as shall seem to the board of trustees of such village to require; but every by-law, ordinance or regulation, unless in case of emergency, shall be published in a newspaper in such village, if one is printed therein, or posted in five public places, at least ten days before the same shall take effect.

19. To prescribe fines, penalties and forfeitures for violations of this chapter, or of any by-laws or ordinances by it established, not exceeding ten dollars and the costs of prosecution for any one offense, which may be recovered by action in the name of the corporation, but such board may remit the whole or any part of the fine, costs, penalty or forfeiture; provided, that the fine assessed for the violation of any ordinance requiring a license shall not be less than the amount required to be paid for such license, although it may exceed the sum of ten dollars.

20. To authorize the construction and maintenance of street railways, water mains, water pipes, gas mains, gas pipes, steam heating mains and steam heating pipes, electric light systems, power systems and telephone systems, along or through or under the streets and alleys and public grounds within the corporate limits, and to grant franchises and rights to persons, associations or corporations, for such purposes, for a period not exceeding twenty years, and to regulate the same. Provided, however, that all franchises granted pursuant to the provisions of this act shall not be deemed exclusive or irrevocable, but subject to the regulatory powers of the board of trustees herein. [1913, ch. 291; 1907, ch. 268; R. C. 1905, § 2864; 1897, ch. 148; R. C. 1899, § 2365; 1905, ch. 186.]

For power of city council as to matters covered by this section, see § 3599 and annotations thereto.

4. Decision of municipal corporation as to what shall constitute nuisance should be sustained on appeal to court unless palpably unreasonable. *Colton v. South Dakota Central Land Co.*, 25 S. D. 309, 28 L.R.A. (N.S.) 122, 126 N. W. 507.

18. By-law passed by trustees, but never published or posted, of no force, in absence of emergency. *O'Hara v. Town of Park River*, 1 N. D. 279, 47 N. W. 380.

19. City or village ordinances are not "criminal laws." *Litchville v. Hanson*, 19 N. D. 672, 124 N. W. 1119, Ann. Cas. 1912D, 876.

§ 3862. **Extended powers.** All powers now by law conferred upon the city council in articles 17 and 18 of chapter 30 of the Political Code of 1905 and all acts amendatory thereto [sections 3689-3743 herein], are given to the boards of trustees of incorporated villages. [1913, ch. 288.]

The title of the foregoing is "An act extending the powers of the board of trustees of incorporated villages, relative to sidewalks, sewers, paving, and water mains."

§ 3863. Power to regulate use of streets. Registration and certification of vehicles. That in addition to the powers already conferred upon them by law, the boards of trustees of villages shall have and are hereby given the power to regulate by ordinance, the traffic over and use of their streets, alleys and public grounds by automobiles, motor cycles, motor trucks, motor cars and traction engines, and to provide for the registration and identification of such vehicles owned or operated within the corporate limits of such villages, and at the expense of the owners or operators thereof. [1911, ch. 5.]

Requiring automobiles to be registered and numbered. 1 L.R.A.(N.S.) 215.

License for operation of automobile. 1 L.R.A.(N.S.) 215; 21 L.R.A.(N.S.) 41; 37 L.R.A.(N.S.) 440.

Operating automobile without license. 23 L.R.A.(N.S.) 561; 25 L.R.A.(N.S.) 734; 35 L.R.A.(N.S.) 699; 41 L.R.A.(N.S.) 308.

Power to prescribe qualifications of chauffeurs. 37 L.R.A.(N.S.) 303.

Provisions as to speed and safety appliances. 1 L.R.A.(N.S.) 219.

Regulating hours when and places where automobiles may be operated. 1 L.R.A.(N.S.) 219; 26 L.R.A.(N.S.) 502.

Power to require one who has caused injury to identify himself. 40 L.R.A.(N.S.) 622.

Regulation of automobiles used for hire. 1 L.R.A.(N.S.) 222.

Regulations affecting motor cycles. 42 L.R.A.(N.S.) 1069.

Motor cycle as a motor vehicle within statutes regulating the latter and other similar vehicles. 21 L.R.A.(N.S.) 41.

§ 3864. Jurisdiction of trustees over public grounds. The trustees shall have jurisdiction over any commons or public grounds belonging to said village and shall have power to regulate with the consent of the majority of the owners thereof, the banks, shores and wharves of that portion of any navigable stream within the corporate limits, but no ferries heretofore, or which may hereafter be established by law shall be prejudiced or in any manner affected by the provisions of this section. [R. C. 1905, § 2865; R. C. 1895, § 2366.]

ARTICLE 3.—AUDITING AND PAYMENT OF ACCOUNTS.

§ 3865. Appropriation of moneys. All moneys, however derived, belonging to such corporation shall only be appropriated for such objects and defraying such expenses as accrue or necessarily arise in the exercise of powers granted by this chapter. No appropriation shall be made without an order to that effect entered upon a proper book to be kept for that purpose by such board. [R. C. 1905, § 2866; R. C. 1899, § 2367.]

§ 3866. Accounts must be audited. No account or claim against said village shall be audited or allowed by the board of trustees unless it is made out fully and itemized, and every such account audited shall be numbered from one upwards in the order they were presented and a memorandum of the same entered upon a book to be kept exclusively for that purpose. [R. C. 1905, § 2867; R. C. 1895, § 2368.]

§ 3867. Payment of accounts. No account or claim shall be paid unless audited and allowed by the board as aforesaid, and no moneys shall be drawn from the treasury except upon a warrant from the treasurer signed by the president of said village and attested by the clerk thereof. [R. C. 1905, § 2868; R. C. 1895, § 2369.]

ARTICLE 4.—CORPORATE INDEBTEDNESS.

§ 3868. Contracting loans. Payment of judgments. No village incorporated under this chapter shall have the power to borrow money or incur any indebtedness, liability or issue bonds to fund any existing indebtedness unless five-eighths of the citizen owners of the taxable property of such village as evidenced by the assessment roll of the preceding year, petition the board of trustees to contract such debt, loan or bonds, and such petition shall have attached thereto, affidavits establishing the genuineness of the signatures of the same; and for any debt created thereby the trustee shall add to the tax duplicate of each year successively, a levy sufficient to pay the annual interest

on such debt or loan with an addition of not less than five cents on the one hundred dollars to create a sinking fund for the liquidation of the principal thereof; provided, further, that whenever any final judgment has been heretofore or may be hereafter obtained against a village and if there shall not be on hand sufficient funds applicable for the purpose of the payment of the same, the trustees shall in addition to all other levies provided for by law, and at the same time annually, levy a tax upon the taxable property of such village, not exceeding in amount one dollar on each one hundred dollars of the assessed valuation in any one year, which shall be used in the payment thereof; provided, further, that if the judgment, plus one year's interest, be not more than one per cent of the assessed valuation, then such levy shall provide for the payment of the same in one year, but if the judgment with one year's interest exceeds one per cent of the valuation, then the trustees shall in one resolution levy a tax for a sufficient number of years to pay the entire amount due; in the event that there is more than one judgment the same shall be paid as herein provided in the order of the docketing of the same with the clerk of the district court of the county in which such village is located; provided, further, that no execution shall issue on any such judgment or judgments nor shall the public property of the village be subject to levy or sold in satisfaction of any such judgments.

The county auditor shall make out, charge and extend upon the tax list against each description of real property and against all personal property, and upon all taxable property of the village all such taxes for judgments he is so notified have been levied by the village in which the property is situated and taxable in the same manner in which the village, county and state tax is extended and deliver it to the county treasurer at the same time.

Provided, further, that when the resolution of the village taxing officers provides for a levy for more than one year, then to annually thereafter and as long as such levy is in force, spread such levy in the manner above set forth without any further notice from such village officers.

After the final entry of any judgment against a village the trustees may issue certificates of indebtedness evidencing the debt, its amount and interest, and payable as funds are collected by the annual levies aforesaid; said certificates may be issued in the total sum of such judgment or may be issued in separate certificates of one hundred dollars each or any multiple or fraction thereof, as the trustees may determine, and shall be presented to the village treasurer on January first and July first of each year until fully paid, for indorsement of funds available on said date, for the satisfaction of the same; such certificates may be at any time, upon there being sufficient funds to fully pay the same, called in by the treasurer for payment, and unless the same shall be surrendered for payment within five days thereafter the interest thereon shall cease; such certificates shall bear the same rate of interest as the judgment or judgments which they represent, and such interest shall be payable semi-annually. Such certificates may be thereafter presented to the clerk of the district court of the county in which such judgment is docketed for certification as to the date of docketing and amount of said judgment, and may thereafter be presented to the auditor of the county in which such village is located who shall certify as to the date and amount of the tax levy provided for its payment. Such certificates so indorsed shall be assignable and negotiable.

The treasurer shall keep separate the funds so raised and to pay out of it the semi annual interest on such judgments and the balance on the principal as fast as the same is accumulated. [1911, ch. 312; 1907, ch. 265; R. C. 1905, § 2869; R. C. 1895, § 2370.]

Petition by resident owners of five-eighths of taxable property gives jurisdiction to make improvements. *Hubbell v. Town of Custer City*, 15 S. D. 55, 87 N. W. 520.

ARTICLE 5.—QUALIFICATION OF OFFICERS.

§ 3869. **Certain officers to give bonds.** The clerk, assessor, treasurer, marshal and justice of the peace shall within ten days after their election or appointment each give a bond payable to the village with freehold sureties, to such an amount as the board of trustees shall direct; but the bonds of the treasurer and marshal shall respectively be for double the amount of the estimated tax duplicate for the current year. [R. C. 1905, § 2870; R. C. 1899, § 2371.]

§ 3780. **Books, etc., to be delivered to successor.** All books, vouchers, moneys or other property belonging to the corporation and in the charge or possession of an officer of the same shall be delivered to his successor when qualified. [R. C. 1905, § 2871; R. C. 1899, § 2372.]

ARTICLE 6.—LEVY AND COLLECTION OF TAXES.

In the title of the act of 1911 constituting this article it is recited that the act is to provide for the levy and collection of taxes in villages and to repeal §§ 2872, 2873, 2874, 2875, 2876, 2877, 2878, 2879, 2880, 2881, 2882, and 2883 of the Revised Codes of 1905.

§ 3871. **Assessor, duties, compensation.** The village assessor shall perform all duties necessary for the assessing of property within the village limits for the purpose of levying village, county, school and state taxes. Upon the completion of the assessment-roll he shall return it to the village clerk on or before the second Monday of June, and said village clerk shall deliver the same to the village board of equalization at the regular meeting thereof. The compensation of said village assessor shall be three dollars per day, and no more, for the time actually employed in making and completing said assessment. [1911, ch. 294, § 1.]

§ 3872. **Board of equalization, meeting.** The board of equalization shall be composed of the board of trustees of said village, and the village clerk, who shall act as clerk to the same, and shall meet on the second Monday in June in each year. The president of the board of trustees shall be chairman of the village board of equalization. [1911, ch. 294, § 2.]

§ 3873. **Duties, complaints and grievances.** The village board of equalization shall meet at the usual place of meeting of the village board, and they shall immediately proceed to examine, ascertain and see that all taxable property in their village has been properly placed upon the list and duly valued by the assessor; and in case any property, real or personal, shall have been omitted by inadvertence or otherwise, it shall be the duty of the said board to place the same upon the list, with the true value thereof, and proceed to correct the assessment so that each tract or lot of real property, and each article, parcel or class of personal property shall be entered on the assessment list at the true value thereof; but the assessment of the property of any person shall not be raised until each person shall have been duly notified of the intent of the board to do so, and on the application of any person considering himself aggrieved, they shall review the assessment and correct the same, as shall appear to them just; any two of said officers are authorized to act at such meeting, and they may adjourn from day to day until they shall finish the hearing of all cases presented on that day; provided, that they shall complete the equalization within ten days.

All complaints or grievances of individual residents of the village in reference to the assessments of real or personal property shall be heard and decided by the village board; provided, further, that the complaints of non-residents in reference to the assessment of any property, real or personal, and of others, in reference to any assessment made after the meeting of the village board of equalization, shall be heard and determined by the county board.

The clerk of the village board of equalization shall keep an accurate record of the proceedings of said board, a copy of which shall be furnished the

county auditor and by him filed as a part of the assessment returns. [1911, ch. 294, § 3.]

§ 3874. Tax levy, made when. The board of trustees shall on the first Monday in July of each year, or within ten days thereafter, make a tax levy for the current fiscal year, and the clerk of said village shall immediately thereafter notify the county auditor in writing of amount of tax so levied. [1911, ch. 294, § 4.]

§ 3875. Duty of county auditor. It shall be the duty of the county auditor in making out the tax list for said year to place the amount of said village taxes, in accordance with said levy, in separate columns in the lists of both personal property and lands, opposite the respective names and parcels of land on said lists. [1911, ch. 294, § 5.]

§ 3876. Duty of county treasurer. The county treasurer of such county shall thereupon collect such taxes, together with the interest and penalty thereon, if any, in the same manner as the general taxes for that year, and shall pay over to the village treasurer of such village all sums so collected, at the end of each month, upon the demand of the village treasurer, and upon an order from the county auditor. [1911, ch. 294, § 6.]

§ 3877. Special taxes assessed to be a lien. All taxes assessed by the board of trustees of villages incorporated under the provisions of this chapter for the grading, paving or otherwise improving the streets of the village, or for the building or repairing sidewalks, shall be a lien on the lots or pieces of ground subject to the same from the time the amount thereof shall have been ascertained, and in case any error or irregularity should occur in the levying or collecting any such taxes, proceeding may be taken anew so as to obviate any such error or irregularity. [1911, ch. 294, § 7; R. C. 1905, § 2880; R. C. 1895, § 2381.]

§ 3878. What costs may be included in special tax. The costs and expenses of grading, filling, paving, macadamizing, culverting, curbing or ditching or otherwise improving streets, sidewalks, alleys, avenues or lanes at their intersections, may be included in the special tax levied for the improvement of any street, sidewalk, alley, avenue or lane as may be deemed best by the board of trustees of such village. [1911, ch. 294, § 8; R. C. 1905, § 2882; R. C. 1895, § 2383.]

Not authorized to make special assessment for laying water mains. *Lee v. Town of Mellette*, 15 S. D. 586, 90 N. W. 855.

§ 3879. Special taxes, how collectible. Such special tax shall be due and may be collected as the improvements are completed. It shall be the duty of the village clerk to deliver to the county auditor a duplicate of all assessments so levied on or before the first day of September of each year, and the county auditor shall extend the assessments so made in the proper column against the property assessed, and each shall be collected and the payment thereof enforced, and such assessments shall be paid over by the county treasurer when collected to the village treasurer in like manner as other taxes. [1911, ch. 294, § 9; R. C. 1905, § 2881; R. C. 1899, § 2382.]

ARTICLE 7.—SPECIAL VILLAGE TAXES.

§ 3880. Taxes for water and light plants. The board of trustees of any village in this state having before the passage of this act [article] installed a water and light plant in such village is authorized to levy a special tax sufficient to pay the cost therefor not exceeding in any case the sum of one per cent per annum upon the assessed valuation of all the taxable property within such village; said taxes shall be collected and paid over to the village treasurer the same as other taxes, and shall be used for no other purpose. [1913, ch. 289.]

ARTICLE 8.—VALIDATING SPECIAL ASSESSMENTS.

The title of the act constituting this article is as follows: "An act validating special assessments and taxes made or levied in cities and villages since 1903 and establishing certain rules of evidence relating thereto."

§ 3881. Special assessments, validated. Every special assessment or part thereof made or levied by the officers of any cities for any purpose authorized by law, heretofore and since the year 1903, and all taxes levied therefor by any board or officer authorized by law to make the same, is hereby legalized and made valid in all respects and purposes, without regard to any defects, errors or omissions in the proceedings therefor, the same as if in all things made in conformity to the laws then in force. [1911, ch. 72, § 1.]

§ 3882. Conclusive evidence. What is. In any action or proceedings where the legality or validity of any of the said taxes, assessments or the warrants issued thereon, is called into question, the production of evidence that any such special assessment was duly approved and confirmed by the city council or board of village trustees, shall be deemed conclusive evidence that every step in the proceedings therefor has been duly and regularly made in the manner and form provided by law. [1911, ch. 72, § 2.]

ARTICLE 9.—COLLECTION OF ROAD TAXES IN VILLAGES.

§ 3883. Board of trustees may levy road taxes. The board of trustees of each incorporated village shall have power to levy and collect a tax for the grading, improvement and maintenance of the streets, alleys and highways and for the construction and repair of crossings, culverts and bridges within the corporate limits of such villages. This tax shall be levied on or before the third Tuesday of May in each year. This tax shall be based upon and computed on the assessment of the village as returned by the state board of equalization for the preceding year. This tax shall be levied in a specific amount, and the rate thereof shall not exceed five mills on the dollar of the assessed valuation; but it shall not be considered as being any part of those village taxes which by laws now in effect are limited to ten mills on the dollar of the assessed valuation. [1907, ch. 267, § 1.]

§ 3884. Tax may be paid in work or cash. Any person against whom, or against whose property, such tax has been levied shall have the right to pay the same in work to be performed under the supervision and direction of the street commissioners at the rate of one dollar and fifty cents for eight hours of work of one man, or three dollars for eight hours' work of one man with one two-horse team. All taxes not paid in work or cash to the street commissioners shall be collected by the officer collecting the taxes for such village. [1907, ch. 267, § 2.]

§ 3885. Village clerk to provide road tax books. It shall be the duty of the village clerk to provide each street commissioner with a suitable book containing the name of each person, firm or corporation liable for road poll, personal property or real estate road taxes and the amount of such taxes and the description of the real property upon which the tax is levied. [1907, ch. 267, § 3.]

§ 3886. Duties of street commissioners. Each street commissioner shall give at least twenty-four hours' notice to each person against whom, or against whose property, a road tax has been levied of the time and place where the work is to be performed. He shall write the word "paid" opposite each item of tax paid to him in work or in cash and return the road tax book to the village clerk on or before the fifteenth day of September with his affidavit attached stating that each item of tax opposite which the word "paid" is written has been paid in work or in cash, and that each item of tax opposite which the word "paid" is not written remains unpaid and delinquent. [1907, ch. 267, § 4.]

§ 3887. **Village clerk to make list of delinquent road taxes.** In all cases where the village taxes are computed by the county auditor, it shall be the duty of the village clerk on or before the first day of October of each year to make out and deliver to the county auditor a complete statement of all unpaid road taxes in his village as the same appear in the road tax book returned to him by the street commissioners, and it shall be the duty of such county auditor to make proper entries of such delinquent road taxes on the tax list for the current year. In case the village is preparing its own tax list, the village clerk shall cause such delinquent road tax to be properly entered on the village tax list. [1907, ch. 267, § 5.]

§ 3888. **Certain township laws applicable to villages.** The same powers and duties in regard to the levy, collection and expenditure of road taxes, which are now by law conferred and imposed upon township supervisors, township road overseers, justices and constables are hereby conferred and imposed upon the corresponding village officers in so far as such powers and duties do not conflict with the provisions of this article. The village trustees shall also have power to expend any portion of the road taxes levied by and in such village in the improvement of public highways outside of the corporate limits of such village but leading thereto; provided, that the authorities having jurisdiction over such highways do not object. [1907, ch. 267, § 6.]

For the township laws referred to in this section, see sections 2004-2034.

ARTICLE 10.—POWERS AND DUTIES OF OFFICERS.

§ 3889. **Duties of village treasurer.** The treasurer of each incorporated village shall so keep his accounts as to show where and from what sources all moneys paid him have been derived and to whom and when such moneys or any part thereof have been paid. The treasurer shall grant all licenses authorized by this chapter upon the presentation of the receipt of the marshal that said money therefor has been paid to said marshal. His books, accounts and vouchers shall at all times be subject to the examination of the board of trustees, and it is its duty to examine the same at a regular meeting of such board on some day between the first and last Mondays of February in each year and have a settlement with said treasurer. [1909, ch. 229; R. C. 1905, § 2884; R. C. 1895, § 2385.]

§ 3890. **Board of trustees to publish receipts and expenditures.** It shall be the duty of the board of trustees immediately after the annual settlement with the treasurer of said corporation to publish in a newspaper if one is published therein, or if there is no newspaper then by posting in three or more public places, an exhibit of the receipts and expenditures specifying the sources of such receipts, what appropriations were made, for what objects, and the specific amount of each. [R. C. 1905, § 2885; R. C. 1899, § 2386.]

§ 3891. **Duties of clerk.** The clerk of such village shall have the custody of the records, books and papers of the board of trustees and shall attend all meetings and keep a record of the proceedings of said board, and shall perform all other duties appertaining to his office, as required of him by the by-laws. [R. C. 1905, § 2886; R. C. 1895, § 2387.]

§ 3892. **Powers of marshal.** The marshal of such village shall be a peace officer and shall possess the powers and be subject to the liabilities possessed and conferred by law upon sheriffs in executing the orders of the trustees or enforcing the by-laws and ordinances of said village, and shall have the same general powers to serve civil process as is now possessed by constables of the county. [1913, ch. 195; R. C. 1905, § 2887; R. C. 1895, § 2388.]

Laws 1907, ch. 269, amended R. C. 1905, § 2887, to read as follows: "Whereas, village marshals throughout the state have acted as constables by reason of a misapprehension as to the law, it is hereby provided that all past acts of said marshals, wherein they assumed to act as constables, is hereby legalized and made of the same effect and

validity as if said marshals had been constables and that said marshals shall not be liable either civilly or criminally for so acting."

Acceptance by marshal of less than legal salary on bills rendered by him amounts to adjudication of claim. *O'Hara v. Town of Park River*, 1 N. D. 279, 47 N. W. 380.

§ 3893. Trustees to superintend grading, etc. The board of trustees shall superintend the grading, paving and improving of streets and the building and repairing of sidewalks. [R. C. 1905, § 2888; R. C. 1899, § 2389.]

§ 3894. Firewardens, duties of. The firewardens shall attend all fires and give their personal superintendence to extinguish the same, and do all other acts required by the by-laws and obey all orders given by the board of trustees in relation to the fire department. Trustees shall by virtue of their office be firewardens. [R. C. 1905, § 2889; R. C. 1899, § 2390.]

§ 3895. Compensation of village officers. The trustees, clerk, assessor, treasurer, marshal and justice of the peace shall respectively receive for their services such compensation as the board of trustees in their by-laws may decide; and the board shall cause other officers of such village to be paid for their services a just and reasonable compensation. [R. C. 1905, § 2890; R. C. 1895, § 2391.]

ARTICLE 11.—SIDEWALKS AND STREETS.

§ 3896. Sidewalks, streets, etc. Petition for building or repairing. Whenever two-thirds of the resident owners in number or in value of real estate bounding both sides of any street not less than one square, shall petition to have such street graded, paved or otherwise improved or the sidewalk thereof built or repaired, or when two-thirds of the owners of real estate in number or in value on one side of such street shall desire a sidewalk on that side, it shall be the duty of such board to levy and cause to be collected by tax upon the owners of the real estate on such street or part of street such a sum of money as is necessary for the improvement of said street or sidewalk or the building of said sidewalk in front of each of the respective lots or at the side of any corner lot or lots or real estate; provided, however, that no real estate shall be taxed as aforesaid for sidewalks built or improvements done at a greater distance from the front of said real estate than one-half the distance to the opposite side of said street. [R. C. 1905, § 2891; 1883, ch. 107, § 1; R. C. 1899, § 2392.]

Right of abutting owner to prevent construction of sidewalk in front of his property. 13 L.R.A.(N.S.) 1110.

Joining in petition for local improvement as estoppel to deny benefits. 36 L.R.A. (N.S.) 41.

Right to withdraw names from petition or remonstrance. 11 L.R.A.(N.S.) 372; 35 L.R.A.(N.S.) 1113.

§ 3897. No one exempt from highway tax. Nothing contained in this article shall exempt the inhabitants of any village from the payment of highway taxes legally assessed, nor from the formation of one or more road districts irrespective of the corporate limits of such village. [R. C. 1905, § 2892; R. C. 1895, § 2393.]

ARTICLE 12.—EXTENSION OF CORPORATE LIMITS.

§ 3898. Addition to corporation. When two-thirds of the owners of a tier of out-lots adjoining an incorporated village shall sign a petition asking that the corporate limits of said village be extended so as to include said out-lots, the board of trustees of said village shall cause said petition to be recorded and make an order that said tier of out-lots shall thereafter be included and constituted a part of said corporation, and the inhabitants residing thereon and owners thereof shall be subject to and entitled to all privileges of said corporation. [R. C. 1905, § 2893; R. C. 1895, § 2394.]

§ 3899. Annexing additional lots. Whenever there shall be lots laid off and platted, adjoining such village, and a record of the same is made in the

register of deeds' office of the proper county, or whenever there shall be lots laid off and platted as above, adjacent but separated from said village by an unplatted strip of territory lying between the original plat and such additional platted territory, if said unplatted strip does not exceed one-fourth of the present area of such village, the board of trustees may by resolution extend the boundary of such village so as to include such lots or such lots and such strips as the case may be, and the lots, or lots and strip thus annexed, shall thereafter form a part of such village and be within the jurisdiction thereof. The trustees shall immediately thereafter file a copy of such resolution, together with a plat and map or survey defining the boundaries of such additionally included territory in the office of the register of deeds of the county. [1907, ch. 263; R. C. 1905, § 2894; R. C. 1895, § 2395.]

§ 3900. Proceedings of trustees to annex additions. When any village shall desire to annex contiguous territory thereto not platted or recorded, the trustees shall present to the board of county commissioners a petition setting forth the reasons for such annexation, and shall accompany the same with a map or plat accurately describing by metes and bounds the territory proposed to be attached, which shall be verified by affidavit. Such trustees shall give thirty days' notice by publication in a newspaper printed in such village, if any, otherwise in the county, and if there is none in the county then by posting such notice in five or more public places within the village; a copy of such notice shall be served upon the owner of such territory if known and is a resident of the county. [R. C. 1905, § 2895; R. C. 1895, § 2396.]

§ 3901. County commissioners to hear and order annexation. The board of county commissioners upon the reception of such petition shall consider the same and shall hear the testimony offered for or against such annexation, and if after inspection of the map and the testimony being heard such board is of the opinion that the prayer of such petition should be granted it shall cause an entry to be made on the order book specifying the territory annexed, with the boundaries thereof according to the survey, which entry or an attested copy thereof shall be conclusive evidence in all courts of such annexation. [R. C. 1905, § 2896; R. C. 1899, § 2397.]

ARTICLE 13.— DIVISION OF VILLAGE AND TOWNSHIP FUNDS.

§ 3902. Division of funds and property. Whenever any village organized under chapter 31 of the political code of North Dakota [chapter 47 herein] shall have been a part of the township for township purposes, and such village shall have determined, under the provisions of said chapter 31 [chapter 47 herein] to become a separate and independent municipality, and such village and township have, prior to such separation, owned property jointly and together, such joint property and any joint funds or debts of said village and township shall be divided between said village and township in proportion to the equalized valuation of the property of said village and township, as fixed and determined by the board of county commissioners of the county in which they are situated, being the last equalization made by said county board previous to such separation, and in making such division, if the property held is real estate situated within either the village or township, then such real estate shall belong to the municipality [in which it is situated, and such municipality] shall pay to the other its proportion of the value thereof and debts; and in case the authorities of such village and township cannot agree upon the value of such real estate, or upon the value of any indivisible property, held jointly, or their just proportion of indebtedness owed, then the authorities of either such village or township may, upon five days' notice of the time and place, apply to the county judge of said county, whose duty it shall be to appoint three arbitrators who shall

be freeholders of said county, and not residents or taxpayers of said village or township, who shall be duly sworn to perform the duties of the trust imposed upon them, and such arbitrators shall view the property and appraise and fix the value thereof, for the purpose of such division, and in case of personal property, if no satisfactory arrangement can be otherwise made, the same shall be sold at auction to the highest bidder, the village or township having the right to bid at such sale. It is further provided that when any village has already become an independent municipality under the provisions of said chapter 31 of the political code of North Dakota [chapter 47 herein] and such village, before such separation, owned property or owed debts jointly with the township, and such property rights have not been adjusted, then the same may be determined and settled in accordance with the provisions of this article. [1907, ch. 264.]

ARTICLE 14.—DISSOLUTION OF CORPORATION.

§ 3903. Petition for election, etc. When an application signed by one-third of the legal voters of any incorporated village shall be presented to the board of trustees in writing asking for a dissolution of the corporation, setting forth the reasons therefor, it shall be competent for the board if it deems the reasons good to call a meeting of the voters of such village by giving ten days' notice thereof as provided in this chapter, to determine whether such corporation shall be dissolved. The board of trustees shall preside at such meeting and the polls shall be opened as at other elections, and the voters shall vote by ballot, "yes" or "no." If a majority of all the votes given shall have thereon the word "yes," and such votes shall have been given by two-fifths of all the legal voters in such village, a statement of the vote signed by the president and attested by the clerk shall be filed in the office of the register of deeds of the county, and such village shall at the expiration of six months from the time of holding such meeting cease to be a corporation, and the property belonging to such corporation after the payment of its debts and liabilities shall be disposed of in such manner as a majority of the voters of such village at any special meeting thereof may direct. [R. C. 1905, § 2897; R. C. 1895, § 2398.]

§ 3904. Dissolution not to affect contracts. No such dissolution shall affect the rights of any person in any contract or agreement to which such corporation is a party. [R. C. 1905, § 2898; R. C. 1899, § 2399.]

ARTICLE 15.—VILLAGE SIDEWALKS.

§ 3905. Sidewalks to be built or repaired. Notice of, how given. Powers of trustees. Duty of owners. It is hereby made the duty of all owners of land adjoining any street, lane or alley in any incorporated village in this state to construct, reconstruct and maintain in good repair such sidewalks along the side of the street, lane or alley next to the lands of such owner respectively as may have been heretofore constructed or shall hereafter be constructed or directed by the board of trustees to be built, and of such material and width and upon such place and grade as the board of trustees may, by resolution, prescribe. Whenever the board of trustees shall deem it necessary that any sidewalk shall be constructed or reconstructed, it shall by resolution direct such construction or reconstruction, specifying the width thereof and the material of which the same is to be constructed or reconstructed. The publication of such resolution twice in some paper printed or published in said village shall be sufficient notice to the owner of the land along which such sidewalk is to be built to construct the same, and unless such owners shall, each along his respective land, construct and fully complete such sidewalk within two weeks after the last publication of such resolution, as aforesaid, the board of trustees shall cause such portion of such sidewalks as have not been built by the owners of such lands to be built by the street

commissioner, or upon contract, or in any other manner as the board may determine. The board of trustees shall assess and levy upon and against such lot and parcel of land along which such sidewalk has been constructed or reconstructed a sum sufficient to cover the cost of such sidewalk along and fronting upon the same lots and parcels of land respectively, which shall be in the following form:

The board of trustees of the village of.....doth hereby assess and levy upon and against the several lots and parcels of land below described the respective sums of money set against each lot or parcel. This assessment is made to defray the cost of a sidewalk along theside of from to in accordance with a resolution of the board of trustees, passed the.....day of..... A. D. 19...., and duly published in.....on the..... days of, A. D. 19.... The amount assessed against and levied upon each lot or parcel being the amount that it cost to construct or reconstruct such sidewalk along and fronting upon the same lot or parcel of land.

Name of Owner, if Known	Description of Land		Amount	
	Lot	Block	Dollars	Cents

Done at a meeting of the board of trustees, this day ofA. D. 19....

.....
President.

Attest:

.....

Village Clerk.

[R. C. 1905, § 2899; 1905, ch. 184, § 1.]

§ 3906. Duties of village clerks and county auditors. The village clerk shall on or before the first day of September of each year deliver to the county auditor a duplicate of all such assessment rolls, and the county auditor shall extend the assessments in proper column against the property assessed, and each assessment shall be collected and the payment thereof enforced as county and state taxes are collected and enforced, and such assessment shall be paid over by the county treasurer when collected to the village treasurer in like manner as other taxes. [R. C. 1905, § 2900; 1905, ch. 184, § 2.]

ARTICLE 16.—POLICE IN UNORGANIZED TOWNS.

§ 3907. Village policemen appointed by board of supervisors in unorganized towns upon petition. Whenever sixty per cent of the electors of any town or village of this state within the limits of any platted town, which village or town has no organized city or village government, shall petition the board of supervisors of the township in which it, or a greater portion thereof, is situated, praying for the appointment of a village policeman to serve as a night watchman in such town or village, and for the levy of a tax upon the property therein to pay such officer, which petition shall state the period for which such appointment is to be made, the name of such townsit in which such police officer is to be appointed, and if it appears that sixty per cent of the electors residing within such townsit have signed

said petition it shall be the duty of said supervisors to fix the compensation of such officer for the period named in such petition for which such appointment is asked. [R. C. 1905, § 2901; 1905, ch. 185, § 1.]

§ 3908. **Police tax levied by board of supervisors. Duty of county auditor.** The said board of supervisors, if the petition is by them found sufficient under the provisions of the previous section, shall at the time the general township tax levy is made, levy upon all the property within said townsite from which said petition is received, the specific amount fixed by them as the compensation of such officer, under the provisions of said section, and the amount so levied shall be certified at the time of certifying other township taxes, by the proper authority to the county auditor, who shall calculate and fix the rate per cent necessary to raise that sum, and extend the same upon the tax list of such township against the property within said townsite in a column therein to be provided, headed "Police Tax." [R. C. 1905, § 2902; 1905, ch. 185, § 2.]

§ 3909. **Tax collected and paid to township treasurer.** The tax so levied shall be collected and paid over as other township taxes are collected and paid, and the treasurer of the township shall keep a separate account thereof. [R. C. 1905, § 2903; 1905, ch. 185, § 3.]

§ 3910. **Policemen qualify and give bond as fixed by board.** In season to serve at the time named in said petition, said board of supervisors shall appoint some suitable person as village policeman, who shall give bond and qualify as township constables are required, which bond shall be in the sum to be fixed by said board and approved and filed as other township officers' bonds. [R. C. 1905, § 2904; 1905, ch. 185, § 4.]

§ 3911. **Powers and duties of police.** Said village policeman shall have all the powers, duties and authority as the constable of such township, and during the period for which he is appointed he shall patrol said townsite each night from eight o'clock p. m. to six o'clock a. m., guard against fire, theft and burglary, preserve the peace and execute the laws of the state therein. [R. C. 1905, § 2905; 1905, ch. 185, § 5.]

§ 3912. **How policemen are to be paid.** From the fund herein provided such police officer shall be paid the compensation fixed by said supervisors by warrants drawn by their authority each month upon the township treasurer payable out of the fund herein created upon verified bills submitted by him. [R. C. 1905, § 2906; 1905, ch. 185, § 6.]

§ 3913. **Tax levy and appointment made before July first. Supervisors' power to remove officer.** No tax levy or appointment shall be made as herein provided in any year in which the petition herein provided for shall not be presented to such supervisors before the first day of July in each year, and said supervisors shall have authority to remove such police officer whenever they shall deem it expedient. [R. C. 1905, § 2907; 1905, ch. 185, § 7.]

ARTICLE 17.— MISCELLANEOUS.

§ 3914. **Proof of compliance with law by village.** Whenever any suit shall be instituted by an incorporated village it shall not be required to show its compliance with any of the provisions of this chapter as to its organization or publication of by-laws or ordinances, unless the same is controverted under oath. [R. C. 1905, § 2908; R. C. 1895, § 2400.]

§ 3915. **Towns and villages may adopt this chapter.** Any town or village heretofore incorporated may by resolution of the board of trustees or other municipal board thereof entered upon the record book of the corporation become incorporated under this chapter, but the same shall be deemed a surrender of all the rights and franchises acquired under any former act of incorporation or acts amendatory thereto. A copy of such resolution shall be filed with the register of deeds of the proper county and entered by him

of record. Trustees and other officers of such incorporated towns or villages by whatever name designated, performing duties of a like nature to those required of officers, created by this chapter shall continue to be the officers of such towns or villages, under the names specified in this chapter, until their successors are elected and qualified. [R. C. 1905, § 2909; R. C. 1895, § 2401.]

§ 3916. When debt not nullified. No debt or liability due to or from any incorporated town or village shall be unpaid by reason of such town or village being brought within the provisions of this chapter and becoming incorporated under it. [R. C. 1905, § 2910; R. C. 1895, § 2402.]

ARTICLE 18.—PROCEDURE IN VILLAGE JUSTICE'S COURT.

§ 3917. Village justice, jurisdiction of. Justices of the peace of any village organized under the provisions of this chapter shall have exclusive jurisdiction to hear and determine all offenses against the ordinances of such village, and concurrent jurisdiction with all other justices in all civil actions and in all criminal actions for offenses against the laws of the state, committed within the county where such village is situated. [R. C. 1905, § 2911; R. C. 1895, § 2403.]

§ 3918. Procedure in, how governed. Whenever complaint shall be made to the justice of the peace of such village, upon oath or affirmation of any person competent to testify against the accused, that an offense has been committed of which such justice of the peace has jurisdiction, said justice of the peace shall forthwith issue a warrant for the arrest of the offender, which warrant shall be served by the marshal of the village, the sheriff or any constable of the county, or any person specially appointed by the justice for that purpose, and in all preliminary examinations before such justice he shall be governed by the code of criminal procedure, and in all trials before such justice for offenses against the state he shall be governed by the justices' code. [R. C. 1905, § 2912; R. C. 1899, § 2404.]

§ 3919. Duty of justice when defendant appears. When any person shall be brought before such justice of the peace upon a warrant it shall be his duty to hear and determine the complaint alleged against him. [R. C. 1905, § 2913; R. C. 1899, § 2405.]

§ 3920. Proceedings when trial is postponed. Upon good cause shown such justice may postpone the trial of the cause to a day certain, in which case he shall require the defendant to enter into an undertaking with sufficient surety conditioned that he will appear before such justice at the time and place appointed, then and there to answer the complaint alleged against him. [R. C. 1905, § 2914; R. C. 1899, § 2406.]

§ 3921. Justice to summon witnesses. It shall be the duty of such justice to summon all persons whose testimony may be deemed material as witnesses at the trial, and to enforce their attendance by attachment, if necessary, and when a trial shall be continued by such justice he may verbally notify such witnesses as may be present to attend before him at the time to which the action is continued, to testify therein, and such verbal notice shall be as valid as a summons. [R. C. 1905, § 2915; R. C. 1899, § 2407.]

§ 3922. Trials, how governed. All trials before such justice shall be governed by the criminal procedure applicable to justices' courts. [R. C. 1905, § 2916; R. C. 1899, § 2408.]

§ 3923. Judgment when defendant found guilty. In all trials for offenses under the ordinances of the village, if the defendant is found guilty the justice shall render judgment accordingly. It shall be part of the judgment that the defendant stand committed until the judgment is satisfied, in no case to exceed one day for every seventy-five cents of the fine and costs assessed against such defendant. [R. C. 1905, § 2917; R. C. 1895, § 2409.]

§ 3924. **Justice is peace officer. Court open every day.** Such justice shall be a conservator of the peace and his court shall be opened every day except Sunday to hear and determine any and all cases cognizable before him; and he shall have power to bring persons forthwith before him for trial. No act shall be performed by him on Sunday except to receive complaints, issue process and take bail. [R. C. 1905, § 2918; R. C. 1899, § 2410.]

§ 3925. **Appeals.** In all cases before such justice an appeal may be taken by the defendant to the district court of the county in which such village is situated; but no appeal shall be allowed unless such defendant shall within ten days enter into an undertaking with sufficient sureties to be approved by such justice, conditioned for the payment of the fine and costs and costs of appeal, and that he will render himself in execution thereof in case such appeal is determined against him. [R. C. 1905, § 2919; R. C. 1895, § 2411.]

Waiver of failure to serve, or defects in service of, process, by appeal from justice's court to court where trial must be de novo. 34 L.R.A.(N.S.) 661.

§ 3926. **Punishment for violation of ordinances.** Any person convicted before such justice of an offense against the ordinances of the village shall be punished by fine as may be regulated by ordinance. [R. C. 1905, § 2920; R. C. 1895, § 2412.]

§ 3927. **Power of justice. Jury. Appeals.** The justice of the peace of the village shall have power to enforce obedience to all orders, rules, judgments and decrees made by him; and he may fine or imprison for contempt offered to him while holding court or to process issued or orders made by him, in the same manner and to the same extent as provided for courts of justices of the peace. From any final conviction, sentence or judgment of said court an appeal may be taken to the district court within the time and in the manner prescribed for taking appeals from justices' courts and the district court shall on such appeals take judicial notice of all the ordinances of such village. Actions before such justices of the peace, arising under village ordinances, shall be tried and determined by such justices of the peace without the intervention of a jury unless the defendant demands a trial by jury; and when a demand shall be so made the trial shall be by jury of twelve citizens of such village having the qualifications of jurors, who shall be summoned by the marshal upon a venire issued by such justice of the peace. The venire for a jury shall contain eighteen names, three of which shall be stricken off the list by the defendant and three by the marshal; the remaining twelve names shall constitute a jury for the trial of an action. If there is any challenge for cause such justice of the peace shall try the question in a summary manner, and he may examine the challenged jurors under oath. [R. C. 1905, § 2921; R. C. 1895, § 2413.]

Power of magistrate to punish witness for contempt. 1 L.R.A.(N.S.) 1135.

Number of jurors necessary to verdict in justice's court. 43 L.R.A. 51.

Consent and waiver as affecting number and agreement of jurors necessary to verdict on appeal. 43 L.R.A. 69.

§ 3928. **Fees of jurors.** Such jurors shall each be paid fifty cents for their services in each action. [R. C. 1905, § 2922; R. C. 1899, § 2414.]

§ 3929. **Costs of jury taxed to defendant, when.** In case the defendant is found guilty the costs of the jury shall be taxed against him as a part of the costs of the action and the amount thereof shall be a part of the judgment. [R. C. 1905, § 2923; R. C. 1899, § 2415.]

§ 3930. **Proceedings, how governed.** In all actions not herein specially provided for, the process and proceedings of the court of such justice of the peace shall be governed by the laws regulating proceedings in justices' courts in criminal actions. [R. C. 1905, § 2924; R. C. 1899, § 2416.]

ARTICLE 19.—ORDINANCES.

§ 3931. **How ordinances may be proven.** All ordinances of the village may be proven by the ordinance book or the certificate of the clerk of the

village under the seal of the village; and when printed in a newspaper or published in book or pamphlet form and purporting to be published or printed by authority of the village, may be read and received in all courts and places without further proof. [R. C. 1905, § 2925; R. C. 1895, § 2417.]

CHAPTER 48.

ORGANIZATION OF VILLAGES IN TERRITORY EMBRACING MORE THAN ONE COUNTY.

§ 3932. When organized. Whenever any area of contiguous territory in this state, not exceeding four square miles, shall have residing thereon a population of not less than one hundred inhabitants, which shall not already have been included within the corporate limits of any legally incorporated village or city and which territory to be embraced in the limits of said village is in more than one county, such territory may become incorporated as a village, in the manner provided in chapter thirty-one (31) of the political code of North Dakota [of 1905], governing the incorporation of villages and said chapter 31 of the political code is hereby made applicable to the organization, power, duties and privileges of such village and as to the authority and duties of its officers, except as herein otherwise specifically provided for. [1911, ch. 314, § 1.]

The act constituting this chapter probably supersedes §§ 3564a-3564e so far as the latter relate to organization of villages.

Who may maintain quo warranto to test validity of organization of village. 21 L.R.A. (N.S.) 685.

§ 3933. Census and survey. Prior to the commencement of any proceedings to incorporate such territory as a village, a census as prescribed in section 2844 of the Revised Codes for 1905 [section 3841 herein], shall be taken and a survey of the territory so to be incorporated shall be made in accordance with section 2845 of said code [section 3842 herein], and furnish proof hereof in conformity to section 2847 R. C. [section 3844 herein]. [1911, ch. 314, § 2.]

§ 3934. Petition for incorporation. A petition signed by not less than one-third (1-3) of the qualified voters, residing within such territory, shall be filed in the office of the county auditor of the county where the greater part of the territory is situated, addressed to the board of county commissioners of such county, which petition shall define the boundaries of such proposed village and state the number of inhabitants residing within such limits, and also state the name of such proposed village, and submit a verified copy of the census taken and a duplicate map of the survey thereof, and such petition shall contain a prayer that the question be submitted to the qualified voters residing within such limits, whether they will organize as a village under said chapter. It shall be the duty of the board of county commissioners to make an order fixing a time and place within the boundaries of such proposed village, at which an election may be held to determine such question (providing that when such territory is situated in more than one county, the commissioners shall designate a separate election place in each county for that portion of territory to be embraced within the limits of the proposed village so to be incorporated) and such commissioners shall name the persons to act as judges in holding such election, and shall give notice thereof by causing the same to be published in a weekly newspaper for a period of ten days, if there is a newspaper published within such territory or by causing five notices to be posted in public places within such proposed village for ten days, and chapter 31 of the political code of 1905 [chapter 47 herein], applicable hereto relative to holding elections and manner of voting and form of ballot, except as herein otherwise specifically provided for. [1911, ch. 314, § 3.]

§ 3935. Commissioners canvass votes. The returns of such election shall be made to and canvassed by the board of county commissioners who ordered such election and the result of such election shall be entered upon the records of such county commissioners, and if a majority of the votes cast at such

election shall be for incorporation, the board shall make an order declaring that such village has been incorporated by the name adopted (stating such name) and cause such order to be spread on the records of said commissioners, which order shall be conclusive of such incorporation in all suits by or against such village, and the existence of such corporation by the name and style aforesaid, shall thereafter be judicially taken notice of in all courts in this state. A certified copy of such order shall be at once transmitted to each county within which a portion of such territory may be situated and the auditor of such county shall likewise make a record thereof on the commissioners' books. [1911, ch. 314, § 4.]

§ 3936. Place of election. Whereas, this act [chapter] provides that villages may be incorporated embracing territory situated within more than one county; and

Whereas, a voter cannot cast his vote in a county other than the one in which he is a qualified voter,

Be it hereby provided for, and made a part of this act [chapter], that the territory embraced within the limits of such corporation be divided into as many election places as there are portions of counties embraced and the whole of such territory to be divided into districts in accordance with section 2852 of the Revised Codes [section 3849 herein]. There shall be a board of election, consisting of two judges and two clerks for each election place, appointed by the board of trustees at their regular meeting preceding the day of any election to be held within such village, and such election boards to make due returns to the board of trustees immediately after the votes are counted and recorded, and shall receive two dollars per day for their services. [1911, ch. 314, § 5.]

§ 3937. Office of village. The officers of a corporation created under and by virtue of this act [chapter] may maintain an office for the performance of their duties in any portion of the limits of said corporation, but all official proceedings must be headed with the name of the village, with the name of each county of which a portion is embraced in such corporate limits and the name of the state of North Dakota. The seal to be used by such village shall also contain the names as above set forth. [1911, ch. 314, § 6.]

§ 3938. Assessor, how elected. In addition to the officers to be elected by such village in accordance with section 2857, chapter 31 of Revised Codes of North Dakota [section 3854 herein], there shall be elected an assessor for each of the counties of which a portion is embraced within the limits of such village, and such assessor shall have the same powers and duties as assessors in villages situated within the limits of one county, and shall be governed accordingly. [1911, ch. 314, § 7.]

§ 3939. Board of equalization. The board of equalization shall consist of the same members as now provided for under chapter 31 [chapter 47 herein], governing villages, but the trustees shall require the clerk of such village to transmit assessment books together with a certified copy of the minutes showing the proceedings of the board of equalization, to the county auditor in each county in which such village is situated, and when the trustees have made a levy on the property assessed within such village to correctly proportion the amount to be certified to each county in accordance with the valuation returned by the assessor and as left by the equalization board. [1911, ch. 314, § 8.]

§ 3940. Duties, county treasurer. The county treasurer shall perform the same duties in relation to the collection of taxes for such villages as is now or may hereafter be provided for. [1911, ch. 314, § 9.]

§ 3941. Other provisions applicable. All acts and parts of acts contained in chapter thirty-one (31), of the political code of North Dakota [chapter 47 herein] relating to incorporation of villages, powers and duties of its officers, not conflicting herewith, are made applicable to the organization of villages hereunder. [1911, ch. 314, § 10.]

CHAPTER 49.

MISCELLANEOUS PROVISIONS RELATING TO CITIES AND VILLAGES.

ARTICLE 1. TOWN PLATS, §§ 3942-3952.

2. PRESERVATION OF PLATS AND PLANS, §§ 3953-3958.
3. VACATION OF PLATS BY DISTRICT COURT, §§ 3959-3961.
4. VACATION OF PLATS BY WRITTEN DECLARATION, §§ 3962-3966.
5. ERRORS AND DEFICIENCIES IN CITY PLATS, § 3967.
6. CHANGING LIMITS OF CITIES, TOWNS AND VILLAGES, §§ 3968-3973.
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9. LOCATING AND VACATING STREETS AND ALLEYS, §§ 3985-3989.
10. WATERWORKS AND FIRE APPARATUS, §§ 3990-3992.
11. INSURANCE TAX FOR FIRE DEPARTMENTS, §§ 3993-3998.
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13. FREE LIBRARIES, §§ 4007-4013.
14. BONDS OF MUNICIPAL CORPORATIONS, §§ 4014, 4015.
15. CITY BONDS FOR AUDITORIUM, GYMNASIUM, PLAY GROUNDS, PUBLIC BATH, ETC., §§ 4016-4018.
16. REFUNDING CITY BONDS, §§ 4019-4025.
17. REFUNDING BONDED SCHOOL INDEBTEDNESS, §§ 4026-4029.
18. REFUNDING CERTAIN MUNICIPAL BONDS, §§ 4030-4037.
19. TAXES IN CERTAIN CORPORATIONS, §§ 4038-4043.
20. COLLECTION OF CITY TAXES, §§ 4044-4049.
21. ROAD AND BRIDGE TAXES, §§ 4050, 4051.
22. LOCAL IMPROVEMENTS IN CERTAIN CITIES, §§ 4052, 4053.
23. PARKS AND PUBLIC GROUNDS, § 4054.
24. PARKS AND PARK DISTRICTS, §§ 4055-4063.
25. VILLAGE PARKS, §§ 4064-4071.

ARTICLE 1.—TOWN PLATS.

§ 3942. **Survey and plat to be made.** When any person wishes to lay out a town in this state or an addition or subdivision of out-lots, such person shall cause the same to be surveyed and a plat thereof made which shall particularly describe and set forth all the streets, alleys, commons or public grounds and all in and out-lots or fractional lots within or adjoining said town, giving the names, width, courses, boundaries and extent of all such streets and alleys. [R. C. 1905, § 2926; R. C. 1899, § 2418.]

§ 3943. **Lots and squares numbered.** All the in-lots intended for sale shall be numbered in progressive numbers or by squares in which they are situated, and their precise length and width shall be stated on said map or plat; and out-lots shall in like manner be surveyed and numbered and their precise length and width stated on the plat or map, together with any streets, alleys or roads which shall divide or border the same. [R. C. 1905, § 2927; 1887, ch. 106, § 1; R. C. 1899, § 2419.]

§ 3944. **Base line, how formed.** The proprietor of the town, addition or subdivision of out-lots, by himself or agent, shall at the time of surveying and laying the same out cause to be planted and firmly fixed in the ground on the line of the main streets of said town two good and sufficient stones of such size and dimension as the surveyor shall direct, said stones to be at least two hundred and fifty yards apart; and the line thus formed shall be a base line from which to make future surveys; and the point or points where the same may be found shall be distinguished on the plat or map. [R. C. 1905, § 2928; R. C. 1899, § 2420.]

§ 3945. **Plat to be certified and acknowledged.** The plat or map after having been completed shall be certified by the surveyor and the officers, and

every person whose duty it shall be to comply with the foregoing requirements shall at or before the time of offering said plat or map for record acknowledge the same before some person authorized to take acknowledgments. A certificate of such acknowledgment shall by the officer taking the same be indorsed on the plat or map, which certificate of the survey and acknowledgment shall also be recorded and form a part of the record. [R. C. 1905, § 2929; R. C. 1899, § 2421.]

§ 3946. Lands donated or granted. Streets. When the plat or map shall have been made out and certified, acknowledged and recorded as required by this chapter every donation or grant to the public, or to any individual, religious society or corporation, marked or noted as such on said plat or map, shall be deemed a sufficient conveyance to vest the fee simple of such parcel or parcels of land as are therein expressed, and shall be considered to all intents and purposes a general warranty against such donors, their heirs or representatives, to said donees or grantees, for their use for the uses and purposes therein named, expressed and intended, and no other use and purpose whatever; and the land intended to be used for the streets, alleys, ways, commons or other public uses in any town, city or addition thereto shall be held in the corporate name thereof in trust to and for the use and purposes set forth and expressed or intended. [R. C. 1905, § 2930; R. C. 1899, § 2422.]

One who dedicates by plat does not convey absolute fee to public. *Donovan v. Allert*, 11 N. D. 289, 58 L.R.A. 775, 95 Am. St. Rep. 720, 91 N. W. 441.

As to right to acquire land for park purposes by common-law dedication. *Cole v. Minnesota Loan & T. Co.*, 17 N. D. 409, 117 N. W. 354, 17 A. & E. Ann. Cas. 304.

The owner of property abutting on street dedicated by plat may recover for injury to trees planted by him. *Lovejoy v. Campbell*, 16 S. D. 231, 92 N. W. 24.

It is presumed that one who records plat of an addition containing undesignated spaces, which appear to form no part of any platted lots, dedicates such spaces as public streets. *Atlas Lumber Co. v. Quirk*, 28 S. D. 643, 135 N. W. 172.

§ 3947. Record of plat in unorganized counties. If the county in which said town or addition is situated shall not be organized, the plat or map shall be recorded in the office of the register of deeds of the county to which such county is at the time attached for judicial purposes. [R. C. 1905, § 2931; R. C. 1899, § 2423.]

§ 3948. Towns already laid out must comply with this chapter. When any town, addition or subdivision has been heretofore laid out and lots sold in this state by agents or proprietors, and a plat or map of the same has not been acknowledged and recorded in conformity with acts heretofore in force, it shall be the duty and it is hereby required of the county commissioners or majority of them in such county, or proprietor or proprietors who have laid out the same, or his or their legal representatives, to have the same fairly, fully and clearly made out, acknowledged and recorded in the proper county, in the form and manner required by this chapter; noticing and particularly describing the donation of lands or otherwise to individual societies, bodies politic, or for common or public purposes; provided, that if the lots shall have been differently numbered and sales made and they cannot be conveniently changed they shall be returned as originally stated; but in all other respects the plat or map shall conform to the requirements of this chapter. [R. C. 1905, § 2932; R. C. 1899, § 2424.]

§ 3949. Fees of surveyor and register. The surveyor who shall lay out, survey and plat any town or addition shall be entitled to receive twenty-five cents for each and every in and out-lot the same may contain, unless otherwise agreed, and the register of deeds of the county recording the same shall receive the sum of two cents for each and every lot as aforesaid; the said plat and survey to be by him transcribed or copied into a book to be provided for that purpose. [R. C. 1905, § 2933; R. C. 1899, § 2425.]

§ 3950. Penalty if sale or lease is offered before compliance with this article. If any person or persons shall dispose of, offer for sale or lease for any time any out or in-lots in any town, village or city or in any addition to any town,

village or city or any part thereof, which shall hereafter be laid out, until all the foregoing requirements of this chapter shall have been complied with, every person so offending shall forfeit and pay the sum of ten dollars for each and every lot or part of a lot sold or disposed of, leased or offered for sale. [R. C. 1905, § 2934; R. C. 1899, § 2426.]

§ 3951. **Penalty if officer or other person neglect to do duty.** If any officer or person whose duty it is to comply with any of the requirements of this article shall neglect or refuse so to do, he shall forfeit and pay a sum not less than ten nor more than one hundred dollars for each month he shall delay a compliance. [R. C. 1905, § 2935; R. C. 1899, § 2427.]

§ 3952. **Forfeitures and liabilities.** All forfeitures and liabilities which may be incurred or arise under this chapter shall be prosecuted for and recovered in the name of the county treasurer; and any officer paying over any money to such treasurer, received under any of the provisions of this chapter, shall take his receipt therefor and forthwith file such receipt with the county auditor, and he shall charge the amount of such receipt against said treasurer on the books of the county. [R. C. 1905, § 2936; R. C. 1899, § 2428.]

ARTICLE 2.—PRESERVATION OF PLATS AND PLANS.

§ 3953. **Copies of originals on file with register of deeds.** For the purpose of preserving from mutilation and impairment the plats and plans on file in the register of deeds office in each organized county, the board of county commissioners may, if they deem necessary, cause copies of the originals on file to be made on sheets of tracing cloth by a competent engineer, said sheets to be not less than thirty by twenty inches, nor more than thirty-one by twenty-one inches, and to be lettered in a workmanlike manner with suitable titles transcribed thereon, numbered, lettered and made up in one or more books, bound in suitable covers so that they may be readily removed for the purpose of making prints. These copies shall serve as negatives for prints, and shall be certified to by the engineer in charge of said work as being correct copies of the original. [1911, ch. 260, § 1.]

§ 3954. **Bond of engineer making copies.** The board of county commissioners may, if they deem advisable, require a bond of said engineer covering a period of five years. [1911, ch. 260, § 2.]

§ 3955. **Written and printed matter to be typewritten and bound.** All descriptions, dedications and written and printed matter that may be found on the original plats and plans shall be typewritten, properly paged, indexed and bound in books to correspond with the negatives heretofore mentioned, and shall be certified to by the engineer having said work in charge, as being correct copies. [1911, ch. 260, § 3.]

§ 3956. **Typewritten copies filed, but not for general use.** The negatives for the prints, and the typewritten copies of the description and dedications shall be filed and not used by the public except by persons authorized by the county commissioners to make additional copies. [1911, ch. 260, § 4.]

§ 3957. **Prints, descriptions and dedications for general use.** Said engineer shall furnish one set of prints from the negatives, either on paper or cloth, which prints shall be placed in substantial covers and bound in one or more books and each book furnished with an index thereto. He shall also furnish one set of descriptions and dedications which shall be bound and indexed to correspond with the prints. Said prints and supplementary descriptions and dedications shall be for the use of the general public, and the county commissioners are authorized to replace from time to time as may be needful, the prints and typewritten sheets that have become mutilated or worn out, and they may cause to be made at different times, prints and typewritten descriptions of all new plats and plans that hereafter may be added to the register of deeds office. [1911, ch. 260, § 5.]

§ 3958. **Rate of pay for the work.** The county commissioners shall not pay more than twenty dollars per sheet for such work performed, and this shall include the work necessary for making the negatives, one set of prints, the necessary covers, and two typewritten copies of descriptions and dedications heretofore mentioned. [1911, ch. 260, § 6.]

ARTICLE 3.—VACATION OF PLATS BY DISTRICT COURT.

§ 3959. **District court may alter or vacate towns.** The district court is authorized and empowered on application made by the proprietors of any town within the county to alter or vacate the same or any part thereof. [R. C. 1905, § 2937; R. C. 1899, § 2429.]

§ 3960. **Notice of application, how given.** If any proprietor of a town shall be desirous of altering or vacating the same or any part thereof, such proprietor shall give notice in writing of such intended application in at least two of the most public places in the county wherein such town may be situated, and insert a copy thereof in a newspaper printed or in circulation in said county if there is one, at least forty days prior to the sitting of the court to which he intends to make such application. [R. C. 1905, § 2938; R. C. 1899, § 2430.]

§ 3961. **Proceedings for.** If such applicant shall produce to the court satisfactory evidence that the notice required by the preceding section has been given, the court shall proceed to hear and determine such petition, and may alter or vacate such town or any part thereof, and order the proceedings thereon to be recorded by the clerk with the records of the court. [R. C. 1905, § 2939; R. C. 1899, § 2431.]

ARTICLE 4.—VACATION OF PLATS BY WRITTEN DECLARATION.

§ 3962. **Plats, how vacated.** Any plat of any town, village or city or addition thereto or any subdivision of land may be vacated by the proprietors thereof at any time before the sale of any lots therein by written instrument declaring the same to be vacated, duly executed, acknowledged or proved and recorded in the same office with the plat to be vacated; and the executing and recording of such writing shall operate to destroy the force and effect of the recording of the plat so vacated, and to divest all public rights in the streets, alleys, commons and public grounds laid out as described in such plat. And in cases where any lots have been sold the plat may be vacated as herein provided by all the owners of lots in such plat joining in the execution of the writing aforesaid; provided, that this article shall not be construed as applying to any of the territory included within the limits of any incorporated city, town or village created and organized under and by virtue of a special act. [R. C. 1905, § 2940; 1887, ch. 109, § 1; R. C. 1899, § 2432.]

§ 3963. **Part of plat vacated, how.** Any part of a plat may be vacated under the provisions and subject to the conditions of this article; provided, such vacating does not abridge or destroy any of the rights and privileges of other proprietors in said plat; and provided, further, that nothing contained in this section shall authorize the closing or obstructing of any public highways laid out according to law. [R. C. 1905, § 2941; 1887, ch. 109, § 2; R. C. 1899, § 2433.]

As to similar provision in Iowa Code 1897, § 919. see *Lorenzen v. Preston*, 53 Iowa, 580, 5 N. W. 764; *Conner v. Iowa City*, 66 Iowa, 419, 23 N. W. 904; *McGrew v. Lettsville*, 71 Iowa, 150, 32 N. W. 252.

§ 3964. **Proprietors' rights, when vacated.** When any part of a plat shall be vacated as aforesaid the proprietors of the lots so vacated may inclose the streets, alleys and public grounds adjoining said lots in equal proportion. [R. C. 1905, § 2942; 1887, ch. 109, § 3; R. C. 1899, § 2434.]

§ 3965. **Register of deeds to mark plat.** The register of deeds in whose office the plats aforesaid are recorded shall write in plain, legible letters

across that part of said plat so vacated the word "vacated," and also make a reference on the same to the volume and page in which such instrument of vacation is recorded. [R. C. 1905, § 2943; 1887, ch. 109, § 4; R. C. 1899, § 2435.]

§ 3966. Owner may plat again. The owner of any lots in a plat so vacated may cause the same and a proportionate part of adjacent streets and public grounds to be platted and numbered by the county surveyor, and when such plat is acknowledged by such owner and recorded in the office of the register of deeds such lots may be conveyed and assessed by the numbers given them on such plat. [R. C. 1905, § 2944; 1887, ch. 109, § 5; R. C. 1899, § 2436.]

ARTICLE 5.— ERRORS AND DEFICIENCIES IN CITY PLATS.

§ 3967. Procedure for correction, method of correction, assessment for expenses. Whenever any platted addition, outlot or parcel of ground, or any subdivision of same within the corporate limits of any city shall be found to be inadequately or erroneously described in the plat, or when such plat or plats shall be found in error or deficient as to marked or scaled distances, angles, descriptions or have such other defects as will make said plat an incorrect and deficient plat and description of the property platted, the city council may by resolution declare it necessary to correct such plat or plats, or completely replat such property, and shall publish such resolutions in the official paper of the city once each week for three consecutive weeks.

Such resolution shall contain and stipulate: (a) The description of the property affected, (b) the nature of the errors or defects, (c) an outline of the proposed corrections, (d) an estimate of the probable cost of making the corrections as made by the city engineer or some competent engineer or surveyor designated for that purpose, (e) that any interested owner may file objections to the proposed work or the cost of same and that such objections will be heard and considered at a meeting designated for that purpose, (f) the time of such meeting when the council will meet to consider all objections. When all objections filed at or prior to the meeting designated for the purpose shall have been duly heard and considered, the city council shall if it deems such work advisable and if the owners of the majority of the property affected shall not have filed a protest against same, order the city engineer or such other competent engineer or surveyor as shall have been designated in the resolution declaring the work necessary, to do the work in accordance with said resolutions.

The engineer or surveyor designated to make the correction or replatting shall follow such original hubs, stakes, monuments and lines as are known to be correct and the original hubs, stakes, monuments and lines, and shall to the best of his ability by actual survey and measurements on the ground make the plat conform to the divisions, subdivisions, blocks, lots, outlots, pieces and parcels of land as originally laid out. All lost or disputed points, lines and angles shall be determined by actual survey and made to conform with the original survey, and shall be marked on the ground with substantial oak stakes in a manner customary and provided for in townsite surveys. All numbers, letterings and names of references to blocks, lots, outlots, additions, streets, avenues, alleys, etc., shall be the same as on the original plat, and the revised and corrected plat shall be a true plat of the survey as originally made. The surveyor shall make his affidavit and certification that the plat has been so made to the best of his ability and shall affix same to the plat.

The completed plat shall be filed with the city auditor who shall publish a notice of that fact once a week for three consecutive weeks, which notice shall stipulate that all interested parties may view same, and set forth a date when the city council will sit to hear objections to the survey as made and when it will consider same.

If in the opinion of the council an injustice has been done, it shall order such surveys and resurveys as it may deem necessary to determine the merit of any claim and shall adjourn from time to time or until such time as all the necessary information shall be available. [1911, ch. 289.]

The council then shall affirm or reject the plat by resolution. If passed by two-thirds vote of the members elected the plat shall be recorded in the county in which the city is located and shall be the true and correct map of the property described and shall supersede any and all previous plats. All costs and disbursements shall be assessed against the property benefited according to the benefits by the city engineer which assessment shall be published in full by the city auditor in the official paper of the city and be subject to the approval of the city council after due consideration and hearing of any and all objections at a meeting designated for that purpose in the notice and publication of the assessment. When approved by the city council such assessment shall be certified to the county auditor and shall be payable in one annual instalment as a special assessment tax.

Approved March 6, 1911.

ARTICLE 6.—CHANGING LIMITS OF CITIES, TOWNS AND VILLAGES.

§ 3968. Limits may be extended. On petition in writing signed by not less than three-fourths of the legal voters and by the owners of not less than three-fourths, in value, of the property in any territory contiguous to any incorporated city or town or village and not embraced within the limits thereof, the city council of the city or the board of trustees of the town or village, as the case may be, may by ordinance annex such territory to such city, town or village upon filing a copy of such ordinance with an accurate map of the territory annexed, duly certified by the mayor of the city or the president of the board of trustees of the town or village in the office of the register of deeds of the county where the annexed territory or the greater portion of it is situated, and having the same recorded therein. [R. C. 1905, § 2945; 1887, ch. 104, § 1; R. C. 1895, § 2437.]

The word "territory" includes all the various pieces or parcels of land sought to be annexed or excluded. *Oehler et al. v. Big Stone City*, 16 S. D. 86, 91 N. W. 450.

Power of legislature to annex territory to municipalities. 27 L.R.A. 737.

Extension of city limits to include toll road as taking of property for which compensation must be made. 17 L.R.A.(N.S.) 1071.

Liability of annexed territory to pay proportionate share of existing debts. 27 L.R.A.(N.S.) 1147.

Municipal liability for defects or obstructions in streets in annexed territory. 20 L.R.A.(N.S.) 575.

Discrimination between residents or property owners in territory annexed, as to right to defend against annexation of territory to municipality. 17 L.R.A.(N.S.) 421.

§ 3969. Limits may be restricted. On petition in writing signed by not less than three-fourths of the legal voters and by the owners of not less than three-fourths, in value, of the property in any territory within any incorporated city, town or village, and being upon the border and within the limits thereof, the city council of the city or the board of trustees of the town or village, as the case may be, may disconnect and exclude such territory from such city, town or village; provided, that the provisions of this section shall only apply to lands not laid out into city, town or village lots or blocks. [R. C. 1905, § 2946; 1887, ch. 104, § 2; R. C. 1895, § 2438.]

Tract to be excluded need not be on border of town, but must be part of territory on border asked to be excluded. *Oehler v. Big Stone City*, 16 S. D. 86, 91 N. W. 450.

Land not necessary for public purposes may be excluded. *Pelletier v. City of Ashton*, 12 S. D. 366, 81 N. W. 735.

One signing a petition for extension of limits to include her property, and paying taxes for three years, is estopped to question legality of proceeding, where great injustice would result to others. *State v. City of Pierre*, 15 S. D. 559, 90 N. W. 1047.

Petition for exclusion of real property from city must show that preliminary steps before council have been taken to give circuit court jurisdiction. *Weiland v. Ashton*, 17 S. D. 621, 98 N. W. 87.

Petition for excluding territory signed by sole owner, where no one resides thereon, is sufficient. *Coughran v. Huron*, 17 S. D. 271, 96 N. W. 92.

Petitioners must prove the signing of petition for excluding territory from city by three-fourths of legal voters and property holders. *Oehler v. Big Stone City*, 16 S. D. 86, 91 N. W. 450.

Division of territory of municipality, town, or county, as affecting its assets and liabilities, in absence of statute on the point. 39 L.R.A.(N.S.) 285.

§ 3970. Notice of petition to be published. No final action shall be taken by the city council or the board of trustees, as the case may be, upon any petition presented in pursuance of the provisions of the last two sections until notice of the presentation of such petition has been given by the petitioners by publication at least once in each week for two successive weeks in some newspaper published in the city, town or village where the petition is presented; or if no newspaper is published therein, then in the newspaper published nearest thereto. [R. C. 1905, § 2947; 1887, ch. 104, § 3; R. C. 1895, § 2439.]

Preliminary steps must be complied with to give court jurisdiction. *Weiland v. City of Ashton*, 17 S. D. 621.

[§ 3971. Petition presented to district court, when. Upon the failure of the city council, or the board of trustees, as the case may be, to grant the request contained in any petition presented in accordance with the provisions of sections 3968 and 3969, for thirty days after the publication of the notice provided for in the last section, or upon a refusal to grant such request, the petitioners may present their petition to the district court of the county in which such city, town or village or the greater portion of it is situated, by filing such petition with the clerk of said court. Notice of such filing shall be served by the petitioners upon the mayor of the city or the president of the board of trustees, as the case may be, together with a notice of the time and place when and where a hearing will be had upon such petition, at least ten days before the date of such hearing. The hearing on the petition may be had at a regular or special term of the district court or by the court in vacation.] [R. C. 1905, § 2948; 1887, ch. 104, § 4; R. C. 1895, § 2440.]

This and the following section were held unconstitutional in *Glaspell v. Jamestown*, 11 N. D. 86, 88 N. W. 1023. *Contra, Wickhem v. Alexandria*, 23 S. D. 556, 122 N. W. 597.

[§ 3972. Duty of court. If upon the hearing the court shall find that the request of the petitioners ought to be granted and can be so granted without injustice to the inhabitants or persons interested the court shall so order. If the court shall find against the petitioners the petition shall be dismissed at the cost of the petitioners.] [R. C. 1905, § 2949; 1887, ch. 104, § 5; R. C. 1899, § 2441.]

Court may exclude land if necessary only to increase city's revenue, when council refuses to do so. *Pelletier v. City of Ashton*, 12 S. D. 366, 81 N. W. 735.

§ 3973. Map to be filed. When any territory is annexed by ordinance or by order of court to any city, town or village as provided in this article, it shall be the duty of the mayor of the city or of the president of the board of trustees of the town or village, as the case may be, to cause an accurate map of such added territory, together with a copy of the ordinance for the annexation or a copy of the order of court therefor, duly certified, to be filed and recorded in the office of the register of deeds of the county in which such added territory or the greater portion of it is situated. If territory is disconnected or excluded from any city, town or village a copy of the ordinance or judgment therefor shall be so filed and recorded, at the expense of the petitioners therefor. [R. C. 1905, § 2950; 1887, ch. 104, § 6; R. C. 1899, § 2442.]

ARTICLE 7.—CHANGING NAMES OF TOWNS OR VILLAGES.

§ 3974. Petition. When any number of the inhabitants of any town or village shall desire to change the name thereof, there shall be filed in the office of the county auditor a petition for that purpose, which must be signed by at least two-thirds of the qualified electors of said town or village, setting forth

the name by which said town or village is known, its location as near as practicable, and giving the name which they desire the town shall thereafter be known by. [R. C. 1905, § 2951; 1885, ch. 31, § 1; R. C. 1899, § 2443.]

§ 3975. Notice. Notice of the filing of such petition and the time and place when the same shall be heard and the objects and purposes thereof shall be given by posting up a written or printed notice in at least five public places in the town or village, the name of which is sought to be changed, at least four weeks before the meeting of the board of county commissioners. [R. C. 1905, § 2952; 1885, ch. 31, § 2; R. C. 1899, § 2444.]

§ 3976. Duty of county commissioners. At the next regular meeting of the board after such notice shall have been posted as aforesaid, the board shall proceed to hear and determine the petition unless the hearing is for good cause continued until the next meeting; and the board shall on the hearing of said petition also hear any remonstrance against the proposed change; and if on hearing it shall appear to the board that two-thirds of the qualified electors of the town or village in good faith signed said petition for change of name and desired the same, then the board shall order said name to be changed as prayed for. [R. C. 1905, § 2953; 1885, ch. 31, § 3; R. C. 1899, § 2445.]

§ 3977. Record. The order of the board shall thereupon be entered of record, giving the name of the town or village as set forth in such petition, the new name given, the time when the change shall take effect, which shall not be less than thirty days thereafter, and directing that notice of said change shall be published in at least one newspaper published in the county, if any, and if there is no newspaper published in the county, then such notice shall be published by posting the same for four weeks on the front door of the court house in which the last term of the district court of said county was held. [R. C. 1905, § 2954; 1885, ch. 31, § 4; R. C. 1899, § 2446.]

§ 3978. Proof of publication to be filed. Proof of such publication shall be filed in the office of the county auditor; and on the day fixed by the board as aforesaid the change shall be complete; provided, that whenever the name of any town or village shall be changed under the provisions of this article the county auditor shall immediately notify the register of deeds who shall note the change of name upon the plat of said town or village with the date thereof. [R. C. 1905, § 2955; 1885, ch. 31, § 5; R. C. 1899, § 2447.]

§ 3979. Costs. In all cases arising under the provisions of this article where there is no remonstrance or opposition to said petition, the petitioners shall pay all costs; but in all other cases costs shall abide the result of the proceeding and be taxed to either party in the discretion of the board, or divided equitably between the parties. [R. C. 1905, § 2956; 1885, ch. 31, § 6; R. C. 1899, § 2448.]

ARTICLE 8.—CHANGING WARDS.

§ 3980. Petition. Notice. When a petition shall be presented to the mayor and council of any city or the president and trustees of any town or village, signed by a majority of the legal voters thereof, to be determined by the number of names on the poll list of the last regular election, praying for a change in the name, number or boundary of wards of said city, town or village, the council of such corporation shall at once cause to be published in a weekly newspaper of the city or village, in at least three issues, a notice of the day, hour and place of meeting at which they will consider such petition. [R. C. 1905, § 2957; 1887, ch. 110, § 1; R. C. 1899, § 2449.]

§ 3981. Council may order change, when. If it shall appear to the council or trustees that the change petitioned for is desirable and for the best interests of the city, town or village the council may by a majority vote of all the members elect order the change desired, but no such change shall take effect until the next regular election. [R. C. 1905, § 2958; 1887, ch. 110, § 2; R. C. 1899, § 2450.]

§ 3982. Plats and records to be changed. The council shall direct the corporation attorney to cause such needful changes in papers, plats and matters of record as the change may demand. [R. C. 1905, § 2959; 1887, ch. 110, § 3; R. C. 1899, § 2451.]

§ 3983. Duty of clerk. It shall be the duty of the town, village or city clerk or auditor to make such changes in the assessment lists as the change in wards necessitates. [R. C. 1905, § 2960; 1887, ch. 110, § 4; R. C. 1899, § 2452.]

§ 3984. Manner of holding election in new ward. Ten days before the next regular election the council shall designate the proper polling place or places for the new ward or wards, appoint judges and clerks, and make all necessary provisions for holding the election in the new ward or wards, naming the several officers to be chosen. [R. C. 1905, § 2961; 1887, ch. 110, § 5; R. C. 1899, § 2453.]

ARTICLE 9.—LOCATING AND VACATING STREETS AND ALLEYS.

§ 3985. Power to open, improve and vacate streets and alleys. Any city, town or village is authorized and empowered through its proper municipal officers, to lay out, open, grade and otherwise improve the streets, alleys, sewers, sidewalks and crossings therein and to vacate the same. When it becomes necessary in order to make any of the improvements herein specified, to take or damage private property, such municipal corporation may exercise the right of eminent domain for any public use authorized by law in the manner provided in chapter 36 of the code of civil procedure. In case private property is taken or damaged for a purpose not of direct benefit to the entire municipal corporation, the damages assessed by the jury shall be paid by the owners of real property who are to be directly benefited by the proposed local improvement, and the jury shall assess the amount to be paid by each owner of real property benefited, but the action shall be conducted by and in the name of the municipal corporation. [R. C. 1905, § 2962; 1897, ch. 102; R. C. 1899, § 2454.]

Damages how assessed and cost of improvement apportioned as provided by this section. *City of Fargo v. Keeney et al.*, 11 N. D. 484, 92 N. W. 836.

Property devoted to public use may be appropriated under power of eminent domain. *Winona & St. P. Ry. Co. v. Watertown*, 4 S. D. 323, 56 N. W. 1077.

Right to take property for streets and alleys. 22 L.R.A.(N.S.) 111.

Compulsory use of private property in road work. 42 L.R.A.(N.S.) 1045.

Acquisition by municipality of right of way for drain. 65 L.R.A. 273.

Taking of property for sewers as a public purpose. 22 L.R.A.(N.S.) 168.

Extension of city limits to include toll road as taking of property for which compensation must be made. 17 L.R.A.(N.S.) 1071.

Liability of municipal corporation for removal of lateral or subjacent support of land. 68 L.R.A. 699.

Liability of municipality for injury to abutting property from bringing street to the grade established in the first instance, under constitutional provision against "damaging," private property for public use without compensation. 7 L.R.A.(N.S.) 108.

Necessity of making compensation on laying out street across railroad property. 24 L.R.A.(N.S.) 1226.

Right of railroad company to compensation for the crossing of its track, where it intersects a street or highway, by an electric road. 29 L.R.A. 485; 13 L.R.A.(N.S.) 916.

§ 3986. Surveys. Whenever the village board of trustees of any incorporated village shall deem it necessary to open, lay out, widen or enlarge any street or alley or public place within the village it shall cause an accurate survey and plat of the same to be made by the county surveyor or other competent civil engineer with an estimate of the probable cost of the improvement, and shall cause the same to be filed in the office of the village clerk and retain a copy in his office. [1907, ch. 262, § 1.]

§ 3987. Taking private property. Whenever it shall be necessary to take private property in order to open, lay out, widen or enlarge any street, alley or any public place in any incorporated village, the same shall be done by

purchase, or under the provisions of the code of civil procedure providing for the exercise of the right of eminent domain; and whenever any judgment for damages to property so taken for any such improvement shall be entered, the village board of trustees shall cause special assessments to be levied upon the property benefited thereby to pay such judgment; provided, that not more than one-fourth thereof may be paid by the levy of a general tax upon all taxable property in the village. [1907, ch. 262, § 2.]

§ 3988. Fixing grades. The village board of trustees of an incorporated village may by ordinance establish the grade of all streets, alleys and sidewalks in the village as the convenience of the inhabitants may require, and a record of the same shall be kept together with a profile thereof in the office of the village clerk; provided, that after the grade of any street has been established as provided in this section, the village shall, if it change the grade, be liable to the abutting property owners for any damages they may sustain by reason of any permanent improvements having been made by them to conform to the grade as first established. [1907, ch. 262, § 3.]

Municipal liability for injury to abutting property from changing street grade under constitutional provision against "damaging" private property for public use without compensation. 86 L.R.A.(N.S.) 1194.

§ 3989. Vacation of streets and alleys. Petition. Appeal. No public grounds, streets or alleys, or parts thereof over or under or through which shall have been constructed lengthwise sewers or watermains by the village, or watermains, gas, steam or other pipes or telephone or telegraph lines by the village's grantees of the right-of-way therefor, shall be vacated and no other public grounds, streets or alleys, or parts thereof, within the village shall be vacated or discontinued by the village board of trustees except upon a petition of a majority of the owners of property on the line of such public grounds, streets or alleys resident within the village. Such petition shall set forth the facts and reasons for such vacation accompanied by a plat of such public grounds, streets or alleys proposed to be vacated, and shall be verified by the oath of at least two of the petitioners, and the consent in writing of all the owners of the property adjoining the plat to be so vacated. The village board of trustees shall thereupon, if they deem it expedient that the matter should be proceeded with, order the petition to be filed with the clerk of the village, who shall give notice of publication in a legal newspaper of the village or if no legal newspaper is published in the village, then in any legal newspaper in the county wherein said village is located, for four weeks, at least once each week, to the effect that such petition has been filed as aforesaid, and stating in brief its object and that said petition will be heard and considered by the village board of trustees or a committee thereof on a certain day therein specified, not less than thirty days after the first publication of such notice. The village board of trustees or such committee as may be appointed by it for the purpose, at the time and place appointed, shall investigate and consider the matter, and shall hear the testimony and evidence of persons interested. The village board of trustees, thereupon after hearing the same, or upon the report of such committee favoring the granting of such petition, may by resolution passed by a two-thirds vote of all the members-elect declare such public grounds, streets or alleys or highways vacated, which resolution, before the same shall go into effect, shall be published as in the case of ordinances and thereupon a transcript of such resolution duly certified by the village clerk shall be filed for record and duly recorded in the office of the register of deeds of the county, and shall have the effect to convey to the abutting property owners all of the right and title of the village to the property so vacated. Any persons aggrieved thereby may within twenty days after publication of such resolution appeal to the district court of the county under the same regulations as in the case of opening streets and alleys, and the judgment of the court therein shall be final. All expenses incurred in vacating any such public grounds, streets or alleys, must

be paid by the petitioners, who shall deposit with the village treasurer such sum as may be necessary therefor, before any such expense is incurred, and the amount so to be deposited shall be determined by the village board of trustees, and any part thereof not used for the expenses shall be returned. [1907, ch. 262, § 4.]

Vacation of street by acts of public authorities. 26 L.R.A. 821.

Right of abutting owner to compensation for vacation of highway. 36 L.R.A.(N.S.) 1115.

—where street is vacated and used for railroad purposes. 36 L.R.A.(N.S.) 790.

Power of municipality as against abutting owner to vacate street and devote land to private purposes. 22 L.R.A.(N.S.) 530.

Right of property owner whose means of access from one direction is shut off or interfered with by closing of adjoining street, or portion of street on which he is situated. 2 L.R.A.(N.S.) 269; 30 L.R.A.(N.S.) 637.

Injury to abutter's easement of light, air and access by vacating street. 14 L.R.A. 370.

ARTICLE 10.— WATERWORKS AND FIRE APPARATUS.

§ 3990. Authorized to purchase fire apparatus, etc. All cities, towns and villages in this state having a population of one thousand inhabitants or more are authorized and empowered to purchase, erect, lease, rent, manage and maintain any system or part of system of waterworks, hydrants and supply of water, telegraph fire signals or fire apparatus that may be of use in the prevention and extinguishment of fires; and to pass such ordinances, penal or otherwise, as may be necessary for the full protection, maintenance, management and control of the property so leased, purchased or erected. The city council or board of trustees of such city, or municipal corporation is authorized and empowered to assess, levy and collect taxes for the purposes aforesaid, and to do all acts necessary to carry such lease and contracts of purchase, erection or maintenance into effect, and to pay the stipulated rent or contract prices for the property so leased, purchased, erected or to be maintained; provided, that any such lease or contracts for purchase, erection or maintenance which shall stipulate for an annual payment greater than an annual levy of seven mills upon each dollar of the assessed valuation of such city or municipal corporation shall not be authorized until the contract providing therefor shall first have been submitted to a vote of the people of such city or municipal corporation at a general or special election and ratified by a majority of the voters of said city or municipal corporation voting at such election. [R. C. 1905, § 2963; 1899, ch. 172; R. C. 1899, § 2459.]

Power to assess abutting property for expense of laying water mains. *Lee v. Town of Mellette*, 15 S. D. 586, 90 N. W. 855.

City may sever connection with lateral pipes to water mains when abutting owner refuses to pay for repairing. *Jackson v. Ellendale*, 4 N. D. 478, 61 N. W. 1030.

Power of legislature to compel municipality to establish water plant, or to purchase existing plant. 44 L.R.A.(N.S.) 1189.

Taxation of waterworks owned by municipality. 60 L.R.A. 851.

Is power conferred upon a municipality to provide waterworks limited to establishment of a municipal plant. 19 L.R.A.(N.S.) 183.

Contract to purchase plant for municipal water supply. 61 L.R.A. 46.

Right of municipality to make profit from its water or lighting plant. 24 L.R.A.(N.S.) 290.

Effect of limitation of municipal indebtedness upon the acquisition of a water supply. 59 L.R.A. 604; 12 L.R.A.(N.S.) 433.

Right of taxpayer in absence of statute to enjoin unlawful expenditures for waterworks. 36 L.R.A.(N.S.) 20.

Liability of municipality operating a waterworks system, for breach of duty to consumer. 42 L.R.A.(N.S.) 286.

—for lack of water to extinguish fire. 23 L.R.A. 146; 61 L.R.A. 95; 25 L.R.A.(N.S.) 239; 36 L.R.A.(N.S.) 1045.

—for tort in connection with waterworks system. 61 L.R.A. 58; 25 L.R.A.(N.S.) 239.

Liability of water company in tort for loss to one sustaining no contract relation with it, by its failure to comply with its contract with the municipality. 6 L.R.A.(N.S.) 1171; 21 L.R.A.(N.S.) 1021.

§ 3991. How construed. The last section shall not be construed to modify or affect the power of any city, town or village or the power of the city council or board of trustees thereof as authorized and granted by the charters of such cities, towns or villages or the laws under which they were incorporated, where said charter or law shall have expressly given to such municipality the power to lease, rent or maintain such property. [R. C. 1905, § 2964; 1887, ch. 105, § 2; R. C. 1895, § 2460.]

§ 3992. Election to determine sale. When any city, town or village shall own the waterworks system of such city, town or village, neither the city council nor the authorities of any such city, town or village shall have authority to sell or dispose of such waterworks system, mains, pumping stations or any part thereof, unless the proposition to sell the same shall first have been submitted to the legal voters of such city, town or village at a special election called for that purpose, and such sale shall have been authorized by a majority vote of all the votes cast at such election; provided, that nothing herein shall prevent the city council of any city from selling or disposing of any machinery, material or other property belonging to any such system which may have become inadequate or insufficient for the purpose for which the same was intended to be used. [R. C. 1905, § 2965; 1893, ch. 134, § 1; R. C. 1899, § 2461.]

ARTICLE 11.—INSURANCE TAX FOR FIRE DEPARTMENTS.

§ 3993. Duty of clerk. The clerk of each city, town or village in this state having an organized fire department shall on or before the thirty-first day of October in each year make and file with the state auditor his certificate stating the existence of such department, the date of its organization, the number of steam, hand or other engines, hook and ladder trucks, and hose carts in actual use, the number of organized companies, the number of members of each company, and the system of water supply in use in such department, together with such other facts as the auditor may require. [R. C. 1905, § 2966; 1887, ch. 53, § 1; R. C. 1899, § 2462.]

As to right of hose company to share of insurance premium moneys under statute. Continental Hose Co. No. 1 v. Fargo, 17 N. D. 5, 114 N. W. 834.

§ 3994. State auditor to furnish blanks. Insurance companies to make statements. The blanks required by law to be furnished by the state auditor to insurance companies shall contain the names of the cities, towns and villages entitled to benefits under this article, and every insurance company doing business in this state shall include in its annual statement the amount of all premiums received by them upon policies issued on property within the corporate limits of such city, town or village during the year ending on the preceding thirty-first day of December. [R. C. 1905, § 2967; 1887, ch. 53, § 2; R. C. 1899, § 2463.]

§ 3995. State auditor to issue warrants. The state auditor on the first day of June thereafter shall issue and deliver to the treasurer of such city, town or village, having an organized fire department entitled to the benefits of this article, his warrant upon the state treasurer for an amount equal to two per cent of the premium received upon policies issued on property in any city, town or village, which warrants shall be numbered consecutively, and shall each specify the date of its issuance and to whom payable, and such warrants shall be paid by the state treasurer to the treasurer of such city, town or village, upon presentation thereof, and when so received by said treasurer the same shall be paid over to the treasurer of each separate organized fire company or companies, in equal proportion, who are members in good standing in the North Dakota firemen's association, and having a membership of at least fifteen members for a period of eight months prior to the date of the certificate of the clerk, as provided in section 3993, and having the management of at least one steam, hand or fire engine, hook and ladder truck or hose cart, upon the written order of such company or companies,

approved by the city, city council, trustees or other governing body of such city, town or village; provided, that in cities, towns and villages having a paid fire department, the amount so received by the city, town or village treasurer shall be placed in a fund to be disbursed by the city council, trustees or other governing body of such city, town or village in maintaining such fire department. [R. C. 1905, § 2968; R. C. 1899, § 2464; 1901, ch. 208, § 1.]

Appropriation of insurance tax to fire companies is constitutional. *Cutting v. Taylor*, 3 S. D. 11, 51 N. W. 949, 15 L.R.A. 691.

On right to injunction against city treasurer to determine rights of fire companies to money claimed under statute. *Continental Hose Co. No. 1 v. Mitchell*, 15 N. D. 144, 105 N. W. 1108.

§ 3996. Qualifications of fire department and companies. No city, town or village having one or more organized fire companies therein, shall be entitled to any of the benefits arising from this article, unless the fire department or companies shall have been in actual existence eight months prior to the filing of the certificate required by section 3993, and unless such fire department or company shall have had for such period, as a part of its equipment, at least one steam, hand or other fire engine, truck or hose cart, with a membership of at least fifteen persons for said period of eight months. [R. C. 1905, § 2969; 1887, ch. 53, § 4; R. C. 1899, § 2465; 1901, ch. 208, § 1.]

§ 3997. Secretary to notify treasurer. It shall be the duty of the secretary of the North Dakota firemen's association to notify the treasurer of each city, town or village, entitled to the benefits of this article, on or before the first day of June each year, of the name of the treasurer of each department or separate organized company in good standing in the North Dakota firemen's association. [R. C. 1905, § 2970; 1901, ch. 208, § 2.]

§ 3998. Failure to file certificate a waiver. If the certificate required by section 3993 is not filed with the auditor on or before the thirty-first day of October in each year, the city, town or village so failing to file such certificate shall be deemed to have waived and relinquished its right for such year to the appropriation herein provided for; provided, however, that in case where any city has filed its certificate for three successive years and drawn money thereunder for such years, the certificate herein provided for may be filed at any time up to and including March first of the succeeding year without waiving the right to the appropriation herein named. [R. C. 1905, § 2971; 1887, ch. 53, § 5; R. C. 1899, § 2466; 1901, ch. 99.]

ARTICLE 12.—FIREMEN'S RELIEF ASSOCIATION PENSION FUND.

§ 3999. Paid fire department and firemen's relief association. In cities, towns and villages having a paid fire department and a duly organized and incorporated firemen's relief association, the amount received by the city, town or village treasurer, as provided in section 2968, of article 9, revised codes of North Dakota, 1905 [section 3995 herein], shall be apportioned as follows: One-half shall be placed in a fund to be disbursed by the city council, trustees or other governing body of such city, town or village in maintaining such fire department and one-half shall be paid to the treasurer of the fireman's relief association, to be disbursed only for the following purposes, viz.:

First: For the maintenance of the fireman's relief association.

Second: For pensions and the relief of sick, injured and disabled members of any fire department in such city, town or village and their widows and orphans.

Third: For the payment of service pensions as hereinafter provided in such amounts and in such manner as its articles of incorporation and by-laws shall designate. Every such fire department relief association organized under any law of this state may pay out of any funds received from the state, or other source, a service pension, in such amounts, not exceeding forty dollars per month, as may be provided by its by-laws to each of its members who have heretofore retired or may hereafter retire, who has reached or shall hereafter

reach the age of fifty years, and who has done, or hereafter shall do, active duty for twenty years or more as a member of a volunteer, paid or partially paid and partially volunteer fire department in the municipality where such association exists, and who has been, or shall hereafter be a member of such fire department relief association at least ten years prior to such retirement, and who complies with such additional conditions as to age, service and membership as may be prescribed by the by-laws of such association. Such pensions shall be uniform in amount, but all may be decreased or increased, within the amount above specified, whenever the amount of funds on hand renders such action advisable. No such pensions shall be paid to any person while he remains a member of a fire department, and no person receiving such pension shall be entitled to other relief from such association. [1909, ch. 123, § 1.]

Validity of law imposing tax on insurance companies for benefit of firemen. 13 L.R.A. (N.S.) 1147.

Nature and circumstance of injury as affecting right to share in pension or insurance fund for firemen. 20 L.R.A. (N.S.) 1176.

Requiring agent of foreign insurance company to contribute to maintenance of fire department or firemen's fund. 24 L.R.A. 299.

Power of legislature to require municipality to pension firemen. 34 L.R.A. (N.S.) 608.

§ 4000. Qualifications for relief and pensions. The qualifications as to age and term of service, shall not apply to members of such fire department, who make application for a pension on account of injuries or disabilities, which unfit them for the duties of an active fireman, and such relief association shall pay a pension to such members, or to the widows and orphans of deceased firemen, in such sums and under such limitations and conditions, as its articles of incorporation and by-laws shall provide and permit. [1909, ch. 123, § 2.]

§ 4001. Association to reduce amount of pensions. Every such association shall at all times have and retain the right to reduce the amount of pensions or to increase them whenever the amount of funds on hand or for other good reasons, such reductions or increase seems advisable or proper to such relief association, but said pension shall not exceed the amount of forty dollars per month to any pensioner or to any one family. [1909, ch. 123, § 3.]

§ 4002. Secretary and treasurer of relief associations to make annual report. The secretary and treasurer of every such relief association shall prepare annually a report of all receipts and expenditures of such association for the previous year, showing for what purpose the money was paid and expended, and to whom, which report shall be filed in the office of the city auditor of the city and the clerk of the town or village in which such association is situated and a duplicate of such report shall also be filed with the state auditor before any money shall be paid to any such relief association. The money paid to such relief association shall be expended only for the pensioning and relief of sick, injured, disabled and retired members of any fire department in such city, town or village, and their widows and orphans as authorized and permitted by this article. [1909, ch. 123, § 4.]

§ 4003. Defining firemen entitled to pension or relief. For the purpose of this article no substitute fireman, or any one serving on probation, or any fireman in a city, town or village having a relief association in its fire department who is not a member of such association, shall be deemed to be a fireman within the meaning of this article. The treasurer of every such relief association before entering upon the duties of his office, shall give a good and sufficient bond to said relief association conditioned for the faithful discharge of the duties of his office, and for the safe keeping and paying over, according to law, of all moneys which come into his hands as such treasurer. [1909, ch. 123, § 5.]

§ 4004. Pensions not subject to legal process. No payments made or to be made by such association to any member on the pension roll shall be subject to judgment, garnishment or execution, or other legal process, and no persons entitled to such payments shall have the right to assign the same, nor shall the association have the authority to recognize any assignment, or pay over any sum which has been assigned. [1909, ch. 123, § 6.]

§ 4005. Public examiner to make annual examination. It shall be the duty of the public examiner to annually examine the books and accounts of the secretary and treasurer of such relief association receiving funds under the provisions of this article, and if he finds that the money or any part of it has been or is being expended for unauthorized purposes, he shall report the same to the governor. The governor shall thereupon direct the state auditor not to issue any warrants for the benefits of the fire department or relief association of such city, town or village, until it shall be made to appear to the public examiner, who shall report the fact to the governor, that all money wrongfully expended has been replaced. The governor may take such further action as the emergency may demand. [1909, ch. 123, § 7.]

§ 4006. Powers of association through trustees. Said association, through its board of trustees and officers shall have full charge, management and control, of said funds herein provided for, which said funds shall be derived from the following sources:

First: From interest, rents, gifts or money from other sources.

Second: From funds received from the state of North Dakota. [1909, ch. 123, § 8.]

ARTICLE 13.— FREE LIBRARIES.

§ 4007. Library fund, how provided. The city council of each city, not exceeding in population fifty thousand inhabitants, and each village or township board of every village and township containing over four hundred inhabitants, shall have the power to establish and maintain a public library and reading room, and for such purpose may annually levy and cause to be collected, as other taxes collected, a tax not exceeding four mills on each dollar of the taxable property of such city, village or township, to constitute the library fund, which fund shall be kept separate and apart from the other money of the city, village or township, by the treasurer thereof, and the same shall be used exclusively for such purpose, provided, that no library shall be so established without first receiving the approval of the majority of the electors of such city, village or township, voting on such question at any general election at which it may be submitted to a vote. [1911, ch. 179; 1909, ch. 155; R. C. 1905, § 2972; 1887, ch. 56, § 1; R. C. 1899, § 2467; 1901, ch. 97.]

§ 4008. Board of directors. Appointment. For the government of such library and reading room there shall be a board of five directors appointed from the citizens of such city, village or township, of both sexes, who shall be appointed by the board of education or school board of such city or village, or, where there is no incorporated city or village, by the board of supervisors of such township; and there shall be one member of such board of education or school board or board of supervisors appointed as one of the directors of such library and reading room. Such directors shall hold their office for three years from the first day of July in the year of their appointment, and until their successors are appointed, but upon their first appointment they shall divide themselves at their first meeting by lot into three classes, and one of such directors shall hold office for one year and two for two years and the remaining two for three years, and thereafter there shall be appointed in each year the requisite number to fill the vacancies caused by the expiration of the terms of those going out of office in such year. All vacancies shall be immediately reported by the board of directors to the board of education, school board or board of supervisors and filled by such board of education, school board or board of supervisors, and if for an unexpired term, for the residue of the term only. No compensation whatever shall be paid or allowed any director in such official capacity. [1909, ch. 155; R. C. 1905, § 2973; 1887, ch. 56, § 2; R. C. 1899, § 2468.]

§ 4009. Board of directors. Duties. Powers. Said directors shall immediately after their appointment meet and organize by electing from their number a president and secretary. They shall make and adopt such by-laws,

rules and regulations relating to the duties of officers and for the management of the library and reading room as may be expedient, not inconsistent with this article. They shall have the exclusive control of the expenditures of all moneys collected for or contributed to the library fund, and the supervision, care and custody of the library property, rooms or buildings constructed, leased or set apart for that purpose, and such money shall be drawn from the treasury by the proper officers upon vouchers of the board of directors without being otherwise audited. They may, with the approval of the board of education or school board or board of township supervisors aforesaid, without which no lease, purchase or contract therefor shall be valid, build, lease or purchase an appropriate building and purchase a site therefor, not, however, employing in such purchase or building more than one-half of the income in any one year. [1909, ch. 155; R. C. 1905, § 2974; 1887, ch. 56, § 3; R. C. 1899, § 2469.]

§ 4010. Regulations governing use of library. Every library and reading room established under this article shall be forever free for the use of the inhabitants of the city, village or township where located, always subject to such reasonable rules and regulations as the board of directors may deem necessary to adopt and publish to render the use of said library and reading room of the greatest benefit, and the board may exclude from the use of said library and reading room any and all persons who shall willfully violate such rules. [1909, ch. 155; R. C. 1905, § 2975; 1887, ch. 56, § 4; R. C. 1899, § 2470.]

§ 4011. Annual report. The board of directors shall make an annual report on July first of each year to the said board of education or school board or board of supervisors stating the condition of the library and property, the various sums of money received from all sources, and how much money has been expended and for what purpose, the number of books and periodicals on hand, the number added by purchase or gift during the year, the number lost and loaned out, the character and kind of books contained in the library, with such other statistics, information and suggestions as they may deem of general interest and a copy of said report shall be filed with the city council or township board and the state library commission. [1909, ch. 155; R. C. 1905, § 2976; 1887, ch. 56, § 5; R. C. 1899, § 2471.]

§ 4012. Donations. All persons desirous of making donations of money, books, personal property or real estate for the benefit of such library shall have the right to vest the same in the board of directors, to be held and controlled by such board when accepted for the use of such library and reading room, and as to such accepted property said board shall be held and considered to be special trustees. [1909, ch. 155; R. C. 1905, § 2977; 1887, ch. 56, § 6; R. C. 1899, § 2472.]

§ 4013. City council appropriate funds. To aid and facilitate the organization of a library in any city, village or township, as in this article provided, where the same is required by the people thereof, and where in any city the sum of four hundred dollars or more shall have been donated and deposited with the city treasurer for that purpose, and in any village or township where the sum of one hundred and fifty dollars or more shall have been donated and deposited with the village or township treasurer for the benefit of such library, and also where such amount shall, prior to the passage of this code, have been donated and expended for the purchase of a library existing in any such city, village or township, the city council of such city is authorized and it shall be its duty to appropriate two hundred dollars from the general fund of such city for such library, for which amount a warrant shall be drawn on the city treasurer; and the board of trustees of such village or the board of supervisors of such township are authorized and it shall be their duty to appropriate one hundred dollars from the general fund of such village or township for such library, for which amount a warrant shall be drawn on such village or township treasurer; provided, that in the case of any library associations now existing it shall first agree to turn over to the library and reading room thus established all books, periodicals and other property. The treasurer of such

city, village or township shall accept such warrant and apply the proceeds from the sale of the same to the library fund, which, together with the amount donated, shall be held subject to the order of the board of directors for such library, and the payment of such warrant shall be provided for in the next assessment of taxes in such city, village or township, and such library may be organized without submitting the same to a vote as provided in section one. [1909, ch. 155; R. C. 1905, § 2978; 1887, ch. 56, § 7; R. C. 1899, § 2473.]

ARTICLE 14.—BONDS OF MUNICIPAL CORPORATIONS.

§ 4014. Bonded indebtedness. For what incurred. Limit of. Any city or municipal corporation in this state may incur a bonded indebtedness for the purpose of erecting public school buildings and other buildings for city purposes, purchasing fire apparatus, putting in water works, sinking public wells or cisterns and putting in sewers and improving streets, which said indebtedness, together with the indebtedness which then exists shall not, except as otherwise provided, exceed five per cent of the assessed valuation of the taxable property in such city or municipal corporation as shown by the return of the assessor for the year next preceding the time at which such indebtedness shall be incurred. Provided, that any incorporated city may by a three-fourths vote of resident property owners increase such indebtedness three per centum on such assessed value beyond said five per cent limit. [1911, ch. 76; R. C. 1905, § 2979; 1887, ch. 16, § 1; 1890, ch. 97, § 1; R. C. 1899, § 2474.]

Liability of government or other public body for its own obligations, stolen from it. 39 L.R.A. (N.S.) 444.

Issue of bonds in payment of municipal water works. 61 L.R.A. 49.

Holders as necessary parties to proceedings to invalidate municipal bonds. 3 L.R.A. (N.S.) 256.

Corporate bonds as subject of attachment as tangible property. 36 L.R.A. (N.S.) 421.

Right of taxpayer, in absence of statute, to enjoin issuance or payment of municipal bonds. 36 L.R.A. (N.S.) 3.

§ 4015. Bonds, how issued. Election. The bonds issued for the purposes mentioned in the last section shall be issued by the city council or board of trustees of any city or municipal corporation only upon a majority vote of the qualified electors of such city or municipal corporation voting thereon at an election regularly called for that purpose and in accordance with the provisions of the charter of such city or municipal corporation governing the issuance and sale of bonds; provided, that in all cities and municipal corporations where the charter does not provide the manner of calling and holding an election for the purpose aforesaid, a special election shall be called and held as herein provided, or such question may be submitted at any annual election. The city council or board of trustees at any regular meeting thereof may decide to call a special election to vote bonds for any of the purposes stated in section 4014, and they shall give at least fifteen days' public notice of such election by at least two publications thereof in a weekly newspaper published therein, or if there is no such newspaper then by posting such notice in five public places in such city. Such notice shall state the amount and denomination of the bonds to be voted for, the rate of interest thereof, the purpose for which such bonds are to be issued, the form of the ballots to be used and the time and place of holding such election. The judges and clerks shall be appointed and the election shall be conducted as provided by the charter of said city for conducting annual elections, and the returns shall be canvassed and in like manner returned. This article shall not be construed to limit or restrict the powers already conferred by any special charter upon the council of any city or municipal corporation. The bonds voted as provided for in this article shall be sold at not less than par value. [R. C. 1905, § 2980; 1887, ch. 16, §§ 2, 3; R. C. 1899, § 2475.]

Object or purposes that may be combined in a single question as to the issuance of bonds submitted to voters of a municipality. 26 L.R.A. (N.S.) 665.

On what basis majority essential to adoption of proposition for issuing municipal bonds is to be computed. 22 L.R.A. (N.S.) 478.

ARTICLE 15.— CITY BONDS FOR AUDITORIUM, GYMNASIUM, PLAY GROUNDS, PUBLIC BATHS, ETC.

§ 4016. **Bonded indebtedness, purposes for which incurred.** The board of city commissioners or the city council of any city shall have the power to submit to a vote of the electors at any general or special election propositions for the issuing of bonds for the erection of a municipal auditorium, armory, the erection of a joint auditorium and armory, public play grounds, a public gymnasium, public baths, or other public places of amusements or entertainment, and for the purchase of suitable sites for such erection or purpose; and in case a majority of the electors voting on any such proposition vote for the same at any regular election, or at any special election called for that purpose it shall be the duty of the board of city commissioners, or of the city council and mayor of any city, forthwith to issue such bonds and proceed to carry out such proposition so submitted. [1913, ch. 71, § 1.]

This section evidently supersedes paragraph 74 of section 3818.

§ 4017. **Bonded indebtedness limit.** Bonds for such purposes shall not be voted or issued in a sum which shall increase the indebtedness of such city to an amount exceeding five per cent of the assessed valuation of the taxable property therein, as determined by the last preceding city assessment, except when by a two-thirds vote at a general or special election such city has voted, or at the election authorizing such bond issue, votes by a two-thirds vote, to increase such indebtedness three per centum on such assessed value beyond said five per cent limit. Such limitation shall, however, in no manner affect the right of any city when authorized by a majority vote at any general or special election to become indebted in an amount not exceeding four per cent of such value without regard for the existing indebtedness of such city, for the purpose of constructing or purchasing water works for the purpose of furnishing the water supply to the inhabitants of such city, or for the purpose of constructing sewers, as now by law provided, nor shall bonds so issued for the purpose of constructing or purchasing water works for the purpose of furnishing a water supply to the inhabitants of said city, or for the purpose of constructing sewers be considered or included in determining the debt limit of any city in the matter of issuing bonds for any of the purposes hereinbefore provided. [1913, ch. 71, § 2.]

Refunding bonds as indebtedness within meaning of debt limit provisions. 37 L.R.A. (N.S.) 1099.

§ 4018. **Bonds paid, how.** No bonds issued under the provisions of this article shall be sold for less than their par value, and the city issuing such bonds shall, at or before the time of issuing the same or incurring the indebtedness for which the same are to be issued, provide for the collection of a direct annual tax sufficient to pay the interest on such debt or such bond when it falls due, and to pay and discharge the principal thereof when the same becomes due, and such provision for the collection of such annual tax shall be irrevocable until such debt is paid; provided, further, that none of the hereinbefore mentioned bonds shall be issued unless at an election after twenty days' notice in a newspaper published in the city, stating the purpose for which said bonds are to be issued and the amount thereof, the legal voters of the city shall, by a majority vote, determine in favor of issuing such bonds; provided, further, that no bonds issued under the provisions of this article shall be issued for a longer period than twenty years. [1913, ch. 71, § 3.]

Payment of commissions for sales of bonds as violating requirement that bonds shall not be sold for less than par. 39 L.R.A. (N.S.) 248.

Accrued interest as part of par value within prohibition against sale of bonds at less than par. 35 L.R.A. (N.S.) 789.

ARTICLE 16.— REFUNDING CITY BONDS.

§ 4019. **Refunding authorized.** Each incorporated city in this state is authorized and empowered, by and through its city council, when deemed in

the judgment of said council to be to the best interests of the city, to issue its negotiable bonds in the name of the city for the sole purpose of funding the outstanding indebtedness of such city, represented by the city warrants, bonds or orders of such city existing against the city, which is at the time due and payable, or is about to become due and payable, or whenever said indebtedness can be refunded at a lower rate of interest than the then existing rate of interest on said indebtedness. [R. C. 1905, § 2981; 1893, ch. 32, § 1; R. C. 1895, § 2476.]

Council may refund city's indebtedness without vote of electors. *Hyde v. Ewert*, 16 S. D. 133, 91 N. W. 474.

Issuance of funding bonds does not create new or additional indebtedness. *Nat. Life Ins. Co. v. Mead*, 13 S. D. 37, 82 N. W. 78; *City of Mitchell v. Smith*, 12 S. D. 241, 80 N. W. 1077.

Issuing funding bonds does not increase debt, but changes form. *City of Pierre v. Dunscomb*, 106 Fed. 611, 45 C. C. A. 499; *Hughes County v. Livingston*, 104 Fed. 306, 43 C. C. A. 541.

Power to borrow money and issue bonds for all municipal purposes includes power to issue bonds to refund indebtedness. *City of Huron v. Sav. Bank*, 86 Fed. 272, 30 C. C. A. 38; *Second Ward Sav. Bank v. Huron*, 80 Fed. 660.

Refunding bonds may be issued by city on discretion of council without action by electors. *Hyde v. Ewert*, 16 S. D. 133, 91 N. W. 474.

Refunding bonds as indebtedness within meaning of debt limit provisions. 37 L.R.A. (N.S.) 1099.

§ 4020. Bonds, denominations, interest. Each bond issued under the provisions of this article shall recite upon its face that it is so issued. Such bonds shall be in denominations of not less than five hundred dollars nor more than one thousand dollars; shall severally show and bear the date of their issue and the date when payable, and shall be made payable in not less than five years nor more than twenty years from their date; shall be made payable to the purchaser or bearer and made payable anywhere in the United States; shall bear interest not exceeding the rate of six per cent per annum, payable annually or semi-annually as may be agreed upon, and shall have interest coupons attached. Said bonds shall be engraved or lithographed on bond paper, and said bonds and each of said coupons shall be signed by the mayor and attested by the city clerk or auditor of the city in whose name they are issued, and to each bond, but not to the coupons the seal of such city shall be affixed. [R. C. 1905, § 2982; 1893, ch. 32, § 2; R. C. 1899, § 2477.]

§ 4021. Sale of bonds. Such bonds may be sold by the city council at not less than their par value, and the proceeds thereof shall be applied solely to the payment of the outstanding indebtedness of such city represented by city warrants, bonds or orders which are authorized to be funded under the provisions of section 4019; or said bonds issued as herein provided may be exchanged at not less than par value for not less than an equal amount, at par value, of such outstanding bonds, warrants or orders of said city as are authorized to be funded under the provisions of section 4019, and when such exchange shall be made said outstanding bonds, warrants or orders so paid by the issue of bonds as herein provided, shall be marked respectively, "paid by bond No. . . . (stating number of such bond)," and shall be retained by the city treasurer until his settlement with the city council, and shall then be compared with the new bond registered, and after such comparison shall be placed in the custody of the city clerk or auditor whose duty it shall be to preserve the same. [R. C. 1905, § 2983; 1893, ch. 32, § 3; R. C. 1899, § 2478.]

Payment of commissions for sales of bonds as violating requirement that bonds shall not be sold for less than par. 39 L.R.A.(N.S.) 248.

Accrued interest as part of par value within prohibition against sale of bonds at less than par. 35 L.R.A.(N.S.) 789.

§ 4022. Record of bonds. The bonds issued as herein provided shall before delivery thereof to the purchaser be presented by the city clerk or auditor to the city treasurer who shall register them in a book to be kept for that purpose and known as the "bond register," wherein he shall enter the number

of each of said bonds, its date, the date of its maturity, its amount and rate of interest and to whom and where payable. [R. C. 1905, § 2984; 1893, ch. 32, § 4; R. C. 1899, § 2479.]

§ 4023. Tax for interest. Sinking fund. The city council shall, each year, levy upon the taxable property in the city a sufficient tax to pay the interest on such bonds as the same shall accrue and also, within a reasonable time before the maturity of said bonds, a sufficient tax to provide a sinking fund for the payment of such bonds at maturity. [R. C. 1905, § 2985; 1893, ch. 32, § 5; R. C. 1899, § 2480.]

§ 4024. Duty of treasurer. On presentation of such bonds and the several coupons thereto attached at their maturity, respectively, it shall be the duty of the city treasurer to pay the same out of any funds in his hands applicable thereto and to cancel the same by writing or stamping across the face of each bond or coupon so paid, "cancelled by payment this day of..... (inserting the date of such payment)." [R. C. 1905, § 2986; 1893, ch. 32, § 6; R. C. 1899, § 2481.]

§ 4025. Bonds negotiable. All bonds issued in substantial conformity to the provisions of the preceding six sections shall in law be considered negotiable. [R. C. 1905, § 2987; 1893, ch. 32, § 7; R. C. 1899, § 2482.]

ARTICLE 17.—REFUNDING BONDED SCHOOL INDEBTEDNESS.

§ 4026. Bonds may be refunded. All bonds heretofore issued by any city or by or under the authority of the board of education of any city in this state for school or school house purposes may be refunded in the discretion of said board in the manner hereinafter provided, whenever there is not sufficient money in the treasury of such city applicable thereto, to pay such bonds. [R. C. 1905, § 2988; 1887, ch. 12, § 1; R. C. 1899, § 2483.]

§ 4027. Denomination of bonds. Said bonds shall be in denominations of not less than one hundred nor more than one thousand dollars, shall be numbered consecutively from one upward, shall bear the date of their issue, shall be made payable to the purchaser or bearer, shall be payable ten years from date, and shall bear interest at a rate not exceeding seven per cent per annum payable annually, with interest coupons attached, and principal and interest shall be made payable at such place as may be designated by the board of education. The bonds and each coupon shall be signed by the mayor and attested by the city clerk or auditor under the seal of the city. Said bonds shall be printed, engraved or lithographed on bond paper, and a duly authenticated copy of this article shall be printed on the back of each bond. [R. C. 1905, § 2989; 1887, ch. 12, § 2; R. C. 1899, § 2484.]

§ 4028. Board of education to levy tax. The board of education shall levy each year upon the taxable property of such city a tax sufficient to pay the interest on said bonds as the same accrues, and after five years from the date of said bonds an annual sinking fund tax sufficient for the payment of said bonds at maturity, which taxes shall become due and be collected the same as other city taxes. [R. C. 1905, § 2990; 1887, ch. 12, § 3; R. C. 1899, § 2485.]

§ 4029. Bonds, how executed. The refunding of indebtedness and the issuance of bonds provided in this article shall be under the control and direction of the board of education, and a resolution of said board directing the execution of such bonds and specifying the number and amount of each bond shall authorize and require the mayor and city clerk or auditor to execute the same in the manner herein provided, and deliver the bonds so executed to the board of education, who shall provide for the sale and negotiation thereof or for the exchange of said bonds for outstanding bonds authorized to be refunded under this article, as they may deem best; provided, that such refunding bonds shall not be sold or exchanged at less than par value. Both

principal and interest of said bonds shall be paid by the city treasurer by warrants drawn upon the funds created therefor and issued under the direction of the board of education. A duly certified copy of the resolution of the board of education authorizing and directing the execution of such bonds by the mayor and city clerk or auditor shall be printed on the back of each bond. A register of all bonds so executed shall be made by the city clerk or auditor and kept in his office as a public record, showing the number, date, amount, interest, name of payee and when and where payable, of each and all bonds executed under the provisions of this article. And after such outstanding bonds shall have been so refunded the same shall be placed in the hands of the city clerk or auditor after having had first marked across the face thereof in red ink the words "refunded bond;" and the city clerk or auditor shall thereupon make a record of each bond in the same manner provided herein for bonds issued under this article and at the next regular meeting of the city council shall cancel and burn said bonds in the presence of the city council and make a record of such action in the proceedings of the council. [R. C. 1905, § 2991; 1887, ch. 12, § 4; R. C. 1899, § 2486.]

ARTICLE 18.—REFUNDING CERTAIN MUNICIPAL BONDS.

§ 4030. What corporation may issue. Each incorporated town or village, school district or township in this state, that has heretofore issued, or shall hereafter issue bonds, purporting to have been issued for any purpose authorized by law, which bonds have been actually sold and delivered to purchasers for value, so that the same constitute a valid and existing indebtedness, may at any time after maturity or before maturity, with the consent of the holder, and while said bonds are a valid and existing indebtedness against such town or village, school district or township, refund the same and issue and negotiate new bonds for the amount of such indebtedness or any part thereof. [R. C. 1905, § 2992; 1905, ch. 54, § 1.]

§ 4031. Authority for issue. The necessity for issuing and negotiating bonds under the provisions of this article shall be determined as follows: In case of incorporated towns or villages, by the board of trustees: In case of school districts, by the board of school directors: In case of townships, by the board of supervisors. [R. C. 1905, § 2993; 1905, ch. 54, § 2.]

§ 4032. Bonds, how issued. When in the judgment of the board of any of the municipal corporations herein enumerated, it shall be deemed to be to the best interests of such municipal corporation to issue its negotiable bonds in the name of such corporation for the purpose of refunding or paying the outstanding bonded indebtedness of such corporation, as enumerated in section 4030, refunding bonds may be issued by resolutions duly and legally passed at a regular or special meeting of such board. Such bonds may be signed the same as the bonds refunded or by such officers of the municipal corporation issuing the same as may be designated in the resolutions providing for their issuance. Such bonds shall be made payable in not less than five and not more than twenty years from the date of their issue, and shall not draw a higher rate of interest than the bonds refunded. Such bonds shall be in such denominations as shall be designated in the resolutions authorizing their issuance, shall bear the date of their issue and date of maturity, and shall recite on their face that they are issued under and by authority of this article, and shall be payable to the purchaser or bearer, and shall have interest coupons attached to each bond representing each interest payment. [R. C. 1905, § 2994; 1905, ch. 54, § 3.]

§ 4033. Bonds may be exchanged or sold. Said bonds may be exchanged at par for an equal amount of the old bonds of said municipal corporation with the holder of said indebtedness, or may be sold by the board at not less than their par value and the proceeds applied solely to the payment of the indebtedness for which they are issued. [R. C. 1905, § 2995; 1905, ch. 54, § 4.]

§ 4034. Bonds to be registered by the treasurer. A record of each and every bond issued under this article shall be kept by the treasurer of the municipal corporation issuing the same, showing the number of each bond, its date, amount, rate of interest, date due, where payable and to whom sold. [R. C. 1905, § 2996; 1905, ch. 54, § 5.]

§ 4035. Tax to be levied. The resolutions authorizing the issuance of such bonds shall provide for the levy and collection of an annual tax sufficient to pay the interest and principal of such bonds, as provided by section 184 of the constitution, and the fund arising from such tax levy shall be kept by the treasurer of such corporation in a special fund to be used solely for the payment of the interest and principal of such bonds. [R. C. 1905, § 2997; 1905, ch. 54, § 6.]

§ 4036. Limit of issue. No more of such bonds shall be issued than are necessary for the purpose of paying the outstanding bonds of the municipal corporations issuing the same, as stated in section 4030 of this article, after applying the cash in the treasury available for the payment of the said maturing bonds, and no bonds issued under authority of this article shall be issued or negotiated for less than their par value. [R. C. 1905, § 2998; 1905, ch. 54, § 7.]

§ 4037. Bonds negotiable, when. Bonds issued in substantial conformity with the provisions of this article, shall in law be deemed negotiable. [R. C. 1905, § 2999; 1905, ch. 54, § 8.]

ARTICLE 19.—TAXES IN CERTAIN CORPORATIONS.

§ 4038. Interest fund. Any city, town or village in this state having not less than three thousand inhabitants is authorized and empowered through its proper officers to levy and collect taxes not exceeding twelve mills on the dollar of the assessed valuation of said city, town or village, for the purpose of creating an interest fund with which to pay interest upon the existing bonded indebtedness of such municipality, including bonds, if any, issued under the direction of the respective boards of education therein. If any officer of such municipality shall use the moneys collected by virtue of this section for any other purpose than that expressed herein, he shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred nor more than five hundred dollars or imprisoned in the county jail not less than thirty days nor more than one year. [R. C. 1905, § 3000; 1887, ch. 139, § 1; R. C. 1899, § 2487.]

§ 4039. Sinking fund. They may also levy and collect taxes not exceeding four mills on the dollar for the purpose of creating a sinking fund to pay the bonds of the municipality as the same may mature; and the proper officers of the municipality may invest the money in said fund in interest bearing securities of the state or of any organized county therein or of the municipality, and shall in no other manner dispose of the money in said fund, and if any officer of such municipalities shall use the money in said fund in any other manner than as provided in this section he shall be guilty of a misdemeanor. [R. C. 1905, § 3001; 1887, ch. 139, § 2; R. C. 1899, § 2488.]

§ 4040. For school purposes. They may also levy and collect taxes for school purposes not to exceed twenty mills on the dollar, the taxes so levied and collected to be kept in a fund to be called the school fund to be expended under the direction of the board of education. [R. C. 1905, § 3002; 1887, ch. 139, § 3; R. C. 1899, § 2489.]

§ 4041. For other municipal purposes. They may also levy and collect taxes not exceeding twenty mills on the dollar for all other municipal purposes in any one year, on all taxable property within said municipality, and taxes so levied and collected shall be kept in a fund to be called the general fund. [R. C. 1905, § 3003; 1887, ch. 139, § 4; 1890, ch. 98, § 1; R. C. 1899, § 2490.]

Tax cannot be levied for purely private objects. *Manning v. City of Devils Lake*, 13 N. D. 47, 99 N. W. 51.

§ 4042. **Special assessments for sidewalks.** They may also levy and collect special assessments for sidewalks and street improvements as hereinafter provided, and the money so collected shall be kept in a fund called the special assessment fund. [R. C. 1905, § 3004; 1887, ch. 139, § 5; R. C. 1899, § 2491.]

§ 4043. **Limitation of indebtedness.** It shall be unlawful for the officers of such municipality to incur any greater indebtedness in any one year than three thousand dollars in excess of the taxes levied for that year, unless authorized and directed so to do by a vote of the electors of such municipality at an election held for that purpose. Any officer or officers contracting the same shall be guilty of a misdemeanor, and if any officer of said municipality shall issue any evidence of such indebtedness he shall be guilty of a misdemeanor. [R. C. 1905, § 3005; 1887, ch. 139, § 6; R. C. 1899, § 2492.]

As of what time is the assessed valuation to be taken for purpose of determining the debt limit of a municipality. 28 L.R.A.(N.S.) 149.

Right of taxpayer to enjoin creation of excessive indebtedness by municipality. 36 L.R.A.(N.S.) 9.

Effect of limitation of indebtedness upon the acquisition of a water supply or sewer system. 59 L.R.A. 604.

Statutes legalizing excessive indebtedness. 27 L.R.A. 703.

What are "public utilities" within statute allowing municipality to exceed debt limit for purchase or repair of public utilities. 31 L.R.A.(N.S.) 556.

Right of municipality to secure public utilities by piecemeal to avoid constitutional debt limit. 12 L.R.A.(N.S.) 433.

ARTICLE 20.—COLLECTION OF CITY TAXES.

§ 4044. **City property, how assessed.** The assessors of the several incorporated cities of the state having city assessors shall make out and deliver to the county auditors of their respective counties the assessment roll of said city or cities at the time and in the manner provided by the general laws of the state for county and township assessors; provided, that in all incorporated cities of this state, whether incorporated under special acts, or otherwise, not having city assessors, the assessment roll of all property subject to taxation in any such city made and equalized for county purposes shall be and constitute the assessment roll for said city and the county auditor of the county in which any such city is situated shall, as soon as said assessment roll is completed, certify to the city council of every such city within his county the aggregate amount of the valuation of the taxable property in any such city as shown by said assessment roll; provided, further, that all taxes in any such city levied before the passage and approval of this code shall be collected as now provided by law or ordinance. [R. C. 1905, § 3006; 1887, ch. 142, § 1; 1889, ch. 27, § 1; R. C. 1899, § 2493.]

§ 4045. **Tax levy, made when.** The common council of such cities shall, on or before the first Monday in September of each year, or within ten days thereafter, make the tax levy for the current fiscal year, and fix the rate of taxation upon the property in such city, and the auditor of such city shall forthwith transmit the same to the county auditor. [R. C. 1905, § 3007; 1887, ch. 142, § 2; R. C. 1899, § 2494; 1903, ch. 160.]

§ 4046. **Duty of county auditor.** It shall be the duty of the county auditor in making out the tax list for said year to place the amount of said city taxes in accordance with said levy in separate columns in the list of both personal property and lands, opposite the respective names and parcels of land on said lists. [R. C. 1905, § 3008; 1887, ch. 142, § 3; R. C. 1899, § 2495.]

§ 4047. **Duty of county treasurer.** The county treasurer of such county shall thereupon collect such taxes, together with the interest and penalty thereon, if any, in the same manner as the general taxes for that year, and shall pay over to the city treasurer of such city all sums so collected, as fast as collected, and shall take the city treasurer's vouchers therefor. [R. C.

1905, § 3009; 1887, ch. 142, § 4; 1889, ch. 29, § 1; R. C. 1899, § 2496; 1901, ch. 149.]

The amendment of 1901 to this section does not by implication repeal section 1575. *City of Fargo v. Ross, Co. Treas.*, 11 N. D. 369, 92 N. W. 449.

§ 4048. Salaries of city treasurers. The city council of all such cities shall have authority to regulate and fix the compensation and salaries of city treasurers within their respective cities, whether such cities have heretofore had such power under their charters or not, and such salaries shall in no case exceed six hundred dollars. [R. C. 1905, § 3010; 1887, ch. 142, § 5; R. C. 1899, § 2497.]

§ 4049. Does not apply to taxes for special improvements. This article shall not apply to taxes levied by such cities for special improvements therein. [R. C. 1905, § 3011; 1887, ch. 142, § 6; R. C. 1899, § 2498.]

ARTICLE 21.—ROAD AND BRIDGE TAXES.

§ 4050. Road funds to be turned over. All road taxes collected as personal taxes from residents of any incorporated city, town or village, and all road taxes collected on account of real or personal property situated within any incorporated city, town or village by the treasurer of the county in which such city or town is located, shall be turned over quarterly by such treasurer to the treasurer of such incorporated city, town or village to be expended under the direction of the city council of such city or of the board of trustees of such town or village, as the case may be, in the improvement of the streets or bridges thereof or of the roads approaching thereto. [R. C. 1905, § 3012; 1887, ch. 147, § 1; R. C. 1899, § 2499.]

Words "incorporated city or town" does not include civil townships, not merely incorporated municipalities. *Blue Grass Twp. v. Morton County*, 21 N. D. 557, 132 N. W. 148.

§ 4051. Bridge funds to be turned over to city. The county treasurer of each county wherein any city or municipal corporation shall have constructed a bridge or shall hereafter construct a bridge over any navigable stream shall pay to the city treasurer of such city or municipality whereby such bridge has been constructed or is about to be constructed, all money in the county treasury or which may come into the county treasury in the bridge fund of such county, which may have been or shall be levied, assessed and collected from persons and property, or either, in said city or municipality. [R. C. 1905, § 3013; 1890, ch. 39, § 1; R. C. 1899, § 2500.]

Is constitutional. *State ex rel. Hagen v. Anderson*, 22 N. D. 65, 132 N. W. 433.

ARTICLE 22.—LOCAL IMPROVEMENTS IN CERTAIN CITIES.

§ 4052. Assessments for. The city council of any city not organized under the general law for the incorporation of cities shall have power to make assessments for local improvements on property adjoining or benefited thereby, including extension of water mains in such cities, owning and operating exclusively a public system of water works, to collect the same in the manner hereinafter provided, and to fix and determine and collect penalties for nonpayment of any such special assessment and taxes. [R. C. 1905, § 3014; 1890, ch. 96, § 1; R. C. 1899, § 2501.]

§ 4053. Improvements, how made. When the city council of such city shall deem it necessary to open, widen, extend, grade, pave, macadamize, bridge, curb, gutter, drain or otherwise improve any street, alley, lane or highway or other public grounds within the city limits, or extend or improve any public system of water works exclusively owned and operated by the said city for which a special assessment is to be levied, as herein provided, the city council shall, by resolution, declare such work or improvement necessary to be done, and such resolution shall be published for three consecutive weeks, at least once a week, in the official newspaper of the city, and unless a majority, in value, of the owners of the property liable to be assessed there-

for, shall, within twenty days after the expiration of such publication, file with the city clerk or auditor a written protest against such improvement, then the city council shall have power to cause such improvement to be made and to contract therefor, and to levy and collect the assessment upon the property so benefited in the manner and at the time other taxes are collected, and all work done under this section shall be let by contract to the lowest responsible bidder therefor. [R. C. 1905, § 3015; 1890, ch. 96, § 2; R. C. 1899, § 2502.]

ARTICLE 23.—PARKS AND PUBLIC GROUNDS.

§ 4054. **Cities may acquire real estate for.** Cities and villages in this state are empowered and authorized to receive by gift or devise, real estate within their corporate limits or within five miles thereof for purposes of parks or public grounds. Such real estate shall be vested in the city or village upon the conditions imposed by the donors, and upon the acceptance thereof by the mayor and city council or the board of trustees, the jurisdiction of the city council or board of trustees shall be extended over such real estate. The city council and board of trustees of villages shall have power to enact by-laws, rules and ordinances for the protection and preservation of any real estate acquired as herein contemplated, and to provide suitable penalties for the violation of any such by-laws, rules or ordinances. The police powers of any city or village that shall acquire any real estate as herein contemplated shall be at once extended over the same by virtue of this article. [R. C. 1905, § 3016; 1890, ch. 99, § 1; R. C. 1899, § 2503.]

As to right to acquire land for park purposes by common-law dedication. *Cole v. Minnesota Loan & T. Co.*, 17 N. D. 409, 117 N. W. 354, 17 A. & E. Ann. Cas. 304.

ARTICLE 24.—PARKS AND PARK DISTRICTS.

§ 4055. **Procedure.** Any incorporated city of the state of North Dakota may by a two-thirds vote of its council by yeas and nays at a regular meeting thereof, take advantage of the provisions of this article. [1907, ch. 179, § 1; R. C. 1905, § 3017; 1905, ch. 143, § 1.]

Not unconstitutional as delegating legislative power to council. *Vallely v. Park Comrs.*, 16 N. D. 25, 15 L.R.A. (N.S.) 61, 111 N. W. 615.

§ 4056. **Park districts, how created.** Any city desiring to take advantage of this article shall do so by ordinance expressing its intent and desire so to do, whereupon the territory embraced in such city shall be deemed and it is hereby declared to be a park district of the state of North Dakota. [1907, ch. 179, § 2; R. C. 1905, § 3018; 1905, ch. 143, § 2.]

§ 4057. **How designated. Powers of.** Each park district of the state shall be known as "park district of the city of," and as such shall have a seal and perpetual succession, with power to sue and be sued, contract and be contracted with, acquire by purchase, gift, devise or otherwise, and hold, own, possess and maintain real and personal property in trust for the purpose of parks, boulevards and ways, and to exercise all the powers herein-after designated or which may hereafter be conferred upon it. [1907, ch. 179, § 3; R. C. 1905, § 3019; 1905, ch. 143, § 3.]

§ 4058. **Election of commissioners. Filling vacancies.** The powers of each park district shall be exercised by a board of park commissioners consisting of five members who shall hold office for the period of five years from and after the date of their election and qualification and until their successors are duly elected and qualified, except the members of the first board, who shall hold office as follows: One member until the third Tuesday in April of the year following their election, one member until one year from the last mentioned date, one member until two years from the last mentioned date, one member until three years from the last mentioned date and one member until four years from such last mentioned date. The members of the park commission shall qualify by taking and filing with the city

auditor of the city the oath prescribed by section 211 of the constitution. The city treasurer shall be ex-officio treasurer of the park district. He shall take the oath prescribed by section 211 of the constitution and shall furnish such bond as may be required by the commission. The members of the commission shall be elected by the qualified electors of the park district at the annual city election held on the first Monday of April of each year, shall qualify within ten days after their election, and shall on the third Tuesday of April organize by the selection of a president and vice-president. The first board may be elected at a regular annual city election or at a special election for that purpose called by the city council. The members of the board shall receive no compensation for their services as such, and shall have the qualifications of electors of such district. They shall not be interested in any contract entered into by said commission. Vacancies on such board shall be filled by the board until the next regular election of members of the board, when such vacancies shall be filled by election. Removal of residence from the park district by any member of the commission shall create a vacancy. [1907, ch. 179, § 4; R. C. 1905, § 3020; 1905, ch. 143, § 4.]

§ 4059. Powers of commission. The park commission shall have power:

1. To acquire by purchase, gift, devise, condemnation or otherwise, land within its territorial limits, or within two miles therefrom, for parks, boulevards and ways, and shall have sole and exclusive authority to maintain, govern, erect and improve the same.

2. To lay out, open, grade, curb, pave and otherwise improve any path, way or street, in, through or around said parks, and to construct, erect, build, maintain, manage, govern and erect any and all buildings, pavilions, play and pleasure grounds or fields and such other improvements of a like character as may be deemed necessary.

3. To pass all ordinances necessary, requisite and needful for the regulation and government thereof, and to make, change and enforce any order with reference thereto.

4. To levy special assessments on all property specially benefited by the purchase, opening, establishment and improvement of such parks, boulevards and ways or streets or ways about the same.

5. To require the services of the city engineer of the city included in such park district, who shall be ex-officio engineer and surveyor of such commission, and to require the services of a clerk, and such clerk shall be paid by such commission for his services as clerk a salary not to exceed twenty-five dollars (\$25.00) per month, to appoint other employes for the performance of manual labor, including such police force as may be deemed necessary.

6. To issue the negotiable bonds of the park district in a sum not to exceed one and one-half per cent of the taxable property therein situated, for the sole and exclusive purposes of purchasing and acquiring lands for such parks, boulevards and ways, and for the permanent improvement thereof, including the erection and construction of buildings, pavilions, plays and pleasure fields; provided, such bonds shall not bear a rate of interest to exceed six per cent; and provided, further, that upon the affirmative vote of the electors of such district, as by law provided, such commission may be authorized to issue such bonds in any amount in the aggregate not to exceed five per cent of the value of the taxable property in such district.

7. To levy taxes upon all property within said district for the purpose of maintaining and improving said parks, boulevards and ways, and to defray the expenses of such board; provided, that such tax so levied shall in no year exceed the sum of three mills on each dollar of taxable property within said district.

8. To establish building lines for all property fronting on any park, boulevard or way under the direction and control of such commission, and to

control the subdivision and planting of property within four hundred feet thereof.

9. To borrow money in anticipation of taxes already levied to defray the expenses of the year and to issue therefor the notes or obligations of the district.

10. To connect any park or parks owned or controlled by it with any other park or parks, and for that purpose to select and take charge of any connecting street or streets or parts thereof, and the said park commission shall have sole and exclusive charge and control of such street or streets so taken for such purpose.

11. To plant, set out, maintain, protect and care for shade trees in any of the public streets or highways of their respective districts, and to specify and regulate the kinds of trees that shall be planted or set out in such streets or highways, the size and location of such trees and the methods to be used in the planting and cultivation thereof, and to pass such ordinances as may be requisite, necessary or needful for the protection and control of such trees. [1911, ch. 75; 1909, ch. 176, § 5; 1907, ch. 179, § 5; R. C. 1905, § 3021; 1905, ch. 143, § 5.]

1. Taking of property for parks and squares as a public purpose. 22 L.R.A.(N.S.) 170.

3. Prohibiting use of automobiles in parks. 1 L.R.A.(N.S.) 221.

4. Power to improve streets for park purposes at expense of abutting owner. 32 L.R.A.(N.S.) 1056.

§ 4060. Meetings, where held. Ordinances. The park commission shall hold a regular meeting on the first Tuesday of each month at such hour as it may by rule designate, and such special meetings as it may deem necessary. Special meetings may be called by the president and must be called by him upon the request in writing of two members of the board. The commission shall have power to adopt such rules of procedure as it may deem necessary. The powers of the commission shall be exercised by ordinance unless otherwise provided. All ordinances shall be read twice and at least eight days shall intervene between the readings. They shall be adopted by ye and nay vote and shall be approved by the president and published in the official newspaper of the city and shall go into effect upon such publication. The enacting clause of all ordinances shall be as follows: "Be it enacted by the park commissioners of the park district of the city of" The ye and nay votes shall be taken on all propositions involving the expenditure of money, and levying of taxes or the issuance of bonds or other certificates of indebtedness. All contracts shall be let to the lowest responsible bidder after advertisement in the official newspaper of the city for three successive weeks, once in each week; provided, that such commission shall have the power to reject all bids. All contracts shall be in writing and signed by the president and clerk of the board and unless so executed shall be void. At no time shall the debt of the park district exceed five per cent of the taxable property within the district, according to the last preceding assessment. No bill, claim, account or demand against the district shall be audited, allowed or paid until a full itemized statement in writing properly verified shall be filed with the park commission. All claims against the park district arising out of negligence shall be in writing and verified by the claimant, and shall contain a full, clear and concise statement of the transaction out of which it is alleged to arise, giving time, place, extent of injury or damage, and shall be filed within thirty days from the date thereof with the clerk of the board. No action shall be maintained unless begun after thirty days and within six months from the date of the filing of the claim. [1907, ch. 179, § 6; R. C. 1905, § 3022; 1905, ch. 143, § 6.]

Municipal liability for defects or obstructions in paths in parks. 20 L.R.A.(N.S.) 574.

—for defects or obstructions in park strips, or sides of streets. 20 L.R.A.(N.S.) 593; 40 L.R.A.(N.S.) 94.

—for negligence of park commissioners. 2 L.R.A.(N.S.) 147.

Municipal liability for injuries through unsafe conditions in parks or public grounds other than streets. 33 L.R.A.(N.S.) 523.

§ 4061. **Police magistrate to have jurisdiction.** The police magistrate of the city shall have exclusive jurisdiction to try and determine all causes of action for violation of the rules or ordinances enacted by the board and the procedure therein with the right of appeal shall be as prescribed by general law. [1907, ch. 179, § 7; R. C. 1905, § 3023; 1905, ch. 143, § 7.]

§ 4062. **General law governs commissioners.** In the issuing of bonds, warrants, certificates of indebtedness and in levying any tax or special assessment and in otherwise carrying out, enforcing or making effective any of the powers herein granted, the park commissioners and their officers and the park district shall be governed by and shall follow the laws enacted for the government of cities, except as herein otherwise specially provided. [1907, ch. 179, § 8; R. C. 1905, § 3024; 1905, ch. 143, § 8.]

§ 4063. **Repeal.** Chapter 143 of the laws of North Dakota of 1905 is hereby repealed, but in so far as said law has not been held to be unconstitutional and void, this article, so far as consistent therewith, shall be held and construed to be a continuation of and not a repeal of such law. [1907, ch. 179, § 9.]

Chapter 143 of the Laws of 1905, here repealed, constitutes sections 3017-3024 of the Revised Codes of 1905.

ARTICLE 25.—VILLAGE PARKS.

§ 4064. **Procedure.** Any incorporated village of the state of North Dakota may, by a majority vote of its board of trustees by yeas and nays at a regular meeting thereof, take advantage of the provisions of this article. [1913, ch. 290, § 1.]

§ 4065. **Creation of park districts.** Any village desiring to take advantage of this article shall do so by ordinance or resolution regularly adopted, expressing its intent or desire so to do, whereupon the territory embraced in such village, or within the park which may be acquired under this article if not within the village limits, shall be deemed and is hereby declared to be a park district of the state of North Dakota. [1913, ch. 290, § 2.]

§ 4066. **How designated. Power of.** Each park district under this article shall be known as "park district of the village of," and as such district shall have a seal and perpetual succession, with power to sue and be sued, contract and be contracted with, acquire by purchase, gift, devise or otherwise, and hold, own, possess and maintain real and personal property in trust for the purpose of parks, boulevards and ways, and to exercise all the powers herein designated, or which may hereafter be conferred upon it. [1913, ch. 290, § 3.]

§ 4067. **Commissioners, election thereof and filling of vacancies.** The powers of each park district shall be exercised by a board of commissioners consisting of three members, who shall hold office for a period of three years from and after the date of their election and qualification, except the members of the first board, who shall hold office as follows: One member until the first annual village election following their election; one member until one year from the last mentioned date and one member until two years from such last mentioned date. The members of the park commission shall qualify by taking and filing with the village clerk the oath prescribed by section 211 of the constitution. The village treasurer shall be ex-officio treasurer of the park district, and he shall take the oath prescribed by section 211 of the constitution, and shall furnish and file such bond as may be required by the commission. The members of the park commission shall be elected by the qualified electors of the village at the annual village election, and shall qualify within ten days after their election, and shall organize, within ten days after so qualifying, by the selection of a president, vice-president and secretary. The first board may be elected at a regular or special meeting called therefor by the board of trustees of the village. The members shall receive no compensation for

their services, and shall have the qualifications of electors of the village. They shall not be interested in any contract entered into by said commission. Vacancies on the board shall be filled by the remaining members of the board until the next regular village election when such vacancies shall be filled by election. [1913, ch. 290, § 4.]

§ 4068. Powers of the commission. The park commission shall have power:

(a) To acquire by purchase, gift, devise, condemnation or otherwise, land within its territorial limits or within one mile therefrom, for parks, boulevards and ways, and shall have sole and exclusive power and authority to maintain, govern, erect and improve the same.

(b) To lay out, open, grade, curb, pave and otherwise improve any path, way or street, in, through or around said parks, and to construct, erect, build, maintain, manage, govern, any and all buildings pavilions, play and pleasure grounds or fields, and such other improvements (of) or a like character as they may deem necessary.

(c) To pass and promulgate all rules and regulations, either by ordinance or resolution, requisite and needful for the regulation and government thereof, and to make, change and enforce any order with reference thereto.

(d) To levy special assessments on all property specially benefited by the purchase, establishment and improvements of such parks, boulevards and ways or streets about the same.

(e) To employ such engineers, surveyors and clerks or other employes, including such police force as may be necessary, and to define and prescribe their respective duties and to fix their compensation.

(f) To issue negotiable bonds of the park district in a sum not to exceed one and one-half per cent of the taxable property therein situated, for the sole and exclusive purpose of purchasing and acquiring lands for such parks, boulevards and ways, and for the permanent improvements thereof, including the erection of the necessary buildings, pavilions, play and pleasure fields; provided, however, that such bonds shall not bear a rate of interest to exceed six per cent per annum.

(g) To levy taxes upon all property within said district for the purpose of maintaining and improving said parks, boulevards and ways, and to defray the expenses of such board and their employes; provided, however, that such taxes so levied shall in no year exceed the sum of three mills on each dollar of taxable property within said district.

(h) To establish building and street lines for all property fronting on any park, boulevard or way, under the direction and control of said commission, and to control the subdivision and platting of property within two hundred feet thereof.

(i) To borrow money in anticipation of taxes already levied to defray the expenses of the year, and to issue therefor warrants or other obligation of the district.

(j) To plant, to set out, maintain and protect and care for shade trees in any of the public streets or highways of said parks or park districts, and to specify and regulate the kind of trees that shall be planted or set out in such streets or highways, the size and location of such trees and the method to be used in planting and cultivating the same, and to pass such resolutions or ordinances as may be necessary or needful for their control and protection. [1913, ch. 290, § 5.]

See annotation to section 4059.

§ 4069. Meetings are held, ordinances and resolutions. The park commission shall hold a regular meeting on the first Monday of each and every month at such hour as it may deem most convenient, and such special meetings as it shall deem necessary. Special meetings may be called by the president, and shall be subject to the same regulations as the calling of special meetings of the board of trustees of the village. The powers of the

commission shall be exercised by resolution or ordinance. All resolutions or ordinances shall be read once, and shall be adopted by the yeas and nays, be approved by the president and upon the same being published once in the official paper of the village, they shall go into effect within three days after the publication thereof. No expenditure of money, or levying of taxes, or the issuance of bonds, or other certificate of indebtedness, shall be made excepting upon the yeas and nays vote of the commission. The letting of all contracts shall be subject to the same regulations and restrictions as provided for the letting of contracts by the village, and shall be signed by the president and secretary. At no time shall the debt of the park district exceed five per cent of the taxable property within the district, according to the last preceding assessment. All bills, claims and accounts or demands against said district shall be audited, allowed and paid in the same manner as bills against the village, and no action of any kind shall be maintained unless such claim, bill or demand has been regularly presented. [1913, ch. 290, § 6.]

§ 4070. **Justice of the peace. Jurisdiction.** The village justice of the peace shall have the full and exclusive jurisdiction to try and determine all causes of action for the violation of any rules, ordinances or resolutions enacted by the board, and all procedure before the justice shall be the same as is now prescribed for the trying of offenses against the village ordinances. [1913, ch. 290, § 7.]

§ 4071. **General laws govern commission.** In the issuing of bonds, warrants, certificates of indebtedness and in levying on taxes or special assessments, and in otherwise carrying on, enforcing or making effective any of the powers herein granted, the park commissioners and their officers, and the park district, shall be governed by and shall follow the laws enacted for the government of villages, except as herein otherwise specially provided. [1913, ch. 290, § 8.]

CHAPTER 50.

TOWNSHIP GOVERNMENT.

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ARTICLE 1.—HOW ORGANIZED AND NAMED.

§ 4072. **Petition for organization of township.** Whenever a majority of the legal voters of any congressional township in this state having an assessed valuation exceeding forty thousand dollars and containing twenty-five legal voters petition the board of county commissioners to be organized as a township under this article such board shall forthwith proceed to fix and determine the boundaries of such new township and to name the same; and the board shall make a full report of all its proceedings in relation to laying off such township and file the same with the county auditor. [R. C. 1905, § 3047; 1883, ch. 112, sub-ch. 1, § 1; R. C. 1899, § 2526; 1905, ch. 179.]

§ 4073. **Fragment of township attached to adjoining township.** A fraction of a township may be attached by such board to an adjoining township or be divided between two or more townships or organized separately, according to the wishes of a majority of the legal voters to be affected thereby; and when rivers, lakes or creeks so divide a township as to make it inconvenient to do township business, such board may dispose of any fraction so formed by annexing the same to an adjoining township in the same county if it shall seem to it proper, whenever petitioned to do so by not less than two-thirds of the legal voters residing in such fraction, and the fact that any such petition is signed by two-thirds of such voters may be proved by the affidavit of any legal voter residing in such fraction having knowledge of the fact; and townships having two or more villages or cities, each containing two hundred or more inhabitants, may petition the board of county commissioners for division; and whenever the board is so petitioned, it may, if it thinks the interest of such township will be subserved thereby, divide such townships in such manner as will best suit the convenience of the territory, and the board of county commissioners of any county lying west of the Missouri river may unite not less than two congressional townships into one civil township, or may add not more than three congressional townships to any congressional township already organized as a civil township, when petitioned by a majority of the legal voters affected thereby, if in the opinion of the board the best interests of such townships will be subserved thereby; provided, that at least twenty days' notice shall be given by the board of county commissioners to the chairman of the board of supervisors of each township affected by the change before action is taken thereon; provided, further, that nothing herein contained shall be construed to release any property in or belonging to that part of any township so detached from any tax levied or assessed prior to such division being made; provided, also, that the portion of any township annexed to any other township, and any village or city separated from any township, under the provisions of this article, shall not be released from nor in any way discharged from the payment of any bonded or other indebtedness that may exist against the township from which separation has been made. [1913, ch. 91; R. C. 1905, § 3048; 1883, ch. 112, sub-ch. 1, § 2; 1885, Spl. ch. 50, § 1; R. C. 1899, § 2527.]

Division of territory of town as affecting its assets and liabilities. 39 L.R.A. (N.S.) 285.

§ 4074. **Name of township.** Townships thus formed shall be named in accordance with the expressed wish of a majority of the legal voters residing therein, but if they fail to designate a name the board of county commissioners may select a name. [R. C. 1905, § 3049; 1883, ch. 112, sub-ch. 1, § 3; R. C. 1899, § 2528.]

§ 4075. **First township meeting.** The board of county commissioners shall thereupon make out notices designating a suitable place for holding the first township meeting in each township, which shall be held within twenty days after the township is organized; and the county auditor shall deliver such notice to the sheriff of the county, who shall cause the same to be posted in each township not less than ten days before the day set for such meeting. [R. C. 1905, § 3050; 1883, ch. 112, sub-ch. 1, § 4; R. C. 1899, § 2529.]

§ 4076. **County auditor transmits name to state auditor.** Each county auditor shall, within thirty days after such township is organized, transmit by mail to the state auditor an abstract of such report, giving the bounds of each township and the name designated; and the county auditor shall record in a book kept for that purpose a full description of each township. [R. C. 1905, § 3051; 1883, ch. 112, sub-ch. 1, § 5; R. C. 1899, § 2530.]

§ 4077. **When similar names are adopted by different townships.** If the state auditor on comparing the abstract of the reports from the several counties finds that any two or more townships have the same name he shall transmit to the county auditor of the proper county the name of the township to be altered; and the board of county commissioners shall at its next meeting thereafter adopt for such township some name different from those theretofore named, so that no two townships organized under this chapter shall have the same name, and when such name is adopted the county auditor shall inform the state auditor as before directed. [R. C. 1905, § 3052; 1883, ch. 112, sub-ch. 1, § 6; R. C. 1899, § 2531.]

§ 4078. **Present boundaries to remain.** The boundary lines of each organized township shall remain as now established until otherwise provided by the board of county commissioners under authority of law. [R. C. 1905, § 3053; 1883, ch. 112, sub-ch. 1, § 7; R. C. 1899, § 2532.]

ARTICLE 2.—DIVISION OF ORGANIZED TOWNSHIPS.

§ 4079. **Civil townships, how formed.** Any congressional township or fraction thereof, bordering on a lake or bordering on a river, containing more than eighteen sections of land, which has residing therein one hundred or more inhabitants, and forming a part of an organized civil township, may be set apart and organized as a separate civil township in the manner herein provided, and when duly organized shall have the same powers and privileges and be subject to the same liabilities and restrictions as other civil townships, except as herein otherwise provided; but no civil township shall be so formed under the provisions of this article as to leave residing in the township from which it is separated less than one hundred inhabitants; provided, such separation shall be made only upon congressional township lines. [1909, ch. 221; R. C. 1905, § 3054; 1899, ch. 60; R. C. 1899, § 2533.]

§ 4080. **Petition county commissioners. Notice published.** The legal voters residing in such congressional or fractional township bordering on a lake, may petition the board of county commissioners of the county in which it is situated, at any regular meeting of said board, to be set off as a separate civil township, upon at least thirty days' previous notice thereof, and of the time and place of application, which notice shall be published at least three times in the newspaper in which the proceedings of said board are published, or, if there is none such, notice shall be posted in at least three public places in the proposed new township, and as many more elsewhere in the township affected thereby, one of which shall be at the place where the last election was held. [R. C. 1905, § 3055; 1899, ch. 60; R. C. 1899, § 2534.]

§ 4081. **When boards shall set off townships. Election.** Upon presentation of such petition signed by a majority of the legal voters residing within such proposed township and due proof of notice as herein provided and of the further fact that the territory has the requisite number of inhabitants and the

petition the requisite number of competent signers as aforesaid the board shall proceed to set off said congressional or fractional township bordering on a lake, as a separate civil township and constitute the same an election precinct, and designate the place of holding elections and the time and place of holding the first township meeting therein, and the name adopted for such township, and notice thereof shall be given as in other cases. The board of county commissioners, within thirty days after such election, shall meet as a board of arbitrators together with the county auditor and judge of the county court and determine, subject to appeal to the district court, upon a just and fair distribution of the property and apportionment of the debt of said township between the townships so formed from said original township. [R. C. 1905, § 3056; 1899, ch. 60; R. C. 1899, § 2535.]

§ 4082. Proportional share of moneys. Liabilities. The new township shall succeed to a proportional share of the moneys and other property of the former township and to a like share of its debts and liabilities existing at the time of the division, such proportion to be determined by the relative value of the property of the respective parts as shown by the last preceding assessment and the account shall be settled between them by the board of county commissioners at its next regular meeting after the organization of the new township from the best evidence obtainable and for that purpose said board shall have power to bring before it the necessary witnesses, books and papers upon subpoenas to be issued by the clerk of the district court upon request of the chairman, and the statement of such account shall be conclusive as between the respective townships unless appealed from as provided by law, but the enforcement of their respective obligations thereon must be left to the courts; provided, however, that no division of a civil township as herein provided shall operate to prevent the enforcement of obligations existing prior thereto to the same extent as if no division was made. [R. C. 1905, § 3057; 1895, ch. 30, § 4; R. C. 1899, § 2536.]

Division of territory of town as affecting its assets and liabilities. 39 L.R.A.(N.S.) 285.

Liability of territory annexed to township to pay proportionate share of existing debts. 27 L.R.A.(N.S.) 1147.

ARTICLE 3.—CORPORATE POWERS.

§ 4083. Powers of township. Each township is a body corporate and has capacity:

1. To sue and be sued.
2. To purchase and hold lands within its limits and for the use of its inhabitants, subject to the powers of the legislative assembly.
3. To make such contracts and purchase and hold such personal property as may be necessary for the exercise of its corporate or administrative powers.
4. To make such orders for the disposition, regulation or use of its corporate property as may be deemed conducive to the interests of its inhabitants. [R. C. 1905, § 3058; 1883, ch. 112, sub-ch. 1, § 8; R. C. 1899, § 2537.]

§ 4084. Powers of, limited. No township shall possess or exercise any corporate powers except such as are enumerated in this chapter, or specially given by law or necessary to the exercise of the powers so enumerated or granted. [R. C. 1905, § 3059; 1883, ch. 112, sub-ch. 1, § 9; R. C. 1899, § 2538.]

Supervisors possess only powers expressly conferred by statute. *Aldrich v. Collins*, 3 S. D. 154, 52 N. W. 854; *Van Antwerp v. Dell Rapids Township*, 3 S. D. 305, 53 N. W. 82.

Right to exercise any corporate power denied if in doubt. *Aldrich v. Collins*, 3 S. D. 154, 52 N. W. 854; *Van Antwerp v. Dell Rapids Township*, 3 S. D. 305, 53 N. W. 82.

Power of town to remove officer in absence of statutory authority. 9 L.R.A.(N.S.) 572; 39 L.R.A.(N.S.) 519.

Power of town board to appoint officers or make contract for term of office extending beyond its own term. 29 L.R.A.(N.S.) 652.

Liability of township on negotiable paper executed by officer of town. 21 L.R.A.(N.S.) 1078.

§ 4085. Actions to be in corporate name. All actions or proceedings by or against a township in its corporate capacity shall be in the name of such township; but each conveyance of land within the limits of such township, made in any manner for the use or benefit of its inhabitants, has the same effect as if made to the township by name. [R. C. 1905, § 3060; 1883, ch. 112, sub-ch. 1, § 10; R. C. 1899, § 2539.]

ARTICLE 4.—ANNUAL TOWNSHIP MEETINGS.

§ 4086. Annual township meeting, when held. The citizens of the several townships of this state, qualified to vote at general elections, shall annually assemble and hold township meetings in their respective townships, on the third Tuesday in March at such place in each township as the electors thereof at their annual township meetings from time to time appoint; and notice of the time and place of holding such meetings shall be given by the township clerk, by posting up written or printed notices in three of the most public places in such township at least ten days prior to such meetings; provided, that before any change of place of holding meetings is made, notice of such contemplated change may be given by any member of the township board to the township clerk, who shall in his regularly printed or written notices as above provided, incorporate the special notice of the contemplated change of place of holding such meetings. [R. C. 1905, § 3061; 1899, ch. 159; R. C. 1899, § 2540; 1901, ch. 203.]

Township election day not legal holiday. *State v. Currie*, 8 N. D. 545, 80 N. W. 475.
On right to raise money for highway purposes at annual town meeting and disposition of fund illegally raised. *Miner v. Clifton Twp.*, 30 S. D. 127, 137 N. W. 585.

§ 4087. Township officers, when elected. Term of office. There shall be elected at the annual township meeting in each township one supervisor for a term of three years; one township clerk, one assessor, one treasurer, two justices of the peace and two constables shall be elected once in two years, except to fill vacancies.

In the event that the county commissioners have not at their regular meeting after April first appointed a county superintendent of highways, then the board of supervisors shall appoint one overseer of highways for each township, who shall hold his office during the pleasure of the board.

At the first annual township meeting in each township after the taking effect of this article, there shall be elected at large for each township, three supervisors, one to serve until the first annual township meeting, one to serve until the second annual township meeting and one to serve until the third annual township meeting thereafter; provided, that the provisions hereof shall not affect the terms of supervisors elected prior to the taking effect of this act [section 4087].

The board of supervisors at the first regular meeting shall elect one of their members as chairman to serve for a period of one year. [1913, ch. 90; 1911, ch. 306; R. C. 1905, § 3062; 1883, ch. 112, sub-ch. 1, § 12; R. C. 1899, § 2541; 1905, ch. 182.]

Supervisors not empowered to purchase road machine without electors' authority. *F. C. Austin Mfg. Co. v. Twin Brooks Twp.*, 16 S. D. 126, 91 N. W. 470.

§ 4088. Powers of electors. The electors of each township have power at the annual township meeting:

1. To determine the number of poundmasters and the location of pounds.
2. To select such township officers as are required to be chosen.
3. To direct the institution or defense of actions in all controversies where such township is interested.
4. To direct such sums to be raised in such township for the prosecuting or defending such actions as they may deem necessary.
5. To make all rules and regulations for impounding of animals.
6. To impose such penalties on persons offending against any rule or regu-

lation established by the township as they think proper, not exceeding ten dollars for each offense, except as herein otherwise provided.

7. To apply such penalties when collected in such manner as they deem most conducive to the interests of the township.

8. To ratify or reject recommendations offered by the township board of supervisors for the expenditure of funds for the purpose of purchasing building sites and purchase, location, erection or removal of any building or erection for township purposes; provided, that no such recommendation shall be adopted otherwise than by a two-thirds vote of the electors present and voting at any annual township meeting.

9. To authorize and empower the board of township supervisors to purchase liquids, compounds or other ingredients to cause the destruction of noxious weeds, and to authorize the purchase of sprinklers to be used in spraying said liquids or compounds for the destruction of noxious weeds; but that no township shall purchase more than two such sprinklers in any one year. [1909, ch. 223; 1907, ch. 255, § 1; 1883, ch. 112, sub-ch. 1, § 13; R. C. 1899, § 2542.]

§ 4089. **Certain tax levies legalized.** The levy of taxes as made by the various township boards of supervisors in this state for road and general purposes, for the years 1899 and 1900 where said levy did not exceed eight mills and where said levy was not authorized at the regular township meetings, is hereby legalized and made valid in all respects and for all purposes, the same as if it had been authorized in conformity to the laws then in force. [R. C. 1905, § 3064; 1901, ch. 157.]

ARTICLE 5.—PAVING AND OTHER PUBLIC IMPROVEMENTS IN CERTAIN CIVIL TOWNSHIPS.

Laws 1907, ch. 252, consisting of fifty sections, was entitled "An act to provide for paving, curbing or macadamizing the highways in civil townships adjoining incorporated cities of not less than six thousand inhabitants, and for the construction of sewers and water mains therein, connecting with city sewers and water mains or with their own trunk sewers, and for the construction of sidewalks."

Section 49 of that chapter expressly repealed "article 5 of chapter 33 of the Revised Codes of 1905." But the substantive provisions in said chapter 252 were held unconstitutional in *Morton v. Holes*, 17 N. D. 154, 115 N. W. 256. Pursuant to the general rule that where an act expressly repealing another act and providing a substitute therefor is found to be invalid, the repealing must also be held to be invalid (36 Cyc. 1099), article 5 in the Revised Codes above mentioned is considered as still in force and constitutes sections 4090-4102 herein.

§ 4090. **What civil townships may pave, grade or macadamize streets.** Any civil township in this state adjoining an incorporated city having by the last census at least six thousand inhabitants and which shall have paved, graded, curbed or macadamized its streets leading to the boundaries of such civil township or shall have constructed sewers or water mains in such streets, may pave, grade or macadamize the highways of such township connecting with such city streets, or with such highways so paved or highways running along the boundaries of such city, or construct sewers or water mains therein as provided by this article; provided, that such township shall not so improve any portion of such highways not lying within its boundaries. [R. C. 1905, § 3065; 1905, ch. 177, § 1.]

§ 4091. **How accomplished.** Whenever the owners of real property abutting on such highway, or part thereof, in such civil township, sought to be improved as provided in this article, and representing a majority by feet of the frontage of said property so abutting, shall desire to improve such highway, or part thereof, as herein provided, they shall petition the board of supervisors of such township in writing, setting forth and describing specifically in such petition, the kind, character and extent of the improvement desired, specifying the width and material of pavement, if any, and the size and material of any sewers or water mains, the number and location of

manholes and catch basins for such sewers, and the number and location of fire hydrants for such water mains, which petition shall be accompanied by an affidavit of each signer thereof, stating his place of residence, and that he is the owner of certain real property abutting on the part of such highway sought to be improved, describing such property, and stating the number of feet frontage thereof abutting on such street, which petition shall be filed in the office of the township clerk. [R. C. 1905, § 3066; 1905, ch. 177, § 2.]

§ 4092. Township board to have working plans made. The board of township supervisors shall, upon the filing of such petition, procure the making, by some competent civil engineer, of complete working plans and specifications for the improvement designated in such petition, together with an estimate of the probable cost thereof, which plans, specifications and estimate, when completed, shall be filed in the office of the township clerk. [R. C. 1905, § 3067; 1905, ch. 177, § 3.]

§ 4093. Township clerk to advertise for bids. The township clerk shall thereupon advertise in some newspaper of general circulation, published in such adjoining incorporated city, for bids for the construction of such improvement according to such plans and specifications, stating the time and place at which such bids will be received and opened, which time shall not be less than twenty-five days after the first publication of such advertisement, which shall be published in such newspaper three times, once in each week for three successive weeks, and such advertisement shall state that such improvement is to be paid for by special assessments made for that purpose. [R. C. 1905, § 3068; 1905, ch. 177, § 4.]

§ 4094. Bids to be accompanied by certified check. Each bid for such work shall be accompanied by a certified check payable or indorsed to said civil township for at least fifty per cent of the amount thereof and no bid shall be considered which is not accompanied by such check. [R. C. 1905, § 3069; 1905, ch. 177, § 5.]

§ 4095. Contracts, how let. At the time stated in such advertisement for opening such bids, the board of township supervisors shall meet at the place designated in such advertisement, and open said bids, and award the contract for the construction of such improvements to the lowest bidder therefor, and shall thereupon return to each of the unsuccessful bidders the certified check accompanying his bid, and shall retain the certified check of the successful bidder until the making of the contract and giving of the bond hereinafter provided, and when such contract and bond shall have been executed and filed, the said certified check shall thereupon be returned, but in case the successful bidder fails or refuses to enter into such contract or to give such bond, said certified check shall be retained by said civil township as liquidated damages for such failure to enter into said contract, and give said bond. When such contract has been awarded, the board of township supervisors shall have the same prepared and may employ a competent attorney for that purpose, and such contract shall state the time on or before which such work shall be finished, and shall provide that such work shall be done in accordance with the plans and specifications therefor on file in the office of the township clerk, and in accordance with the bid of the contractor therefor and subject to the approval of such engineer as shall be selected by the board of township supervisors for inspecting and approving such work, and shall further contain a clause that the consideration of said contract is to be paid in warrants, drawn upon the special assessment fund created for the payment of such improvement, and no such civil township shall be or become in any way liable for the payment of any part of the consideration of such contract by general taxation, or from the funds of said township, or otherwise than from such special assessment fund. Such contract shall be entered into in the name of such civil township and be signed on behalf thereof by the chairman of its

board of supervisors, and attested by the township clerk, and when signed by the contractor shall be filed in the office of the township clerk. [R. C. 1905, § 3070; 1905, ch. 177, § 6.]

In absence of charter or statutory requirement municipal contracts need not be let under competitive bidding. *Price v. Fargo*, 24 N. D. 440, 139 N. W. 1054.

Discretion in choosing between bidders for public contract. 38 L.R.A.(N.S.) 653.

Elements to be considered in determining responsibility of bidder. 38 L.R.A.(N.S.) 672.

Rights under statute or ordinance requiring award of public contract to lowest bidder. 26 L.R.A. 707.

Remedy of lowest bidder for refusal of authorities to award contract to him. 30 L.R.A.(N.S.) 126.

Validity of contract for material patented or held in monopoly where a public letting to the lowest bidder is required. 5 L.R.A.(N.S.) 680.

§ 4096. Contractor to give bond. The contractor under said contract shall at the time of making the same, execute and file with the township clerk a bond in a penal sum equal to the consideration of said contract, conditioned for the faithful performance of said work according to such plans, specifications and contract, and within the time fixed in said contract, subject to the approval of said engineer, and further conditioned for the payment by said contractor for all material and labor used in said work, which bond shall be signed by the contractor and two sufficient sureties and shall be subject to the approval of the board of township supervisors, and when approved by them shall be filed in the office of the township clerk. [R. C. 1905, § 3071; 1905, ch. 177, § 7.]

Right of subcontractor, materialman or laborer to maintain action on contractor's bond to owner. 27 L.R.A.(N.S.) 573.

Contractor's bonds as substitute for mechanics' liens. 27 L.R.A.(N.S.) 579.

Liability of sureties on contractor's bond to laborers or materialmen not entitled to a lien, when bond is conditioned against liens or claims. 9 L.R.A.(N.S.) 889.

Effect of invalidity of contract for public work upon the liability of the contractor's bondsmen for material, etc., furnished in carrying out the contract. 13 L.R.A.(N.S.) 793.

Does bond of highway contractor cover personal injuries to members of public. 34 L.R.A.(N.S.) 152.

Penalty as limit of liability on contractor's bond. 55 L.R.A. 393.

Discretion as to bond of bidder for public contract. 38 L.R.A.(N.S.) 664.

§ 4097. Township clerk to apportion cost of work. When such contract shall have been fully performed, and the work thereunder approved by such engineer as hereinbefore provided, and the expense connected with such work has been determined, the township clerk shall compute the same, and ascertain the total cost of said improvement, including all expenses in connection therewith of every kind and character, and shall thereupon forthwith calculate the amount to be assessed for such improvement against each lot and parcel of ground abutting on such improvement. And in estimating such assessment he shall take the entire cost of such improvement and divide the same by the number of feet front abutting upon the same, and the quotient shall be the sum to be assessed per foot upon all land so bounding or abutting. And the township clerk shall make and file in his office an assessment list containing the names of the owners of said lands as appears from said affidavits, and of other owners if known to him, together with a description of the lands assessed, which description shall include all such lands between the line of such highway and a line three hundred feet distant therefrom and parallel therewith, and no others. The township clerk shall thereupon cause said assessment to be published in the newspaper in which said advertisement for bids was published, with a notice of the time and place when and where the board of township supervisors will meet to approve such assessment, which notice shall be published in said newspaper once, at least ten days prior to the date fixed therein for the meeting of said township board of supervisors. Said assessment list shall contain or have attached thereto the certificate of the township clerk that the same is correct, and the township clerk shall file

in his office with said assessment, an itemized statement of all the expenses of such improvement included therein. [R. C. 1905, § 3072; 1905, ch. 177, § 8.]

§ 4098. **County auditor to assess against property.** When such assessment shall have been approved by the board of township supervisors, the township clerk shall thereupon transmit to the county auditor a certified copy thereof, and the county auditor shall thereupon enter the amount of such assessment against the property assessed therefor on the tax list of the current year, and shall add thereto one per cent of the amount so assessed for the expense of the collection thereof, and such assessment shall be collected and paid over to the township treasurer, with interest and penalties collected, in the same manner as other township taxes, and shall be credited by the township treasurer to the special assessment fund for such improvement, and shall be diverted to no other purpose. [R. C. 1905, § 3073; 1905, ch. 177, § 9.]

§ 4099. **Penalty for nonpayment.** In case such assessments are not paid the same penalties shall be added thereto and the same proceedings shall be had for the sale of said lands upon which the same are levied, as are had in case of special assessments in incorporated cities, and all the provisions of the statutes with reference to such sales and redemption therefrom in incorporated cities shall apply to special assessments under this article. [R. C. 1905, § 3074; 1905, ch. 177, § 10.]

§ 4100. **Assessments a lien against property.** Such assessment shall be a lien, from the time they are approved by the board of township supervisors, upon the lands abutting upon said improvement to a distance of three hundred feet from the line of such highway and parallel thereto, which lien shall be paramount to all other liens upon such land except ordinary taxes, and such assessments shall become due and payable fifteen days after their approval, and shall bear interest at the rate of seven per cent per annum after they become due. [R. C. 1905, § 3075; 1905, ch. 177, § 11.]

Power of legislature to make special assessments superior to other prior liens. 35 L.R.A. 373; 30 L.R.A.(N.S.) 762.

Superiority as between successive special assessments. 30 L.R.A.(N.S.) 767.

§ 4101. **How contractor paid.** When any work contracted for under this article shall have been completed according to the contract therefor and approved as hereinbefore provided, the contractor shall be paid therefor in warrants drawn on the special assessment fund herein provided and not otherwise. [R. C. 1905, § 3076; 1905, ch. 177, § 12.]

§ 4102-4137. **Cities and townships to pay for improvements on streets and highways.** The expense of improving streets and highways lying on the boundary line between any such city and township under this article may be done and paid for by such city and by such township, in such proportion as may be mutually agreed on between them, and any such incorporated city may permit such township to connect with its sewer system and water mains, on such terms as shall be just, and fully compensate said city therefor and for all water furnished to said township mains. [R. C. 1905, § 3077; 1905, ch. 177, § 13.]

ARTICLE 6.—SPECIAL MEETINGS.

§ 4138. **Special meetings held, when.** Special meetings may be held for the purpose of electing township officers to fill vacancies that occur, also for the purpose of transacting any lawful business, whenever the supervisors, township clerk and justices of the peace, or any two of them, together with at least twelve freeholders of the township file in the office of the township clerk a written statement that a special meeting is necessary. [R. C. 1905, § 3078; 1883, ch. 112, sub-ch. 1, § 16; R. C. 1899, § 2543.]

§ 4139. **Clerk to give notice of meeting.** Each clerk with whom such statement is filed as required in the preceding section, shall record the same and immediately cause notice to be posted in five of the most public places in the township, giving at least ten days' notice of such special meeting; and if there is a newspaper published in the township he shall cause a copy of such notice

to be published therein at least three days before the time appointed for such meeting. [R. C. 1905, § 3079; 1883, ch. 112, sub-ch. 1, § 17; R. C. 1899, § 2544.]

§ 4140. What notice must specify. Each notice given for a special meeting shall specify the purpose for which it is to be held, and no other business shall be transacted at such meeting than such as is specified in such notice. If vacancies in office are to be filled at such meeting the notice shall specify in what office vacancies exist, how they occurred, who was the last incumbent and when the term of each office expires. [R. C. 1905, § 3080; 1883, ch. 112, sub-ch. 1, § 18; R. C. 1899, § 2545.]

ARTICLE 7.—MODE OF CONDUCTING TOWNSHIP MEETINGS.

§ 4141. Organization of meeting. The electors present at any time between nine and ten o'clock in the forenoon of the day of the annual or special meeting shall be called to order by the township clerk, if present; in case he is not present then the voters may elect by acclamation one of their number chairman and three of their number judges of such meeting, who shall be duly sworn and be judges of the qualifications of township electors. They shall then proceed to choose one of their number to preside as moderator of such meeting. The clerk last before elected shall be clerk of the meeting and keep full minutes of its proceedings, in which he shall enter at length every order or direction and all rules and regulations made by the meeting. If the clerk is absent, then some person shall be elected to act as clerk of the meeting. [R. C. 1905, § 3081; 1883, ch. 112, sub-ch. 1, § 19; R. C. 1899, § 2546.]

§ 4142. Duty of moderator. Reconsideration of vote. At the opening of each meeting the moderator shall state the business to be transacted, and the order in which it shall be entertained, and no proposition to vote a tax shall be acted on out of the order of business as stated by the moderator, and no proposition to reconsider any vote shall be entertained at any meeting unless such proposition to reconsider is made within one hour from the time such vote was passed, or the motion for such reconsideration is sustained by a number of voters equal to a majority of all the names entered upon the poll list at such election up to the time such motion is made; and all questions upon motions made at township meetings shall be determined by a majority of the electors voting; and the moderator shall ascertain and declare the result of the votes on each question. [R. C. 1905, § 3082; 1883, ch. 112, sub-ch. 1, § 20; R. C. 1899, § 2547.]

§ 4143. Proclamation of opening and closing polls. Before the electors proceed to elect any township officer, proclamation shall be made of the opening of the polls by the moderator, and proclamation shall in like manner be made of the adjournment, and of the opening and closing of the polls, until the election is ended. [R. C. 1905, § 3083; 1883, ch. 112, sub-ch. 1, § 21; R. C. 1899, § 2548.]

Supervisors not empowered to purchase road machine without electors' authority. *F. C. Austin Mfg. Co. v. Twin Brooks Twp.*, 16 S. D. 126, 91 N. W. 470.

§ 4144. Who are voters. No person shall vote at any township meeting unless he is qualified to vote at general elections, and has been for the last ninety days an actual resident of the township wherein he offers to vote. [R. C. 1905, § 3084; 1883, ch. 112, sub-ch. 1, § 22; R. C. 1899, § 2549.]

§ 4145. Challenge to voter. If any person offering to vote at any election or upon any question arising at such township meeting is challenged as unqualified, the judges of the meeting shall proceed thereupon in like manner as the judges at the general election are required to proceed, adapting the oath to the circumstances of the township meeting. [R. C. 1905, § 3085; 1883, ch. 112, sub-ch. 1, § 23; R. C. 1899, § 2550.]

§ 4146. Certain officers to be elected by ballot. The supervisors, treasurer, township clerk, assessor, justice of the peace, constables and overseer of high-

ways in each township shall be elected by ballot. All other officers, if not otherwise provided by law, shall be chosen either by yeas and nays or by a division, as the electors determine. [R. C. 1905, § 3086; 1883, ch. 112, sub-ch. 1, § 24; R. C. 1899, § 2551.]

§ 4147. **All candidates on one ballot.** When the electors vote by ballot all the candidates voted for shall be named on one ballot, which shall contain, written or printed, or partly written and partly printed, the names of the persons voted for and the offices to which such persons are intended to be chosen, and shall be delivered to one of the judges so folded as to conceal its contents. [R. C. 1905, § 3087; 1883, ch. 112, sub-ch. 1, § 25; R. C. 1899, § 2552.]

§ 4148. **Poll list.** When the election is by ballot a poll list shall be kept by the clerk of the meeting, on which shall be entered the name of each person whose vote is received. [R. C. 1905, § 3088; 1883, ch. 112, sub-ch. 1, § 26; R. C. 1899, § 2553.]

§ 4149. **Judges to deposit ballots.** When the election is by ballot one of the judges shall deposit the ballots in a box provided for that purpose. [R. C. 1905, § 3089; 1883, ch. 112, sub-ch. 1, § 27; R. C. 1899, § 2554.]

§ 4150. **Judges to canvass the votes.** At the close of every election by ballot the judges shall proceed publicly to canvass the votes, which canvass when commenced shall continue without adjournment or interruption until the same is completed. [R. C. 1905, § 3090; 1883, ch. 112, sub-ch. 1, § 28; R. C. 1899, § 2555.]

§ 4151. **Manner of canvassing.** The canvass shall be conducted by taking one ballot at a time from the ballot box and counting until the number of ballots is equal to the number of names on the poll list, and if there are any left in the box they shall be immediately destroyed; and the person having the greatest number of votes for any office shall be declared duly elected; provided, that if two or more persons have an equal and the highest number of votes for any office, the judges of election shall at once publicly by lot determine who of such persons shall be declared elected. If on opening the ballots two or more ballots are found to be so folded that it is apparent that the same person voted them the board shall immediately destroy the ballots. [R. C. 1905, § 3091; 1883, ch. 112, sub-ch. 1, § 29; R. C. 1899, § 2556.]

§ 4152. **Result to be announced.** The canvass being completed, a statement of the result shall be entered at length by the clerk of the meeting in the minutes of its proceedings to be kept by him as before required, which shall be publicly read by him to the meeting, and such reading shall be deemed notice of the result of the election to every person whose name is entered on the poll list as a voter. [R. C. 1905, § 3092; 1883, ch. 112, sub-ch. 1, § 30; R. C. 1889, § 2557.]

§ 4153. **Minutes to be filed.** The minutes of the proceedings of each meeting, subscribed by the clerk of said meeting and by the judges, shall be filed in the office of the township clerk within two days after such meeting. [R. C. 1905, § 3093; 1883, ch. 112, sub-ch. 1, § 31; R. C. 1899, § 2558.]

Conclusiveness of records of meetings of towns and the power to amend. 13 Am. St. Rep. 550.

§ 4154. **Duty of township clerk.** The clerk of each township meeting shall, immediately after the votes are canvassed, transmit to each person elected to any township office, a notice of his election. [R. C. 1905, § 3094; 1883, ch. 112, sub-ch. 1, § 32; R. C. 1899, § 2559; 1903, ch. 92.]

§ 4155. **Proceedings when meeting fails to elect.** In case any township refuses or neglects to organize and elect township officers at the time fixed by law for holding annual township meetings, twelve freeholders of the township may call a township meeting for the purpose aforesaid, by posting notices in three public places in such township, giving at least ten days' notice of such meeting; which notice shall set forth the time, place and object of such meeting; and the electors when assembled by virtue of such notice shall

possess all the powers conferred upon them at the annual township meeting. In case no such notice is given as aforesaid within thirty days after the time for holding the annual meeting, the board of county commissioners of the county shall, on the affidavit of any freeholder of the township, filed in the office of the clerk of the board, setting forth the facts, at any regular or special meeting of the board, appoint the necessary township officers of such township, and the persons so appointed shall hold their respective offices until others are elected and qualified in their places, and shall have the same power and be subject to the same duties as if they had been duly elected. [R. C. 1905, § 3095; 1883, ch. 112, sub-ch. 1, § 33; R. C. 1899, § 2560.]

ARTICLE 8.—BY-LAWS.

§ 4156. **By-laws.** No by-law made by any township shall take effect before the same is published by posting copies thereof in three of the most public places in the township; and such by-laws, duly made and so published, are binding upon all persons coming within the limits of the township as well as upon the inhabitants thereof, and shall remain in force until altered or repealed at some subsequent township meeting. [R. C. 1905, § 3096; 1883, ch. 112, sub-ch. 1, § 14; R. C. 1899, § 2561.]

§ 4157. **Clerk shall post by-laws.** The township clerk shall post in three of the most public places in his township, copies of all by-laws made by such township, and shall make an entry in the township records of the time when, and the places where such by-laws were posted. [R. C. 1905, § 3097; 1883, ch. 112, sub-ch. 1, § 15; R. C. 1899, § 2562.]

ARTICLE 9.—QUALIFICATION OF OFFICERS.

§ 4158. **Voter eligible to office.** Each person qualified to vote at township meetings is eligible to any township office. [R. C. 1905, § 3098; 1883, ch. 112, sub-ch. 1, § 34; R. C. 1899, § 2563.]

§ 4159. **Officers to take oath.** Each person elected or appointed to the office of supervisor, township clerk, assessor, treasurer, constable or road overseer, shall, within ten days after he is notified of his election or appointment, take and subscribe, before the township clerk or justice of the peace, the oath prescribed in section 211 of the constitution. Such oath shall be administered without fee and certified by the officer by whom it is taken, with the date of taking the same. [R. C. 1905, § 3099; 1883, ch. 112, sub-ch. 1, § 35; R. C. 1899, § 2564; 1901, ch. 204.]

§ 4160. **Certificate of oath to be filed.** The person taking such oath shall immediately and before entering upon the duties of his office file the certificate of such oath in the office of the township clerk. [R. C. 1905, § 3100; 1883, ch. 112, sub-ch. 1, § 36; R. C. 1899, § 2565.]

§ 4161. **Justice to take oath and give bond.** Each person elected or appointed to the office of justice of the peace shall within ten days after receiving notice thereof take and subscribe before any officer authorized to administer oaths the oath prescribed in section 211 of the constitution. Such justice shall also execute a bond as provided in chapter 6 [chapter 7 herein] of this code and file the same with the clerk of the district court of the proper county for the benefit of any person aggrieved by the acts of such justice, and any person aggrieved may maintain an action on said bond in his own name against such justice and his sureties. [R. C. 1905, § 3101; 1883, ch. 112, sub-ch. 1, § 37; R. C. 1899, § 2566.]

§ 4162. **Certificate to official acts of justice.** The bond and oath of office of a justice of the peace, filed in the office of the clerk of the district court for the county or judicial subdivision, are sufficient authority for said clerk to certify to the official acts and signature of such justice of the peace. [R. C. 1905, § 3102; 1879, ch. 59, § 94; R. C. 1899, § 2567.]

§ 4163. **Jurisdiction of township justices.** All justices of the peace of any township in this state shall have the same power and jurisdiction in their respective counties as is now or hereafter may be conferred upon justices of the peace under the provisions of the justices' code, and all amendments made or which may be hereafter made to said code. [R. C. 1905, § 3103; 1881, ch. 129, § 1; R. C. 1899, § 2568.]

§ 4164. **Proceedings before township justices.** The civil and criminal proceedings before township justices of the peace shall be governed and controlled by the justices' code and the code of criminal procedure and the amendments made or which may hereafter be made to said codes. [R. C. 1905, § 3104; 1881, ch. 129, § 2; R. C. 1899, § 2569.]

§ 4165. **Bond of treasurer.** Each person elected or appointed to the office of treasurer, before entering upon the duties of his office, shall execute a bond in double the probable amount of money to be received by him, which amount shall be determined by the board of supervisors of the township. [R. C. 1905, § 3105; 1883, ch. 112, sub-ch. 1, § 38; R. C. 1899, § 2570.]

But see as to requirements of bonding with the state bonding department, section 193.

§ 4166. **Constable to take oath and give bond.** Each person chosen to the office of constable, before entering upon the duties of his office and within eight days after he is notified of his election or appointment, shall take and subscribe the oath of office and execute a bond as prescribed by law. Such bond shall be approved and filed as provided in chapter 6 [chapter 7 herein] of this code. [R. C. 1905, § 3106; 1883, ch. 112, sub-ch. 1, § 40; R. C. 1895, § 2571.]

§ 4167. **Bond of assessor to be filed.** Each township assessor shall give a bond in the penal sum of five hundred dollars and shall immediately after the approval thereof, deliver the same to the township clerk, whose duty it shall be forthwith to file such bond with the county auditor. [R. C. 1905, § 3107; 1889, ch. 128, § 1; R. C. 1895, § 2572.]

But see as to requirement of bonding in the state bonding department, section 193.

§ 4168. **Neglect to qualify.** If any person elected or appointed to any township office, of whom an oath or bond is required, neglects to file the same within the time prescribed by law such neglect shall be deemed a refusal to serve in such office. [R. C. 1905, § 3108; 1883, ch. 112, sub-ch. 1, § 42; R. C. 1899, § 2573.]

§ 4169. **Penalty for neglect to take oath.** If any township officer who is required by law to take an oath of office, enters upon the duties of his office before taking such oath, he forfeits to such township the sum of fifty dollars. [R. C. 1905, § 3109; 1883, ch. 112, sub-ch. 1, § 43; R. C. 1899, § 2574.]

§ 4170. **Road overseer and pound master to file acceptance.** Each person elected or appointed to the office of overseer of highways or pound master, before he enters upon the duties of his office and within ten days after he is notified of his election or appointment, shall file in the office of the township clerk a notice signifying his acceptance of such office. A neglect to file such notice shall be deemed a refusal to serve. [R. C. 1905, § 3110; 1883, ch. 112, sub-ch. 1, § 44; R. C. 1899, § 2575.]

ARTICLE 10.—VACANCIES.

§ 4171. **Board may accept resignations.** The board of supervisors of any township may for sufficient cause shown to it accept the resignation of any officer in its township, and whenever it accepts any such resignation it shall forthwith give notice thereof to the township clerk. [R. C. 1905, § 3112; 1883, ch. 112, sub-ch. 1, § 46; R. C. 1899, § 2577.]

§ 4172. **Vacancies, how filled.** Whenever any township fails to elect the proper number of officers, or whenever any person elected to a township office fails to qualify, or whenever any vacancy happens in any township office from death, resignation, removal from the township or other cause,

the justices of the peace of the township, together with the board of supervisors or a majority of them, shall fill the vacancy by appointment by warrant under their hand, and the persons so appointed shall hold their offices until the next annual meeting and until their successors are elected and qualified, and shall have the same powers and be subject to the same duties and penalties as if they had been duly elected. [R. C. 1905, § 3113; 1883, ch. 112, sub-ch. 1, § 47; R. C. 1899, § 2578.]

§ 4173. Vacancies in appointing board. Whenever a vacancy occurs from any cause in the office of the justice of the peace or township supervisor, the remaining officers of such appointing board shall fill any vacancy thus occurring. [R. C. 1905, § 3114; 1883, ch. 112, sub-ch. 1, § 48; R. C. 1899, § 2579.]

§ 4174. When county auditor to appoint township assessor. When any township assessor is elected and fails or refuses to qualify or to discharge the duties of his office, or if the electors of a township fail for any reason to elect an assessor, and the township board of said township fails or refuses to appoint an assessor for the township on or before the fifteenth day of April of the year for which such assessor is to serve, it shall be the duty of the county auditor to appoint an assessor for such township, who shall be a resident of the township for which he is to serve as assessor. [R. C. 1905, § 3115; 1887, ch. 156, § 1; R. C. 1899, § 2580.]

ARTICLE 11.—BOARD OF HEALTH.

§ 4175. Who constitutes. Powers of. The supervisors of each township and the trustees of each incorporated village shall constitute a board of health and within their respective townships or villages shall have and exercise under the supervisory control of the county superintendent of public health, all the powers necessary for the preservation of public health. [1913, ch. 59, § 9; R. C. 1905, § 3116; 1883, ch. 112, sub-ch. 1, § 50; R. C. 1899, § 2581; 1905, ch. 52.]

Powers which may be delegated to boards of health. 80 Am. St. Rep. 212.

Power of health authorities as to nuisances. 36 L.R.A. 603; 23 Am. Rep. 212.

—to forbid use of a polluted water supply. 23 L.R.A.(N.S.) 766.

—to require alteration of private property in a particular manner to abate conditions endangering public health. 24 L.R.A.(N.S.) 241.

Quarantine regulations. 26 L.R.A. 484.

Compulsory vaccination. 25 L.R.A. 152; 26 L.R.A. 728; 17 L.R.A.(N.S.) 709.

§ 4176. Powers of board of health. The board of health may examine into all nuisances, sources of filth and causes of sickness and make such temporary regulations respecting the same as it shall judge necessary for the public health and safety of the inhabitants, but upon taking such action, the board shall immediately report the same to the county superintendent of public health, who shall then take the matter up and give the board specific instructions or proceed to the place and take such action as he may deem necessary for the protection of public health, and each person who violates any order or regulation made by any board of health, and duly published, is guilty of a misdemeanor and is punishable by a fine not exceeding one hundred dollars or by imprisonment in the county jail not exceeding three months. [1913, ch. 59, § 10; R. C. 1905, § 3117; 1883, ch. 112, sub-ch. 1, § 51; R. C. 1899, § 2582.]

Authority of legislature to make punishable failure to comply with rule of health board. 6 L.R.A.(N.S.) 143.

§ 4177. Public notice of orders and regulations. Notice shall be given by the board of health of all orders and regulations made by it, by publishing the same in some newspaper if there is one published in such township or the county; if there is none, then by posting such notice in five public places therein; and such publication of said orders and regulations shall be deemed a legal notice to all persons. [R. C. 1905, § 3118; 1883, ch. 112, sub-ch. 1, § 52; R. C. 1899, § 2583.]

§ 4178. Penalty for refusal to obey order. Whenever any nuisance, source of filth or cause of sickness is found on private property, the board of health shall order the owner or occupant thereof at his own expense to remove the same within twenty-four hours; and if the owner or occupant thereof neglects so to do he shall forfeit a sum not exceeding fifty dollars, to be recovered in the name of and for the use of the township. [R. C. 1905, § 3119; 1883, ch. 112, sub-ch. 1, § 53; R. C. 1899, § 2584.]

Power of health authorities to require alteration of private property in a particular manner to abate conditions endangering public health. 24 L.R.A.(N.S.) 241.

§ 4179. Proceedings on such refusal. Whenever such owner or occupant shall fail to comply with such order of the board of health, said board may cause the said nuisance, source of filth or cause of sickness to be removed, and all expenses incurred thereby shall be paid by such owner or occupant or by the person causing or permitting the same. [R. C. 1905, § 3120; 1883, ch. 112, sub-ch. 1, § 54; R. C. 1899, § 2585.]

Power to fill lowlands at expense of owner. 30 L.R.A.(N.S.) 709.

§ 4180. Board to enter infected premises. Proceedings if opposed. Whenever the board of health deems it necessary for the preservation of the health of its inhabitants to enter any building or vessel in the township for the purpose of examining into and destroying, removing or preventing any nuisance, source of filth or cause of sickness, and shall be refused such entry, any member of the board may make complaint under oath to a justice of the peace of his township, stating the facts in the case so far as he has knowledge thereof. [R. C. 1905, § 3121; 1883, ch. 112, sub-ch. 1, § 55; R. C. 1899, § 2586.]

§ 4181. Warrant to be issued by justice. Such justice shall thereupon issue a warrant directed to the sheriff or any constable of the county, commanding him to take sufficient aid, and being accompanied by two or more members of the board of health, between the hours of sunrise and sunset, to repair to the place where such nuisance, source of filth or cause of sickness complained of may be, and destroy, remove or prevent the same under the direction of the members of such board of health. [R. C. 1905, § 3122; 1883, ch. 112, sub-ch. 1, § 56; R. C. 1899, § 2587.]

§ 4182. Quarantine of infected person. When any person coming from abroad or residing in any city, town or village in this state is infected or lately has been infected with the smallpox or other contagious disease dangerous to the public health, the board of health of the city, town or village where such sick or infected person is, may immediately cause such person to be removed to a separate house if it can be done without danger to his health, and shall provide for such person a nurse, medical attendance and other necessities, which shall be a charge in favor of such city, town or village against the person so provided for, his parents, guardian or master, if able, otherwise against the county to which he belongs, or the state if such person is a nonresident of the state. [R. C. 1905, § 3123; 1883, ch. 112, sub-ch. 1, § 57; R. C. 1899, § 2588.]

Quarantine regulations and their validity. 26 L.R.A. 484; 47 Am. St. Rep. 533.

Pest houses, power of municipalities and other public bodies to establish and to compel the removal of sick persons thereto. 92 Am. Dec. 76.

Right to injunction against sending to pest house. 23 L.R.A.(N.S.) 1188.

§ 4183. Same. When person cannot be moved. If such infected person cannot be removed without danger to his health, the board shall make provision as directed in the preceding section, for such person in the house where he may be, and in such case it may cause the persons in the neighborhood to be removed; and may take such other measures as it deems necessary for the safety of the inhabitants. [R. C. 1905, § 3124; 1883, ch. 112, sub-ch. 1, § 58; R. C. 1899, § 2589.]

§ 4184. Board to provide hospital. When a disease dangerous to the public health breaks out in any township, the board shall immediately provide such hospital or place of reception for the sick and infected as is judged best

for their accommodation and the safety of the inhabitants, which shall be subject to the regulations of the board; and the board may cause any sick and infected person to be removed thereto, unless his condition will not permit such removal without danger to his health, in which case the house or place where he remains shall be considered as a hospital, and with all its inmates subject to the regulations of the board. [R. C. 1905, § 3125; 1883, ch. 112, sub-ch. 1, § 59; R. C. 1899, § 2590.]

ARTICLE 12.—POWERS AND DUTIES OF SUPERVISORS.

§ 4185. Regular meetings. The township board of supervisors shall hold regular meetings on the Tuesday next preceding the annual town meeting (being the second Tuesday of March), and on the Tuesday next succeeding the annual town meeting (being the fourth Tuesday of March), on the second Monday in June and the last Tuesday in October of each year. [R. C. 1905, § 3126; 1899, ch. 160; R. C. 1899, § 2591; 1901, ch. 205; 1903, ch. 200.]

Clerk of township board of supervisors is not authorized to call special session of town board for purpose of passing upon petition relating to sale of intoxicating liquor at retail. *State ex rel. Ketterling v. Gregory*, 26 S. D. 13, 127 N. W. 733, Ann. Cas. 1913A, 40.

§ 4186. Where held. Such meetings shall be held at the office of the township clerk or at the usual place for holding the annual township meetings if there is one. It shall meet not later than ten o'clock a. m. and shall not adjourn before four o'clock p. m. [R. C. 1905, § 3127; 1887, ch. 155, § 2; R. C. 1899, § 2592.]

§ 4187. Business to be transacted. At its meetings in February and June it shall perform all the duties now required of it by law to be transacted at such meetings, and any other business that may legally come before it. [R. C. 1905, § 3128; 1887, ch. 155, § 3; R. C. 1899, § 2593.]

§ 4188. Approve bonds of township officers. At its meeting in March the chairman shall approve the bonds of township officers, and said officers shall immediately enter upon the duties of their office, and shall assess the highway labor and road tax for the ensuing year and perform all the duties required of them in article 13 of chapter 31. [R. C. 1905, § 3129; 1887, ch. 155, § 4; R. C. 1899, § 2594.]

Supervisors levy the highway, labor and road tax, but its expenditure is under control of road overseers. *Aldrich v. Collins*, 3 S. D. 154, 52 N. W. 854.

§ 4189. Audit accounts. At its meeting in October it shall audit accounts, settle with the road overseers and transact any other business that may come before it. [R. C. 1905, § 3130; 1887, ch. 155, § 5; R. C. 1899, § 2595.]

Road overseer supervises expenditure of road tax. *Aldrich v. Collins*, 3 S. D. 154, 52 N. W. 854.

§ 4190. Adjourned and special meetings. It may adjourn from time to time, and in cases of emergency may hold special meetings on call of the clerk on three days' notice. [R. C. 1905, § 3131; 1887, ch. 155, § 6; R. C. 1899, § 2596.]

§ 4191. Business with board. When to appear. It shall be the duty of all persons having business to transact with the board of supervisors of any township to appear before such board at any regular meeting, or file such business with the clerk, to be laid before the board by him at its next meeting. [R. C. 1905, § 3132; 1887, ch. 155, § 7; R. C. 1899, § 2597.]

§ 4192. Powers of supervisors. The supervisors shall have charge of such affairs of the township as are not by law committed to other township officers, and they shall have power to draw orders on the township treasury for the disbursement of such funds as may be necessary for the purpose of defraying the incidental expenses of the township and for all moneys raised by the township to be disbursed for any other purpose and when it shall seem advisable by said board of supervisors they may recommend to the electors of their township the expenditure of a stated amount for the purpose of purchasing building sites and purchase, erection, location or removal of any

building, or erection for a town hall, library building or other erection for use and benefit of said township. [1909, ch. 223, § 2; 1907, ch. 255, § 2; R. C. 1905, § 3133; 1883, ch. 112, sub-ch. 1, § 60; R. C. 1899, § 2598.]

Power of town board to act as determined by place of performance. 33 L.R.A. 86.

Power of town board to appoint officers or make contract for term of office extending beyond its own terms. 29 L.R.A. (N.S.) 652.

§ 4193. Improving streets. Whenever any incorporated village or town which is laid out into streets is included in the limits of an organized township, the township supervisors are authorized to cause improvements to be made in any street that may be needed as a highway if the corporate authorities of such village or town neglect to make such improvements. [R. C. 1905, § 3134; 1883, ch. 112, sub-ch. 1, § 61; R. C. 1899, § 2599.]

Distinction between incorporated town and organized township. *Town of Dell Rapids v. Irving*, 7 S. D. 310, 64 N. W. 149, 29 L.R.A. 861.

§ 4194. Board to prosecute actions. The supervisors shall by their name of office prosecute for the benefit of the township, all actions upon bonds given to them or their predecessors in office; and shall also sue for and collect all penalties and forfeitures in respect to which no other provision is made, incurred by any officer or inhabitant of the township; and they shall have power, in like manner, to prosecute for any trespass committed on any public inclosure, highway or property belonging to the township, and shall pay all moneys collected under this section to the township treasurer. [R. C. 1905, § 3135; 1883, ch. 112, sub-ch. 1, § 62; R. C. 1899, § 2600.]

§ 4195. Quorum of the board. Any two of the supervisors shall constitute a quorum for the performance of any duties required by law of the township supervisors, except when otherwise provided. [R. C. 1905, § 3136; 1883, ch. 112, sub-ch. 1, § 63; R. C. 1899, § 2601.]

ARTICLE 13.—POWERS AND DUTIES OF OFFICERS.

TOWNSHIP CLERK.

§ 4196. Clerks may administer oaths. The township clerks of the several townships, city clerks or auditors of all cities, and recorders of all towns or villages in this state, are authorized to administer oaths and take acknowledgments of instruments, authorized or required by law. [R. C. 1905, § 3137; 1883, ch. 112, sub-ch. 1, § 64; R. C. 1899, § 2602.]

§ 4197. Custody of records. The township clerk shall have the custody of the record books and papers of the township when no other provision is made by law, and he shall duly file and safely keep all certificates of oaths and other papers required by law to be filed in his office. [R. C. 1905, § 3138; 1883, ch. 112, sub-ch. 1, § 65; R. C. 1899, § 2603.]

§ 4198. Deputy. He may at his discretion appoint a deputy, for whose acts he shall be responsible. Before any deputy clerk enters upon the duties of his office he shall take and subscribe the oath required by law, which oath shall be filed in the office of the clerk of the district court. [R. C. 1905, § 3139; 1883, ch. 112, sub-ch. 1, § 65; R. C. 1899, § 2603.]

§ 4199. Shall keep records. The clerk shall record in the book of records of his township, minutes of the proceedings of each township meeting, and enter therein each order or direction and all rules and regulations of any such meeting; and shall also file and preserve all accounts audited by the township board or allowed at a township meeting, and enter a statement thereof in such book of records. [R. C. 1905, § 3140; 1883, ch. 112, sub-ch. 1, § 66; R. C. 1899, § 2604.]

§ 4200. Clerk to give bond and take oath. Each person elected or appointed to the office of township clerk shall, before entering upon the duties of his office and within the time prescribed by law for filing his oath of office, execute a bond with two or more sureties to be approved by the chairman of the township board of supervisors, in such penal sum as the supervisors direct,

conditioned for the faithful discharge of his duties. Such bond so approved shall be filed in the office of the county auditor for the benefit of any person aggrieved by the acts or omissions of such clerk; and any person so aggrieved or the township may maintain an action on such bond against said clerk and his sureties. [1909, ch. 222; R. C. 1905, § 3141; 1883, ch. 112, sub-ch. 1, § 67; R. C. 1899, § 2605.]

§ 4201. Send name of constable to clerk of district court. Each township clerk, immediately after the qualification of any constable elected or appointed in his township, shall transmit to the clerk of the district court of the county the name of such constable. [R. C. 1905, § 3142; 1883, ch. 112, sub-ch. 1, § 68; R. C. 1899, § 2606.]

§ 4202. Send name of justice to clerk of district court. Each township clerk shall immediately after the election of any justice of the peace in his township transmit a written notice thereof to the clerk of the district court of the county, stating therein the name of the person elected and the term for which he is elected; and if elected to fill a vacancy, he shall state in such notice who was the last incumbent of the office. [R. C. 1905, § 3143; 1883, ch. 112, sub-ch. 1, § 69; R. C. 1899, § 2607.]

§ 4203. Penalty for neglect. If any township clerk willfully neglects to make such return he shall be guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding ten dollars. [R. C. 1905, § 3144; 1883, ch. 112, sub-ch. 1, § 70; R. C. 1899, § 2608.]

TOWNSHIP TREASURER.

§ 4204. Duties of treasurer. The township treasurer shall receive and take charge of all moneys belonging to the township or which are by law required to be paid into the township treasury, and shall pay over and account for the same upon the order of such township or the officers thereof duly authorized in that behalf, made pursuant to law, and shall perform all such duties as may be required of him by law. [R. C. 1905, § 3145; 1883, ch. 112, sub-ch. 1, § 71; R. C. 1899, § 2609.]

Township treasurer must keep funds separate. *Aldrich v. Collins*, 3 S. D. 154, 52 N. W. 854.

§ 4205. To keep account of receipts and disbursements. Each township treasurer shall keep a true account of all moneys by him received by virtue of his office, and the manner in which the same are disbursed, in a book provided at the expense of the township for that purpose, and exhibit such account, together with his vouchers, to the township board at its annual meeting, for adjustment; and he shall deliver all books and property belonging to his office and the balance of all moneys in his hands as such treasurer, to his successor in office, on demand after such successor has qualified according to law. [R. C. 1905, § 3146; 1883, ch. 112, sub-ch. 1, § 72; R. C. 1899, § 2610.]

§ 4206. Treasurer to draw moneys from the county. The township treasurer shall, from time to time, draw from the county treasury such moneys as have been received by the county treasurer for the use of his township and on the receipt of such moneys shall deliver proper vouchers therefor. Each township treasurer shall be allowed and entitled to retain two per cent of all moneys paid out of the township treasury, for receiving, safely keeping, and paying over the same according to law; provided, that the township treasurer shall not be allowed two per cent on the balance turned over to his successor. [1913, ch. 87; R. C. 1905, § 3147; 1883, ch. 112, sub-ch. 1, § 73; R. C. 1899, § 2611; 1901, ch. 202.]

§ 4207. Treasurer to make statement. Each township treasurer within five days preceding the annual township meeting shall make out a statement in writing of the moneys by him received into the township treasury from the county treasurer and from all other officers and persons, and also of all

moneys paid out by him as such treasurer, in which statement he shall set forth particularly from whom and on what account such moneys were received by him, with the amount received from each officer or person and the date of receiving the same, also to whom and for what purpose any moneys have been paid out by him, with the amount and date of each payment. He shall also state therein the amount of moneys remaining in his hands as treasurer. Such statement shall be filed by him in the office of the township clerk, and shall be by such clerk carefully preserved and recorded in the township book of records, and a duplicate of such statement shall at the same time be filed by the township treasurer with the county auditor of his county. [R. C. 1905, § 3148; 1883, ch. 112, sub-ch. 1, § 74; 1887, ch. 157, § 1; R. C. 1899, § 2612.]

§ 4208. Penalty for neglect. Each township treasurer who refuses or neglects to comply with the provisions of the four preceding sections shall forfeit not more than two thousand dollars, to be recovered in any court of competent jurisdiction, the amount to be fixed by the jury trying the cause, or by the court, if there is no jury impaneled, and may be recovered by a civil action in the name of the person who prosecutes the same, with costs of the suit; one-half shall go to the person so prosecuting, and the remainder to the township of which such delinquent is or has been treasurer. [R. C. 1905, § 3149; 1883, ch. 112, sub-ch. 1, § 75; R. C. 1899, § 2613.]

§ 4209. Depositing township moneys in own name prohibited. It shall be unlawful for any township treasurer to deposit any moneys belonging to the township in any bank, savings bank, trust company or other fiduciary institution, in his own name. All such moneys shall be deposited in the name of the township, and any interest on such moneys shall be credited to and accrue to the township fund. [1913, ch. 89, § 1.]

§ 4210. Penalty. Any person violating the provision of the preceding section shall be guilty of a misdemeanor. [1913, ch. 89, § 2.]

§ 4211. Warrant record. Indorsement of warrants not paid. Each township treasurer shall keep a suitable book to be provided at the expense of the township in which he shall enter the township orders that he cannot pay for want of funds when presented to him for payment, which orders when presented shall be indorsed by such treasurer by putting upon the back of the same the words "not paid for want of funds," giving the date of such indorsement, signing his name as township treasurer, which order when so indorsed shall bear interest from that date until paid. All township orders shall be paid in the order that they are registered, out of the first moneys that come into the treasurer's hands for such purposes. [R. C. 1905, § 3150; 1883, ch. 112, sub-ch. 1, § 76; R. C. 1899, § 2614.]

Township warrants nonnegotiable. *Gilman v. Township of Gilby*, 8 N. D. 627, 80 N. W. 889.

ASSESSORS.

§ 4212. Assessors, how governed. The township assessor shall be governed by and make assessments and returns as provided in the chapter on revenue and taxation of this code, and shall be paid for his service out of the township treasury. [R. C. 1905, § 3151; 1879, ch. 59, § 55; R. C. 1899, § 2615.]

ARTICLE 14.—BOARD OF AUDITORS.

§ 4213. Supervisors to audit accounts. The supervisors constitute a board of audit for the purpose of auditing all accounts payable by the township; and if for any cause there are not three supervisors present to constitute such board the chairman, and in his absence either of the supervisors may notify any one or as many of the justices of the peace of the township as will, together with the supervisors present, make a board of three; and the board so constituted shall have authority to act as the township board. [R. C. 1905, § 3152; 1883, ch. 112, sub-ch. 1, § 77; R. C. 1899, § 2616.]

§ 4214. Meetings of board. Auditing accounts of treasurer. The board shall meet on the Tuesday next preceding the annual township meeting and on the last Tuesday of October in each year, and at such other times as it deems necessary and expedient for the purpose of auditing and settling all charges against the township, and it shall state on each account the amount allowed by it; but no allowance shall be made for any account which does not specifically state each item of the same and the nature thereof. At the regular meeting on the Tuesday next preceding the annual town meeting (being the second Tuesday of March) in each year, the board shall examine and audit the accounts of the township treasurer for all moneys received and disbursed by him as such officer; and at said meeting shall audit the accounts of all other township officers who are authorized by law to receive or disburse any money of the township by virtue of their offices. [1909, ch. 225; R. C. 1905, § 3153; 1883, ch. 112, sub-ch. 1, § 78; 1887, ch. 155, § 5; R. C. 1899, § 2617.]

Presentation of claim for audit not a condition precedent to bringing suit. Short v. Township, 8 S. D. 148, 65 N. W. 432.

§ 4215. Board to report accounts audited and allowed. Such board shall make a report, stating in detail the items of account audited and allowed, the nature of each account, and the name of the person to whom such account was allowed, including a statement of the fiscal concerns of the township, and an estimate of the sum necessary for the current expenses thereof, the support of the poor and other incidental expenses for the ensuing year. [R. C. 1905, § 3155; 1883, ch. 112, sub-ch. 1, § 80; R. C. 1899, § 2619.]

§ 4216. Report to be read at township meeting. Such report shall be produced and publicly read by the township clerk at the next ensuing township meeting, and the whole or any portion of such report may be referred by order of the meeting to a committee, whose duty it shall be to examine the same and report thereon to such meeting. [R. C. 1905, § 3156; 1883, ch. 112, sub-ch. 1, § 81; R. C. 1899, § 2620.]

§ 4217. Treasurer shall pay all orders. The amount of any account audited and allowed by the board and the amount of any account voted to be allowed at any township meeting shall be paid by the township treasurer on the order of the board signed by the chairman and countersigned by the clerk; and all orders issued to any person by the board for any sum due from such township shall be receivable in payment of township taxes of such township. [R. C. 1905, § 3157; 1883, ch. 112, sub-ch. 1, § 82; R. C. 1899, § 2621.]

§ 4218. Clerk of the board of supervisors. The township clerk shall be clerk of the township board, and shall keep in his office a true record of all its proceedings. [R. C. 1905, § 3158; 1883, ch. 112, sub-ch. 1, § 83; R. C. 1899, § 2622.]

ARTICLE 15.—FEES OF OFFICERS.

§ 4219. Compensation of assessor. The township assessor shall receive for his services three dollars per day for each day necessarily devoted by him to the service of the township while engaged in his duties as such assessor; provided, that such compensation shall not exceed the sum of sixty dollars in any one congressional township. [R. C. 1905, § 3159; 1883, ch. 112, sub-ch. 1, § 86; 1889, ch. 126, § 1; R. C. 1895, § 2623.]

§ 4220. Compensation of clerk and supervisors. The township clerk and supervisors shall receive for their services one dollar and fifty cents per day for each day necessarily devoted by them to the service of the township when attending to business in their township, and two dollars when attending to business out of the township; no township supervisor shall receive more than thirty-five dollars compensation in any one year; provided, that the township clerk shall be paid fees for the following, and not a per diem: For serving notices of election upon township officers, as required by law, twenty-five cents each; for filing any paper required by law to be filed in his office, ten cents each; for posting notices required by law, twenty-five cents

each; for recording any order or any instrument or writing authorized by law, ten cents for each one hundred words; for copying any record or instrument on file in his office and certifying the same, ten cents for each one hundred words, to be paid for by the person applying for the same. [R. C. 1905, § 3160; 1883, ch. 112, sub-ch. 1, § 86; R. C. 1899, § 2624.]

§ 4221. **Compensation, increasing or reducing.** At any township meeting before the electors commence balloting for officers they may by resolution reduce or increase the compensation of officers, but no such increase shall exceed one hundred per cent. [R. C. 1905, § 3161; 1883, ch. 112, sub-ch. 1, § 86; R. C. 1899, § 2625.]

ARTICLE 16.—CLAIMS AGAINST TOWNSHIPS OR COUNTIES.

§ 4222. **Claims against townships. Accounts stated, how.** Before any account, claim or demand against any township or county of this state for any property or services for which such township or county shall be liable shall be audited or allowed by the board or officers authorized by law to audit and allow the same, the person in whose favor such account, claim or demand shall be, or his agent, shall reduce the same to writing in items and shall verify the same to the effect that such account, claim or demand is just and true, that the money therein charged was actually paid for the purposes therein stated, or that the property therein charged for was actually delivered or used for the purposes therein stated and was of the value therein charged, or that the services therein charged were actually rendered and of the value therein charged, or in case such services were official for which fees are prescribed by law then that the fees or amounts charged therefor are such as are allowed by law; and that no part of such account, claim or demand has been paid; provided, that the provisions of this article shall not apply to any claim or demand for an annual salary or per diem of jurors or witnesses fixed by or in pursuance of any statute. [R. C. 1905, § 3162; 1883, ch. 112, sub-ch. 1, § 87; R. C. 1899, § 2626.]

Powers and duties of board of county commissioners. *State ex rel. Wiles v. Heinrich*, 11 N. D. 31, 88 N. W. 734.

Acceptance of warrant for claim against county, which has been duly presented and allowed in part, is presumed to be in full of claims presented. *Paulson v. Ward County*, 23 N. D. 601, 42 L.R.A.(N.S.) 111, 137 N. W. 486.

Liability of township on negotiable paper executed by officer of town. 21 L.R.A.(N.S.) 1078.

§ 4223. **Accounts must be verified.** The verification required by the preceding section may be made before any officer authorized by law to administer oaths, or before any member of the board to which the account, claim or demand shall be presented to be audited, and each member of such board is hereby authorized to administer the proper oath in such cases; and each person who willfully or knowingly swears falsely on any such claim shall be deemed guilty of perjury and be punished accordingly. [R. C. 1905, § 3163; 1883, ch. 112, sub-ch. 1, § 88; R. C. 1899, § 2627.]

§ 4224. **What accounts need not be verified.** In case any such account, claim or demand shall be made or presented by any administrator or executor on behalf of the estate of a deceased person he shall not be required to verify the same, but may prove the same otherwise to the satisfaction of the board. [R. C. 1905, § 3164; 1883, ch. 112, sub-ch. 1, § 88; R. C. 1899, § 2628.]

§ 4225. **Consideration of account and action thereon.** Whenever an account, claim or demand against any township or county shall have been verified in the manner prescribed in this article, the board to whom the same is presented may receive and consider the same and may allow or disallow the same in whole or in part, as to such board or officers shall appear just or lawful, saving to such claimants the right of appeal. [R. C. 1905, § 3165; 1883, ch. 112, sub-ch. 1, § 89; R. C. 1899, § 2629.]

Right of town authorities to reconsider action as to allowance of claim. 21 L.R.A.(N.S.) 289.

Right of town to surrender valid claim upon partial payment thereof. 19 L.R.A. (N.S.) 320.

§ 4226. **Penalty for auditing an account not verified.** Any member of such board who shall audit and allow any account, claim or demand required by this article to be itemized and verified, without the same having been first duly itemized and verified, shall be deemed guilty of a misdemeanor and be punished by a fine of not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both. [R. C. 1905, § 3166; 1883, ch. 112, sub-ch. 1, § 90; R. C. 1899, § 2630.]

§ 4227. **Claims against counties offset by taxes due.** It shall be the duty of the board of county commissioners of any county in this state, when any bill or claim is presented to them to be audited in favor of any person, corporation or society to ascertain from the tax records of such county if the person, corporation or society to whom said credit originally accrued or presenting same is indebted to any school district, municipal corporation, county or state for personal taxes due or delinquent, and if such indebtedness shall be found to exist, to deduct the same from the bill so presented. Or if the taxes shall exceed the demands so presented, then to have the claim entered as a credit on the tax books of such county in favor of the person, corporation or society to whom said credit originally accrued, if found to be indebted for taxes due or delinquent as above provided. If no such indebtedness exists against such party, then to deduct any part due or delinquent taxes owing by the person, corporation or society presenting same and the right to offset such taxes shall be deemed to have accrued from the day the county became indebted to any person, corporation or society. Any sale, transfer or assignment thereof shall not defeat the right of the county to make such credit or offset. [R. C. 1905, § 3167; 1901, ch. 162.]

ARTICLE 17.—SUITS BY AND AGAINST TOWNSHIP.

§ 4228. **Proceedings in.** Whenever any controversy or cause of action exists between townships or between a township and an individual or corporation, a civil action may be commenced and prosecuted for the purpose of trying and settling such controversy, and the same shall be conducted in the same manner, and the judgment therein shall have the like effect, as in other actions or proceedings of a similar kind between individuals and corporations. [R. C. 1905, § 3168; 1883, ch. 112, sub-ch. 1, § 91; R. C. 1899, § 2631.]

When limitations begin to run against action on township warrant. 10 L.R.A. (N.S.) 478.

§ 4229. **Township to sue in its name.** In all such actions and proceedings the township shall sue and be sued in its name, except where township officers are authorized by law to sue in their name of office for the benefit of the township. [R. C. 1905, § 3169; 1883, ch. 112, sub-ch. 1, § 92; R. C. 1899, § 2632.]

§ 4230. **Service, on whom.** In legal proceedings against a township by name all papers shall be served on the chairman of the board of supervisors, and in case of his absence on the township clerk, and whenever any action or proceeding is commenced the chairman shall attend to the defense thereof, and lay before the electors of the township at the first township meeting a full statement of such proceedings, for their election in regard to the defense thereof. [R. C. 1905, § 3170; 1883, ch. 112, sub-ch. 1, § 94; R. C. 1899, § 2633.]

§ 4231. **Jurisdiction.** No action in favor of any township shall be brought before any justice of the peace residing in such township. [R. C. 1905, § 3171; 1883, ch. 112, sub-ch. 1, § 95; R. C. 1899, § 2634.]

§ 4232. **Recovery in cases of trespass.** Whenever any action is brought to recover a penalty imposed for any trespass committed on the lands belonging to the township, if it appears on the trial thereof that the actual amount of injury to such township lands in consequence of such trespass exceeds the

sum of twelve dollars and fifty cents, then the amount of actual damage with costs of suit shall be recovered in such action, instead of any penalty for such trespass imposed by the township meeting, and such recovery shall be a bar to all other actions for the same trespass. [R. C. 1905, § 3172; 1883, ch. 112, sub-ch. 1, § 96; R. C. 1899, § 2635.]

§ 4233. Court may partition lands, when. Whenever by judgment or decision in any action or proceeding brought to settle any controversy in relation to township commons or other lands, the common property of a township, or for the partition thereof, the rights of any township are settled and confirmed, the court in which such proceedings are had may partition such lands according to the rights of the parties. [R. C. 1905, § 3173; 1883, ch. 112, sub-ch. 1, § 97; R. C. 1899, § 2636.]

§ 4234. Payment of judgment. When a judgment is recovered against any township or against any township officers in an action prosecuted by or against them in their name of office, no execution shall be awarded or issued upon such judgment, but the same, unless reversed or stayed on appeal, shall be paid by the township treasurer upon demand and the delivery to him of a certified copy of the docket of the judgment, if there is sufficient money of such township in his hands not otherwise appropriated. If he fails to do so he shall be personally liable for the amount, unless the collection thereof is afterwards stayed upon appeal. If payment is not made within thirty days after the time fixed by law for the county treasurer to pay over to the township treasurer the money in his hands belonging to such township levied for the purpose of paying such judgment, next after the rendition of such judgment, execution may be issued, but only township property shall be liable thereon. [R. C. 1905, § 3174; 1883, ch. 112, sub-ch. 1, § 98; R. C. 1899, § 2637.]

§ 4235. When judgment is not satisfied. If judgment for the recovery of money is rendered against any township, and the judgment is not satisfied or proceedings thereon stayed by appeal or otherwise before the next annual meeting of the township, a certified copy of the docket of the judgment may be presented to such township, at said annual meeting. The supervisors of the township shall thereupon cause the amount due on the judgment, with interest from the date of its recovery, to be added to the tax of such township and the same certified to the county auditor and collected as other township taxes are collected. [R. C. 1905, § 3175; 1883, ch. 112, sub-ch. 1, § 99; R. C. 1899, § 2638.]

ARTICLE 18.—TOWNSHIP CHARGES AND LEVIES.

§ 4236. Township charges, what are. The following shall be deemed township charges:

1. The compensation of township officers for services rendered their respective townships.
2. Contingent expenses necessarily incurred for the use and benefit of the township.
3. The moneys authorized to be raised by the vote of the township meeting for any township purpose.
4. Each sum directed by law to be raised for any township purpose; provided, that no tax for township purposes shall exceed the amount voted to be raised at the annual meeting as provided in section 1540. [R. C. 1905, § 3176; 1883, ch. 112, sub-ch. 1, § 100; R. C. 1899, § 2639; 1903, ch. 172.]

§ 4237. Clerk to notify county auditor of levy. It is the duty of the township clerk immediately after the board of supervisors have made the levy of taxes, or within three days thereafter, to notify the county auditor of the amount levied, who shall enter the same on the county tax list, to be collected by the county treasurer as county taxes are collected. [R. C. 1905, § 3177; 1879, ch. 59, § 33; R. C. 1899, § 2641.]

See also section 2149.

ARTICLE 19.—BOOKS AND PAPERS OF OUTGOING OFFICERS.

§ 4238. **Successor in office to demand records.** Whenever the term of any supervisor, township clerk or assessor expires, and another person is appointed or elected to such office, such successor immediately after he enters upon the duties of his office shall demand of his predecessor all books and papers under his control belonging to such office. [R. C. 1905, § 3178; 1883, ch. 112, sub-ch. 1, § 102; R. C. 1899, § 2642.]

§ 4239. **Same, vacancy.** Whenever either of the officers above named resigns, or the office becomes vacant in any way, and another person is elected or appointed in his stead, the person so elected shall make such demand of his predecessors or of any person having charge of such books and papers. [R. C. 1905, § 3179; 1883, ch. 112, sub-ch. 1, § 103; R. C. 1899, § 2643.]

§ 4240. **Records to be delivered.** Each person so going out of office, whenever thereto required pursuant to the foregoing provisions, shall deliver upon oath all records, books and papers in his possession or under his control, belonging to the office held by him, which oath may be administered by the officer to whom such delivery is made. [R. C. 1905, § 3180; 1883, ch. 112, sub-ch. 1, § 104; R. C. 1899, § 2644.]

§ 4241. **Demand for records in case of death.** Upon the death of any of the officers enumerated, the successor of such officer shall make such demand as above provided of the executor or administrator of such deceased officer, and such executor or administrator shall deliver upon like oath all records, books, papers or moneys in his possession or under his control, belonging to the office held by his testator or intestate. [R. C. 1905, § 3181; 1883, ch. 112, sub-ch. 1, § 105; R. C. 1899, § 2645.]

ARTICLE 20.—SECTION CORNERS.

§ 4242. **Township supervisors to employ surveyors to run lines and erect monuments on corners.** Whenever it appears advisable to any board of township supervisors in this state to erect permanent monuments to perpetuate the boundaries as fixed by the United States survey, they may employ a competent surveyor or civil engineer to run the lines and to mark the section corners, and may on the corners so marked place a stone monument eight inches square on each end, and fifteen inches long, which monument shall be buried in the earth so that one end thereof eight inches square shall be flush with the surface of the road or grade, and so that the center thereof shall mark the intersection of the four section lines converging at that point, and so that the said lines shall run diagonally across the face of the said stone monument. [R. C. 1905, § 3182; 1905, ch. 180, § 1.]

Location of land marks only presumptively correct. *Webster v. White*, 8 S. D. 479, 66 N. W. 1145.

§ 4243. **When petitioned, supervisors shall call election to vote on question of placing monuments.** Whenever the township supervisors of any organized township in this state shall be petitioned by not less than twelve freeholders of said township to call an election to ascertain the will of the majority of the voters of said township on the question of erecting such monuments, the said board of township supervisors shall submit the question of whether or not such monuments shall be placed in said township, which election shall be held the same time as the usual spring election for township officers, and if a majority of those voting in said township at such spring election vote in favor of erecting said monuments, then the said board of township supervisors shall immediately thereafter cause such monuments to be placed as provided in section 3182. [R. C. 1905, § 3183; 1905, ch. 180, § 2.]

§ 4244. **Cost of monuments to be charged to townships.** Whenever it is decided by the board of township supervisors of any organized township to erect such monument, or whenever, as the result of an election, the township board proceeds to erect said monuments the cost thereof shall be a proper

charge upon the funds of said township and the township board is authorized to pay the cost thereof, or to lay a tax upon the property of the township for the purpose of paying the same. [R. C. 1905, § 3184; 1905, ch. 180, § 3.]

§ 4245. Penalty for destroying or removing. Any person who shall destroy, remove, deface or in any way injure or damage such monuments, when so erected, shall be deemed guilty of a misdemeanor. [R. C. 1905, § 3185; 1905, ch. 180, § 4.]

§ 4246. Board authorized to establish monuments in unorganized townships. The board of county commissioners shall have the same authority to establish, fix and erect monuments in unorganized townships as is given township boards of supervisors under the provisions of this article, and also for the establishment of lost corners. [R. C. 1905, § 3186; 1905, ch. 180, § 5.]

ARTICLE 21.—GUIDE POSTS.

§ 4247. Township to erect guide posts. Each township shall erect and maintain guide posts on the highways and other ways within the township, at such places as are necessary or convenient for the direction of travelers. [1913, ch. 86; R. C. 1905, § 3187; 1883, ch. 112, sub-ch. 1, § 106; R. C. 1899, § 2646.]

ARTICLE 22.—PUBLIC PLACES.

§ 4248. Voters shall designate. At the annual township meeting in each year the legal voters present at each meeting shall determine and designate three places in the township as public or the most public places of such township, and that all legal notices required to be posted in three public or the most public places of a township shall be posted at such places at least, and they shall make provision for the erection and maintenance of posts on which to post notices as aforesaid in all places so designated, in which there is no sufficient natural convenience for that purpose. [R. C. 1905, § 3192; 1883, ch. 112, sub-ch. 1, § 111; R. C. 1899, § 2651.]

ARTICLE 23.—POUNDS AND POUND MASTERS.

§ 4249. Pounds located. Whenever the electors of any township determine at their annual township meeting to erect one or more pounds therein, the same shall be under the care and direction of such pound masters as are chosen or appointed for that purpose. [R. C. 1905, § 3193; 1883, ch. 112, sub-ch. 1, § 112; R. C. 1899, § 2652.]

Liability of municipality for impounding animals. 27 L.R.A.(N.S.) 138.

§ 4250. Discontinuing pounds. The electors of any township may at any annual township meeting discontinue any pounds therein. [R. C. 1905, § 3194; 1883, ch. 112, sub-ch. 1, § 113; R. C. 1899, § 2653.]

§ 4251. Fees of pound master and notice of taking up estrays. Sales. The pound master is allowed to charge and collect the following fees: For taking into pound or discharging therefrom any horse, ass or mule, and all neat cattle, twenty cents each; for every sheep or lamb, ten cents each; and for every hog, large or small, ten cents each; and twenty-five cents for keeping each twenty-four hours in pound; and the pound master has a lien on all such animals for the full amount of his legal charges and expenses, and shall be entitled to the possession of such animals until the same are paid; and if the same are not paid and said animals removed within ten days after they are impounded the pound master shall give notice as provided in chapter 117 of the session laws of 1907, and also by posting in three of the most public places in the township, notices that said animals, describing them, are impounded, and that unless the same are taken away and fees paid within thirty days after the date of such notice, he will sell the same at public vendue at the place where the township meetings of such township are usually held; and on the day designated in such notice the pound master shall expose such animals

for sale and sell the same to the highest bidder for cash, for which service he shall receive two per cent of the purchase money for each animal. [1909, ch. 121; R. C. 1905, § 3195; 1883, ch. 112, sub-ch. 1, § 114; R. C. 1899, § 2654.]

"Chapter 117 of the session laws of 1907, to which this section refers, was amended in 1913 and now constitutes section 2658 herein.

§ 4252. Proceeds, disposition of. Out of the money realized from such sale the pound master shall deduct all his legal fees and charges and pay the balance, if any, to the chairman of the township supervisors, at the same time giving to the supervisors an accurate description of the animals sold and the amount received by him for each animal, and shall take a receipt and duplicate therefor and file one of them with the township clerk; provided, the supervisors shall at any time within six months, upon sufficient proof from the owner of any animal so sold, pay to such owner the balance due as received from said pound master; but if said money is not claimed within that time then the sum so received shall be retained for the use of the township; provided, that in unorganized townships and in townships which have been dissolved as civil townships, the county commissioners are hereby authorized on the petition of a majority of the legal voters of such townships to do and perform any and all acts that the electors might do of a civil township as prescribed in sections 3193, 3194 and 3195. [R. C. 1905, § 3196; 1899, ch. 121; R. C. 1899, § 2655.]

ARTICLE 24.—DEBTS AND BONDS.

§ 4253. Limit of debt of townships. No township has power to contract debts or make expenditures for any one year in a larger sum than the amount of taxes assessed for such year without having been authorized by a majority of the voters of such township, and no township shall assess for township purposes more than ten mills on the dollar of taxable property for any one year. [R. C. 1905, § 3197; 1883, ch. 112, sub-ch. 1, § 115; R. C. 1899, § 2656.]

Supervisors not empowered to create future indebtedness without electors' authority. *F. C. Austin Mfg. Co. v. Twin Brooks Twp.*, 16 S. D. 129, 91 N. W. 470.

On what basis majority essential to adoption of proposition for issuing municipal bonds is to be computed. 22 L.R.A. (N.S.) 478.

§ 4254. Bonds of townships issued. How and when. The boards of supervisors of the organized townships of this state, or those that may hereafter be organized, are authorized and empowered to issue the bonds or orders of their respective townships, with coupons attached, and in such amounts and at such periods as they may be directed by two-thirds of the legal voters present and voting at any legally called township meeting held for that purpose; such bonds or orders to be payable in such amounts and at such times, not exceeding twenty years from date, as two-thirds of the legal voters present and voting at such meeting shall determine, with interest thereon not to exceed seven per cent per annum, payable annually, which bonds or orders and coupons shall be signed by the chairman of the board of supervisors and countersigned by the clerk of the township; provided, that nothing herein contained shall be construed to authorize the issuing of such bonds or orders unless the same shall have first been voted for by ballot by two-thirds of all legal voters present and voting at any annual or special township meeting called for that purpose, notices of which, particularly specifying the object for which such meeting was called, have been posted in at least three public places in the township for not less than ten days prior to the time of calling the same. Provided, further, that any township may in the manner provided in this section issue bonds to aid in the construction of a bridge across a navigable stream on the boundary line of its county even though a portion of such bridge may be located within the corporate limits of a city. [1911, ch. 307; 1909, ch. 224; R. C. 1905, § 3198; 1883, ch. 112, sub-ch. 1, § 116; R. C. 1899, § 2657.]

Holders as necessary parties to proceedings to invalidate moneyed obligations of towns. 3 L.R.A. (N.S.) 256.

§ 4255. Bonds must be sold at par. No bonds or orders issued under the authority of this article shall be issued or negotiated for less than par value; nor shall such bonds or orders or the proceeds thereof be used or appropriated for any purpose whatever other than as specified in this article. [R. C. 1905, § 3199; 1883, ch. 112, sub-ch. 1, § 117; R. C. 1899, § 2658.]

Accrued interest as part of par value within prohibition against sale of bonds at less than par. 35 L.R.A.(N.S.) 789.

Payment of commissions for sales of bonds as violating requirement that bonds shall not be sold for less than par. 39 L.R.A.(N.S.) 248.

§ 4256. Levying bond tax. The board of supervisors and its successors are authorized and it is their duty on or before the first day of September next after the date of such bonds or orders, and in each and every year thereafter on or before the first day of September, until the payment of such bonds or orders and interest is fully provided for, to levy and in due form to certify to the county auditor of the county in which said township is situated, a tax upon the taxable property of the township equal to the amount of principal and interest maturing next after such levy, and in the discretion of the board, such further sums as it shall deem expedient, not exceeding twenty per cent of such maturing bonds or orders and interest, which taxes shall be payable in money and shall constitute a fund for the payment of said bonds or orders and the interest thereon. [R. C. 1905, § 3200; 1883, ch. 112, sub-ch. 1, § 118; R. C. 1899, § 2659.]

ARTICLE 25.—REFUNDING BONDS.

§ 4257. To be issued when. Each organized township in this state is authorized and empowered by and through its board of supervisors, when in the judgment of such board it is deemed for the best interests of the township, to issue its negotiable bonds in the name of such township for the sole purpose of refunding any outstanding bonded indebtedness of such township. [R. C. 1905, § 3201; R. C. 1895, § 2660.]

§ 4258. Issuance, how determined. Denomination. Form. The necessity of issuing and negotiating bonds under the provisions of this article shall be determined by the board of supervisors of such township. Such bonds shall be in denominations of not more than one thousand dollars nor less than one hundred dollars, shall bear the date of their issue and shall be made payable to the purchaser or bearer, and be payable in not less than five nor more than fifteen years from their date; and shall bear interest at a rate not higher than the bonds refunded and shall have coupons attached for each interest payment; such bonds and coupons shall be signed by the chairman of the board of supervisors and shall be attested by the township clerk. Each bond shall state on its face that it is issued in accordance with this article. Such bonds may be made payable at such place as may be agreed upon. [R. C. 1905, § 3202; R. C. 1895, § 2661.]

§ 4259. Record to be kept. A record of each bond so issued shall be kept by the township clerk, showing the number of each bond, its date, amount, rate of interest, when and where payable, the amount received therefor, to whom sold and how the proceeds were disposed of. [R. C. 1905, § 3203; R. C. 1895, § 2662.]

§ 4260. Annual tax to pay principal and interest. At or before the time of issuing any bonds pursuant to the provisions of this article, it shall be the duty of the board of supervisors to provide for the collection of an annual tax sufficient to pay the interest and also the principal thereof when due. [R. C. 1905, § 3204; R. C. 1895, § 2663.]

§ 4261. Payment of, at maturity. Cancellation. When such bonds and the coupons thereto attached mature it shall be the duty of the township treasurer to pay the same on presentation out of any funds in his hands applicable thereto; and he shall then properly cancel the same. [R. C. 1905, § 3205; R. C. 1895, § 2664.]

ARTICLE 26.—IRRIGATION.

§ 4262. Petition. Election. Whenever ten legal voters of any organized township petition the township board fifteen days previous to any annual township meeting to submit the question of irrigation by building dams to create ponds or reservoirs on any of the creeks or coulees in the township, it shall be the duty of the board to submit the question to the voters at the next annual township meeting and the township clerk shall cause three notices to be posted specifying the place and nature of such proposed improvements. [R. C. 1905, § 3206; 1890, ch. 43, § 1; R. C. 1895, § 2665.]

§ 4263. Tax. Whenever two-thirds of the legal voters of any organized township in this state, at their annual township meeting, agree that it is advisable and for the public good that certain specified creeks or coulees should be improved to increase the water supply and for the purpose of irrigation, it shall be lawful for such voters to levy a tax upon said township, to be expended in building dams to create ponds and reservoirs, by and under the direction of the board of supervisors of the township; provided, such improvements shall be wholly in said township; and no lands shall be flooded without the consent of the owner or without just compensation therefor, which compensation shall be determined as provided in the chapter on eminent domain in the code of civil procedure. [R. C. 1905, § 3207; 1890, ch. 43, § 2; R. C. 1895, § 2666.]

Taking of property for irrigation as a public purpose. 22 L.R.A.(N.S.) 162.

§ 4264. Maximum levy. The tax authorized to be levied by the last section shall not exceed two mills on the dollar of the assessed valuation of the township. [R. C. 1905, § 3208; 1890, ch. 43, § 3; R. C. 1899, § 2667.]

ARTICLE 27.—CONTRACT SYSTEM OF HIGHWAY LABOR.

§ 4265. Township boards have supervision over. The several township boards of organized townships in the state shall have general supervision over the roads, highways and bridges throughout their several townships. [R. C. 1905, § 3209; 1895, ch. 91, § 1; R. C. 1899, § 2668.]

Township immune from liability for the acts or negligence of its officers as to repairs of roads and defective bridges. Township acts merely as the instrumentality of the state. *Vail v. Town of Amenia*, 4 N. D. 239, 59 N. W. 1092.

Township not liable for loss suffered by land owner from increased flow of surface water, resulting solely from improvement of a highway, without negligence. *Carroll v. Township of Rye*, 13 N. D. 458, 101 N. W. 894.

Right of town to collect tolls for use of bridge or highway. 42 L.R.A.(N.S.) 836.

Liability of township for defects in highways. 13 L.R.A.(N.S.) 1219.

—for obstruction or defect outside of traveled portion of highway. 40 L.R.A.(N.S.) 182.

—for injury to employe engaged in repairing highway. 41 L.R.A.(N.S.) 1074.

—for injury by interference of bridge with flow of water. 59 L.R.A. 856.

Effect on liability for injury on defective highway of division of territory of town. 39 L.R.A.(N.S.) 285.

Duty of town to maintain barriers along rural highway or bridges. 42 L.R.A. 267.

—to provide barriers to protect traveler from obstructions outside of highway. 20 L.R.A.(N.S.) 980.

§ 4266. Plans and specifications. The several township boards whenever in their judgment it is for the best interest of the township may at the next annual meeting cause a vote to be taken by a ballot on which shall be written or printed the words "for contract system," "against contract system," and if a majority of the votes cast are in favor of the contract system then the township board shall at the next meeting succeeding the annual meeting advertise in one of the county papers for bids for two successive weeks for the improvement and repairing of highways and bridges in its township in the following manner:

1. The board shall furnish plans and specifications for all work and improvements to be done and performed in the several townships which shall be filed in the office of the township clerk.

2. It shall at the time of advertising for bids give at least ten days' notice, to be posted in conspicuous places in said township, that bids will be received at a time and place mentioned in said notice, and said contracts shall be let to the lowest bidder in accordance with such plans and specifications as are furnished by said board, and the said board shall require upon the letting of such contract or contracts a good and sufficient bond for the faithful performance of the work to be done and performed in said contract, and said board shall have authority to reject any and all bids. Whenever the "contract system" has been adopted, as provided herein, township road taxes shall be paid in money only. [R. C. 1905, § 3210; 1899, ch. 141; R. C. 1899, § 2669.]

§ 4267. **Special fund.** All moneys raised in pursuance of the provisions hereof shall constitute a special fund for the improvement of highways and shall be collected, paid out and expended in the manner provided for warrants drawn on the treasurer of each township for general expenses thereof, and such fund shall be kept separate and shall not be used for any other purpose whatsoever. [R. C. 1905, § 3211; 1895, ch. 91, § 4; R. C. 1899, § 2671.]

§ 4268. **Assessments, how collected.** Upon failure to pay any tax assessed for the purposes herein named the same shall become delinquent and shall be collected in the same manner as other taxes. [R. C. 1905, § 3212; 1895, ch. 91, § 5; R. C. 1899, § 2672.]

§ 4269. **Road machinery.** In townships owning road machinery, the township board shall have authority to make such disposition of the same as in its discretion is best for the interests of the township, or it may purchase or lease such machinery as may be necessary for the purpose of carrying out the provisions hereof, and the performance of contracts in reference thereto; provided, that no machinery shall be purchased or sold to exceed in value the sum of two hundred and eighty dollars, except such sale or purchase shall be ordered at the annual township meeting by a majority vote of the legal voters of such township assembled at such meeting or at a special election called for that purpose by said board upon petition of twelve freeholders of said township. [1911, ch. 146; R. C. 1905, § 3213; 1895, ch. 91, § 6; R. C. 1899, § 2673; 1905, ch. 181.]

Supervisors' purchase of road machine must be authorized by electors. *F. C. Austin Mfg. Co. v. Township*, 16 S. D. 126, 91 N. W. 470.

ARTICLE 28.— MISCELLANEOUS.

§ 4270. **Officers not to be interested in contracts.** No township officer shall become a party to or be interested directly or indirectly in any contract made by the board of which he may be a member; and every contract or payment voted for or made contrary to the provisions of this section is void; and any violation of this section shall constitute malfeasance in office which will subject the officer so offending to be removed from office. [R. C. 1905, § 3214; 1883, ch. 112, sub-ch. 1, § 119; R. C. 1899, § 2674.]

§ 4271. **Election districts.** Each township organized under this chapter, or any law heretofore in force, constitutes an election district. [R. C. 1905, § 3215; 1883, ch. 112, sub-ch. 1, § 120; R. C. 1899, § 2675.]

§ 4272. **City to have same powers as township.** Nothing in this chapter contained shall in any way apply to any portion of the state which is embraced within the limits of any incorporated city; but each incorporated city shall have and exercise within its limits, in addition to its powers, the same powers conferred by this chapter upon townships in the manner prescribed by law. [R. C. 1905, § 3216; 1883, ch. 112, sub-ch. 1, § 121; R. C. 1899, § 2676.]

§ 4273. **Constable, powers of.** Any constable in any organized township containing any village not incorporated, shall be a proper officer for arresting and detaining any person for disorderly conduct within the village arising from drunkenness or otherwise, without process first issuing, and any

person deemed guilty of such disorderly conduct shall be taken before any justice of the peace of such township, and upon conviction thereof be fined in the sum of not less than five nor more than ten dollars and all costs arising from such complaint and trial. [R. C. 1905, § 3217; 1879, ch. 59, § 95; R. C. 1899, § 2677.]

§ 4274. To provide for confinement of prisoners. Any township with any such village not incorporated shall at the annual township meeting have power to vote any appropriations necessary for providing a place of confinement, and may adopt such regulations as may be necessary in relation thereto. [R. C. 1905, § 3218; R. C. 1899, § 2678.]

Right of action for imprisonment in unhealthful or unfit prison or jail. 36 L.R.A. 293; 2 L.R.A. (N.S.) 95.

Liability of municipality for tort in connection with jails and prisons. 25 L.R.A. (N.S.) 98.

— for negligence or other tort of keeper or inmate of municipal prison. 25 L.R.A. (N.S.) 180.

— for injury to neighboring property from maintenance of prison. 34 L.R.A. (N.S.) 461.

§ 4275. Notice to be given. Any township providing such place of confinement shall cause notice thereof to be published in the newspaper having the largest circulation in such township, if there is any, or cause the township clerk to post notice thereof in three of the most public places in such township. [R. C. 1905, § 3219; R. C. 1899, § 2769.]

§ 4276. Convicted person confined. Any person convicted under the preceding sections shall be confined in the calaboose until all fines and costs are paid, not less than one day nor more than ten days. [R. C. 1905, § 3220; R. C. 1899, § 2680.]

ARTICLE 29.—DISSOLUTION OF TOWNSHIPS.

§ 4277. Petition for dissolution. Notice of elections. What notice shall specify. When an application signed by one-third of the legal voters of any organized civil township within this state shall be presented to the board of supervisors of such civil township, in writing, at least ten days prior to the fourth Monday of June in any year, asking for a dissolution of the civil township, setting forth the reasons therefor, such petition shall be considered by such board of supervisors at its regular meeting on the fourth Monday in June in such year, and it shall be competent for the board, if it deems the reasons good, to call a meeting of the voters of such civil township, by giving at least ten days' notice thereof, to determine whether such civil township shall be dissolved. Said notice shall be signed by the town clerk of such civil township, and shall be by him posted in five of the most public places in such civil township, at least ten days prior to such meeting of said voters, and also, if there is a newspaper published in such civil township, he shall cause a copy of such notice to be published once therein, at least five days before the time appointed for such meeting. Each notice given for such a meeting shall specify the purpose for which it is to be held, and no other business shall be transacted at such meeting than such as is specified in such notice. [R. C. 1905, § 3221; 1897, ch. 139, §§ 1, 2, 3; R. C. 1899, § 2680a.]

§ 4278. Shall vote by ballot. The board of supervisors of such civil township shall preside at such meeting, and the polls shall be opened and closed as at other township meetings, and the voters shall vote by ballot, "yes" or "no," and the result of the vote shall be publicly announced after the polls close and as soon as ascertained by the officers of such meeting, and if a majority of all the votes shall be "yes" and shall have been given by a majority of all the legal voters in such civil township, a statement of the vote signed by the chairman of the board of supervisors of such civil township, and attested by the clerk thereof, shall be filed in the office of the county auditor of the county within which such civil township lies, and such civil township shall on the first day of January next succeeding the time of

holding such meeting cease to be a corporation; provided, the property belonging to such civil township, after the payment of its debts and liabilities, shall be disposed of in such manner as a majority of the voters of such civil township at any special meeting may have directed. And all of the records of such civil township shall be turned over by the officers of said civil township to the county auditor of the county wherein said district lies, for preservation and safe keeping. [R. C. 1905, § 3222; 1897, ch. 139, § 4; R. C. 1899, § 2680b; 1903, ch. 199, § 1.]

§ 4279. Personal rights not affected. No such dissolution shall affect the right of any person in any contract or agreement to which such corporation is a party. [R. C. 1905, § 3223; 1897, ch. 139, § 5; R. C. 1899, § 2680c.]

§ 4280. Assessment and levy. Upon the dissolution of any civil township, it shall be the duty of the board of county commissioners of the county within which such civil township lies, to attach the territory embraced within such township for the purpose of assessment and taxation to such assessment district of such county as such board may deem advisable or practicable, and to levy on the taxable property, in such township, in addition to the other levies provided by law, a sum sufficient to discharge all debts and liabilities existing against said township at the time of its dissolution, and the county auditor shall enter the same on the county tax list, to be collected by the county treasurer as other county taxes are collected, and it shall be the duty of said treasurer to credit the money derived from such levy to a special fund to be used in the payment of said debts and liabilities, and any balance remaining in said fund after the payment of said debts and liabilities, shall be transferred to the credit of such district, to be used in the construction of roads and bridges therein. [R. C. 1905, § 3224; 1897, ch. 139, § 6; R. C. 1899, § 2680d; 1903, ch. 199, § 2.]

§ 4281. Duty of county auditor. It shall be the duty of the county auditor of such county, upon the dissolution of any civil township therein, to immediately notify the state auditor thereof, and, further, to enter upon the proper record book in his office the fact of such dissolution. [R. C. 1905, § 3225; 1897, ch. 139, § 7; R. C. 1899, § 2680e.]

ARTICLE 30.—CONSOLIDATION OF TOWNSHIPS.

§ 4282. Supervisors and clerks of townships dissolved must determine amount due on annexation. When a township or a fraction of a township has been dissolved and attached to another township, by the county commissioners as now provided by law, it shall be the duty of the several boards of supervisors with the clerks of the townships affected by the change to meet prior to the annual town meeting at the usual meeting place and according to the notice of the township clerk of the township to which annexation has been made for the purpose of determining the financial amount due consequent to the said annexation. [R. C. 1905, § 3226; 1905, ch. 178, § 1.]

Division of territory of town as affecting its assets. 39 L.R.A. (N.S.) 285.

Liability of territory annexed to township to pay proportionate share of existing debts. 27 L.R.A. (N.S.) 1147.

§ 4283. To determine value of property belonging to township. At such meeting, such board of supervisors, with the clerks, shall determine the value of town hall, jail, graders, plows, scrapers and all other property legally owned and used by said township in conducting the business of said township, to which said annexation has been made, together with the moneys in the treasury and also the money due said township from the county and other sources, and also all back or unpaid taxes shall constitute the assets and they shall deduct therefrom all bonds and legal debts against said township which shall constitute the liabilities and the difference between the two shall constitute the net assets or net liabilities. [R. C. 1905, § 3227; 1905, ch. 178, § 2.]

Roads and bridges do not constitute public property owned by county within meaning of section 2336 of Revised Codes, 1905. State ex rel. Mountrail County v. Amundson, 23 N. D. 238, 135 N. W. 1117.

§ 4284. To determine the pro rata amount due from annexed territory. When it is shown that there is a net asset it shall be the duty of the several boards of supervisors with the clerks to determine the pro rata amount due from the annexed territory in proportion to the assessed valuation of one to the other. All questions herein shall be determined by a majority vote of the board hereinbefore provided. [R. C. 1905, § 3228; 1905, ch. 178, § 3.]

§ 4285. Tax to be levied against territory annexed. At the first annual township meeting there shall be levied against the fractional township or township annexed, the sum hereinbefore found to be due the township affected by the annexation, thereby in addition to the levies provided by law. [R. C. 1905, § 3229; 1905, ch. 178, § 4.]

CHAPTER 51.

PRESERVATION OF LAND MARKS.

§ 4286. Boards responsible for preservation of corner monuments. The board of supervisors in all organized townships are hereby made responsible for the safe preservation of all section corner, quarter corner and meander corner monuments in any organized township in this state. The board of county commissioners are hereby made responsible for the preservation of all such corner monuments in unorganized townships in any organized county in the state, the town board in any incorporated town or village is hereby made responsible for the preservation of all such corner monuments in any incorporated town or village, and the city council in any incorporated city is hereby made responsible for the preservation of all such corner monuments in any incorporated city in the state. [1911, ch. 288, § 1.]

§ 4287. Notice of corner monuments about to be destroyed. It is hereby made the duty of all officers having in charge the construction or repair of streets and highways, whenever a quarter corner, section corner or meander corner monument is about to be destroyed by the wear of travel or the grading of said streets or highways, to notify the chairman of the board of supervisors in any organized township or the chairman of the town board in any incorporated town or village, or the mayor of any city, or the chairman of the board of county commissioners, as the case may be, that such monument or monuments are about to be destroyed. [1911, ch. 288, § 2.]

§ 4288. County surveyor to replace corner monuments. Upon the request of the mayor of any city or the chairman of any town board, or the chairman of the board of supervisors in any organized township, or the chairman of the board of county commissioners, it is hereby made the duty of the county surveyor to take immediate steps to replace such monument, in case it is about to be destroyed by travel, in such a manner that the travel will not further affect it, and in the case that it is about to be destroyed by the grading of any street or highway, to reference such monument in such manner that it can be replaced after the grading is completed, and to replace the same after said grading is completed. In replacing such monuments the county surveyor may replace the original, if in his opinion it is in good condition and will serve the purpose. If the original monument is not in good condition for replacement he shall sink into the earth a column of concrete or cement block at least two feet in length, twelve inches square at the base, six inches square at the top, and carefully describe the same in the records of his survey. [1911, ch. 288, § 3.]

§ 4289. Fees and expenses for replacing. For such services rendered, the county surveyor shall be paid the fees and expenses as now provided by law for the surveying of county roads, upon the presentation of properly prepared vouchers by the city, town, village, organized township or county

from which the request came. In case the county has no county surveyor, the work to be done as provided in section 4288 may be done by any competent surveyor or engineer designated by the board of county commissioners, and for such services rendered he shall be paid the same fees and in the same manner as provided for the county surveyor in this section. [1911, ch. 288, § 4.]

§ 4290. Penalty for destroying or removing corner monuments. Any person who destroys, defaces, changes or removes to another place any section corner, quarter section corner or meander corner monument or any government line of survey, or cuts down any witness trees, or any trees blazed to mark the line of government survey, or to deface or remove any monument or bench mark of any government survey until after the same has been referenced by the county surveyor or some competent surveyor or engineer, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than ten dollars nor more than fifty dollars. [1911, ch. 288, § 5.]

CHAPTER 52.

FOREST FIRE WARDENS.

§ 4291. Office of forest fire warden created. Who shall serve as wardens. The office of forest fire warden is hereby created. It shall be the duty of each supervisor of a civil township in this state in which at least twenty-five per cent of the total area is woodland to act as forest fire warden therein. At the second March meeting each year, the township supervisors shall divide their township into three forest fire warden districts, one for each warden. For unorganized townships having at least twenty-five per cent of woodland, the board of county commissioners shall at the regular January meeting of each year, appoint two or more forest fire wardens for each township, each warden to have supervision over such portion thereof as the board may designate, and to serve for a period of one year. [1909, ch. 125, § 1.]

§ 4292. Powers and duties of wardens. Each warden shall be empowered and it shall be his duty to take such precautions against the kindling and spreading of forest fires as he may deem necessary, especially in dry and dangerous seasons of the year. He shall have power, and it shall be his duty, whenever his district is threatened with approaching fire, or suffering from forest fires, to call to his assistance any number of able-bodied men within his district to proceed to the place of danger and extinguish the fire. Whenever a forest fire has occurred in his district it shall be his duty to proceed immediately to a strict inquiry into the cause and origin of the fire, and in all cases where such fire has been found to have originated through the unlawful act of any person it shall be his special duty to make complaint before the proper magistrate. [1909, ch. 125, § 2.]

§ 4293. Compensation. Each forest fire warden shall receive a compensation of three dollars per day for the time actually and necessarily employed in the discharge of his duties. Any employe engaged in like service shall receive a compensation of two and fifty one-hundredths dollars per day. In civil townships such compensation shall be paid out of the township general fund; in unorganized townships such compensation shall be paid out of the county general fund. [1909, ch. 125, § 3.]

CHAPTER 53.

PARTITION FENCES.

§ 4294. Legal fences defined. All fences four and a half feet high and in good repair, consisting of rails, timber, boards or stone walls, or any combination thereof, and all brooks, rivers, ponds, creeks, ditches and hedges, or other things, which shall be equivalent thereto, in the judgment of the fence viewers within whose jurisdiction the same may be, or any such fences as the parties interested may agree upon, shall be deemed legal and sufficient fences. [R. C. 1905, § 3230; 1903, ch. 100, § 1.]

Sufficiency of fences. 22 L.R.A. 105.

§ 4295. Wire fence legal. In all cases where any law of this state requires to be erected or maintained any fence or fences for any purpose whatever, it shall be sufficient and a compliance with such law, if there shall be erected and maintained a barbed wire fence, consisting of two barbed wires and one smooth wire, with at least forty barbs to the rod, the wire to be firmly fastened to the posts not more than two rods apart, with one stay between the posts, the top wire to be not more than fifty-two inches high or less than forty-eight, and the bottom wire not less than sixteen inches from the ground; or four smooth wires with posts not more than two rods apart, and with good stays not to exceed eight feet apart, the top wire to be not more than fifty-six inches high nor less than forty-eight, and the bottom wire not less than sixteen inches nor more than twenty inches from the ground; provided, that five smooth wires shall be required to constitute a legal partition fence; provided, that any other fence authorized by law shall also be held a legal fence. [R. C. 1905, § 3231; 1903, ch. 100, § 2.]

Inapplicable to case where corral fence for protection of haystacks is required. *Johnson v. Rickford*, 18 N. D. 268, 122 N. W. 386.

§ 4296. Partition fences, maintained how. The respective occupants of land inclosed with fences shall keep up and maintain partition fences between their own and the next adjoining inclosures, in equal shares, so long as both parties continue to improve the same. [R. C. 1905, § 3232; 1903, ch. 100, § 3.]

Partition fences. 68 Am. Dec. 626.

Applicability of statutory provision for joint construction of line or division fence, where lands of one of adjoining owners are otherwise uninclosed. 20 L.R.A.(N.S.) 1092.

Effect of joint building of line fence on adverse possession. 33 L.R.A.(N.S.) 937.

Effect of agreement to move line fence on adverse possession. 33 L.R.A.(N.S.) 939.

Injunction to compel or prevent erection, maintenance or removal of fences. 7 L.R.A.(N.S.) 55.

Validity of oral agreement as to erection or maintenance of fences. 27 L.R.A.(N.S.) 326.

Liability for injuries arising from defects in partition fences. 54 Am. St. Rep. 513.

§ 4297. Penalty for neglect. In case any party neglects to repair or rebuild any partition fence which of right he ought to maintain, the aggrieved party may complain to the civil township supervisors or a majority of them, who, after due notice to each party, shall proceed to examine the same and if they determine that the fence is insufficient, they shall signify the same in writing to the delinquent occupant of the land, and direct him to repair or rebuild the same within such time as they may deem reasonable; and if such fence is not repaired or rebuilt accordingly, it shall be lawful for the complainant to repair or rebuild the same. [R. C. 1905, § 3233; 1903, ch. 100, § 4.]

§ 4298. Same. Value of repairs, etc., recoverable. When any deficient fence, built or repaired by any complainant as provided in the preceding section, is adjudged sufficient by two or more of said supervisors, and the value of such repairing or building up, together with their fees, is ascertained by a certificate under their hands, the complainant shall have a right to demand, either of the owner or occupant of the land where the fence was deficient, the sum so ascertained; and in case of neglect or refusal to pay

the sum so due for one month after demand thereof is made, the complainant may recover the same, with interest at one per cent a month, in civil action. [R. C. 1905, § 3234; 1903, ch. 100, § 5.]

§ 4299. Controversy, how settled. When any controversy arises about the rights of respective occupants in partition fences, or their obligation to maintain same, either party may apply to a majority of the supervisors of the civil township where the lands lie, who, after due notice to each party, may, in writing, assign to each his share thereof and direct the time within which each party shall erect or repair his share of the fence, in the manner before provided; which assignment, being recorded in the registry of deeds, shall be binding upon the parties and upon all the succeeding occupants of the lands; and they shall be obliged always thereafter to maintain their respective portions of said fence. [R. C. 1905, § 3235; 1903, ch. 100, § 6.]

§ 4300. Party neglecting to maintain fence. How liable. In case any party refuses to erect or maintain the part of any fence assigned to him as aforesaid, the same may be erected and maintained by the aggrieved party, in the manner before provided, and he shall be entitled to the value thereof, ascertained in the manner aforesaid, and be recovered in like manner. [R. C. 1905, § 3236; 1903, ch. 100, § 7.]

§ 4301. Division of fences valid. All divisions of fences made by supervisors according to the provisions of this chapter, or which shall be made by the owners of adjoining lands, in writing, witnessed by two witnesses, signed, sealed and acknowledged by the parties making the same, being recorded in the registry of deeds, shall be good and valid against the parties thereto, and their heirs and assigns. [R. C. 1905, § 3237; 1903, ch. 100, § 8.]

§ 4302. Party voluntarily erecting whole fence may recover, when. When any controversy that may arise between the occupants of adjoining lands, as to their respective rights in any partition fence, it shall appear to the supervisors that either of the occupants had, before any complaint made to them, voluntarily erected the whole fence, or more than his just share of the same, or otherwise become proprietor thereof, the other occupant shall pay for as much as shall be assigned to him to repair and maintain, the value of which shall be ascertained and recorded in the manner provided in this chapter. [R. C. 1905, § 3238; 1903, ch. 100, § 9.]

§ 4303. Fences to be kept in repair throughout the year. All partition fences shall be kept in good repair throughout the year, unless the occupants of the lands on both sides otherwise mutually agree. [R. C. 1905, § 3239; 1903, ch. 100, § 10.]

§ 4304. Proceedings when land is bounded by rivers. When lands of different persons which are required to be fenced are bounded upon or divided by any river, brook, pond or creek, which of itself, in the judgment of the supervisors, is not a sufficient fence, and it is in their opinion impracticable, without unreasonable expense, for the partition fence to be made in such waters, in the place where the true boundary line is, if in such case the occupant of the land on one side refuses or neglects to join with the occupant of the land on the other side, in making a partition fence on the one side or the other, or if such person disagrees respecting the same, then two or more supervisors of the civil township in which such lands lie, on application to them made, shall forthwith proceed to view such river, brook, pond or creek. [R. C. 1905, § 3240; 1903, ch. 100, § 11.]

§ 4305. Supervisors to give notice and render decision. If such supervisors determine that such river, brook, pond or creek will not answer the purpose of a sufficient fence, and that it is impracticable, without unreasonable expense, to build a fence on the true boundary line they shall, after giving notice to the parties, determine how, or on which side thereof, the fence shall be set up and maintained, or whether partly on one side and partly on the other side, and shall reduce such determination to writing and sign the same;

and if either party refuses or neglects to make or maintain his part of the fence, according to the determination of said supervisors, the same may be made and maintained by the other party as before provided in this chapter, and the delinquent party shall be subject to the same charges and costs, to be recovered in like manner. [R. C. 1905, § 3241; 1903, ch. 100, § 12.]

§ 4306. Lands occupied in common. How fenced. When any lands belonging to different persons in severalty have been occupied in common without a partition fence between them, and one of the occupants is desirous to occupy his part in severalty, and the occupant refuses or neglects, on demand, to divide with him the line where the fence ought to be built, or to build a sufficient fence on his part of the lines when divided, the party desiring it may have the same divided and assigned by a majority of the supervisors of the same civil township, in the manner provided in this chapter. [R. C. 1905, § 3242; 1903, ch. 100, § 13.]

§ 4307. Supervisors to assign time for making fence. Upon the division and assignment as provided in the preceding section, the supervisors may, in writing under their hands, assign a reasonable time for making the fence, having regard to the season of the year; and, if either party shall not make his part of the fence within the time assigned, the other party may, after having completed his part of the fence, make the part of the other, and recover therefor the ascertained expense thereof, together with the fees of the supervisors, in the manner provided in this chapter. [R. C. 1905, § 3243; 1903, ch. 100, § 14.]

§ 4308. Partition fence, when removable. When one party ceases to improve his land, or opens his inclosure, he shall not take away any part of the partition fence belonging to him, and adjoining the next inclosure, if the owner or occupant of such adjoining inclosure will, within two months after the same is ascertained, pay therefor such sum as a majority of the supervisors shall, in writing under their hands, determine to be the value of such partition fence belonging to such parties. [R. C. 1905, § 3244; 1903, ch. 100, § 15.]

§ 4309. Rule in case of uninclosed lands afterwards fenced. When any uninclosed grounds are afterwards inclosed, the owner or occupant thereof shall pay one-half of each partition fence, standing upon the line between his land and the inclosure of any other owner or occupant, and the value thereof shall be ascertained by a majority of the supervisors of the civil township, in writing under their hands, in case the parties do not agree; and if such owner or occupant neglects or refuses for sixty days after the value has been ascertained and demand made to pay for one-half of such partition fence, the proprietor of each fence may maintain a civil action for such value and the cost of ascertaining the same. [R. C. 1905, § 3245; 1903, ch. 100, § 16.]

§ 4310. Supervisors, how selected in certain cases. In all cases where the line upon which the partition fence is to be made, or to be divided is the boundary line between civil townships, or partly in one civil township and partly in another, a supervisor shall be taken from each civil township. [R. C. 1905, § 3246; 1903, ch. 100, § 17.]

§ 4311. Rule when partition fence runs into water. When a partition fence running into the water is necessary to be made, the same shall be done in equal shares, unless otherwise agreed by the parties; and in case either party refuses or neglects to make or maintain the share belonging to him, similar proceedings shall be had as in case of the other fences, and with like effect. [R. C. 1905, § 3247; 1903, ch. 100, § 18.]

§ 4312. Effect of record of division. In all cases where the line upon which a partition fence, to be built between unimproved lands, has been divided by the supervisors, or by agreement in writing between the owners of such lands, recorded in the office of the register of deeds of the county where such lands lie, the several owners thereof, and their heirs and assigns forever,

shall erect and support said fence agreeably to such divisions. [R. C. 1905, § 3248; 1903, ch. 100, § 19.]

§ 4313. **Notice of determination not to improve lands.** If any person determines not to improve any of his lands adjoining any partition fence that may have been divided according to the provisions of this chapter, and gives six months' notice of such determination to all the adjoining occupants of the lands, he shall not be required to keep up or support any part of such fence during the time his lands are open and unimproved, and he may thereafter remove his portion thereof, if the owner or occupant of the adjoining inclosure will not pay therefor, as provided in section 4307. [R. C. 1905, § 3249; 1903, ch. 100, § 20.]

§ 4314. **Supervisor neglecting to perform duty. Penalty.** Any supervisor who shall, when requested, unreasonably neglect to view any fence, or to perform any other duty required of him in this chapter, shall forfeit the sum of five dollars, and shall be liable to the party injured for all damages consequent upon such neglect. [R. C. 1905, § 3250; 1903, ch. 100, § 21.]

§ 4315. **Fees of supervisors.** Each supervisor shall be paid by the person employing him, at the rate of one dollar per day for the time he is so employed; and if such person neglects to pay the same within thirty days after the service is performed, each supervisor having performed any such service may recover in civil action the amount of such fees. [R. C. 1905, § 3251; 1903, ch. 100, § 22.]

§ 4316. **Fence viewers.** In all counties not divided into civil townships, the county commissioners shall act as fence viewers, and be governed by the provisions of this chapter; provided, the provisions of this chapter shall apply to the respective occupants of the land inclosed with fences for the purpose of pasturage or grazing. [R. C. 1905, § 3252; 1903, ch. 100, § 23.]

§ 4317. **Civil action for failure to build. Recovery.** In case any person neglects or refuses to erect or maintain the part of any such fence assigned to him to erect or maintain, the same may be erected and maintained by the party aggrieved thereby in a good and substantial manner, and he may recover of the party so neglecting or refusing, in a civil action in any court having jurisdiction of the amount involved, the value of that part of said fence so erected or maintained which was assigned to the party so neglecting or refusing, together with all the costs and expenses of such action, and all the costs and expenses of the assignment provided in section 4294. [R. C. 1905, § 3253; 1903, ch. 100, § 24.]

Lack of division fence as affecting liability for damages by trespassing cattle. 22 L.R.A. 60.

Extent of liability for permitting another's live stock to escape from pasture by failure to keep proper division fence. 20 L.R.A. 479.

CHAPTER 54.

MISCELLANEOUS PROVISIONS.

§ 4318. **Code not retroactive unless so declared.** No part of this code is retroactive unless expressly so declared. [R. C. 1905, § 3254; R. C. 1895, § 2681.]

Inapplicable to redemptions under former sales. *Blakemore v. Cooper*, 15 N. D. 5, 4 L.R.A.(N.S.) 1074, 125 Am. St. Rep. 574, 106n.

§ 4319. **Rule of construction of code.** The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. The code establishes the law of this state respecting the subjects to which it relates, and its provisions and all proceedings under it are to be liberally construed, with a view to effect its objects and to promote justice. [R. C. 1905, § 3255; R. C. 1895, § 2582.]

§ 4320. **Same.** The provisions of this code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments. [R. C. 1905, § 3256; R. C. 1895, § 2683.]

§ 4321. **Offices under acts repealed by code are continued, when.** All persons who, at the time this code takes effect, hold office under any of the acts repealed, continue to hold the same according to the tenure thereof, except those offices which are not continued by one of the codes adopted at this session of the legislative assembly, and excepting offices filled by appointment. [R. C. 1905, § 3257; R. C. 1895, § 2684.]

§ 4322. **Same.** When any office is abolished by the repeal of any act, and such act is not in substance re-enacted or continued in either of the codes, such office ceases at the time the codes take effect. [R. C. 1905, § 3258; R. C. 1895, § 2685.]

§ 4323. **Pending actions or proceedings not affected by code.** No action or proceeding commenced before this code takes effect, and no right accrued, is affected by its provisions, but the proceedings therein must conform to the requirements of this code as far as practicable. [R. C. 1905, § 3259; R. C. 1895, § 2686.]

As to repealing statute not affecting right to redeem from tax sale. *Blakemore v. Cooper*, 15 N. D. 5, 4 L.R.A.(N.S.) 1074, 125 Am. St. Rep. 574, 106 N. W. 566.

Lien upon personal property acquired under certain statute is unaffected by repeal of statute. *Hagler v. Kelly*, 14 N. D. 218, 103 N. W. 629.

§ 4324. **Limitations, how reckoned.** When a limitation or period of time prescribed in any existing statute for acquiring a right or barring a remedy, or for any other purpose, has begun to run before this code goes into effect, and the same or any limitation of time is prescribed in this code, the time which has already run shall be deemed part of the time prescribed as such limitation by this code. [R. C. 1905, § 3260; R. C. 1895, § 2687.]

§ 4325. **This act, how referred to.** This act, whenever cited, enumerated, referred to or amended may be designated simply as the political code, adding when necessary, the number of the section. [R. C. 1905, § 3261; R. C. 1895, § 2688.]

CIVIL CODE

CHAPTER 1.

GENERAL DEFINITIONS AND DIVISIONS.

§ 4326. **Title.** This act shall be known as the civil code of the state of North Dakota. [R. C. 1905, § 4001; Civ. C. 1877, § 1; R. C. 1899, § 2689.]

§ 4327. **Origin of law.** Law is a rule of property and of conduct prescribed by the sovereign power. [R. C. 1905, § 4002; Civ. C. 1877, § 2; R. C. 1899, § 2690.]

§ 4328. **Expression of law.** The will of the sovereign power is expressed:

1. By the constitution of the state.
2. By the statutes of the state.
3. By the ordinances of other and subordinate legislative bodies.
4. By the decisions of the tribunals enforcing those rules, which, though not enacted, form what is known as customary or common law. [R. C. 1905, § 4003; Civ. C. 1877, § 3; R. C. 1899, § 2691.]

§ 4329. **Common law divided.** The common law is divided into:

1. Public law, or the law of nations.
2. Domestic or municipal law. [R. C. 1905, § 4004; Civ. C. 1877, § 4; R. C. 1899, § 2692.]

§ 4330. **Evidence of same.** The evidence of the common law is found in the decisions of the tribunals. [R. C. 1905, § 4005; Civ. C. 1877, § 5; R. C. 1899, § 2693.]

§ 4331. **Codes exclude common law.** In this state there is no common law in any case where the law is declared by the codes. [R. C. 1905, § 4006; Civ. C. 1877, § 6; R. C. 1899, § 2694.]

Common law inapplicable to bring case within scope and purview of Civil Code. *Banbury v. Sherin*, 4 S. D. 88, 55 N. W. 723; *McClain v. Williams*, 11 S. D. 227, 76 N. W. 930, 49 L.R.A. 610, 74 A. S. R. 791; *Garrison v. Purdy*, 3 D. 178, 14 N. W. 100.

On rule of evidence as to evidence to be used as standard for comparison. *Mississippi Lumber & Coal Co. v. Kelly*, 19 S. D. 577, 104 N. W. 265, 9 A. & E. Ann. Cas. 449.

Challenge to array in civil cases lies as at common law, although not provided for by Code of Civil Procedure. *Jones v. Woodwarth*, 24 S. D. 583, 124 N. W. 844, Ann. Cas. 1912A, 1134.

§ 4332. **Classification of civil rights.** All original civil rights are either:

1. Rights of person; or,
2. Rights of property. [R. C. 1905, § 4007; Civ. C. 1877, § 7; R. C. 1899, § 2695.]

§ 4333. **Rights, how waived.** Rights of property and of person may be waived, surrendered or lost by neglect in the cases provided by law. [R. C. 1905, § 4008; Civ. C. 1877, § 8; R. C. 1899, § 2696.]

§ 4334. **Code divisions.** This code has four general divisions:

1. The first relates to persons.
2. The second, to property.
3. The third, to obligations.
4. The fourth contains general provisions relating to persons, property and obligations. [R. C. 1905, § 4009; Civ. C. 1877, § 9; R. C. 1899, § 2697.]

CHAPTER 2.

PERSONS.

§ 4335. Minority defined. Minors are:

1. Males under twenty-one years of age.
2. Females under eighteen years of age.

The periods thus specified must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority. [R. C. 1905, § 4010; Civ. C. 1877, § 10; R. C. 1899, § 2698.]

Infant female as reaching majority at age of 18 years, in relation to action to recover land under section 54 of Code of Civil Procedure. *Ford v. Ford*, 24 S. D. 644, 124 N. W. 1108.

As to similar provision in Cal. Civ. Code, § 26, see *Ganahl v. Soher*, 2 Cal. Unrep. 415, 5 Pac. 80.

§ 4336. Adults. All other persons are adults. [R. C. 1905, § 4011; Civ. C. 1877, § 11; R. C. 1899, § 2699.]

§ 4337. Unborn child. A child conceived, but not born, is to be deemed an existing person so far as may be necessary for its interests in the event of its subsequent birth. [R. C. 1905, § 4012; Civ. C. 1877, § 12; R. C. 1899, § 2700.]

Homicide in killing of unborn child. 63 L.R.A. 908.

Conflict of laws as to rights of after-born children under will. 2 L.R.A.(N.S.) 467.

Devises of life estates to unborn children of living persons as contravening rule against perpetuities. 6 L.R.A.(N.S.) 330.

Capacity of child en ventre sa mere to take under devise or bequest to "children," etc. 1 B. R. C. 582.

Marketability of title subject to defeat by birth of person not in being. 38 L.R.A.(N.S.) 35.

Divestiture of estates of persons not in being. 8 L.R.A.(N.S.) 49; 42 L.R.A.(N.S.) 439.

Omission of children from will as affecting right to probate. 34 L.R.A.(N.S.) 966.

Conflict of laws as to disinheritance. 2 L.R.A.(N.S.) 459.

Admissibility of extrinsic circumstances in ascertaining intention of testator in respect to disinheritance an after-born child. 13 L.R.A.(N.S.) 781.

Infant en ventre sa mere as grantee in deed. 44 L.R.A. 489.

As to similar provision in Cal. Civ. Code, § 29, see *Lehmann v. Schmidt*, 87 Cal. 15, 25 Pac. 161; *Daubert v. Western Meat Co.*, 139 Cal. 480, 96 Am. St. Rep. 154, 69 Pac. 297, 73 Pac. 244.

§ 4338. Minor's disability. A minor cannot give a delegation of power, nor under the age of eighteen make a contract relating to real property or any interest therein, or relating to any personal property not in his immediate possession or control. [R. C. 1905, § 4013; Civ. C. 1877, § 15; R. C. 1899, § 2701.]

Conflict of laws relating to age of majority. 17 Am. Dec. 180.

Care which must be exercised in dealing with infant. 49 Am. St. Rep. 406.

As to similar provision in Cal. Civ. Code, § 33, see *Re Cahill*, 74 Cal. 52, 15 Pac. 364; *Taylor v. Hill*, 115 Cal. 143, 44 Pac. 336, 46 Pac. 922.

§ 4339. Contract subject to disaffirmance. A minor may make any contract other than as above specified in the same manner as an adult, subject only to his power of disaffirmance under the provisions of this chapter and subject to the provisions of the chapters on marriage and on master and servant. [R. C. 1905, § 4014; Civ. C. 1877, § 16; R. C. 1899, § 2702.]

As to legal effect of infant's contract. *Luce v. Jestrab*, 12 N. D. 548, 97 N. W. 848.

Contracts of infants. 18 Am. St. Rep. 573.

Infant's contract of suretyship. 18 Am. St. Rep. 614.

Power of infants to bind themselves by contracts of apprenticeship. 34 Am. Dec. 538; 18 Am. St. Rep. 626.

Execution of power of appointment by infants. 64 L.R.A. 907.

Binding effect of stipulation in contract, as to time for suit thereon. 1 L.R.A.(N.S.) 525.

Lack of parent or guardian as enlarging infant's capacity to contract for other than necessities. 36 L.R.A.(N.S.) 57.

Effect of part performance of contract for services by infants. 24 L.R.A. 233.

Infants as partners. 18 Am. St. Rep. 601.

Estoppel in pais, as applied to infants. 44 Am. Dec. 285.

As to similar provision in Cal. Civ. Code, § 34, see *Magee v. Welsh*, 18 Cal. 155; *Hastings v. Dollarhide*, 24 Cal. 195.

§ 4340. Minor's contracts. In all cases other than those specified in sections 4341 and 4342 the contract of a minor, if made while he is under the age of eighteen, may be disaffirmed by the minor himself, either before his majority or within one year's time afterward; or in case of his death within that period, by his heirs or personal representatives; and if the contract is made by the minor while he is over the age of eighteen, it may be disaffirmed in like manner upon restoring the consideration to the party from whom it was received or paying its equivalent with interest. [R. C. 1905, § 4015; Civ. C. 1877, § 17; R. C. 1899, § 2703.]

May be disaffirmed by restoring consideration. Retention of consideration and promise to pay after reaching majority affirms minor's contract. Once affirmed he cannot disaffirm; liability is upon his contract, not quantum meruit. *Luce v. Jestrab*, 12 N. D. 548, 97 N. W. 848.

Minor over 18 years of age may avoid contract of suretyship by disaffirming same. *Helland v. Colton State Bank*, 20 S. D. 325, 106 N. W. 60.

Avoidance of contracts by infants. 13 Am. Dec. 131; 18 Am. St. Rep. 659.

Bills by infants to impeach or avoid decrees. 112 Am. St. Rep. 198.

Avoidance by infant of brokerage agency. 41 L.R.A.(N.S.) 1219.

Avoidance by infant of release of cause of action ex delicto. 11 L.R.A.(N.S.) 690.

Effect upon title to property purchased by infant of his disaffirmance, after majority, of his executory contract to pay for the same. 8 L.R.A.(N.S.) 104.

Infant's right to repudiate contract for services and sue on quantum meruit. 15 L.R.A. 211.

Right of infant to rescind purchase of corporate stock. 28 L.R.A.(N.S.) 128.

Right of woman to disaffirm marriage settlement executed while she was an infant. 12 L.R.A.(N.S.) 1184.

Disaffirmance by married infant of deeds in which their husbands joined. 44 Am. Rep. 272.

Effect of infant's retaining an account to render it an account stated. 29 L.R.A.(N.S.) 340.

Necessity of returning consideration in order to disaffirm infant's contract. 26 L.R.A. 177; 62 Am. Dec. 734; 46 Am. Rep. 317.

Survival of infant's right to disaffirm contract. 43 L.R.A.(N.S.) 714.

Ratification of contracts by infants after coming of age. 28 Am. Rep. 30; 18 Am. St. Rep. 606, 610; 53 L.R.A. 365.

Possession after majority as affirmation of lease by infant. 47 L.R.A.(N.S.) 547.

As to similar provisions in Cal. Civ. Code, § 35, see *Combs v. Hawes*, 2 Cal. Unrep. 555, 8 Pac. 597; *Hastings v. Dollarhide*, 24 Cal. 195; *Butler v. Hyland*, 89 Cal. 575, 26 Pac. 1108; *Whyte v. Rosencrantz*, 123 Cal. 634, 69 Am. St. Rep. 90, 56 Pac. 436.

§ 4341. Cannot disaffirm contracts for necessities. A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support or that of his family entered into by him when not under the care of a parent or guardian able to provide for him or them. [R. C. 1905, § 4016; Civ. C. 1877, § 18; R. C. 1899, § 2704.]

Contracts for necessities and their effect. 18 Am. St. Rep. 606, 643.

Liability of infant upon negotiable paper given for necessities. 12 L.R.A. 859.

Liability of infant husband for necessities furnished wife while living with him. 65 L.R.A. 550.

Must the plaintiff in an action against an infant for necessities furnished show them actually to have been required. 1 B. R. C. 156.

Bicycles as necessities. 47 L.R.A. 307.

Liability of infant for services of attorneys at law. 44 L.R.A.(N.S.) 411; 96 Am. St. Rep. 731.

As to similar provision in Cal. Civ. Code, § 36, see *Whyte v. Rosencrantz*, 123 Cal. 634, 69 Am. St. Rep. 90, 56 Pac. 436.

§ 4342. Nor statutory contracts. A minor cannot disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute. [R. C. 1905, § 4017; Civ. C. 1877, § 19; R. C. 1899, § 2705.]

As to similar provision in Cal. Civ. Code, § 37, see *Whyte v. Rosencrantz*, 123 Cal. 634, 69 Am. St. Rep. 90, 56 Pac. 436.

§ 4343. Idiot's powers. A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value

of things furnished to him necessary for his support or the support of his family. [R. C. 1905, § 4018; Civ. C. 1877, § 20; R. C. 1899, § 2706.]

As to being applicable to contracts made while party is temporarily intoxicated. *Spoonheim v. Spoonheim*, 14 N. D. 380, 104 N. W. 845.

Defense of insanity is not established in action on contract unless evidence shows that defendant was "person entirely without understanding." *Wood v. Pehrsson*, 21 N. D. 357, 130 N. W. 1010.

Who deemed to be insane persons. 29 Am. Dec. 38.

Marriage of insane persons. 79 Am. St. Rep. 376.

Capacity to make contract as affected by mental conditions. 3 L.R.A.(N.S.) 174.

Renewal of obligations by incompetent persons. 34 L.R.A. 274.

Right of bona fide holder of promissory note of insane person. 35 L.R.A. 161.

Effect of insanity of party to revoke warrant of attorney to confess judgment. 13 L.R.A. 797.

Validity of contract executed after insanity in pursuance of an obligation assumed while sane. 14 L.R.A.(N.S.) 962.

Insanity of servant executing release on accepting benefits of relief fund. 11 L.R.A.(N.S.) 201.

What circumstances will charge one with notice that other contracting party is of unsound mind. 31 L.R.A.(N.S.) 1159.

Effect upon liability of surety of principal's incapacity to contract. 20 L.R.A.(N.S.) 1000.

Statute of frauds as affecting guaranty of contract of person under disability. 33 L.R.A. 359.

Conveyance of homestead during insanity by one of spouses. 13 L.R.A.(N.S.) 430.

Right of devisee or legatee to attack conveyance or transfer by testator. 30 L.R.A.(N.S.) 194.

Mental incapacity of grantor as rendering title unmarketable. 38 L.R.A.(N.S.) 26.

Validity of deed by incompetent person. 19 L.R.A. 489.

Validity of contract made with intoxicated person. 54 L.R.A. 440; 2 L.R.A.(N.S.) 666; 25 L.R.A. (N. S.) 596.

Right to affirmative relief in equity from contract on ground that it was procured from complainant while intoxicated. 17 L.R.A.(N.S.) 1066.

As to similar provision in Cal. Civ. Code, § 38, see *Harris v. Harris*, 59 Cal. 620; *More v. Calkins*, 85 Cal. 177, 24 Pac. 729; *Castro v. Geil*, 110 Cal. 292, 52 Am. St. Rep. 84, 42 Pac. 804; *Jacks v. Estee*, 139 Cal. 507, 73 Pac. 247.

§ 4344. When idiot's contract subject to rescission. A conveyance or other contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined is subject to rescission as provided in the chapter of rescission of this code. [R. C. 1905, § 4019; Civ. C. 1877, § 21; R. C. 1899, § 2707.]

Conveyance by person of unsound mind subject to rescission. *Mach v. Blanchard*, 15 S. D. 432, 90 N. W. 1042.

May deed of real property executed by an incompetent not judicially declared such be avoided in action at law. 19 L.R.A.(N.S.) 461.

Contracts of insane persons, and when and how may be avoided. 15 Am. Dec. 361; 21 Am. Rep. 29; 71 Am. St. Rep. 425.

Right to enforce mortgage given by incompetent person who had not been declared such. 42 L.R.A.(N.S.) 343.

As to similar provision in Cal. Civ. Code, § 39, see *More v. Calkins*, 85 Cal. 177, 24 Pac. 729; *Castro v. Geil*, 110 Cal. 292, 52 Am. St. Rep. 84, 42 Pac. 804; *Murphy v. Crowley*, 140 Cal. 141, 73 Pac. 820.

§ 4345. Cannot contract after incapacity determined. After his incapacity has been judicially determined a person of unsound mind can make no conveyance or other contract, nor delegate any power, nor waive any right, until his restoration is judicially determined. But if actually restored to capacity he may make a will, though his restoration is not thus determined. [R. C. 1905, § 4020; Civ. C. 1877, § 22; R. C. 1899, § 2708.]

Adjudication of insanity as showing want of capacity to execute contracts, make wills and the like. 140 Am. St. Rep. 346.

Testamentary capacity at the time of giving instructions for will as affecting measure of capacity which must exist at time of execution. 2 B. R. C. 41.

Power of one lacking testamentary capacity to revoke will. 18 L.R.A.(N.S.) 99.

As to similar provision in Cal. Civ. Code, § 40, see *Re Johnson*, 57 Cal. 529; *Kellogg v. Cochran*, 87 Cal. 192, 12 L.R.A. 104, 25 Pac. 677.

§ 4346. Minor liable for wrongs. A minor or a person of unsound mind of whatever degree is civilly liable for a wrong done by him in like manner

as any other person. [R. C. 1905, § 4021; Civ. C. 1877, § 23; R. C. 1899, § 2709.]

Civil liability of infant for and for deceit and false representations. 33 Am. Dec. 179; 37 Am. Rep. 413; 42 Am. St. Rep. 753.

Estoppel of an infant by his fraud. 57 L.R.A. 684.

Liability of an infant as trustee or officer. 57 L.R.A. 688.

Infant's acts in inducing another to enter into contract with him by representing that he is of age as constituting offense of false pretenses. 24 L.R.A.(N.S.) 1101.

Infant's tort in inducing a contract. 57 L.R.A. 675.

Infant's tort in the performance of a contract. 57 L.R.A. 680; 35 L.R.A.(N.S.) 574.

Responsibility of infant for crime. 70 Am. Dec. 496.

Civil liability of insane persons for torts or negligence. 26 L.R.A. 153; 42 L.R.A.(N.S.) 83; 42 Am. St. Rep. 753.

Liability of insane person for libel or slander. 26 L.R.A. 154; 42 L.R.A.(N.S.) 85.

Liability of lunatic for torts of committee, guardian or employe. 42 L.R.A.(N.S.) 87.

Insanity of member as affecting decision of lodge against him. 49 L.R.A. 371.

§ 4347. When subjected to exemplary damages. A minor or person of unsound mind cannot be subjected to exemplary damages unless at the time of the act he was capable of knowing that it was wrongful. [R. C. 1905, § 4022; Civ. C. 1877, § 24; R. C. 1899, § 2710.]

§ 4348. Rights of action. A minor may enforce his rights by civil action or other legal proceedings in the same manner as a person of full age, except that a guardian must be appointed to conduct the same. [R. C. 1905, § 4023; Civ. C. 1877, § 25; R. C. 1899, § 2711.]

Admission and waivers by representatives of infants in actions. 32 L.R.A. 671.

Judgments against infants. 13 Am. Dec. 159.

—how to correct and avoid them when they are erroneous or voidable. 89 Am. Dec. 185.

Judgments for or against insane persons. 130 Am. St. Rep. 841.

As to similar provision in Cal. Civ. Code, § 42, see *Re Cahill*, 74 Cal. 52, 15 Pac. 364; *Crawford v. Neal*, 56 Cal. 321.

§ 4349. Indian rights. Disabilities. Indians resident within this state have the same rights and duties as other persons, except that:

1. They cannot vote or hold office except as prescribed in subdivision three of section 121 of the constitution of this state.

2. They cannot grant, lease or incumber Indian lands except in the cases provided by law. [R. C. 1905, § 4024; Civ. C. 1877, § 26; R. C. 1895, § 2713.]

Validity of divorce according to Indian customs. 35 L.R.A.(N.S.) 795.

CHAPTER 3.

PERSONAL RIGHTS.

§ 4350. General personal rights. Besides the personal rights mentioned or recognized in the political code every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation and from injury to his personal relations. [R. C. 1905, § 4025; Civ. C. 1877, § 27; R. C. 1899, § 2713.]

As to similar provision in Cal. Civ. Code, § 43, see *Lewis v. Terry*, 111 Cal. 39, 31 L.R.A. 220, 52 Am. St. Rep. 146, 43 Pac. 398; *Dittrich v. Gobey*, 119 Cal. 599, 51 Pac. 962; *Humphrey v. Pope*, 122 Cal. 253, 54 Pac. 847.

§ 4351. Defamation. Defamation is effected by:

1. Libel; or,

2. Slander. [R. C. 1905, § 4026; Civ. C. 1877, § 28; R. C. 1899, § 2714.]

§ 4352. Libel defined. Libel is a false and unprivileged publication by writing, printing, picture, effigy or other fixed representation to the eye which exposes any person to hatred, contempt, ridicule or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation. [R. C. 1905, § 4027; Civ. C. 1877, § 29; R. C. 1899, § 2715.]

Charge of false affidavits to commence case, not libelous per se. *Casselman v. Winship*, 3 D. 292, 19 N. W. 412.

As to what constitutes libel. *Lauder v. Jones*, 13 N. D. 525, 101 N. W. 907.

Name of libeled party need not appear in libelous publication to constitute libel. *Baron v. Smith*, 19 S. D. 50, 101 N. W. 1105.

Legal malice is conclusively presumed to sustain the action and to recover actual damages, if defamatory charge was unprivileged. *Wrege v. Jones*, 13 N. D. 267, 100 N. W. 705.

Jury determines whether language was used in an innocent or defamatory sense. Actionable if defamatory charge is made indirectly. *Lauder v. Jones*, 13 N. D. 525, 101 N. W. 907.

Malice essential to recovery of damages. In an unprivileged charge the law implies malice to sustain action and to recover compensatory damages. *Lauder v. Jones*, 13 N. D. 525, 101 N. W. 907.

Language charging person with deception in conduct of his business, but that he was guilty of unfair dealing was libelous. *Ramharter v. Olson*, 26 S. D. 499, 128 N. W. 806, *Ann. Cas.* 1913B, 253.

General rules applicable to. 4 Am. Dec. 348.

When charge of offense committed in another state is actionable. 9 Am. Dec. 613.

Newspaper libel. 15 Am. St. Rep. 333.

Liability of newspaper proprietor or manager for libel published without his knowledge or consent. 26 L.R.A. 779.

Libel laws as infringement of freedom of press. 32 L.R.A. 831.

Common-law rights of author of libelous work. 51 L.R.A. 360.

Right to compel publisher of libel to disclose source of information. 12 L.R.A.(N.S.) 630.

Criticisms of writings as libel. 28 L.R.A. 670.

Libel or slander by filing lien. 16 L.R.A. 625.

Giving one an indefinite rating, or refusal to give any rating, in a mercantile agency, as a libel. 25 L.R.A.(N.S.) 1021.

Libel by written charge with reference to plaintiff's business. 4 L.R.A.(N.S.) 977.

Blacklisting dealer as libel. 49 L.R.A. 612; 8 L.R.A.(N.S.) 783.

Placing scurrilous or defamatory matter upon outside covering of mail as offense against postal laws. 33 L.R.A.(N.S.) 800.

Laudatory or ironical article as libel. 4 L.R.A.(N.S.) 861.

Is article susceptible of libelous meaning rendered nonlibelous by the fact that it would not be understood in a libelous sense by those acquainted with the plaintiff. 18 L.R.A.(N.S.) 622.

Libel by publication of photograph as that of another person. 6 L.R.A.(N.S.) 919.

Publication of one's photograph in connection with scandalous matter concerning another. 35 L.R.A.(N.S.) 595.

Right of action for use of photographs or name for advertising purposes. 24 L.R.A.(N.S.) 991; 34 L.R.A.(N.S.) 1137.

Expressions or comments without misstating facts as libel. 28 L.R.A. 667.

Publication by aggrieved party making known to third person contents of libelous letter. 15 L.R.A.(N.S.) 1141.

Addressing letter to attorney or agent of plaintiff as publication for purposes of libel. 21 L.R.A.(N.S.) 33.

Communication to stenographer or clerk as publication of libel. 1 B. R. C. 455.

Transmission of libelous matter by postcard or telegraph as publication. 1 B. R. C. 464.

Liability of telegraph company for handling libelous message. 9 L.R.A.(N.S.) 140; 37 L.R.A.(N.S.) 861.

Libel of a class or number of persons. 70 Am. St. Rep. 754.

Right of one not specially named to maintain action for libel or slander based on charges made against a class or group of persons to which he belongs. 23 L.R.A.(N.S.) 726; 25 L.R.A.(N.S.) 382; 42 L.R.A.(N.S.) 870.

Criminal liability for agent's act. 41 L.R.A. 653.

Right of corporation to sue for libel or slander. 2 L.R.A.(N.S.) 741.

—for libel affecting its property. 52 L.R.A. 526.

Liability of corporation for libel or slander. 115 Am. St. Rep. 721.

—criminal responsibility. 2 B. R. C. 249.

Liability of officers of a corporation for its libelous publications. 28 L.R.A. 427.

Liability of husband and wife for wife's libel or slander. 30 L.R.A. 521.

Injunction against libel or slander. 35 Am. St. Rep. 675.

—against publishing or circulating statements relative to industrial disputes by labor union. 32 L.R.A. 1013.

Truth as defense to action for libel or slander. 21 L.R.A. 502; 31 L.R.A.(N.S.) 132.

Defense that defendant did not originate, but merely repeated, the defamatory charge. 55 Am. St. Rep. 611.

Mutual vituperation or defamation as affecting remedy for libel or slander. 28 L.R.A. 721.

Damages in action for libel, what are proper elements of. 72 Am. Dec. 421.

Venue in actions for. 15 Am. Dec. 224.

Province of judge and jury in prosecutions for. 13 Am. St. Rep. 625.

Effect of admission to change burden of proof and right to open and close in action for libel. 61 L.R.A. 538, 547, 556.

See also annotation to following section.

As to similar provision in Cal. Civ. Code, § 45, see *Dixon v. Allen*, 69 Cal. 527, 11 Pac. 179; *Bettner v. Holt*, 70 Cal. 270, 11 Pac. 713; *Tonini v. Cevasco*, 114 Cal. 266, 46 Pac. 103; *Schomberg v. Walker*, 132 Cal. 224, 64 Pac. 290.

§ 4353. Slander. Slander is a false and unprivileged publication, other than libel, which:

1. Charges any person with crime or with having been indicted, convicted or punished for crime.

2. Imputes to him the present existence of an infectious, contagious or loathsome disease.

3. Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualifications in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade or business, that has a natural tendency to lessen its profit.

4. Imputes to him impotence or want of chastity; or,

5. Which, by natural consequence, causes actual damage. [R. C. 1905, § 4028; Civ. C. 1877, § 30; R. C. 1899, § 2716.]

Distinction between libel and slander. *Barron v. Smith*, 19 S. D. 50, 101 N. W. 1105.

What words actionable per se. 1 Am. Dec. 448; 12 Am. Dec. 39; 41 Am. Rep. 590; 116 Am. St. Rep. 802.

Applying vile epithets to man. 28 L.R.A.(N.S.) 85.

Insulting passenger by suggesting that he belongs in colored compartment as an actionable wrong. 32 L.R.A.(N.S.) 206.

Stating that a white person is a negro, or of negro blood. 36 L.R.A.(N.S.) 974.

What is publication of slander. 12 Am. St. Rep. 78.

Charging one with refusal to pay debt as libel or slander. 3 L.R.A.(N.S.) 339.

Libel or slander by imputing to one not in business nonpayment of debts or want of credit. 42 L.R.A.(N.S.) 515.

Liability of corporation for slander by an agent or employee. 21 L.R.A.(N.S.) 873.

As to similar provision in Cal. Civ. Code, § 46, see *Haskins v. Jordan*, 123 Cal. 157, 55 Pac. 786; *Jarman v. Rea*, 137 Cal. 339, 70 Pac. 216.

1. In slander, proof of special damages unnecessary where complainant is charged with indictable offense. *Bedtkey v. Bedtkey*, 15 S. D. 310, 89 N. W. 479.

Charging solicitation to crime. 25 L.R.A. 435.

Informal communication with respect to criminal charge. 4 L.R.A.(N.S.) 149; 32 L.R.A.(N.S.) 740.

3. Expressions or comments as to public or professional men without misstating facts. 28 L.R.A. 674.

Liability to individual for general reflection upon the business in which he is engaged. 5 L.R.A.(N.S.) 480.

Right to recover for slander or libel affecting one in his business or professional capacity, as affected by his own violation of law in respect thereof. 33 L.R.A.(N.S.) 90.

Libel or slander by imputing incompetency to physician. 26 L.R.A. 325.

Slander in charging woman with unchastity causing loss of business. 24 L.R.A.(N.S.) 598.

Libel or slander by charging one with exacting excessive compensation for goods or services. 40 L.R.A.(N.S.) 79.

Oral charge of insolvency against a merchant. 4 L.R.A.(N.S.) 973.

Expressions or comments as to officers or candidates without misstating facts. 28 L.R.A. 672.

Charging public official with graft in public contracts. 5 L.R.A.(N.S.) 498.

Charging acceptance of bribe. 3 L.R.A.(N.S.) 1139.

Libel by charging the raising or disbursing of campaign funds. 2 L.R.A.(N.S.) 691.

What words uttered concerning clergyman are actionable per se. 28 L.R.A.(N.S.) 152.

Liability growing out of the giving or refusing of information affecting the character or reputation of servant. 4 L.R.A.(N.S.) 1092.

4. Slander and libel in charging woman with unchastity. 24 L.R.A.(N.S.) 577.

Actionable character of epithets that impute immorality to a woman. 4 L.R.A.(N.S.) 560.

Truth of charge of adultery or fornication, as a defense to a civil action for libel or slander. 31 L.R.A. (N.S.) 146.

See also annotation to preceding section.

§ 4354. Privileged communications. A privileged communication is one made:

1. In the proper discharge of an official duty.

2. In any legislative or judicial proceeding, or in any other proceeding authorized by law.

3. In a communication without malice to a person interested therein by one who is also interested, or by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or who is requested by the person interested to give the information.

4. By a fair and true report without malice of a judicial, legislative or other public official proceeding, or of anything said in the course thereof.

In the cases provided for in subdivisions three and four of this section malice is not inferred from the communication or publication. [R. C. 1905, § 4029; Civ. C. 1877, § 31; R. C. 1899, § 2717.]

Publication of matters affecting candidate's fitness for office privileged, unless actual malice or want of probable cause is shown. *Boucher v. Clark Pub. Co.*, 14 S. D. 72, 84 N. W. 237; *Ross v. Ward*, 14 S. D. 240, 85 N. W. 182.

Publication of matters affecting candidate's fitness for office not libelous without proof of express malice, though unjust and too severe. *Myers v. Longstaff*, 14 S. D. 98, 84 N. W. 233.

Newspaper article concerning professional conduct of practicing physician is not privileged communication. *Root v. Dutcher*, 23 S. D. 70, 120 N. W. 772.

Justification in actions of libel and slander. 91 Am. St. Rep. 285.

Privileged communications, expressions or statements. 2 Am. Dec. 431; 15 Am. Dec. 232; 31 Am. Rep. 708; 104 Am. St. Rep. 110.

Necessity that the plea of justification or privilege correspond to the words imputed to the defendant by the complaint. 28 L.R.A.(N.S.) 551.

Repetition of privileged statement as evidence of malice. 42 L.R.A.(N.S.) 1109.

May malice, which will preclude qualified privilege, be inferred from publication alone. 12 L.R.A.(N.S.) 91.

Burden of showing good faith in making privileged communication. 3 L.R.A.(N.S.) 696.

What publications concerning candidates for office are justifiable. 86 Am. Dec. 88.

Privileged communication as to unchastity of woman. 24 L.R.A.(N.S.) 613.

Privilege as affected by extent of publication. 20 L.R.A.(N.S.) 363.

As to similar provision in Cal. Civ. Code, § 47, see *Preston v. Frey*, 91 Cal. 107, 27 Pac. 533; *Schomberg v. Walker*, 132 Cal. 224, 64 Pac. 290.

1. Reports of police officers as privileged communications. 30 L.R.A.(N.S.) 315.

Privilege of school superintendent or other officer in reporting to school authorities upon character of teacher. 30 L.R.A.(N.S.) 200.

Privileged character of complaints to public officer against subordinate. 27 L.R.A.(N.S.) 1041.

Privileged character of official report by executive or administrative officer. 5 L.R.A.(N.S.) 163.

2. Testimony in judicial proceedings is privileged. Exemption of witness from liability is absolute. *Lauder v. Jones*, 13 N. D. 525, 101 N. W. 907.

Libel in judicial proceedings. 123 Am. St. Rep. 631.

Attorney's liability for words spoken at a trial. 17 Am. Dec. 194.

Privilege of witness as to defamatory testimony. 22 L.R.A. 836, 6 Am. St. Rep. 825.

Privilege of informal communication with respect to criminal charge. 4 L.R.A.(N.S.) 149; 32 L.R.A.(N.S.) 740.

To what proceedings in court does privilege of publication attach. 16 L.R.A.(N.S.) 953.

Privilege as to proceedings of grand jury. 32 L.R.A.(N.S.) 785.

Privilege as to proceedings for impeachment or removal of public officers. 25 L.R.A.(N.S.) 455.

Libel by defamatory words in pleading. 22 L.R.A. 649; 13 L.R.A.(N.S.) 820.

3. Privilege of gratuitous report on financial responsibility and integrity. 42 L.R.A.(N.S.) 520.

Report of mercantile agency as a privileged communication. 36 L.R.A.(N.S.) 452; 2 B. R. C. 215.

—as affected by extent of publication. 20 L.R.A.(N.S.) 366.

Privileged communications as to character or reputation of servant. 4 L.R.A.(N.S.) 1104.

Qualified privilege as to communications to employer with respect to employee. 16 L.R.A.(N.S.) 1017.

Privilege of communications between principal and agent. 36 L.R.A.(N.S.) 449.

Qualified privilege of communication between members of an association or of a private corporation. 26 L.R.A.(N.S.) 1080.

Privilege of statements by physician or surgeon. 38 L.R.A.(N.S.) 69.

4. Privilege as affected by extent of publication. 20 L.R.A.(N. S.) 361.

Report of meeting of private corporation as subject of privilege. 19 L.R.A.(N.S.) 863.
Is the publication of pleadings or other papers, before any hearing has been had thereon, privileged. 12 L.R.A.(N.S.) 188; 38 L.R.A.(N.S.) 913.

Addition of extrinsic defamatory matter in communicating report as affecting privilege. 36 L.R.A.(N.S.) 146.

May malice which will preclude qualified privilege be inferred from publication alone. 12 L.R.A.(N.S.) 91.

§ 4355. Offenses against personal relation. The rights of personal relation forbid:

1. The abduction of a husband from his wife or of a parent from his child.
2. The abduction or enticement of a wife from her husband, of a child from a parent or from a guardian entitled to its custody, or of a servant from his master.

3. The seduction of a wife, daughter, orphan sister or servant; and,

4. Any injury to a servant which affects his ability to serve his master.
[R. C. 1905, § 4030; Civ. C. 1877, § 32; R. C. 1899, § 2718.]

As to similar provision in Cal. Civ. Code, § 49, see *Boyson v. Thorn*, 98 Cal. 578, 21 L.R.A. 233, 33 Pac. 492; *Humphrey v. Pope*, 122 Cal. 253, 54 Pac. 847.

2. As to right of wife to maintain action for alienation of husband's affections. *King v. Hanson*, 3 N. D. 85, 99 N. W. 1085.

Wife's right to sue for alienation of husband's affection. 28 Am. St. Rep. 217; 46 Am. St. Rep. 472.

Right of wife, under modern married women's acts, to sue for alienation of the affections of her husband. 4 L.R.A.(N.S.) 643; 29 L.R.A.(N.S.) 842.

Conspiracy to alienate husband's affections. 3 L.R.A.(N.S.) 470.

Liability of parent for causing separation of husband and wife. 9 L.R.A.(N.S.) 322.

Effect of fact that husband or wife of plaintiff in action for alienation of affections was the active and aggressive party. 16 L.R.A.(N.S.) 742.

Action for alienation of wife's affections. 44 Am. St. Rep. 845.

Liability of person who interferes between master and servant to cause the latter to be discharged or the former to be deserted. 11 Am. St. Rep. 474.

Inducing servant to quit work, when actionable. 22 Am. Rep. 485; 59 Am. Rep. 720.

3. Order of arrest may be issued in action by father for seduction of minor daughter. *State ex rel. Nyhus v. Ross*, 24 N. D. 586, 139 N. W. 1051.

What constitutes seduction. 44 Am. Dec. 162; 8 Am. St. Rep. 870; 76 Am. St. Rep. 659.

By whom may action for seduction be maintained. 4 Am. Dec. 403; 64 L.R.A. 622.

Right of one in loco parentis to maintain action for seduction of an illegitimate. 35 L.R.A.(N.S.) 1062.

Loss of service as element in action by father for seduction of child. 14 L.R.A. 700.

Seduction of divorced woman or widow. 21 L.R.A.(N.S.) 265.

Effect of fact that intercourse was accomplished by force to defeat action for seduction. 18 L.R.A.(N.S.) 587.

Effect of fact that the husband or wife of plaintiff in an action for criminal conversation was the active and aggressive party. 16 L.R.A.(N.S.) 742.

Evidence of defendant's pecuniary circumstances in action for seduction. 36 Am. Rep. 445.

Evidence of character of parent or child in parent's action for seduction. 14 L.R.A.(N.S.) 750.

Evidence of character of husband or wife in action for criminal conversation. 14 L.R.A.(N.S.) 749.

§ 4356. Force to protect. Any necessary force may be used to protect from wrongful injury the person or property of one's self or of a wife, husband, child, parent or other relative or member of one's family, or of a ward, servant, master or guest. [R. C. 1905, § 4031; Civ. C. 1877, § 33; R. C. 1899, § 2719.]

CHAPTER 4.

MARRIAGE CONTRACT.

§ 4357. Marriage defined. Marriage is a personal relation arising out of a civil contract to which the consent of the parties thereto is essential, but the marriage relation may be entered into, maintained, annulled or dissolved only as provided by law. [R. C. 1905, § 4032; 1890, ch. 91, § 1; R. C. 1899, § 2720.]

Common-law marriages are no longer recognized as valid. *Schumacher v. Great Northern R. Co.*, 23 N. D. 231, 136 N. W. 85.

Words "the marriage relation shall be entered into * * * only as provided by law" are mandatory and prohibitive. *Schumacher v. Great Northern R. Co.*, 23 N. D. 231, 136 N. W. 85.

What constitutes marriage. 69 Am. Dec. 615.

Common-law marriage. 124 Am. St. Rep. 104.

—effect of statute. 2 L.R.A.(N.S.) 353.

Sufficiency and validity of marriage by the law of nature. 77 Am. Dec. 606.

Law governing validity of marriage. 57 L.R.A. 155; 11 L.R.A.(N.S.) 1082; 17 L.R.A.(N.S.) 800; 26 L.R.A.(N.S.) 179; 28 L.R.A.(N.S.) 753; 43 L.R.A.(N.S.) 355.

How proof of marriage is to be made. 22 Am. Dec. 157.

Competency and sufficiency of evidence of marriage. 57 Am. Rep. 451.

Effect of contracting or dissolution of marriage after initiation but before consummation of, right under homestead entry. 7 L.R.A.(N.S.) 967.

Effect of marriage upon wife's status as an alien. 22 L.R.A. 148.

How far marriage of infant works emancipation. 16 L.R.A. 578; 24 L.R.A.(N.S.) 160.

Effect of injured party's marriage to one of several joint tort feorsors to release all. 58 L.R.A. 307.

Effect of marrying witness in order to prevent her from testifying. 67 L.R.A. 499.

Effect of intermarriage between debtor and creditor upon indebtedness. 21 L.R.A.(N.S.) 683.

As to similar provision in Cal. Civ. Code, § 55, see *Sharon v. Sharon*, 67 Cal. 185, 7 Pac. 456, 635, 8 Pac. 709; *Sharon v. Sharon*, 75 Cal. 1, 16 Pac. 345; *Sharon v. Sharon*, 79 Cal. 633, 22 Pac. 26, 131; *Wadsworth v. Wadsworth*, 81 Cal. 182, 15 Am. St. Rep. 38, 22 Pac. 648; *Mott v. Mott*, 82 Cal. 413, 22 Pac. 1140; *Kilburn v. Kilburn*, 89 Cal. 46, 23 Am. St. Rep. 447, 26 Pac. 636; *People v. Beevers*, 99 Cal. 236, 33 Pac. 844, 9 Am. Crim. Rep. 139; *People v. Lehmann*, 104 Cal. 633, 38 Pac. 422; *Norman v. Norman*, 121 Cal. 620, 42 L.R.A. 343, 66 Am. St. Rep. 74, 54 Pac. 143.

§ 4358. Age of consent to marriage. Any unmarried male of the age of eighteen years or upwards, and any unmarried female of the age of fifteen years or upwards, and not otherwise disqualified, are capable of consenting to and consummating marriage; provided, that if the male is under twenty-one years, or the female under eighteen years of age, the license provided in this chapter shall not be issued without the consent of the parents or guardian, if there be any. [R. C. 1905, § 4033; 1897, ch. 4; R. C. 1899, § 2721.]

Proof of, by parol evidence; record evidence not required. *Mathews v. Silvester*, 14 S. D. 505, 85 N. W. 998.

Conflict of laws as to validity of marriage of persons under age of consent. 57 L.R.A. 172.

Validity of marriage of persons of nonage. 22 L.R.A.(N.S.) 1202.

Effect of parents' consent on marriage of persons of nonage. 22 L.R.A.(N.S.) 1206.

As to similar provision in Cal. Civ. Code, § 56, see *Sharon v. Sharon*, 75 Cal. 1, 16 Pac. 345; *People v. Kehoe*, 123 Cal. 224, 69 Am. St. Rep. 52, 55 Pac. 911.

§ 4359. Who disqualified to marry. Marriages between parents and children, including grandparents and grandchildren of every degree, between brothers and sisters of the half as well as the whole blood, between uncles and nieces, aunts and nephews, or cousins of the first degree of the half as well as the whole blood, are declared to be incestuous and absolutely void. This section shall apply to illegitimate as well as legitimate children and relations. [R. C. 1905, § 4034; 1890, ch. 91, § 3; R. C. 1895, § 2722.]

Conflict of laws as to incestuous marriage. 57 L.R.A. 166.

§ 4360. When marriage voidable. A marriage contracted by a person having a former husband or wife living, if the former marriage has not been annulled or dissolved, is illegal and void from the beginning unless such former husband or wife was absent and believed by such person to be dead for a period of five years immediately preceding. [R. C. 1905, § 4035; 1890, ch. 91, § 6; R. C. 1895, § 2723.]

As to annulment of marriage where one of the parties separated from but did not divorce former spouse. *Mickels v. Fennell*, 15 N. D. 188, 107 N. W. 53.

When marriage void and when voidable. 44 Am. Dec. 54.

Validity of agreement to marry where one of the parties is already married. 1 B. R. C. 917.

Conflicting presumptions as to validity of former marriage. 16 L.R.A.(N.S.) 104.

Second marriage being shown, on whom rests burden of proving termination or continuance of the first. 89 Am. St. Rep. 198.

Effect of right to appeal from divorce decree on party's right to remarry. 17 L.R.A. 573.

Effect of removal of impediment to marriage after parties have begun cohabitation. 3 L.R.A.(N.S.) 244.

Effect of a void marriage. 96 Am. St. Rep. 267.

As to similar provision in Cal. Civ. Code, § 61, *Jackson v. Jackson*, 94 Cal. 446, 29 Pac. 957; *Re Wood*, 137 Cal. 129, 69 Pac. 900; *Buelna v. Ryan*, 139 Cal. 630, 73 Pac.

466; Re Harrington, 140 Cal. 244, 98 Am. St. Rep. 51, 73 Pac. 1000; Deyoe v. Superior Ct., 140 Cal. 476, 98 Am. St. Rep. 73, 74 Pac. 28.

§ 4361. Who may solemnize marriages. License. Marriages may be solemnized by all judges of courts of record within their respective jurisdictions; by justices of the peace, within their respective jurisdictions; by ordained ministers of the gospel and priests of every church: but marriages solemnized by the society of Friends or Quakers, according to the form used in their meetings shall be valid. No such person shall solemnize any marriage until the parties thereto shall produce a license, issued by the county judge of the county in which either one of the contracting parties resides, or if such county is unorganized, of the county to which it is attached for judicial purposes. When any person authorized by law shall solemnize a marriage, he shall fill out and sign a certificate following the marriage license on the blank form prescribed by law, giving his official title, or if a minister of the gospel or priest, the ecclesiastical body with which he is connected and return such license and certificate to the county judge of the county where the license originally was issued, within thirty days thereafter. Such certificate shall be signed by two witnesses to the marriage ceremony in addition to the signature of the person who solemnized the marriage. [1907, ch. 172; R. C. 1905, § 4036; 1890, ch. 91, § 7; R. C. 1895, § 2724.]

Conflict of laws as to manner or form of solemnizing marriage. 57 L.R.A. 155; 11 L.R.A.(N.S.) 1082; 17 L.R.A.(N.S.) 800; 26 L.R.A.(N.S.) 179; 28 L.R.A.(N.S.) 753.

Presumption from marriage ceremony. 14 L.R.A. 540; 16 L.R.A.(N.S.) 98; 34 L.R.A.(N.S.) 940.

Effect of ceremonial marriage to overcome presumption arising from cohabitation and reputation. 16 L.R.A.(N.S.) 102.

Effect upon duly solemnized marriage of absence of license required by statute. 15 L.R.A.(N.S.) 463.

Presumption of marriage license. 14 L.R.A. 541.

§ 4362. Marriage license. How obtained. The county judge of each county in this state, when applied to by any person for a marriage license, shall inquire of such person upon oath relative to the legality of such contemplated marriage and he may examine other witnesses upon oath if deemed best; and if any of the persons intending to marry are under age said judge shall require the consent of the parent or guardian, if there is any, personally given, or a certificate of consent signed by such parent or guardian and attested by two witnesses, one of whom shall appear before such judge and make an oath that he saw such parent or guardian sign such certificate; and if said judge shall be satisfied there is no legal impediment thereto, he shall issue and sign such marriage license and affix his seal, in the form prescribed by law. Provided that the inquiry above mentioned on oath relative to the legality of such contemplated marriage, and the examination of other witnesses upon oath may be taken and sworn to before a notary public, or other officer authorized to administer oaths and if such affidavits are deemed sufficient by the county judge to whom such application is made, such statements and application shall be considered of the same force and effect as if taken personally before said county judge. Provided further that the county judge shall retain on file in his office all papers and records pertaining to such marriage license. [1911, ch. 186; R. C. 1905, § 4037; 1890, ch. 91, § 8; R. C. 1899, § 2725.]

§ 4363. License and certificate. The marriage license and certificate of the person solemnizing the marriage shall be upon one blank form substantially as follows:

MARRIAGE LICENSE.

State of North Dakota, }
County of } ss.:

To any person authorized by law to perform the marriage ceremony, greeting:
You are hereby authorized to join in marriage, of

....., aged and, of.....,
aged; and of this license and your certificate you will make due
return to my office within thirty days.

Dated at this day of 19...

[Seal.]

County Judge.

CERTIFICATE OF MARRIAGE.

I hereby certify that the persons named in the foregoing license were by
me joined in marriage at, county of,
state of North Dakota, on the day of 19...

In presence of

..... }
..... }

Witnesses.

[R. C. 1905, § 4038; 1890, ch. 91, § 9; R. C. 1899, § 2726.]

§ 4364. **Record to be kept by county court.** The county judge shall keep a
marriage record book, in which he shall keep a correct copy of all marriage
licenses issued by him; and when a license is returned with the certificate
of the person performing the marriage ceremony properly filled out and
signed, he shall also record such certificate immediately following the record
of such license; and for each license and the record herein required he shall
be entitled to a fee of one dollar to be paid by the party applying for the
same. [R. C. 1905, § 4039; 1890, ch. 91, § 10; R. C. 1899, § 2727.]

§ 4365. **Indian marriage contracts valid.** Indians contracting marriage
according to the Indian custom and cohabiting as man and wife shall be
deemed legally married. [R. C. 1905, § 4040; 1890, ch. 91, § 13; R. C. 1899,
§ 2728.]

§ 4366. **Marriages valid where contracted, valid in this state.** All
marriages contracted outside of this state, which are valid according to the
laws of the state or country where contracted, shall be valid in this state.
[R. C. 1905, § 4041; 1890, ch. 91, § 14; R. C. 1899, § 2729.]

By what laws validity of marriage determined. 8 Am. Dec. 133.

Validity of marriage when solemnized out of the state. 18 Am. Rep. 521.

Validity of marriage when contracted by residents of a state in violation of its
laws beyond its boundaries. 60 Am. St. Rep. 941.

§ 4367. **Certified record is evidence.** The books of record of marriage
licenses issued and certificates returned kept by the county judge of any
county, or copies of such entries certified by such judge under the seal of the
court, shall be received as evidence in all courts. [R. C. 1905, § 4042; 1890,
ch. 91, § 15; R. C. 1895, § 2730.]

Record or certified copy of certificate of marriage is not only evidence to prove mar-
riage, but that original certificate itself is also evidence thereof. State v. Walsh, 25
S. D. 30, 125 N. W. 295.

§ 4368. **Causes for annulling marriage.** A marriage may be annulled by an
action in the district court to obtain a decree of nullity for any of the follow-
ing causes existing at the time of the marriage:

1. When the party in whose behalf it is sought to have the marriage
annulled was under the age of legal consent and such marriage was con-
tracted without the consent of his or her parent or guardian, unless after
attaining the age of consent such party freely cohabited with the other as
husband or wife.

2. When the former husband or wife of either party was living and the
marriage with such former husband or wife was then in force.

3. When either party was of unsound mind, unless such party after coming
to reason freely cohabited with the other as husband or wife.

4. When the consent of either party was obtained by fraud, unless such
party afterwards with full knowledge of the facts constituting the fraud
freely cohabited with the other as husband or wife.

5. When the consent of either party was obtained by force, unless such party afterwards freely cohabited with the other as husband or wife.

6. When either party was at the time of the marriage physically incapable of entering into the marriage state and such incapacity continues and appears to be incurable. [R. C. 1905, § 4043; Civ. C. 1877, § 54; R. C. 1895, § 2731.]

Residence of one year is not prerequisite to maintenance of action to annul marriage. *Montague v. Montague*, 25 S. D. 471, 30 L.R.A.(N.S.) 745, 127 N. W. 639, Ann. Cas. 1912C, 591.

Marriage between first cousins, valid in state where contracted and where parties were then domiciled, cannot be annulled by courts of this state. *Garcia v. Garcia*, 25 S. D. 645, 32 L.R.A.(N.S.) 424, 127 N. W. 586, Ann. Cas. 1912C, 621.

What is void marriage. 79 Am. St. Rep. 361.

Annulment of marriage on publication where defendant is absent from the country. 19 L.R.A. 820.

Antenuptial pregnancy or unchastity as a ground of divorce or annulment of marriage. 18 L.R.A. 375.

Effect of conviction and sentence upon marriage relation. 31 L.R.A. 515.

Compelling division of property accumulated during void marriage. 68 Am. St. Rep. 375.

Effect of annulment of marriage on property held by the entireties. 30 L.R.A. 333.

Division of property upon the annulment of marriage. 36 L.R.A.(N.S.) 844.

Division of community property upon the annulment of marriage. 36 L.R.A.(N.S.) 845.

Alimony in suit to annul marriage. 3 L.R.A.(N.S.) 192.

Right to temporary alimony on annulment of marriage. 26 L.R.A.(N.S.) 500.

Power, upon annulling a marriage, to require man to provide for support of woman or child. 5 L.R.A.(N.S.) 767.

Condonation of loathsome disease as defense to action for annulment of marriage. 5 L.R.A.(N.S.) 729.

As to similar provision in Cal. Civ. Code, § 82, see *People v. Beevers*, 99 Cal. 286, 33 Pac. 844, 9 Am. Crim. Rep. 139; *Linebaugh v. Linebaugh*, 137 Cal. 26, 69 Pac. 616.

2. As to annulment of marriage where one of the parties separated from but did not divorce former spouse. *Mickels v. Fennell*, 15 N. D. 188, 107 N. W. 53.

Effect of marriage during continuance of prior valid marriage. 46 Am. Dec. 130.

3. Annulment of marriage of person while insane. 40 L.R.A. 744.

Fraud which will warrant annulment of marriage. 24 Am. Rep. 453.

Fraud in contracting by a pregnant woman. 44 Am. Rep. 104.

Misrepresentations or concealment as to one's physical or mental condition as ground for annulment of marriage. 13 L.R.A.(N.S.) 996.

Misrepresentation as to disposition or general character as ground for annulment of marriage. 30 L.R.A.(N.S.) 301.

5. Effect of duress to avoid marriage. 43 L.R.A. 814.

What constitutes duress for which marriage may be annulled. 27 L.R.A.(N.S.) 803.

Right to avoid marriage entered into, to escape prosecution for seduction, upon ground of duress. 16 L.R.A.(N.S.) 938.

6. Power to compel plaintiff in suit for annulment of marriage to submit to a physical examination. 14 L.R.A. 466.

§ 4369. Limitation of action. An action to obtain a decree of nullity of marriage for causes mentioned in the preceding section, must be commenced within the periods and by the parties as follows:

1. For causes mentioned in subdivision one, by the party to the marriage, who was married under the age of legal consent, within four years after arriving at the age of consent, or by his or her parent or guardian at any time before such party has arrived at the age of legal consent.

2. For causes mentioned in subdivision two, by either party during the life of the other, or by such former husband or wife.

3. For causes mentioned in subdivision three, by the party injured, or a relative or guardian of the party of unsound mind at any time before the death of either party.

4. For causes mentioned in subdivision four, by the party injured within four years after the discovery of the facts constituting the fraud.

5. For causes mentioned in subdivisions five and six, by the injured party within four years after the marriage. [R. C. 1905, § 4044; Civ. C. 1877, § 55; R. C. 1895, § 2732.]

As to annulment of marriage where one of the parties separated from, but did not divorce, former spouse. *Mickels v. Fennell*, 15 N. D. 188, 107 N. W. 53.

§ 4370. Children legitimate. When a marriage is annulled children begotten before the judgment are legitimate and succeed to the estate of both parents. [R. C. 1905, § 4045; Civ. C. 1877, § 56; R. C. 1895, § 2733.]

As to similar provision in Cal. Civ. Code, § 84, see *Re Wardell*, 57 Cal. 484; *Adams v. Adams*, 154 Mass. 290, 13 L.R.A. 275, 28 N. E. 260.

§ 4371. Custody of children. The court must award the custody of the children of a marriage annulled on the ground of fraud or force to the innocent parent and may also provide for their education and maintenance out of the property of the guilty party. [R. C. 1905, § 4046; Civ. C. 1877, § 57; R. C. 1899, § 2734.]

Applicable only to actions where voidable marriage is annulled for fraud or force. *Mickels v. Fennell*, 15 N. D. 188, 107 N. W. 53.

§ 4372. Effect of judgment. A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them. [R. C. 1905, § 4047; Civ. C. 1877, § 58; R. C. 1899, § 2735.]

Decrees of nullity and their effect. 65 Am. Dec. 355.

Conclusiveness as to third persons of decree in suit for annulment of marriage as to facts adjudicated as distinguished from status established. 38 L.R.A.(N.S.) 559.

CHAPTER 5.

REGULATING MARRIAGES.

§ 4373. Persons prohibited from marrying. No woman under the age of forty-five years, or man of any age, except he marry a woman over the age of forty-five years, either of whom is a common drunkard, habitual criminal, epileptic, imbecile, feeble minded person, idiot or insane person, or person who has theretofore been afflicted with hereditary insanity, or is afflicted with pulmonary tuberculosis in its advanced stages, or any contagious venereal disease, shall hereafter intermarry or marry any other person within this state. [1913, ch. 207, § 1.]

Marriage of person while insane. 40 L.R.A. 737.

Mental capacity essential to a valid marriage. 38 L.R.A.(N.S.) 818.

Effect of recovery of sanity after commencement of cohabitation between parties married while one of them was insane. 3 L.R.A.(N.S.) 247.

§ 4374. Performance of marriage ceremony between certain persons prohibited. No clergyman or other officer authorized by law to solemnize marriages within this state shall hereafter perform a marriage ceremony uniting persons in matrimony, either of whom is an epileptic, imbecile, feeble minded person, common drunkard, insane person, habitual criminal or person afflicted with pulmonary tuberculosis in its advanced stages, or any contagious venereal disease, unless the female party to such marriage is over the age of forty-five years. [1913, ch. 207, § 2.]

§ 4375. Affidavits to obtain marriage license. The county judge, before a marriage license is issued, shall require each applicant therefor to file in his office upon blanks to be provided by the county for that purpose, an affidavit of at least one duly licensed physician other than the person seeking the license, showing that the contracting parties are not feeble minded, imbeciles, epileptics, insane persons, common drunkards, or persons afflicted with pulmonary tuberculosis in its advanced stages, provided, that in addition, the affidavit as to the male contracting party shall show that such male is not afflicted with any contagious venereal disease. He shall also require an affidavit of some disinterested, credible person, showing that said persons are not habitual criminals; the female is over the age of eighteen years and the male is over the age of twenty-one years, unless the consent in writing is obtained of the father, mother or other guardian of the person for whom the license is required in cases where the female is under the age of eighteen years and the male is under the age of twenty-one years, provided, that no consent shall be given, nor license issued, unless such female be over the age of fifteen years. Said affidavit may be subscribed and sworn to before any person authorized to administer oaths.

Any one knowingly swearing falsely to the statements contained in the affidavit mentioned in this article shall be deemed guilty of perjury and punished as provided by the laws of the state of North Dakota. [1913, ch. 207, § 3.]

§ 4376. License or marriage of intoxicated persons prohibited. A license to marry shall not be issued to one under the influence of intoxicating liquor at the time of making application for license, and no marriage ceremony shall be performed when either or both of the contracting parties are under the influence of intoxicating liquor or any narcotic drug. [1913, ch. 207, § 4.]

Effect of intoxication on marriage. 34 L.R.A. 87.

§ 4377. Physician's fee for examination and affidavit. For making an examination of either of the contracting parties to a marriage, and the affidavit required in this act, a physician may charge a fee of not to exceed two dollars. [1913, ch. 207, § 5.]

§ 4378. Penalty for violation of foregoing provisions. Any person violating any of the provisions of this article, or any person knowingly swearing falsely to any of the statements contained in the affidavits mentioned in this act, shall be punished by a fine of not less than fifty dollars or more than five hundred dollars, or by imprisonment in the county jail not over thirty days or by both such fine and imprisonment. [1913, ch. 207, § 6.]

CHAPTER 6.

DISSOLUTION OF MARRIAGE.

ARTICLE 1. CAUSES FOR GRANTING DIVORCE, §§ 4379-4386.

2. CAUSES FOR DENYING DIVORCE, §§ 4387-4400.

3. GENERAL PROVISIONS, §§ 4401-4406.

ARTICLE 1.—CAUSES FOR GRANTING DIVORCE.

§ 4379. Marriage. How dissolved. Marriage is dissolved only:

1. By the death of one of the parties; or,
2. By a judgment of a court of competent jurisdiction decreeing a divorce of the parties.

The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons, except that neither party to a divorce may marry except in accordance with the decree of the court granting the divorce.

It shall be the duty of the court granting a divorce to specify in the order for judgment whether either or both of the parties shall be permitted to marry, and if so when, and the court shall have jurisdiction to modify the decree of divorce at any time so as to permit one or both of the parties to marry, if in his discretion he shall deem it right. [1911, ch. 183; R. C. 1905, § 4048; Civ. C. 1877, § 59; R. C. 1895, § 2736; 1901, ch. 70.]

Effect of dissolution of marriage after initiation but before consummation of rights under homestead entry. 7 L.R.A.(N.S.) 967.

As to similar provision in Cal. Civ. Code, § 90, see *Re Wood*, 137 Cal. 129, 69 Pac. 900; *Linebaugh v. Linebaugh*, 137 Cal. 26, 69 Pac. 616.

2. Agreement by husband to deed land in return for mutual settlement and bill is not collusive and void. *Burgess v. Burgess*, 17 S. D. 44, 95 N. W. 279.

Effect of judgment decreeing divorce is to restore parties to state of unmarried persons, excepting only prohibition against remarriage within three months. *Luick v. Arends*, 21 N. D. 614, 132 N. W. 353.

Jurisdiction over absent citizens in suits for divorce. 53 Am. St. Rep. 182.

Power of courts to require submission to physical examination of person in suits for divorce. 3 Am. St. Rep. 556.

Validity of divorce according to Indian custom. 35 L.R.A.(N.S.) 795.

When and to what extent can decree of divorce be attacked after the death of one or both of the parties. 125 Am. St. Rep. 230; 57 L.R.A. 583; 1 L.R.A.(N.S.) 551.

Decree against plaintiff in suit for divorce as bar to subsequent divorce action. 26 L.R.A.(N.S.) 577.

Conclusiveness, as to third persons, of decree in suit for divorce as to the facts adjudicated, as distinguished from the status established. 38 L.R.A.(N.S.) 559.

Judgment in civil action as evidence, in a criminal prosecution, to prove divorce obtained before alleged bigamous marriage. 26 L.R.A.(N.S.) 465.

Effect of decree of divorce. 65 Am. Dec. 355.

—upon conveyance by husband to wife. 69 L.R.A. 379.

—on property held by the entireties. 30 L.R.A. 333; 10 L.R.A.(N.S.) 463.

—on community property, in absence of adjudication. 11 L.R.A.(N.S.) 103.

—on wife's right to insurance upon husband's life. 50 L.R.A. 552.

—to revoke gift by will. 69 L.R.A. 940.

—on right to take under gift to "husband," "wife," or "widow." 33 L.R.A.(N.S.) 826.

—of decree granted in another state. 7 Am. Dec. 206; 26 Am. Rep. 31.

—on dower. 15 L.R.A. 542; 59 L.R.A. 181.

—on property rights generally. 59 L.R.A. 178.

—of foreign decree. 21 Am. Dec. 747.

—upon dower. 41 L.R.A.(N.S.) 219.

—extraterritorial effect. 83 Am. St. Rep. 616; 94 Am. St. Rep. 553.

—of divorce rendered upon constructive service. 18 L.R.A.(N.S.) 647.

Settlement of property rights between husband and wife on account of divorce as implied revocation of will. 20 L.R.A.(N.S.) 1073.

Divorced wife as a "dependent" within restrictions as to beneficiaries of mutual benefit associations. 2 L.R.A.(N.S.) 655.

§ 4380. Causes for divorce. Divorces may be granted for any of the following causes:

1. Adultery.

2. Extreme cruelty.

3. Willful desertion.

4. Willful neglect.

5. Habitual intemperance.

6. Conviction of felony. [R. C. 1905, § 4049; 1899, ch. 77; R. C. 1899, § 2737; 1901, ch. 71, § 1.]

Statutory causes for divorce in the different states. 65 Am. Dec. 708.

Impotency as a ground for. 28 Am. Dec. 447; 116 Am. St. Rep. 241.

Antenuptial pregnancy or unchastity as ground for divorce. 18 L.R.A. 375.

Insanity as a ground for divorce. 34 L.R.A. 161; 39 L.R.A. 264.

Mental incapacity at time of marriage as ground. 40 L.R.A. 741.

As to similar provision in Cal. Civ. Code, § 92, see *Waldron v. Waldron*, 85 Cal. 251, 9 L.R.A. 487, 24 Pac. 649, 858.

1. Insanity as affecting adultery. 34 L.R.A. 162; 47 Am. Dec. 469.

Effect of complainant's knowledge of spouse's antenuptial unchastity as a bar to a divorce for subsequent adultery. 23 L.R.A.(N.S.) 240.

Cruelty as recriminatory defense to subsequent adultery. 39 L.R.A.(N.S.) 1135.

Desertion as recriminatory defense to subsequent adultery. 39 L.R.A.(N.S.) 1135.

2. Cruelty as ground for divorce. 29 Am. Dec. 674; 73 Am. Dec. 619; 40 Am. Rep. 463; 51 Am. Rep. 736; 65 Am. St. Rep. 69.

Insanity as affecting cruelty. 34 L.R.A. 164.

3. Desertion as ground for divorce. 119 Am. St. Rep. 617.

6. Effect on right to divorce of an appeal from conviction. 31 L.R.A. 518.

Effect of commutation of the sentence or of a pardon. 31 L.R.A. 519; 7 L.R.A.(N.S.) 272.

Conviction in another state. 31 L.R.A. 519.

Retroactive effect of statute as to effect of conviction and sentence upon the marriage relation. 31 L.R.A. 520.

Right to divorce where crime is prior to marriage. 31 L.R.A. 520.

Conviction as cruelty, justifying divorce. 31 L.R.A. 521.

Conviction as a bar to divorce by the party convicted. 31 L.R.A. 521.

§ 4381. Adultery defined. Adultery within the meaning of this article is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife. [R. C. 1905, § 4050; Civ. C. 1877, § 60; R. C. 1899, § 2738.]

Insanity as affecting adultery. 34 L.R.A. 162; 47 Am. Dec. 469.

§ 4382. Extreme cruelty defined. Extreme cruelty is the infliction by one party to the marriage of grievous bodily injury or grievous mental suffering upon the other. [R. C. 1905, § 4051; Civ. C. 1877, § 60; R. C. 1899, § 2739.]

Mental suffering as ground for divorce in absence of bodily injury. *Mahnken v. Mahnken*, 9 N. D. 188, 82 N. W. 870.

False charges of husband's marital infidelity not ground for divorce where conduct gave wife reason to believe that charges were true. *McAllister v. McAllister*, 7 N. D. 324, 75 N. W. 256.

Desertion is not absence from family dwelling caused by cruelty or threats of bodily harm. *Pollock v. Pollock*, 9 S. D. 48, 68 N. W. 176.

Sufficiency of evidence to warrant granting of decree of divorce. *DeRoche v. DeRoche*, 13 N. D. 17, 94 N. W. 767, 1 A. & E. Ann. Cas. 221.

Drunkenness as affecting cruel and inhuman treatment. 34 L.R.A. 454.

Charge of adultery as cruelty. 18 L.R.A.(N.S.) 303; 34 L.R.A.(N.S.) 360.

Conviction as cruelty entitling to divorce. 31 L.R.A. 521.

Bringing another woman into home as cruel and inhuman treatment. 2 L.R.A.(N.S.) 669.

Relations between one spouse and relatives of the other as affecting the question of cruelty. 13 L.R.A.(N.S.) 222; 34 L.R.A.(N.S.) 759.

Profanity and obscenity as ground for divorce, as cruel and inhuman treatment. 12 L.R.A.(N.S.) 820.

As to similar provision in Cal. Civ. Code, § 94, see *Waldron v. Waldron*, 85 Cal. 251, 9 L.R.A. 487, 24 Pac. 649, 858; *White v. White*, 86 Cal. 219, 24 Pac. 996; *Barnes v. Barnes*, 95 Cal. 171, 16 L.R.A. 660, 30 Pac. 298; *Smith v. Smith*, 124 Cal. 651, 57 Pac. 573.

§ 4383. Desertion defined. Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

1. Persistent refusal to have reasonable matrimonial intercourse as husband and wife, when health or physical condition does not make such refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party, when there is no just cause for such refusal, is desertion.

2. When one party is induced by the stratagem or fraud of the other party to leave the family dwelling place or to be absent, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud, and not by the other.

3. Departure or absence of one party from the family dwelling place caused by cruelty or by threats of bodily harm from which danger would be reasonably apprehended from the other is not desertion by the absent party, but it is desertion by the other party.

4. Separation by consent, with or without the understanding that one of the parties will apply for a divorce, is not desertion.

5. Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation.

6. Consent to a separation is a revocable act and if one of the parties afterwards in good faith seeks a reconciliation and restoration, but the other refuses it, such refusal is desertion.

7. If one party deserts the other and before the expiration of the statutory period required to make the desertion a cause of divorce returns and offers in good faith to fulfill the marriage contract and solicits condonation, the desertion is cured. If the other party refuses such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of the refusal.

8. A husband may choose any reasonable place or mode of living, and if the wife does not conform thereto it is desertion.

9. If the place or mode of living selected by the husband is unreasonable and grossly unfit and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him. [R. C. 1905, § 4052; Civ. C. 1877, § 60; R. C. 1899, § 2740.]

Wife remaining at home while husband leaves without returning, cannot be charged with desertion in absence of cruelty or threats causing husband to leave. *Barrett v. Barrett*, 20 S. D. 210, 105 N. W. 463.

What constitutes desertion. 138 Am. St. Rep. 146.

Effort to induce spouse to return home as a condition of desertion. 39 L.R.A.(N.S.) 1119.

Relations between one spouse and relatives of the other as affecting the question of desertion. 13 L.R.A.(N.S.) 222; 34 L.R.A.(N.S.) 759.

Conviction as desertion justifying divorce. 31 L.R.A. 520.

Drunkenness as affecting desertion. 34 L.R.A. 457.

Insanity as affecting abandonment. 34 L.R.A. 164.

Computation of period of abandonment as affected by insanity of defendant 16 L.R.A.(N.S.) 1071.

Charges of adultery as abandonment. 18 L.R.A.(N.S.) 310.

As to similar provision in Cal. Civ. Code, § 95, see *Benkert v. Benkert*, 32 Cal. 467; *Towle v. Matheus*, 130 Cal. 574, 62 Pac. 1064.

1. Refusal of marital intercourse as ground for divorce. 14 L.R.A. 685.

As to similar provision in Cal. Civ. Code, § 96, see *Fink v. Fink*, 137 Cal. 559, 70 Pac. 628; *Vosburg v. Vosburg*, 136 Cal. 195, 68 Pac. 694.

3. It is desertion on part of wife who drives husband from home by threats or acts of cruelty. *Pollock v. Pollock*, 9 S. D. 48, 68 N. W. 176.

Desertion by forcing spouse to leave marital home. 29 L.R.A.(N.S.) 614.

6. As to similar provision in Cal. Civ. Code, § 101, see *Sargent v. Sargent*, 106 Cal. 541, 39 Pac. 931; *McMullin v. McMullin*, 140 Cal. 112, 73 Pac. 808.

7. As to similar provision in Cal. Civ. Code, § 102, see *Andrews v. Runyon*, 65 Cal. 629, 4 Pac. 669; *McMullin v. McMullin*, 123 Cal. 653, 56 Pac. 554; *Sweasey v. Sweasey*, 126 Cal. 123, 58 Pac. 456.

8. Right of husband to choose place and mode of living. *Currie v. Look*, 14 N. D. 482, 106 N. W. 131.

Refusal of wife to follow husband, on change of domicil, as desertion. 4 L.R.A.(N.S.) 145.

§ 4384. Willful neglect defined. Willful neglect is the neglect of the husband to provide for his wife the common necessities of life, he having the ability to do so; or it is the failure to do so by reason of idleness, profligacy or dissipation. [R. C. 1905, § 4053; Civ. C. 1877, § 60; R. C. 1899, § 2741.]

As to similar provision in Cal. Civ. Code, § 105, see *Wagner v. Wagner*, 104 Cal. 293, 37 Pac. 935.

§ 4385. Habitual intemperance defined. Habitual intemperance is that degree of intemperance from the use of intoxicating drinks, morphine, opium, chloral, cocaine or other like narcotic drugs, which disqualifies the person a great portion of the time from properly attending to business or which would reasonably inflict a course of great mental anguish upon the innocent party. [R. C. 1905, § 4054; Civ. C. 1877, § 60; R. C. 1895, § 2742.]

Morphine habit reasonably and necessarily caused by using it to alleviate pain, is not ground for divorce. *Rindlaub v. Rindlaub*, 19 N. D. 352, 125 N. W. 479.

Drunkenness as a ground for divorce. 34 L.R.A. 449.

Who is an habitual drunkard within the meaning of divorce laws. 6 L.R.A.(N.S.) 914; 40 L.R.A.(N.S.) 655.

Pleadings and proof in action for divorce on ground of drunkenness. 34 L.R.A. 452.

Morphinism as ground for divorce. 39 L.R.A. 264.

§ 4386. Duration of offenses as grounds for divorce. Willful desertion, willful neglect or habitual intemperance must continue for one year before either is a ground for divorce. [R. C. 1905, § 4055; 1899, ch. 77; R. C. 1899, § 2743; 1901, ch. 73, § 2.]

Computation of period of abandonment as affected by insanity of defendant. 16 L.R.A.(N.S.) 1071.

Insanity as affecting abandonment and failure to support. 34 L.R.A. 164.

ARTICLE 2.—CAUSES FOR DENYING DIVORCE.

§ 4387. When divorce will be denied. Divorces must be denied upon showing:

1. Connivance; or,
2. Collusion; or,
3. Condonation; or,
4. Recrimination; or,
5. Limitation and lapse of time. [R. C. 1905, § 4056; Civ. C. 1877, § 61; R. C. 1899, § 2744.]

Insanity as defense against divorce. 34 L.R.A. 166.

Conviction as bar to divorce by party convicted. 31 L.R.A. 521.

1. Connivance as a bar to divorce. 120 Am. St. Rep. 520.

2. Agreement by husband to deed land in return for mutual settlement and bill, is not collusive and void. *Burgess v. Burgess*, 17 S. D. 44, 95 N. W. 279.

Attack on decree of divorce by party colluding in its procurement. 60 L.R.A. 297, 305.

Fraud and collusion in appearance by nonresident in divorce case. 23 L.R.A. 288.

3. Condonation of desertion as defense to divorce action. 39 L.R.A.(N.S.) 1121, 1126.

Condonation of loathsome disease as defense to action for divorce or annulment of marriage. 5 L.R.A.(N.S.) 729.

Effect of complainant's knowledge of spouse's antenuptial unchastity as a bar to divorce for subsequent adultery. 23 L.R.A.(N.S.) 240.

§ 4388. Connivance defined. Connivance is the corrupt consent of one party to the commission of the acts of the other constituting the cause of divorce. Corrupt consent is manifested by passive permission with intent to connive at or actively procure the commission of the acts complained of. [R. C. 1905, § 4057; Civ. C. 1877, § 61; R. C. 1899, § 2745.]

As to collusive divorce. *Clopton v. Clopton*, 11 N. D. 212, 91 N. W. 46.

What is not connivance in adultery. 54 Am. Rep. 492.

As to similar provision in Cal. Civ. Code, § 112, see *Thomson v. Thomson*, 121 Cal. 11, 53 Pac. 403.

§ 4389. Collusion defined. Collusion is an agreement between the husband and wife that one of them shall commit, or appear to have committed, or be represented in court as having committed, acts constituting a cause of divorce for the purpose of enabling the other to obtain a divorce. [R. C. 1905, § 4058; Civ. C. 1877, § 61; R. C. 1899, § 2746.]

Arrangements between the parties to avoid a threatened scandal not amenable to judicial censure. *Clopton v. Clopton*, 11 N. D. 212, 91 N. W. 46.

Agreement as to property rights not collusion. *Burgess v. Burgess*, 17 S. D. 44, 95 N. W. 279.

In order to constitute collusion there must be misrepresentation in court by agreement, which makes it appear that acts constituting cause for divorce have been committed when such acts have not been committed. *Wiemer v. Wiemer*, 21 N. D. 371, 130 N. W. 1015.

As to similar provision in Cal. Civ. Code, § 114, see *Beard v. Beard*, 65 Cal. 354, 4 Pac. 229; *Thomson v. Thomson*, 121 Cal. 11, 53 Pac. 403.

§ 4390. Condonation defined. Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce. [R. C. 1905, § 4059; Civ. C. 1877, § 61; R. C. 1899, § 2747.]

§ 4391. Requisites of condonation. The following requirements are necessary to condonation:

1. A knowledge on the part of the condoner of the facts constituting the cause of divorce.

2. Reconciliation and remission of the offense by the injured party.

3. Restoration of the offending party to all marital rights.

Condonation implies a condition subsequent, that the forgiving party must be treated with conjugal kindness. When the cause of divorce consists of a course of offensive conduct, or arises in cases of cruelty from successive acts of ill treatment, which may aggregately constitute the offense, cohabitation or passive endurance or conjugal kindness shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone. In such cases condonation can be made only after the cause of divorce has become complete as to the acts complained of. A fraudulent concealment by the condonee of facts constituting a different cause of divorce from the one condoned and existing at the time of condonation avoids such condonation. [R. C. 1905, § 4060; Civ. C. 1877, § 61; R. C. 1899, § 2748.]

Cruelty not condoned by subsequent cohabitation without express agreement and such agreement is revoked by subsequent cruelty. *Taylor v. Taylor*, 5 N. D. 58, 63 N. W. 893.

Forgiving party must be treated with kindness, or condonation is void. *Gardner v. Gardner*, 9 N. D. 192, 82 N. W. 872.

§ 4392. Revocation of condonation. Condonation is revoked and the original cause of divorce revived:

1. When the condonee commits acts constituting a like or other cause of divorce; or,

2. When the condonee is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith or not fulfilled. [R. C. 1905, § 4061; Civ. C. 1877, § 61; R. C. 1899, § 2749.]

§ 4393. Recrimination defined. Recrimination is a showing by the defendant of any cause of divorce against the plaintiff in bar of the plaintiff's cause of divorce. Condonation of a cause of divorce shown in the answer as a recriminatory defense is a bar to such defense, unless the condonation is

revoked as above provided, or two years have elapsed after the condonation and before accruing or completion of the cause of divorce against which the recrimination is shown. [R. C. 1905, § 4062; Civ. C. 1877, § 61; R. C. 1899, § 2750.]

Recriminatory defenses in suits for. 15 Am. Dec. 211; 86 Am. St. Rep. 333.

Husband's adultery as preventing him from relying on wife's adultery as defense to an action for support. 19 L.R.A.(N.S.) 468.

Desertion or cruelty as a recriminatory defense to subsequent adultery. 39 L.R.A.(N.S.) 1135.

Condoned adultery as recriminative bar to divorce for adultery on part of condoning party. 90 Am. Dec. 611.

§ 4394. Adultery by husband. When a divorce is granted for the adultery of the husband, the legitimacy of children of the marriage begotten of the wife before the commencement of the action is not affected. [R. C. 1905, § 4063; Civ. C. 1877, § 62; R. C. 1899, § 2751.]

§ 4395. By wife. Legitimacy. When a divorce is granted for the adultery of the wife the legitimacy of children begotten of her before the commission of the adultery is not affected; but the legitimacy of other children of the wife may be determined by the court upon the evidence in the case. In every such case all children begotten before the commencement of the action are to be presumed legitimate until the contrary is shown. [R. C. 1905, § 4064; Civ. C. 1877, § 63; R. C. 1899, § 2752.]

§ 4396. Time limited. A divorce must be denied when there is an unreasonable lapse of time before the commencement of the action. Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion or condonation of the offense, or full acquiescence in the same with intent to continue the marriage relation, notwithstanding the commission of the offense set up as a ground of divorce. The presumption arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action. [R. C. 1905, § 4065; Civ. C. 1877, § 65; 1881, ch. 29, § 1; R. C. 1899, § 2753.]

§ 4397. Only statutory limitations. There are no limitations of time for commencing actions for divorce except such as are contained in the foregoing section. [R. C. 1905, § 4066; Civ. C. 1877, § 66; R. C. 1895, § 2754.]

§ 4398. Term of residence. A divorce must not be granted unless the plaintiff has in good faith been a resident of the state for twelve months next preceding the commencement of the action and is a citizen of the United States or has declared his intention to become such. The provisions of this section shall not apply to any action for divorce in which the complaint shall have been filed in the office of the clerk of the district court prior to the first day of July, 1899. [R. C. 1905, § 4067; 1899, chs. 75, 76; R. C. 1899, § 2755.]

"Residence" construed to mean the same as "domicil," and must be in good faith. *Smith v. Smith*, 7 N. D. 404, 75 N. W. 783; *Smith v. Smith*, 10 N. D. 219, 86 N. W. 721.

Attempt of husband pending suit for divorce by wife to acquire domicil for purpose of divorce in other state. *Streitwolf v. Streitwolf*, 181 U. S. 179, 45 L. ed. 807, 21 S. Ct. R. 553.

Not necessary to serve order of publication in any cases except divorce cases. *Allen v. Richardson*, 16 S. D. 390, 92 N. W. 1075.

Substantial compliance with statutory provisions as to residence must be shown. *Grant v. Grant*, 6 S. D. 147, 60 N. W. 743.

Resident of other state cannot acquire domicil in this state simply by coming within state and remaining the requisite period. *Graham v. Graham*, 9 N. D. 88, 81 N. W. 44.

Applicable only to divorce actions. *Allen v. Richardson*, 16 S. D. 390, 92 N. W. 1075.

Does not apply to action for annulment of marriage, and residence of one year is not prerequisite to maintenance of such action. *Montague v. Montague*, 25 S. D. 471, 30 L.R.A.(N.S.) 745, 127 N. W. 639, Ann. Cas. 1912C, 591.

Is not unconstitutional as not being within powers reserved to state, and is not in conflict with federal constitution. *Pugh v. Pugh*, 25 S. D. 7, 32 L.R.A.(N.S.) 954, 124 N. W. 959.

§ 4399. Presumption of domicile. In actions for divorce the presumption of law that the domicile of the husband is the domicile of the wife does not

apply. After separation each party may have a separate domicile, depending for proof upon actual residence and not upon legal presumptions. [R. C. 1905, § 4068; Civ. C. 1877, § 68; R. C. 1899, § 2756.]

As to similar provision in Cal. Civ. Code, § 129, see *Re Wickes*, 128 Cal. 270, 49 L.R.A. 138, 60 Pac. 867; *McGrew v. Mutual L. Ins. Co.*, 132 Cal. 85, 84 Am. St. Rep. 20, 64 Pac. 103.

§ 4400. Affirmative proof required. No divorce can be granted upon the default of the defendant, or upon the uncorroborated statement, admission or testimony of the parties, or upon any statement or finding of fact made by a referee; but the court must in addition to any statement or finding of the referee require proof of the facts alleged. [R. C. 1905, § 4069; Civ. C. 1877, § 69; R. C. 1899, § 2757.]

Allegation of marriage in complaint admitted in defendant's answer, and testified to by plaintiff, sufficiently proved without corroboration. *Clopton v. Clopton*, 11 N. D. 212, 91 N. W. 46.

Testimony of plaintiff in divorce action as to intermarriage of parties need not be corroborated where it is alleged and admitted in pleadings. *Clopton v. Clopton*, 11 N. D. 212, 91 N. W. 46.

Slight corroboration is necessary to sustain decree of divorce, where facts and circumstances are such as to preclude any possibility of collusion. *Tuttle v. Tuttle*, 21 N. D. 503, 131 N. W. 460, Ann. Cas. 1913B, 1.

As to similar provision in Cal. Civ. Code, § 130, see *Johnson v. Superior Ct.*, 63 Cal. 578; *Beard v. Beard*, 65 Cal. 354, 4 Pac. 229; *Cooper v. Cooper*, 88 Cal. 45, 25 Pac. 1062; *Venzke v. Venzke*, 94 Cal. 225, 29 Pac. 499; *Foley v. Foley*, 120 Cal. 33, 65 Am. St. Rep. 147, 52 Pac. 122; *Andrews v. Andrews*, 120 Cal. 184, 52 Pac. 298; *McMullin v. McMullin*, 140 Cal. 112, 73 Pac. 808.

ARTICLE 3.—GENERAL PROVISIONS.

§ 4401. Maintenance. Though a judgment of divorce is denied the court may in an action for divorce provide for the maintenance of a wife and her children, or any of them, by the husband. [R. C. 1905, § 4070; Civ. C. 1877, § 70; R. C. 1899, § 2758.]

Action for separate maintenance may be maintained, and court may require defendant to provide counsel fees and temporary support. *Milliron v. Milliron*, 9 S. D. 181, 68 N. W. 286, 62 Am. St. Rep. 863; *Bueter v. Bueter*, 1 S. D. 94, 45 N. W. 208, 8 L.R.A. 562.

Power, in absence of statute, to decree alimony or maintenance independently of proceedings for divorce. 38 L.R.A.(N.S.) 950.

Wife's right to maintain suit for maintenance, independent of divorce. 77 Am. St. Rep. 228.

As to similar provision in Cal. Civ. Code, § 136, see *Hagle v. Hagle*, 68 Cal. 588, 9 Pac. 842; *Hagle v. Hagle*, 74 Cal. 608, 16 Pac. 518; *Peyre v. Peyre*, 79 Cal. 336, 21 Pac. 838; *Anderson v. Anderson*, 124 Cal. 48, 71 Am. St. Rep. 17, 56 Pac. 630, 57 Pac. 81; *Sweasey v. Sweasey*, 126 Cal. 123, 58 Pac. 456.

§ 4402. Alimony pending action. When an action for divorce is pending, the court may in its discretion, require either party thereto to pay as alimony any money necessary for the support of the other party thereto, or children of the marriage, or to prosecute or defend the action. [1911, ch. 184; R. C. 1905, § 4071; Civ. C. 1877, § 71; R. C. 1899, § 2759.]

Temporary alimony will be denied when marriage is denied. *Barden v. Barden*, 4 S. D. 305, 56 N. W. 1069.

As to power of court to make allowance pendente lite in divorce action. *Mosher v. Mosher*, 16 N. D. 269, 12 L.R.A.(N.S.) 820, 125 Am. St. Rep. 654, 113 N. W. 99.

Embraces entire subject-matter of allowance of alimony, etc., pendente lite. *State ex rel. Hagert v. Templeton*, 18 N. D. 525, 25 L.R.A.(N.S.) 234, 123 N. W. 283.

Order for temporary alimony not inhibitive of further order. *Grant v. Grant*, 5 S. D. 1, 57 N. W. 948; *Vert v. Vert*, 3 S. D. 619, 54 N. W. 655.

Order for temporary alimony should be served on husband personally. *Scott v. Scott*, 9 S. D. 125, 68 N. W. 194.

Husband not liable to action for attorney's services rendered in suit by wife for divorce. *Sears v. Siverson*, 22 S. D. 74, 115 N. W. 519.

On suit money or attorney's fees as specific part of temporary alimony. *Boyle v. Boyle*, 19 N. D. 522, 126 N. W. 229.

Supreme court has jurisdiction to grant temporary alimony and suit money pending appeal, although circuit court may grant such relief. *Wells v. Wells*, 26 S. D. 70, 127 N. W. 636.

Allowances of suit money in divorce action should be made payable to wife and not to attorney. *Bailey v. Bailey*, 22 N. D. 553, 134 N. W. 747.

On right of husband to alimony in divorce action. *Hagert v. Hagert*, 22 N. D. 290, 38 L.R.A.(N.S.) 966, 133 N. W. 1035.

Power to award temporary alimony or counsel fees pending attempt to set aside decree of divorce or separation. 24 L.R.A.(N.S.) 1015.

Wife's liability for legal services in divorce suit. 24 L.R.A. 634; 34 L.R.A.(N.S.) 1080.

Alimony pendente lite or counsel fees in suit for divorce when marriage is denied. 25 L.R.A.(N.S.) 387.

Husband's liability for services rendered to wife in divorce suit. 24 L.R.A. 629.

Liability of husband on wife's contract for attorneys' fees in divorce proceedings. 13 L.R.A.(N.S.) 244.

Power of court to allow attorneys' fees in divorce suit after reconciliation of parties. 36 L.R.A.(N.S.) 1001.

Validity of agreement to pay attorney a percentage of amount obtained as alimony. 33 L.R.A.(N.S.) 1074.

Liability of guardian for suit money in divorce proceedings against ward. 15 L.R.A.(N.S.) 1034.

Jurisdiction to award temporary alimony, suit money and counsel fee pending an appeal in divorce suit. 27 L.R.A.(N.S.) 712.

Allowance of suit money to husband. 25 L.R.A.(N.S.) 234.

As to similar provision in Cal. Civ. Code, § 137, see *Sharon v. Sharon*, 67 Cal. 185, 7 Pac. 456, 635, 8 Pac. 709; *Sharon v. Sharon*, 75 Cal. 1, 16 Pac. 345; *Turner v. Turner*, 80 Cal. 141, 22 Pac. 72; *Ex parte Spencer*, 83 Cal. 460, 17 Am. St. Rep. 266, 23 Pac. 395; *Mudd v. Mudd*, 98 Cal. 320, 33 Pac. 114; *Storke v. Storke*, 99 Cal. 621, 34 Pac. 339; *Loveren v. Loveren*, 100 Cal. 493, 35 Pac. 87; *Rose v. Rose*, 109 Cal. 544, 42 Pac. 452; *Hite v. Hite*, 124 Cal. 389, 45 L.R.A. 793, 71 Am. St. Rep. 82, 57 Pac. 227; *Sweasey v. Sweasey*, 126 Cal. 123, 58 Pac. 456; *Anderson v. Anderson*, 137 Cal. 225, 68 Pac. 1061.

§ 4403. Temporary support and maintenance. In all actions brought to enforce the obligations established by law for the support or maintenance of either party to a marriage in an action of divorce, the court shall have authority, in its discretion, to require the defendant therein to pay such sum or sums of money as it may deem necessary for the temporary support and maintenance of the plaintiff and to prosecute the action. [1911, ch. 185.]

§ 4404. Custody of children. In an action for divorce the court may before or after judgment give such direction for the custody, care and education of the children of the marriage as may seem necessary or proper and may at any time vacate or modify the same. [R. C. 1905, § 4072; Civ. C. 1877, § 72; R. C. 1899, § 2760.]

Decree awarding alimony may be modified when conditions have changed. *Greenleaf v. Greenleaf*, 6 S. D. 348, 61 N. W. 42.

Allowance to wife may be in gross sum, instead of periodical payments. *Williams v. Williams*, 6 S. D. 284, 61 N. W. 38.

Payment of alimony may be enforced. *Allison v. Allison*, 5 S. D. 216, 58 N. W. 563.

Decree may be modified so as to require payment of fixed sum, and may make same a lien on homestead, and direct that it be sold. *Harding v. Harding*, 16 S. D. 406, 92 N. W. 1080.

In a divorce granted to husband, no allowance for wife's support can be made; a decree for payment of monthly sum not enforceable by attachment for contempt. *Glynn v. Glynn*, 8 N. D. 233, 77 N. W. 594.

Alimony may be made in gross sum or by monthly payments. *Williams v. Williams*, 6 S. D. 284, 61 N. W. 38.

Where homestead is sold to pay alimony year's redemption shall be allowed. *Harding v. Harding*, 16 S. D. 406, 92 N. W. 1080.

Jurisdiction of court to award custody of children after prayer for divorce has been withdrawn or dismissed. 35 L.R.A.(N.S.) 1159.

Effect of death of parent to whom custody of child was awarded upon rights of surviving parent. 20 L.R.A.(N.S.) 171.

Effect of provision in decree of divorce or separation on right of parent to custody of child. 41 L.R.A.(N.S.) 597.

Custody of children when interstate or international elements involved. 59 L.R.A. 177.

Jurisdiction to award custody of child temporarily within the state but domiciled elsewhere. 10 L.R.A.(N.S.) 690.

Recognition of right, emanating from foreign power, to the custody and control of a child. 7 L.R.A.(N.S.) 306.

Removal of child from jurisdiction of court during divorce proceedings. 58 L.R.A. 939.

Extraterritorial effect of judgment awarding custody of children. 39 L.R.A.(N.S.) 988.

As to similar provision in Cal. Civ. Code, § 138, see *Schammel v. Schammel*, 105 Cal. 258, 38 Pac. 729; *Younger v. Younger*, 106 Cal. 377, 39 Pac. 779; *Gaston v. Gaston*, 114 Cal. 542, 55 Am. St. Rep. 86, 46 Pac. 609; *McKay v. Superior Ct.*, 120 Cal. 143, 40 L.R.A. 585, 52 Pac. 147; *McKay v. McKay*, 125 Cal. 65, 57 Pac. 677; *Shattuck v. Shattuck*, 135 Cal. 192, 67 Pac. 45; *Vosburg v. Vosburg*, 137 Cal. 493, 70 Pac. 473.

§ 4405. Support. When divorce is granted, the court shall make such equitable distribution of the property of the parties thereto as may seem just and proper and may compel either of such parties to provide for the maintenance of the children of the marriage, and make such suitable allowances to the other party for support during life or for a shorter period as to the court may seem just, having regard to the circumstances of the parties respectively; and the court may from time to time modify its orders in these respects. [1911, ch. 184; R. C. 1905, § 4073; 1899, ch. 78; R. C. 1899, § 2761.]

Divorce granted husband for fault of wife, court has no power to make allowance for support of wife. Express contract to pay for support cannot be enforced by contempt proceedings. *Glynn v. Glynn*, 8 N. D. 233, 77 N. W. 594.

Alimony may be granted in gross sum. *De Roche v. De Roche*, 12 N. D. 17, 94 N. W. 767, 1 A. & E. Ann. Cas. 221.

Court may modify divorce decree to require husband to support child in custody of wife, although not claimed in original complaint. *Marks v. Marks*, 22 S. D. 453, 118 N. W. 694.

Court may modify divorce decree on husband's default, by requiring payment of certain sum to be lien on homestead. *Harding v. Harding*, 16 S. W. 406, 92 N. W. 1080.

Order for maintenance, etc., where divorce is granted for offense of husband, may be enforced by appointment of receiver, or by any other remedy applicable to case. *Drake v. Drake*, 27 S. D. 329, 131 N. W. 294.

Supreme court may require payment of temporary alimony and suit money pending appeal by husband from allowance of permanent alimony. *Tuttle v. Tuttle*, 26 S. D. 95, 127 N. W. 637.

On power of court to grant permanent alimony before divorce is decreed. *Boyle v. Boyle*, 19 N. D. 522, 126 N. W. 229.

Alimony and its allowance. 60 Am. Dec. 664.

Award of alimony on constructive service. 16 L.R.A. 234; 59 L.R.A. 178; 9 L.R.A.(N.S.) 593.

Husband's prospects as basis for alimony. 4 L.R.A.(N.S.) 909.

Right of wife against whom an absolute divorce is granted to permanent alimony. 20 L.R.A.(N.S.) 421; 30 L.R.A.(N.S.) 73.

Liability of guardian for alimony in divorce proceedings instituted by or against the ward. 15 L.R.A.(N.S.) 1034.

Assignability of decree for alimony. 7 L.R.A.(N.S.) 179.

Liability of alimony for debts. 32 L.R.A.(N.S.) 270.

Judgment for alimony as a fixed liability for purposes of bankruptcy act. 54 L.R.A. 369.

Power of court to decree alimony after the granting of a divorce. 88 Am. Dec. 657.

Independent suit for alimony after decree of divorce. 21 L.R.A. 677.

Valid divorce granted in one state as affecting independent suit for alimony in another. 34 L.R.A.(N.S.) 1106.

Power of court to create and enforce liens for alimony. 102 Am. St. Rep. 700.

Validity of provision in decree for alimony declaring a lien on husband's personalty. 30 L.R.A.(N.S.) 1062.

Money decree for permanent alimony or separate maintenance as lien on real property. 25 L.R.A.(N.S.) 132.

Failure to pay alimony or allowance for support granted by decree of divorce as a criminal offense. 42 L.R.A.(N.S.) 1055.

Contempt proceedings to enforce payment of alimony. 137 Am. St. Rep. 875; 24 L.R.A. 433.

Enforcement of payment of alimony by imprisonment. 37 Am. St. Rep. 763; 34 L.R.A. 665; 17 L.R.A.(N.S.) 1140.

Remedy for the enforcement against decedent's estate of alimony which had accrued prior to his death. 18 L.R.A.(N.S.) 257.

Enforcing award of alimony in another state. 59 L.R.A. 178.

Equitable jurisdiction to enforce a foreign decree for alimony. 9 L.R.A.(N.S.) 1071.

Action to recover installments of alimony accruing under a decree rendered in another state. 9 L.R.A.(N.S.) 1168; 28 L.R.A.(N.S.) 1068.

Effect of wife's subsequent adultery upon an allowance of alimony. 19 L.R.A. 811.
 Adultery while insane as affecting claim for alimony. 34 L.R.A. 164.
 Effect of intermarriage of parties to a divorce upon the right to alimony or provision in lieu of alimony. 3 L.R.A.(N.S.) 923.
 Effect of second marriage upon obligation to pay alimony. 62 L.R.A. 975.
 Does alimony terminate on the death of the husband. 2 L.R.A.(N.S.) 232.
 Validity of agreement made after divorce as a substitute for an award of alimony. 35 L.R.A.(N.S.) 1167.
 Validity of anticipatory contract making provision for wife in the event of her obtaining a divorce for subsequent fault of husband. 23 L.R.A.(N.S.) 880.
 Allowance of alimony to husband. 34 L.R.A. 110; 25 L.R.A.(N.S.) 234.
 Power, on annulling marriage, to require man to provide for support of child. 5 L.R.A.(N.S.) 767.
 Recovery by mother against father for money expended in support of children after divorce. 38 L.R.A.(N.S.) 509.
 Father's liability for support of children as affected by decree awarding custody to mother. 2 L.R.A.(N.S.) 851; 47 Am. St. Rep. 314.
 Duty of father to support child awarded to mother by decree of divorce silent as to maintenance. 114 Am. St. Rep. 700.
 As to similar provision in Cal. Civ. Code, § 139, see *Everett v. Everett*, 52 Cal. 383; *Robinson v. Robinson*, 79 Cal. 511, 21 Pac. 1095; *Re Spencer*, 82 Cal. 110, 23 Pac. 37; *Ex parte Spencer*, 83 Cal. 460, 17 Am. St. Rep. 266, 23 Pac. 395; *Howell v. Howell*, 104 Cal. 45, 43 Am. St. Rep. 70, 37 Pac. 770, 772; *Schammel v. Schammel*, 105 Cal. 258, 38 Pac. 729; *Gaston v. Gaston*, 114 Cal. 542, 55 Am. St. Rep. 86, 46 Pac. 609; *Huellmantel v. Huellmantel*, 124 Cal. 583, 57 Pac. 582; *McKay v. McKay*, 125 Cal. 65, 57 Pac. 677.

§ 4406. Security, separate estate. Homestead. The court may require such party to give reasonable security for providing maintenance or making any payments required under the provisions of this chapter and may enforce the same by appointment of a receiver or by any other remedy applicable to the case. But when the wife has a separate estate sufficient to give her a proper support, the court in its discretion may withhold any allowance to her out of the separate property of the husband. The court in rendering the decree of divorce may assign the homestead or such part thereof as may to the court seem just, to the innocent party either absolutely or for a limited period, according to the facts in the case and in consonance with law relating to homesteads. The disposition of the homestead by the court and all orders and decrees touching the alimony and maintenance of either party to a marriage and for the custody, education and support of the children as above provided are subject to revision on appeal in all particulars, including those which are stated to be in the discretion of the court. [1911, ch. 184; R. C. 1905, § 4074; Civ. C. 1877, § 74; R. C. 1899, § 2762.]

As providing for appeals from all orders and decrees touching alimony and maintenance. *Tonn v. Tonn*, 16 N. D. 17, 111 N. W. 609.

Divorced wife retains no right in homestead unless so decreed. *Brady v. Kreuger*, 8 S. D. 464, 66 N. W. 1083, 59 Am. St. Rep. 771.

Decree being silent upon the subject, homestead remains in possession of party holding legal title, discharged of claims of other party. *Rosholt v. Mehus*, 3 N. D. 513, 57 N. W. 783.

Court may decree homestead to wife or may make alimony lien on same. *Harding v. Harding*, 16 S. D. 406, 92 N. W. 1080.

Husband not liable to action for attorney's services rendered in suit by wife for divorce. *Sears v. Siverson*, 22 S. D. 74, 115 N. W. 519.

Effect of divorce on homestead. 23 L.R.A. 239; 16 L.R.A.(N.S.) 114.

—on partition of homestead. 4 L.R.A.(N.S.) 786.

—on "family" under homestead and exemption laws. 4 L.R.A.(N.S.) 396.

Effect of dissolution of marriage after initiation but before consummation of right under homestead entry. 7 L.R.A.(N.S.) 967.

Money decree for permanent alimony or separate maintenance as lien on homestead. 25 L.R.A.(N.S.) 137.

As to similar provision in Cal. Civ. Code, §§ 140, 146, see *Eslinger v. Eslinger*, 47 Cal. 62; *Cummings v. Cummings*, 75 Cal. 434, 17 Pac. 442; *Simpson v. Simpson*, 80 Cal. 237, 22 Pac. 167; *Neary v. Godfrey*, 102 Cal. 338, 36 Pac. 655; *Huellmantel v. Huellmantel*, 117 Cal. 407, 49 Pac. 574; *Re James*, 124 Cal. 653, 57 Pac. 578, 1008; *Gorman v. Gorman*, 134 Cal. 378, 66 Pac. 313; *Petaluma Sav. Bank v. Superior Ct.*, 111 Cal. 488, 44 Pac. 177; *Gaston v. Gaston*, 114 Cal. 542, 55 Am. St. Rep. 86, 46 Pac. 609; *Murray v. Murray*, 115 Cal. 266, 37 L.R.A. 626, 56 Am. St. Rep. 97, 47 Pac. 37; *Storke v. Storke*, 116 Cal. 47, 47 Pac. 869, 48 Pac. 121.

CHAPTER 7.

HUSBAND AND WIFE.

§ 4407. Mutual relations. Husband and wife contract toward each other obligations of mutual respect, fidelity and support. [R. C. 1905, § 4075; Civ. C. 1877, § 75; R. C. 1899, § 2763.]

If husband assents to opening of highway across homestead, he having title wife's assent will be presumed. *Centerville Twp. v. Jenter*, 25 S. D. 314, 126 N. W. 575.

Separate action by infirm husband against wife will lie to compel wife to support him when she is amply able to do so. *Hagert v. Hagert*, 22 N. D. 290, 38 L.R.A.(N.S.) 966, 133 N. W. 1035.

Misconduct of wife as affecting gift to her before, and in consideration of, marriage. 6 L.R.A.(N.S.) 785.

Marital misconduct of one spouse as avoiding gift by other. 35 L.R.A.(N.S.) 124.

As to similar provision in Cal. Civ. Code, § 155, see *Sharon v. Sharon*, 75 Cal. 1, 16 Pac. 345; *Mott v. Mott*, 82 Cal. 413, 22 Pac. 1140; *Livingston v. Conant*, 5 Cal. Unrep. 933, 51 Pac. 859; *Martin v. Southern P. Co.*, 130 Cal. 285, 62 Pac. 515.

§ 4408. Head of family. The husband is the head of the family. He may choose any reasonable place or mode of living and the wife must conform thereto. [R. C. 1905, § 4076; Civ. C. 1877, § 76; R. C. 1899, § 2764.]

Head of family may be either husband or wife under certain circumstances. *Ness v. Jones*, 10 N. D. 587, 88 N. W. 706.

Wife not "head of family" for purpose of claiming exemptions of personalty. *Ness v. Jones*, 10 N. D. 587, 88 N. W. 706.

Wife may be head of family, and so able to claim exemptions from her separate estate. *Linander v. Longstaff*, 7 S. D. 157, 63 N. W. 775.

Married woman, living with her husband, must show affirmatively that she heads the family to recover exempt property. *Blount v. Medbery*, 16 S. D. 562, 94 N. W. 428.

Domicile of wife, when different from that of her husband. 84 Am. St. Rep. 27.

§ 4409. Duty to support. The husband must support himself and his wife out of his property or by his labor. The wife must support the husband when he has not deserted her out of her separate property, when he has no separate property and he is unable from infirmity to support himself. [R. C. 1905, § 4077; Civ. C. 1877, § 77; R. C. 1899, § 2765.]

Separate action by infirm husband against wife will lie to compel wife to support him when she is amply able to do so. *Hagert v. Hagert*, 22 N. D. 290, 38 L.R.A.(N.S.) 966, 133 N. W. 1035.

Wife not bound to reimburse county for husband's maintenance in insane asylum. *Hamlin County v. Tauer*, 18 S. D. 295, 100 N. W. 430.

Offense of desertion or failure to provide for wife or family as affected by residence of parties. 47 L.R.A.(N.S.) 218.

Conveyance of property in contemplation of, but before negotiations for, marriage, as a fraud. 9 L.R.A.(N.S.) 955.

Right of wife to relief against conveyance or transfer made or contemplated by her husband in fraud of her support. 18 L.R.A.(N.S.) 1147.

Recovery by mother against father for money expended in support of children. 38 L.R.A.(N.S.) 508.

Failure to support wife as desertion entitling her to divorce. 29 L.R.A.(N.S.) 618.

Validity of antenuptial contract by one party to support the other. 15 L.R.A.(N.S.) 491.

Liability of husband for necessities furnished wife while living with him. 47 L.R.A.(N.S.) 279.

Liability of wife for necessities. 31 Am. Rep. 697.

Implied liability of wife for family expenses; rules in various states. 15 L.R.A. 717.

When separate estate of married woman is chargeable with debts of herself and husband. 72 Am. Dec. 513.

§ 4410. Separate property. Dwelling. Except as mentioned in section 4409, neither the husband nor the wife has any interest in the property of the other, but neither can be excluded from the other's dwelling. [R. C. 1905, § 4078; Civ. C. 1877, § 78; R. C. 1899, § 2766.]

Gratuitous contribution of husband's time and skill to management of wife's property creates no title in him to its profits. *Olson v. O'Connor*, 9 N. D. 504, 84 N. W. 359.

Wife not answerable for assault and battery committed by husband, though employed by her and occupying same homestead. *Curtis v. Dinneen*, 4 D. 245, 30 N. W. 148.

§ 4411. Rights and capacity of husband and wife. Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which the other might, if unmarried. The wife after marriage has with respect to property, contracts and torts the same capacity and rights and is subject to the same liabilities as before marriage, and in all actions by or against her she shall sue and be sued in her own name. [R. C. 1905, § 4079; 1899, ch. 100; R. C. 1899, § 2767.]

As authorizing wife to maintain action in her own name. *King v. Hanson*, 13 N. D. 85, 99 N. W. 1085.

Husband may deal with wife in regard to property as a stranger. *Williams v. Harris*, 4 S. D. 22, 54 N. W. 926.

A husband has a right to pay his wife an honest debt in an honest manner. *Garvin v. Pettee*, 15 S. D. 266.

May deal with each other as if unmarried; conveyance directly to wife valid. *Johnson v. Brauch*, 9 S. D. 116, 68 N. W. 173, 62 Am. St. Rep. 857; *Williams v. Harris*, 4 S. D. 22, 54 N. W. 926, 46 Am. St. Rep. 753.

Wife executing promissory note with husband is liable thereon, though note given for husband's individual debt. *Col. U. S. Mortgage Co. v. Bradley*, 4 S. D. 158, 55 N. W. 1108; *Miller v. Purchase*, 5 S. D. 232, 58 N. W. 556; *Col. U. S. Mortgage Co. v. Stevens*, 8 N. D. 265, 55 N. W. 578; *Granger v. Roll*, 6 S. D. 611, 62 N. W. 970.

Wife may employ husband as servant. *Curtis v. Dinneen*, 4 D. 245, 30 N. W. 148.

Wife joining in mortgage upon husband's property to secure his debt is a surety. *People's Bank v. Francis*, 8 N. D. 369, 79 N. W. 853.

Conveyance of homestead by husband to wife in fraud of creditors passes no title. *Kettleschlager v. Ferrick*, 12 S. D. 455, 81 N. W. 889.

Husband may deal with wife; may pay her an honest debt. *Kolbe v. Harrington*, 15 S. D. 263, 88 N. W. 572.

The husband's fraudulent intent in transferring land to wife will not defeat the transfer, unless wife has knowledge of fraud. *First State Bank v. O'Leary*, 13 S. D. 204, 83 N. W. 45; *Hewett v. Usher*, 11 S. D. 512, 78 N. W. 993; *Williams v. Harris*, 4 S. D. 22, 54 N. W. 926, 46 Am. St. Rep. 753.

Choses in action of wife, antenuptial and postnuptial. 46 Am. Dec. 47.

Right of husband to prevent wife engaging in a separate business in competition with his own business. 32 L.R.A.(N.S.) 837.

Title by adverse possession as between husband and wife. 18 Am. St. Rep. 113.

Conveyances and contracts between husband and wife. 99 Am. Dec. 599.

—from husband to wife. 88 Am. Dec. 54; 133 Am. St. Rep. 607; 69 L.R.A. 353.

—from wife to husband. 9 Am. St. Rep. 323; 20 L.R.A. 702.

Enforcing in equity against married women defectively executed or acknowledged writings. 19 Am. Dec. 230.

Antenuptial contracts between husband and wife, effect of. 73 Am. St. Rep. 898.

Partnership in business between husband and wife. 31 Am. St. Rep. 935.

Powers of attorney by married woman. 84 Am. St. Rep. 761.

Right of husband or wife to compensation for services rendered to each other. 15 L.R.A. 215.

Agreements to compensate each other for services or to relinquish claims on the other's earnings. 58 Am. St. Rep. 492.

Married woman's liability upon covenants of warranty. 43 Am. Dec. 426.

Estoppel against married women. 57 Am. St. Rep. 169.

—by covenants in their deeds. 49 Am. Rep. 87.

Conflict of laws as to the liability of married women. 46 Am. St. Rep. 446.

—as to capacity of wife to become surety for husband. 57 L.R.A. 513.

Obligation purporting to be that of married woman as principal, which, to knowledge of payee or obligee, is used to discharge debt of third person, as a contract of suretyship. 18 L.R.A.(N.S.) 81.

Power of married woman, under statute giving her sole control of her separate estate, to become surety for one other than her husband. 17 L.R.A.(N.S.) 676.

Proof of husband's agency for wife by evidence of similar acts by husband. 17 L.R.A.(N.S.) 223.

Gift by wife to husband, when inferable from use by him of the income of real property. 58 Am. Rep. 261.

Investment by husband in his own name of wife's separate property in real estate as gift to husband. 6 L.R.A.(N.S.) 381; 26 L.R.A.(N.S.) 161.

Investment by husband in his own name of wife's separate property in real estate as creating a trust in her favor. 6 L.R.A.(N.S.) 381; 26 L.R.A.(N.S.) 161.

Does expectation of one spouse on making gift to other that latter will allow former to share in benefits of the property raise implied trust to that effect. 24 L.R.A.(N.S.) 1043.

When resulting trust arises in favor of husband or wife. 127 Am. St. Rep. 252.

Suits between husband and wife, when maintainable. 73 Am. St. Rep. 268.

Right of wife to sue husband for personal tort. 6 L.R.A.(N.S.) 191; 30 L.R.A.(N.S.) 1153.

Husband's right to sue wife for personal tort. 23 L.R.A.(N.S.) 699.

As to similar provision in Cal. Civ. Code, §§ 158, 159, see Parry v. Kelley, 52 Cal. 334; Marlow v. Barlew, 53 Cal. 456; Butler v. Baber, 54 Cal. 178; Schuler v. Savings & L. Soc., 64 Cal. 397, 1 Pac. 479; Sacramento Lumber Co. v. Wagner, 67 Cal. 293, 7 Pac. 705; Goad v. Moulton, 67 Cal. 536, 8 Pac. 63; Burkle v. Levy, 70 Cal. 250, 11 Pac. 643; Schuyler v. Broughton, 70 Cal. 282, 11 Pac. 719; Re Noah, 73 Cal. 583, 2 Am. St. Rep. 829, 15 Pac. 287; Tolman v. Smith, 74 Cal. 345, 16 Pac. 189; Brison v. Brison, 75 Cal. 525, 7 Am. St. Rep. 189, 17 Pac. 689; Burkett v. Burkett, 78 Cal. 310, 3 L.R.A. 781, 12 Am. St. Rep. 58, 20 Pac. 715; Carter v. McQuade, 83 Cal. 274, 23 Pac. 348; Jackson v. Jackson, 94 Cal. 446, 29 Pac. 957; Wickersham v. Comerford, 96 Cal. 433, 31 Pac. 358; Bogart v. Woodruff, 96 Cal. 609, 31 Pac. 618; Schwarze v. Mahoney, 97 Cal. 131, 31 Pac. 908; Porter v. Bucher, 98 Cal. 454, 33 Pac. 335; Wren v. Wren, 100 Cal. 276, 38 Am. St. Rep. 287, 34 Pac. 775; Dimond v. Sanderson, 103 Cal. 97, 37 Pac. 189; Re Davis, 106 Cal. 453, 39 Pac. 756; Glas v. Glas, 114 Cal. 566, 55 Am. St. Rep. 90, 46 Pac. 667; Tillaux v. Tillaux, 115 Cal. 663, 47 Pac. 691; Jones v. Lamont, 118 Cal. 499, 62 Am. St. Rep. 251, 50 Pac. 766; Re Winslow, 121 Cal. 92, 53 Pac. 362; Yoakam v. Kingery, 126 Cal. 30, 58 Pac. 324; Newman v. Freitas, 129 Cal. 283, 50 L.R.A. 548, 61 Pac. 907; Freiermuth v. Steigleman, 130 Cal. 392, 80 Am. St. Rep. 138, 62 Pac. 615; Stiles v. Cain, 134 Cal. 170, 66 Pac. 231; Hamilton v. Hubbard, 134 Cal. 603, 65 Pac. 321, 66 Pac. 860; McDougall v. McDougall, 135 Cal. 316, 67 Pac. 778; Farmers' & M. Bank v. De Shorb, 137 Cal. 685, 70 Pac. 771; McDonald v. Randall, 139 Cal. 246, 72 Pac. 997.

§ 4412. Cannot alter relations. A husband and wife cannot by any contract with each other alter their marital relations, except that they may agree in writing to an immediate separation and may make provision for the support of either of them and of their children during such separation. [R. C. 1905, § 4080; Civ. C. 1877, § 80; R. C. 1895, § 2768.]

Husband and wife may contract to live apart and release interest of each in property of the other. Aspey v. Barry, 13 S. D. 220, 83 N. W. 91.

Agreement by husband to deed land in return for mutual settlement and bill is not collusive and void. Burgess v. Burgess, 17 S. D. 44, 95 N. W. 279.

Agreements for separation and their validity. 90 Am. Dec. 367; 83 Am. St. Rep. 859. Validity of agreement between husband and wife renouncing marital rights. 12 L.R.A.(N.S.) 848.

Wife's right to sue husband on separation agreement. 5 L.R.A.(N.S.) 613.

§ 4413. Separation. The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section. [R. C. 1905, § 4081; Civ. C. 1877, § 81; R. C. 1899, § 2769.]

§ 4414. Separate and mutual rights and liabilities. Neither the husband nor the wife, as such, is answerable for the acts of the other.

2. The earnings of the wife are not liable for the debts of the husband, and the earnings and accumulations of the wife and of her minor children living with her, or in her custody, while she is living separate from her husband, are the separate property of the wife; provided, however, that husband and wife shall be jointly and severally liable for any debts contracted by either while living together, for necessary household supplies of food, clothing and fuel for themselves and family, and for the education of their minor children.

3. The separate property of the husband is not liable for the debts of the wife contracted before the marriage.

4. The separate property of the wife is not liable for the debts of her husband, but is liable for her own debts contracted before or after marriage.

5. No estate is allowed the husband as tenant by curtesy upon the death of his wife, nor is any estate in dower allotted to the wife upon the death of her husband. [1907, ch. 136; R. C. 1905, § 4082; Civ. C. 1877, § 83; 1893, ch. 52, § 2; R. C. 1899, § 2770.]

Divorced husband of a testatrix, having custody and control of child, has no interest in wife's property, except as contingent on child's death. Halde v. Schultz, 17 S. D. 463.

Husband and wife contract as individuals. Colonial & U. S. Mortgage Co. v. Bradley, 4 S. D. 158, 55 N. W. 1108.

Wife is not answerable for tort committed by husband. Curtis v. Dinneen, 4 D. 245, 30 N. W. 148.

Husband answerable for illegal sale with his knowledge and consent of intoxicants by wife. State v. Rozum, 8 N. D. 548, 80 N. W. 477; State v. Ekanger, 8 N. D. 559, 80 N. W. 482.

Liability of wife for crime committed in presence of and with assent of husband. *Neys v. Taylor*, 12 S. D. 488, 81 N. W. 901.

Power to contract not dependent upon existence or nonexistence of separate property. *Col. U. S. Mort. Co. v. Bradley*, 4 S. D. 158, 55 N. W. 1108.

Business conducted by and in the name of the wife. 84 Am. Dec. 753.

Validity of judgments as against married women. 134 Am. St. Rep. 927.

Presumption of coercion by husband. 106 Am. St. Rep. 725.

1. Effect of married women's acts upon husband's liability for wife's torts. 14 L.R.A.(N.S.) 1003; 25 L.R.A.(N.S.) 840.

Liability of community property for torts of wife. 36 L.R.A.(N.S.) 88.

Liability of husband and wife for wife's libel or slander. 30 L.R.A. 521.

2. Judgment against wife for necessary household supplies is valid, and statute is constitutional. *Banner Mercantile Co. v. Hendricks*, 24 N. D. 16, 138 N. W. 993.

As to similar provision in Cal. Civ. Code, §§ 168, 169, see *Spreckels v. Spreckels*, 116 Cal. 339, 36 L.R.A. 497, 58 Am. St. Rep. 170, 48 Pac. 228; *Melvin v. State*, 121 Cal. 16, 53 Pac. 416; *Loring v. Stewart*, 79 Cal. 200, 21 Pac. 651.

3. Antenuptial debts of married women and liability of husbands therefor. 60 Am. Dec. 259.

Validity of husband's express promise to pay debt previously contracted by wife. 7 L.R.A.(N.S.) 1048.

Effect of intermarriage between debtor and creditor upon the indebtedness. 21 L.R.A.(N.S.) 683.

Liability of community property for antenuptial indebtedness. 19 L.R.A. 235.

4. As to similar provision in Cal. Civ. Code, § 171, see *Butler v. Baber*, 54 Cal. 178; *Melvin v. State*, 121 Cal. 16, 53 Pac. 416.

Conveyance by husband to wife as creating separate estate. 69 L.R.A. 370.

Enforcement of wife's liability under statute of another state for a debt contracted by her husband. 17 L.R.A.(N.S.) 426.

Liability of married woman for legal services in divorce suit. 24 L.R.A. 634; 34 L.R.A.(N.S.) 1080.

Liability of estate of married woman for funeral expenses. 33 L.R.A. 662.

Mechanics' lien on building erected by husband on wife's land. 62 L.R.A. 374.

Liability of separate estate of wife for her funeral expenses. 6 L.R.A.(N.S.) 917; 37 L.R.A.(N.S.) 754.

Injunction against execution sale of wife's property for husband's debts. 30 L.R.A. 112, 118.

Right of husband's creditors to reach fruits of his management of, or services in connection with wife's separate estate or business. 21 L.R.A.(N.S.) 1124.

5. Estates of dower and curtesy are unknown to our law. *Fore v. Fore*, 2 N. D. 260, 50 N. W. 712.

Power of legislature to destroy right of curtesy. 19 L.R.A. 256.

Power of legislature to increase dower rights. 17 L.R.A.(N.S.) 319.

§ 4415. Wife's necessities. If the husband neglects to make adequate provision for the support of his wife, except in the cases mentioned in the next section, any other person may in good faith supply her with articles necessary for her support and recover the reasonable value thereof from the husband. [R. C. 1905, § 4083; Civ. C. 1877, § 84; R. C. 1899, § 2771.]

Husband not liable to action for attorney's services rendered in suit by wife for divorce. *Sears v. Siverson*, 22 S. D. 74, 115 N. W. 519.

Agency of wife to act for husband and charge him for necessities. 98 Am. St. Rep. 627.

What are necessities. 10 Am. Dec. 462.

Necessaries for which husband is chargeable. 98 Am. St. Rep. 627.

Liability of husband for money loaned to wife to buy necessities. 23 L.R.A. 132.

Husband's liability for services rendered to wife in divorce suit. 24 L.R.A. 629.

Conclusiveness as to third persons in action for necessities of decree in suit for divorce or annulment as to facts adjudicated as distinguished from status established. 38 L.R.A.(N.S.) 560.

Liability of husband for necessities furnished wife while living with him. 65 L.R.A. 529.

Liability of married woman for necessities purchased by her. 33 L.R.A.(N.S.) 426.

As to similar provision in Cal. Civ. Code, § 174, see *Nissen v. Bendixsen*, 69 Cal. 521, 11 Pac. 29; *Re Weringer*, 100 Cal. 345, 34 Pac. 825; *St. Vincent's Inst. v. Davis*, 129 Cal. 20, 61 Pac. 477.

§ 4416. Abandonment. Separation. A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified by his misconduct in abandoning him; nor is he liable for her support when she is living separate from him by agreement, unless such support is stipulated in the agreement. [R. C. 1905, § 4084; Civ. C. 1877, § 85; R. C. 1899, § 2772.]

As to similar provision in Cal. Civ. Code, § 175, see *Heney v. Sargent*, 54 Cal. 396.

§ 4417. Transfer of property when abandoned. In case the husband or wife abandons the other and removes from the state and is absent therefrom for one year without providing for the maintenance and support of his or her family, or is sentenced to imprisonment either in the county jail or penitentiary for the period of one year or more, the district court of the county or judicial subdivision where the husband or wife so abandoned, or not in prison, resides may, on application by affidavit of such husband or wife, setting forth fully the facts, supported by such other testimony as the court may deem necessary, authorize him or her to manage, control, sell or encumber the property of the said husband or wife for the support and maintenance of the family and for the purpose of paying debts contracted prior to such abandonment or imprisonment. Notice of such proceedings shall be given the opposite party and shall be served as summons is served in ordinary actions. [R. C. 1905, § 4085; 1883, ch. 68, § 1; R. C. 1899, § 2773.]

Validity of conveyance or incumbrance of homestead by wife after abandonment by husband. 36 L.R.A.(N.S.) 1024.

Conveyance of homestead by husband after abandonment by wife. 8 L.R.A.(N.S.) 565.

§ 4418. Contracts binding on both. All contracts, sales or incumbrances made either by the husband or the wife by virtue of the power contemplated and granted by order of the court as provided in the preceding section, shall be binding on both, and during such absence or imprisonment the person acting under such power may sue and be sued thereon, and for all acts done the property of both shall be liable, and execution may be levied or attachment issued thereon according to statute. No suit or proceedings shall abate or be in anywise affected by the return or release of the person confined, but he or she may be permitted to prosecute or defend jointly with the other. [R. C. 1905, § 4086; 1883, ch. 68, § 2; R. C. 1899, § 2774.]

§ 4419. When order set aside. The husband or wife affected by the proceedings contemplated in the two preceding sections may have the order or decree of the court set aside or annulled by affidavit of such party, setting forth fully the facts and supported by such other testimony as the court shall deem proper. Notice of such proceedings to set aside and annul such order must be given the person in whose favor the same was granted and shall be served as summons is served in ordinary actions. The setting aside of such decree or order shall in no wise affect any act done thereunder. [R. C. 1905, § 4087; 1883, ch. 68, § 3; R. C. 1899, § 2775.]

CHAPTER 8.

PARENT AND CHILD.

§ 4420. Legitimacy presumed. All children born in wedlock are presumed to be legitimate. [R. C. 1905, § 4088; Civ. C. 1877, § 86; R. C. 1899, § 2776.]

Divorced husband whose interest in wife's estate is contingent on death of their minor child, cannot contest her will. *Halde v. Schultz*, 17 S. D. 465, 97 N. W. 369.

§ 4421. Children born after dissolution of marriage or before wedlock. All children of a woman who has been married born within ten months after the dissolution of the marriage are presumed to be legitimate children of that marriage. A child born before wedlock becomes legitimate by the subsequent marriage of its parents. [R. C. 1905, § 4089; Civ. C. 1877, § 87; R. C. 1899, § 2777.]

Effect of subsequent marriage of parents on antenuptial issue. 13 L.R.A. 275.

As to similar provision in Cal. Civ. Code, §§ 194, 215, see *Re Wood*, 137 Cal. 129, 69 Pac. 900; *Re Wardell*, 57 Cal. 484.

§ 4422. Who may dispute presumption. The presumption of legitimacy can be disputed only by the husband or wife or the descendant of one or both of them. Illegitimacy in such case may be proved like any other fact. [R. C. 1905, § 4090; Civ. C. 1877, § 88; R. C. 1899, § 2778.]

Evidence of husband or wife as to illegitimacy of child born in marriage. 72 Am. Dec. 649; 69 Am. St. Rep. 571.

Competency of woman to testify as to nonaccess of husband. 2 L.R.A.(N.S.) 619.

Evidence of declarations to show maternity of illegitimate child. 11 L.R.A.(N.S.) 1052.

Admissibility of declarations of relatives of claimant to prove legitimacy or relationship of illegitimate. 36 L.R.A.(N.S.) 533.

Admissibility of declarations of person since deceased against his or her own marriage. 15 L.R.A.(N.S.) 190.

Proof necessary to establish bastardy of child born to married woman. 36 L.R.A.(N.S.) 255.

§ 4423. Both parents support children. The parent entitled to the custody of a child must give him support and education suitable to his circumstances. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability. [R. C. 1905, § 4091; Civ. C. 1877, § 89; R. C. 1899, § 2779.]

Divorce decree directing husband to "provide, care for, maintain and educate" minor son does not change statutory duty. *Glynn v. Glynn*, 8 N. D. 233, 77 N. W. 594.

Support of an adult child as an advancement. 22 L.R.A.(N.S.) 1165.

Parent's duty to support as affected by child's property interests. 57 L.R.A. 729.

Liability of parent for necessities furnished minor child who is living away from the parent's home. 40 L.R.A.(N.S.) 488.

Criminal liability for neglect of child causing death. 61 L.R.A. 290.

—for failure to support child where support is furnished by others. 32 L.R.A.(N.S.) 841.

—for failure to provide child with medical attendance and remedies. 1 B. R. C. 747.

Effect of failure to provide medical attendance for infant to render one guilty of manslaughter. 6 L.R.A.(N.S.) 685.

Religious belief as excuse for failure to furnish medical aid to child. 36 L.R.A.(N.S.) 633.

Liability of father for support of child awarded to mother in a decree of divorce. 47 Am. St. Rep. 314; 114 Am. St. Rep. 700.

As to similar provision in Cal. Civ. Code, § 196, see *Ex parte Miller*, 109 Cal. 643, 42 Pac. 428; *Re Campbell*, 130 Cal. 380, 62 Pac. 613.

§ 4424. Who entitled to the custody of a child. The father of a legitimate unmarried minor child is entitled to its custody, services and earnings; but he cannot transfer such custody or services to any other person except the mother without her written consent, unless she has deserted him or is living separate from him by agreement. If the father is dead or is unable or refuses to take the custody or has abandoned his family the mother is entitled thereto. [R. C. 1905, § 4092; Civ. C. 1877, § 90; R. C. 1899, § 2780.]

Father's right to custody of child. 34 Am. Rep. 698; 40 Am. Rep. 327.

How custody of child to be determined on habeas corpus. 20 Am. Dec. 330.

Parent's right to custody of child and proceedings to vindicate. 2 Am. St. Rep. 183.

Action by parent for taking away of child. 13 Am. Dec. 715.

Liability for enticement of minor from parent's service. 1 L.R.A.(N.S.) 205.

Parent's right to will custody of child. 2 L.R.A.(N.S.) 203.

Effect of father's attempt to appoint guardian for child against the surviving wife.

13 L.R.A.(N.S.) 288.

Denial of custody of child to parent for its well-being. 41 L.R.A.(N.S.) 564.

Placing one's child in another's custody as implying contract not to reclaim child.

16 L.R.A.(N.S.) 1004.

Effect of contract on parent's right to custody of child. 41 L.R.A.(N.S.) 578.

As to similar provision in Cal. Civ. Code, § 197, see *Re Campbell*, 130 Cal. 380, 62 Pac. 613.

§ 4425. Of illegitimate child. The mother of an illegitimate unmarried minor is entitled to its custody, services and earnings. [R. C. 1905, § 4093; Civ. C. 1877, § 91; R. C. 1899, § 2781.]

Right of mother or reputed father to custody or control of illegitimate. 65 L.R.A. 689.

§ 4426. Allowance to parent. The district court may direct an allowance to be made to a parent of a child out of its property for its past or future support and education on such conditions as may be proper, whenever such direction is for its benefit. [R. C. 1905, § 4094; Civ. C. 1877, § 92; R. C. 1899, § 2782.]

Parent's right to furnish support out of child's estate. 16 Am. Dec. 661.

Power of equity over estates of infants. 98 Am. Dec. 733.

§ 4427. Control of property. The parent as such has no control over the property of the child. [R. C. 1905, § 4095; Civ. C. 1877, § 93; R. C. 1899, § 2783.]

§ 4428. Parental abuse. The abuse of parental authority is the subject of judicial cognizance in a civil action in the district court brought by the child, or by its relatives within the third degree, or by the officers of the poor where the child resides; and when the abuse is established, the child may be freed from the dominion of the parent and the duty of support and education enforced. [R. C. 1905, § 4096; Civ. C. 1877, § 94; R. C. 1899, § 2784.]

Chastisement of child by parent, when criminal and prohibited. 59 Am. Rep. 286.

Homicide by excessive or improper chastisement of child. 60 L.R.A. 801.

Liability of parent or custodian for assault by punishment of child. 21 L.R.A. (N.S.) 216.

As to similar provision in Cal. Civ. Code, § 203, see *Ex parte Miller*, 109 Cal. 643, 42 Pac. 428.

§ 4429. When parent's authority ceases. The authority of a parent ceases:

1. Upon the appointment by a court of a guardian of the person of the child;

2. Upon the marriage of the child; or,

3. Upon its attaining majority. [R. C. 1905, § 4097; Civ. C. 1877, § 95; R. C. 1899, § 2785.]

Emancipation of infant. 35 Am. Rep. 117; 113 Am. St. Rep. 113.

How far marriage of infant works emancipation. 16 L.R.A. 578; 24 L.R.A. (N.S.) 160.

§ 4430. Action for support of child. If a parent chargeable with the support of a child dies, leaving it chargeable upon the county and leaving an estate sufficient for its support, the county commissioners of the county in the name of the county may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditor against that estate and against the heirs, devisees and next of kin of the parent. [R. C. 1905, § 4098; Civ. C. 1877, § 96; R. C. 1895, § 2786.]

§ 4431. Support of poor. It is the duty of the father, the mother and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessities previously furnished to such parent is binding. [R. C. 1905, § 4099; Civ. C. 1877, § 97; R. C. 1899, § 2787.]

County may recover against children for necessities furnished to indigent and helpless father. *McCook County v. Kammos*, 7 S. D. 558, 64 N. W. 1123, 58 Am. St. Rep. 854, 31 L.R.A. 461.

Obligation of child to support parent. 117 Am. St. Rep. 128.

Right of parent to sue child for support. 4 L.R.A. (N.S.) 1159.

Right of child who supports parent at request of other children to recover therefor from the latter. 27 L.R.A. (N.S.) 683.

As to similar provision in Cal. Civ. Code, § 206, see *Anderson v. Anderson*, 124 Cal. 48, 71 Am. St. Rep. 17, 56 Pac. 630, 57 Pac. 81.

§ 4432. Neglect of child. If a parent neglects to provide articles necessary for his child, who is under his charge, according to his circumstances, a third person may in good faith supply such necessities and recover the reasonable value thereof from the parent. [R. C. 1905, § 4100; Civ. C. 1877, § 98; R. C. 1899, § 2788.]

§ 4433. Parent when not liable. A parent is not bound to compensate the other parent or relative for the voluntary support of his child without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause. [R. C. 1905, § 4101; Civ. C. 1877, § 99; R. C. 1899, § 2789.]

Claim of relative for support of minor not enforceable at common law. *Flugel v. Henschel*, 6 N. D. 205, 69 N. W. 195.

Maintenance and education of child, claim of parent or one standing in loco parentis for furnishing. 57 Am. Dec. 226.

Recovery by mother against father for money expended in support of children. 38 L.R.A. (N.S.) 508.

Right of one who employs minor without parents' consent to allowance on account of expenditures for necessities. 9 L.R.A. (N.S.) 411.

§ 4434. Support of stepchildren. A husband is not bound to maintain his wife's children by a former husband; but if he receives them into his family and supports them, it is presumed that he does so as a parent and when such

is the case, they are not liable to him for their support, nor he to them for their services. [R. C. 1905, § 4102; Civ. C. 1877, § 100; R. C. 1899, § 7890.]

Stepchildren and stepparents, mutual rights and obligations of. 53 Am. Dec. 345.

Stepchildren as members of the family of insured. 3 L.R.A.(N.S.) 834.

Stepchild as "dependent" within restriction as to beneficiaries of mutual benefit associations. 2 L.R.A.(N.S.) 653; 36 L.R.A.(N.S.) 208.

Implied agreement to pay for services rendered to stepparents. 11 L.R.A.(N.S.) 885.

Authority of stepchild to bind parent by contracts other than those for necessities. 39 L.R.A.(N.S.) 885.

Stepparent's liability for necessities furnished stepchild. 42 L.R.A.(N.S.) 535.

§ 4435. **After majority.** When a child after attaining majority continues to serve and to be supported by the parent, neither party is entitled to compensation in the absence of an agreement therefor. [R. C. 1905, § 4103; Civ. C. 1877, § 101; R. C. 1899, § 2791.]

Boy living with grandfather as with a father has no implied contract for wages.

Murphy v. Murphy, 1 S. D. 316, 47 N. W. 142.

§ 4436. **Child's earnings.** The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment. [R. C. 1905, § 4104; Civ. C. 1877, § 102; R. C. 1899, § 2792.]

§ 4437. **Wages paid.** The wages of a minor employed in service may be paid to him or her until the parent or guardian entitled thereto gives the employer notice that he claims such wages. [R. C. 1905, § 4105; Civ. C. 1877, § 103; R. C. 1899, § 2793.]

§ 4438. **Change of residence.** A parent entitled to the custody of a child has a right to change his residence, subject to the power of the district court to restrain a removal which would prejudice the rights or welfare of the child. [R. C. 1905, § 4106; Civ. C. 1877, § 104; R. C. 1899, § 2794.]

Parent's right to remove child from state. 58 L.R.A. 937.

§ 4439. **Not liable for acts of other.** Neither parent nor child is answerable as such for the act of the other. [R. C. 1905, § 4107; Civ. C. 1877, § 105; R. C. 1899, § 2795.]

Liability of father for damages caused by minor's negligent use of gun. Johnson v. Glidden, 11 S. D. 237, 76 N. W. 933.

Parent is not liable in damages for torts of child committed without his knowledge, and not in course of his employment as child. Fanton v. Byrum, 26 S. D. 366, 34 L.R.A.(N.S.) 501, 128 N. W. 325, 1 N. C. C. A. 812.

Liability of father for acts of his child. 50 Am. Rep. 583; 74 Am. St. Rep. 801.

Parent's liability for torts of minor child. 10 L.R.A.(N.S.) 933.

Liability where automobile is being driven by child. 41 L.R.A.(N.S.) 775.

§ 4440. **Custody of father and mother.** The husband and father as such has no rights superior to those of the wife and mother in regard to the care, custody, education and control of the children of the marriage, while such husband and wife live separate and apart from each other; and when they so live in a state of separation without being divorced, the district court or judges thereof upon application of either may grant a writ of habeas corpus to inquire into the custody of any minor unmarried child of the marriage, and may award the custody of such child to either for such time and under such regulations as the case may require. The decision of the court or judge must be guided by the rules prescribed in section 4461. [R. C. 1905, § 4108; Civ. C. 1877, § 106; R. C. 1895, § 2796.]

Denial of custody of child to parent for its well-being. 41 L.R.A.(N.S.) 564.

Removal of child from state by parent. 58 L.R.A. 937.

Custody of infants when their parents are separated. 34 Am. Rep. 698.

Taking of child by or at instance of one parent from custody of other as kidnapping. 32 L.R.A.(N.S.) 845.

Effect of father's attempt to appoint guardian for child against the surviving wife.

13 L.R.A.(N.S.) 288.

Jurisdiction to award custody of child temporarily within the state, but domiciled elsewhere. 10 L.R.A.(N.S.) 690.

Recognition of right, emanating from foreign power, to the custody and control of a child. 7 L.R.A.(N.S.) 306.

CHAPTER 9.

ADOPTION.

§ 4441. Adoption of minor. Any minor child may be adopted by any adult person in the cases and subject to the rules prescribed in this chapter. [R. C. 1905, § 4109; Civ. C. 1877, § 107; R. C. 1899, § 2797.]

Agreement with parent of child to be adopted, that it shall have share in property of adopting parent, cannot be avoided by will or otherwise. *Quinn v. Quinn*, 5 S. D. 328, 58 N. W. 808.

Adoptive parent may inherit real property owned by adopted child. *Calhoun v. Bryant*, 28 S. D. 266, 133 N. W. 266.

Adoption by one person of the children of another. 39 Am. St. Rep. 210.

Effect of adoption upon kindred of person adopting. 109 Am. St. Rep. 674.

Adoption of adult under statute providing for adoption of "child." 12 L.R.A. (N.S.) 884.

Conflict of laws as to adoption of child. 65 L.R.A. 186.

Enforceability of contract to give child share of estate in consideration of surrender of child to promisor, as affected by noncompliance with statute prescribing mode of adoption. 8 L.R.A. (N.S.) 1130.

As to similar provision in Cal. Civ. Code, § 221, see *Re Jessup*, 81 Cal. 408, 6 L.R.A. 594, 21 Pac. 976, 22 Pac. 742, 1028; *Re Williams*, 102 Cal. 70, 41 Am. St. Rep. 163, 36 Pac. 407.

§ 4442. Relative age limited. A person adopting a child must be at least ten years older than the person adopted. [R. C. 1905, § 4110; Civ. C. 1877, § 108; R. C. 1899, § 2798.]

As to similar provision in Cal. Civ. Code, § 223, see *Re Johnson*, 98 Cal. 531, 21 L.R.A. 380, 33 Pac. 460; *Re Williams*, 102 Cal. 70, 41 Am. St. Rep. 163, 36 Pac. 407.

§ 4443. Consent of husband and wife. A married man not lawfully separated from his wife cannot adopt a child without the consent of his wife, nor can a married woman not thus separated from her husband without his consent; provided the husband or wife not consenting is capable of giving such consent. [R. C. 1905, § 4111; Civ. C. 1877, § 109; R. C. 1899, § 2799.]

§ 4444. Consent of parents, guardian or county commissioners. A legitimate child cannot be adopted without the consent of its parents, if living, nor an illegitimate child without the consent of its mother if living, except as hereinafter provided. Such consent is not necessary from a parent deprived of civil rights, or adjudged guilty of adultery or cruelty, and for either cause divorced, or from a parent adjudged to be an habitual drunkard, or of unsound mind, or who has been judicially deprived of the custody of the child on account of cruelty or neglect. If a child under the age of four years has been in the sole care of persons other than its parents, with or without their consent or approval for the period of two years or over, and if its parent or parents have refused or neglected to support such child, then and in that case it may be legally adopted by the person so having the custody of such child by first obtaining the consent of the mother, or upon due proof of the facts of the parent or parents having refused to support such child for a period above specified, then such child may be adopted without the consent of such parent or parents. If a child has been abandoned by its parent or parents for a period of at least two years or if the parent or parents of such child have refused or neglected to provide for its care or support for such period and if such child has in the meantime become a public charge upon the county in which it resides and has remained such for a period of at least two years, then and in such case it may be legally adopted without the consent of its parent or parents upon due proof of the fact of such abandonment or neglect for the period above specified and upon the consent of the board of county commissioners of the county wherein such child resides given at one of its regular meetings. In case the child has no parent living or the consent of the parent is not necessary under the provisions of this section and no other provision is made in this article for the obtaining of consent to such adoption,

such consent may be given by the guardian if the child has a guardian and if there is no guardian, consent to the adoption may be given by the person having the custody of the child, or by the next of kin of the child residing in this state. [1911, ch. 3; R. C. 1905, § 4112; Civ. C. 1877, § 110; 1891, ch. 4, § 2; R. C. 1895, § 2800; 1903, ch. 124.]

Order of adoption may be made when mother has abandoned her illegitimate child for one year. *Richards v. Matteson*, 8 S. D. 77, 65 N. W. 428.

Constitutionality of statute permitting adoption of child without consent of parents. 18 L.R.A.(N.S.) 326.

Necessity of parent's consent to adoption of illegitimate child. 30 L.R.A.(N.S.) 152.

As to similar provision in Cal. Civ. Code, § 224, see *Re Wardell*, 57 Cal. 484; *Re Williams*, 102 Cal. 70, 41 Am. St. Rep. 163, 36 Pac. 407.

§ 4445. When child must consent. The consent of a child, if over the age of ten years, is necessary to its adoption. [R. C. 1905, § 4113; Civ. C. 1877, § 111; 1891, ch. 4, § 3; R. C. 1895, § 2801.]

§ 4446. Petition for adoption. Any inhabitant of this state may petition the district court or county court having increased jurisdiction in the county of his residence for leave to adopt a child not his own, and if desired for a change of the child's name; but such petition by a person having a husband or wife shall not be granted unless the husband or wife joins therein. [R. C. 1905, § 4114; 1897, ch. 1; R. C. 1899, § 2802.]

As to similar provision in Cal. Civ. Code, § 226, see *Ex parte Clark*, 87 Cal. 638, 25 Pac. 967; *Re Johnson*, 98 Cal. 531, 21 L.R.A. 380, 33 Pac. 460; *Re Williams*, 102 Cal. 70, 41 Am. St. Rep. 163, 36 Pac. 407.

§ 4447. Proceedings on hearing. Decree. If upon the hearing of the petition so presented and consented unto as aforesaid, the court shall be satisfied of the identity and relations of the persons concerned, and that the petitioner is or, in case of husband and wife, that the petitioners are of sufficient ability to bring up the child and to furnish him suitable nurture and education and that it is fit and proper that the petition for leave to adopt such child be granted, a decree shall be made, setting forth the facts and ordering that from and after the date of the decree the child shall be deemed and taken to be the child of the petitioner or petitioners, and the court may if desired in and by the same decree change the name of such child. [R. C. 1905, § 4115; 1891, ch. 4, § 5; R. C. 1899, § 2803.]

§ 4448. Status of adopted child. The child so adopted shall be deemed, as respects all legal consequences and incidents of the natural relation of parent and child, the child of such parent or parents by adoption the same as if he had been born to them in lawful wedlock. [R. C. 1905, § 4116; 1891, ch. 4, § 6; R. C. 1895, § 2804.]

Adoptive parent may inherit real property owned by adopted child. *Calhoun v. Bryant*, 28 S. D. 266, 133 N. W. 266.

Legal status of adopted child. 17 L.R.A. 435.

Right of adopted children to inherit. 118 Am. St. Rep. 684.

Inheritance by or from adopted child. 17 L.R.A. 435.

Law governing. 65 L.R.A. 186.

Right of adopted child to inherit property from a relative of its adoptive parent. 17 L.R.A. 435; 8 L.R.A.(N.S.) 117; 33 L.R.A.(N.S.) 139.

Right of child adopted in other state to take under local statute of descent or distribution. 21 L.R.A.(N.S.) 679; 25 L.R.A.(N.S.) 1285.

Do terms "child," "children," "issue," etc., in statutes governing distribution of decedent's estate include adopted children. 30 L.R.A.(N.S.) 914.

Do terms "child," "children," "issue," etc., in a will include adopted children. 27 L.R.A.(N.S.) 1158.

Right of adopted children to take parents' homestead. 56 L.R.A. 54.

Sufficiency of relationship by adoption to sustain action for death. 16 L.R.A.(N.S.) 199.

Presumption and burden of proof as to undue influence respecting gifts inter vivos to adopted child. 35 L.R.A.(N.S.) 949.

As to similar provision in Cal. Civ. Code, § 228, see *Re Wardell*, 57 Cal. 484; *Re Newman*, 75 Cal. 213, 7 Am. St. Rep. 146, 16 Pac. 887; *Younger v. Younger*, 106 Cal. 377, 39 Pac. 779; *Re Taylor*, 131 Cal. 180, 63 Pac. 345.

§ 4449. Effect of decree. The natural parents of such child shall be deprived by the decree aforesaid of all legal rights respecting the child and such

child shall be free from all obligations of maintenance and obedience respecting his natural parents. [R. C. 1905, § 4117; 1891, ch. 4, § 7; R. C. 1899, § 2805.]

Right of parties to adoption proceeding, or their privies, to attack decree of adoption. 30 L.R.A. (N.S.) 159.

§ 4450. Illegitimate child. The father of an illegitimate child by publicly acknowledging it as his own, receiving it as such with the consent of his wife if he is married, into his family, and otherwise treating it as if it was a legitimate child, thereby adopts it as such, and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such an adoption. [R. C. 1905, § 4118; Civ. C. 1877, § 116; R. C. 1899, § 2806.]

Adopting parent must be domiciled within state when act of adoption occurs; legal effect same as adoption by decree of court. *Eddie v. Eddie*, 8 N. D. 376, 79 N. W. 856, 73 Am. St. Rep. 765.

As to similar provision in Cal. Civ. Code, § 230, see *Re Pico*, 52 Cal. 84; *Re Wardell*, 57 Cal. 484; *Re Jessup*, 81 Cal. 408, 6 L.R.A. 594, 21 Pac. 976, 22 Pac. 742, 1028; *Blythe v. Ayres*, 86 Cal. 532, 19 L.R.A. 40, 31 Pac. 915; *Garner v. Judd*, 6 Cal. Unrep. 675, 64 Pac. 1076; *Re De Laveaga*, 142 Cal. 158, 75 Pac. 790.

CHAPTER 10.

GUARDIAN AND WARD.

§ 4451. Guardian defined. A guardian is a person appointed to take care of the person or property of another. [R. C. 1905, § 4119; Civ. C. 1877, § 117; R. C. 1899, § 2807.]

§ 4452. Ward defined. The person over whom, or over whose property a guardian is appointed, is called his ward. [R. C. 1905, § 4120; Civ. C. 1877, § 118, R. C. 1899, § 2808.]

§ 4453. Guardians classified. Guardians are either:

1. General; or,
2. Special. [R. C. 1905, § 4121; Civ. C. 1877, § 119; R. C. 1899, § 2809.]

§ 4454. General guardian. A general guardian is a guardian of the person, or of all the property of the ward within this state, or of both. [R. C. 1905, § 4122; Civ. C. 1877, § 120; R. C. 1899, § 2810.]

§ 4455. Special guardian. Every other is a special guardian. [R. C. 1905, § 4123; Civ. C. 1877, § 121; R. C. 1899, § 2811.]

§ 4456. How guardian appointed. A guardian of the person or estate or of both of a child born, or likely to be born, may be appointed by will or by deed, to take effect upon the death of the parent appointing:

1. If the child is legitimate, by the father with the written consent of the mother or by either parent, if the other is dead or incapable of consent.
2. If the child is illegitimate, by the mother. [R. C. 1905, § 4124; Civ. C. 1877, § 122; R. C. 1899, § 2812.]

Parent's right to appointment as guardian of minor child. 33 L.R.A. (N.S.) 869.

Right of mother or reputed father to guardianship of illegitimate child. 65 L.R.A. 695.

As to similar provision in Cal. Civ. Code, § 241, see *Murphy v. Superior Ct.*, 84 Cal. 592, 24 Pac. 310; *Re Campbell*, 130 Cal. 380, 62 Pac. 613.

§ 4457. No power without appointment. No person, whether a parent or otherwise, has any power as a guardian of property except by appointment as hereinafter provided. [R. C. 1905, § 4125; Civ. C. 1877, § 123; R. C. 1899, § 2813.]

§ 4458. Jurisdiction in county court. A guardian of the person or property or both of a person residing in this state, who is a minor or of unsound mind, may be appointed in all cases, other than those named in section 4124, by the county court as provided in the probate code. [R. C. 1905, § 4126; Civ. C. 1877, § 124; R. C. 1899, § 2814.]

§ 4459. Guardian of nonresident. A guardian of the property within this state of a person not residing therein who is a minor or of unsound mind

may be appointed by the county court. [R. C. 1905, § 4127; Civ. C. 1877, § 125; R. C. 1899, § 2815.]

Nonresident minors and proceedings to transmit their property to foreign guardians. 95 Am. Dec. 666.

§ 4460. Court appointing has exclusive jurisdiction. In all cases the court making the appointment of a guardian has exclusive jurisdiction to control him. [R. C. 1905, § 4128; Civ. C. 1877, § 126; R. C. 1899, § 2816.]

§ 4461. Rules in appointing. In awarding the custody of a minor or in appointing a general guardian the court or judge is to be guided by the following considerations:

1. By what appears to be for the best interests of the child in respect to its temporal and its mental and moral welfare; and if the child is of sufficient age to form an intelligent preference, the court or judge may consider that preference in determining the question.

2. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right, but, other things being equal, if the child is of tender years, it should be given to the mother; if it is of an age to require education and preparation for labor or business, then to the father. [R. C. 1905, § 4129; Civ. C. 1877, § 127; R. C. 1899, § 2817.]

Selection of guardian is very largely in discretion of court. *Engle v. Yorks*, 7 S. D. 254, 64 N. W. 132.

As to similar provision in Cal. Civ. Code, § 246, see *Re Campbell*, 130 Cal. 380, 62 Pac. 613; *Re Van Loan*, 142 Cal. 423, 76 Pac. 37.

§ 4462. Preference between two equally entitled. Of two persons equally entitled to the custody in other respects preference is to be given as follows:

1. To a parent.

2. To one who was indicated by the wishes of a deceased parent.

3. To one who already stands in the position of a trustee of a fund to be applied to the child's support.

4. To a relative. [R. C. 1905, § 4130; Civ. C. 1877, § 127; R. C. 1899, § 2818.]

Parental relations only disturbed when well-being of child requires it. *Engle v. Yorks*, 7 S. D. 254, 64 N. W. 132.

Denial of custody of child to parent for its well-being. 41 L.R.A.(N.S) 564.

§ 4463. Guardian's power. A guardian appointed by a court has power over the person and property of the ward unless otherwise ordered. [R. C. 1905, § 4131; Civ. C. 1877, § 128; R. C. 1899, § 2819.]

Common-law powers of guardians. 89 Am. St. Rep. 257.

Powers of guardian in chancery and at the common law. 18 Am. Dec. 689.

Waiver by guardian of service of process on minor. 95 Am. Dec. 461.

Testamentary guardians and their powers. 29 Am. Dec. 712.

Right of guardian to remove infant from the state. 58 L.R.A. 931.

§ 4464. Power of guardian of the person. A guardian of the person is charged with the custody of the ward and must look to his support, health and education. He may fix the residence of the ward at any place within the state, but not elsewhere without the permission of the court. [R. C. 1905, § 4132; Civ. C. 1877, § 129; R. C. 1899, § 2820.]

§ 4465. Of the property. A guardian of the property must keep safely the property of his ward. He must not permit any unnecessary waste or destruction of the real property nor make any sale of such property without the order of the county court, but must, so far as it is in his power, maintain the same with its buildings and appurtenances out of the income or other property of the estate and deliver it to the ward at the close of his guardianship in as good condition as he received it. [R. C. 1905, § 4133; Civ. C. 1877, § 130; R. C. 1899, § 2821.]

Guardian cannot loan, lease or invest ward's property without court's order. *Dalrymple v. Loan Co.*, 9 N. D. 306, 83 N. W. 245.

Existence of guardianship as showing want of capacity to execute contracts, make wills, and the like. 140 Am. St. Rep. 346.

Expenditure in excess of income of ward, when authorized. 49 Am. Dec. 657.

Notice of application for sale by guardian as affecting the validity of sale. 120 Am. St. Rep. 148.

Notice of application by guardian for leave to sell infant's real estate as jurisdictional. 8 L.R.A.(N.S.) 1215.

Guardian's right to have judgment set aside. 54 L.R.A. 761.

Admissions and waivers by guardian in actions. 32 L.R.A. 671.

Right of guardian to surrender insurance policy in favor of ward. 35 L.R.A.(N.S.) 1123.

—to enter appearance of ward. 32 L.R.A. 684.

—to submit cause of action for arbitration. 70 L.R.A. 175.

—to compromise infant's cause of action for personal injuries. 21 L.R.A.(N.S.) 338.

—to maintain ejectment. 18 L.R.A. 789.

—to adeem legacy. 28 L.R.A.(N.S.) 401.

—to carry on business on behalf of estate. 40 L.R.A.(N.S.) 204.

Right to mechanics' lien for improvements made on infant's land by authority of guardian. 15 L.R.A.(N.S.) 1159.

§ 4466. Nature of the relation. The relation of guardian and ward is confidential and is subject to the provisions of the chapter on trusts. [R. C. 1905, § 4134; Civ. C. 1877, § 131; R. C. 1899, § 2822.]

Personal liability of guardians. 75 Am. Dec. 447.

Leases executed by ward to guardian, when voidable. 25 Am. Rep. 728.

§ 4467. Guardian controlled by court. In the management and disposition of the person or property committed to him a guardian may be regulated and controlled by the court. [R. C. 1905, § 4135; Civ. C. 1877, § 132; R. C. 1899, § 2823.]

Deceased guardian, method of compelling settlement of accounts by. 8 Am. St. Rep. 684.

§ 4468. Joint guardians. On the death of one of two or more joint guardians the power continues to the survivor until a further appointment is made by the court. [R. C. 1905, § 4136; Civ. C. 1877, § 133; R. C. 1899, § 2824.]

§ 4469. Causes for removal. A guardian may be removed by the county court for any of the following causes:

1. For abuse of his trust.
2. For continued failure to perform his duties.
3. For incapacity to perform its duties.
4. For gross immorality.
5. For having an interest adverse to the faithful performance of his duty.
6. For removal from the state.
7. In the case of a guardian of the property, for insolvency; or
8. When it is no longer proper that the ward should be under guardianship. [R. C. 1905, § 4137; Civ. C. 1877, § 134; R. C. 1899, § 2825.]

County court may on parent's application set aside order surrendering child to children's home association. *McFall v. Simmons*, 12 S. D. 562, 81 N. W. 898.

Petition for such order will be denied when parent is leading immoral life. *State v. Children's Home Society*, 10 N. D. 493, 88 N. W. 273.

§ 4470. When power of parental guardian superseded. The power of a guardian appointed by a parent is superseded:

1. By his removal as provided in the last section; or,
2. By the solemnized marriage of the ward; or,
3. By the ward's attaining majority. [R. C. 1905, § 4138; Civ. C. 1877, § 135; R. C. 1899, § 2826.]

§ 4471. When power of court guardian suspended. The power of a guardian appointed by a court is suspended only:

1. By order of the court; or,
2. If the appointment was made solely because of the ward's minority, by his attaining majority; or,
3. The guardianship over the person of the ward, by the marriage of the ward. [R. C. 1905, § 4139; Civ. C. 1877, § 136; R. C. 1899, § 2827.]

§ 4472. Ward's power on majority. After the ward has come to his majority he may settle accounts with his guardian and give him a release, which is valid if obtained fairly and without undue influence. [R. C. 1905, § 4140; Civ. C. 1877, § 137; R. C. 1899, § 2828.]

Right of ward to maintain action at law against guardian for guardianship funds, after termination of guardianship, but before settlement of account. 26 L.R.A.(N.S.) 789.

§ 4473. When discharge granted. A guardian appointed by a court is not entitled to his discharge until one year after the ward's majority. [R. C. 1905, § 4141; Civ. C. 1877, § 138; R. C. 1899, § 2829.]

§ 4474. Asylum for persons of unsound mind. A person of unsound mind may be placed in an asylum for such persons upon the order of the county court of the county in which he resides, as follows:

1. The court must be satisfied by the oath of two reputable physicians that such person is of unsound mind and unfit to be at large.

2. Before granting the order the judge must examine the person himself or, if that is impracticable, cause him to be examined by an impartial person duly sworn for that purpose.

3. After the order is granted the person alleged to be of unsound mind, his or her husband or wife or relative to the third degree, may appeal to the district court and demand therein an investigation before a jury, which must be substantially in all respects conducted as under an inquisition of lunacy. [R. C. 1905, § 4142; Civ. C. 1877, § 139; R. C. 1899, § 2830.]

CHAPTER 11.

MASTER AND SERVANT.

§ 4475. Apprenticeship authorized. Male minors and unmarried females under the age of eighteen years, with the consent of the persons or officers hereinafter mentioned, may bind themselves by a writing called an indenture as fully as if they were of age to serve as clerks, apprentices or servants in a particular calling until majority or for any shorter time. [R. C. 1905, § 4143; Civ. C. 1877, § 140; R. C. 1895, § 2831.]

Contracts of infants for the purposes of binding themselves as apprentices. 34 Am. Dec. 538; 18 Am. St. Rep. 626.

Effect of death on contract of apprentices. 23 L.R.A. 707.

Proprietary interest of master in earnings of apprentices. 5 L.R.A.(N.S.) 1154.

Damages recoverable in action by master for injury to apprentices. 32 L.R.A.(N.S.) 38.

Duty to furnish medical aid to apprentices. 28 L.R.A. 555; 4 L.R.A.(N.S.) 49.

§ 4476. By whom consent given. Consent to an indenture of apprenticeship must be given by certificate at the end thereof, or indorsed thereon, signed:

1. By the father and mother of the apprentice.

2. If the father lacks capacity to consent, or has abandoned or neglected to provide for the family, or is dead, and no testamentary guardian or executor has been appointed by him with power under the will to bring up the child to a calling, and a certificate of such fact is indorsed on the indenture by a justice of the peace of the county, then by the mother.

3. If the father is dead and such guardian or executor has been appointed by him, then by such guardian or executor.

4. If the mother is dead, or lacks capacity to consent, then by the father.

5. If there is no parent of capacity to consent and no such executors, then by the guardian; or,

6. If there is no such parent, executor or guardian, then by the county commissioners of the county, or by any two justices of the peace of the county, or by the county judge. [R. C. 1905, § 4144; Civ. C. 1877, § 141; R. C. 1899, § 2832.]

§ 4477. Liability on breach of contract. A parent, executor or guardian, consenting to an indenture is not liable for a breach thereof by the apprentice, unless the indenture or consent expresses an intention to bind him therefor. [R. C. 1905, § 4145; Civ. C. 1877, § 142; R. C. 1899, § 2833.]

§ 4478. Poor may be bound. Any child who is chargeable, or whose parents are chargeable, to a county may be bound to service until attaining majority by the county commissioners as provided in this chapter; but such

binding by such county commissioners must be with the consent in writing of the county judge of the county. [R. C. 1905, § 4146; Civ. C. 1877, § 143; R. C. 1895, § 2834.]

§ 4479. Indian child. No child of an Indian woman can be bound under this chapter, except in the presence and with the consent of a justice of the peace; and his certificate of consent must be filed with the county judge of the county where the indenture is executed. [R. C. 1905, § 4147; Civ. C. 1877, § 144; R. C. 1899, § 2835.]

§ 4480. Indenture must state age. In every indenture of apprenticeship the age of the apprentice must be stated, and such statement is presumptive evidence thereof; and before an officer executes an indenture or consents thereto, he must inform himself of the age of the apprentice. [R. C. 1905, § 4148; Civ. C. 1877, § 145; R. C. 1899, § 2836.]

§ 4481. Consideration. If there is any pecuniary consideration for an indenture of apprenticeship on either part it must be stated therein. [R. C. 1905, § 4149; Civ. C. 1877, § 146; R. C. 1899, § 2837.]

§ 4482. Education required. The indenture shall also contain an agreement on the part of the person to whom such child shall be bound, that he will cause such child to be instructed to read and write and to be taught the general rules of arithmetic or, in lieu thereof, that he will send such child to school three months of each year of the period of indenture; and that he will give him a new Bible at the expiration of his term of service. [R. C. 1905, § 4150; Civ. C. 1877, § 147; R. C. 1899, § 2838.]

§ 4483. Filing counterpart. Every officer executing an indenture of apprenticeship must file a counterpart thereof with the county judge of the county in which he is an officer. [R. C. 1905, § 4151; Civ. C. 1877, § 148; R. C. 1899, § 2839.]

§ 4484. Immigrant minor. An immigrant minor may bind himself to service until he attains majority, or for a shorter term, in such manner as may be prescribed by the law of the country in which the contract is made. If the indenture is made for the purpose of enabling him to pay his passage to this country it may be for the term of one year, although such term extends beyond his majority; but in no case for a longer term. [R. C. 1905, § 4152; Civ. C. 1877, § 149; R. C. 1899, § 2840.]

§ 4485. Acknowledgment. Every indenture under section 4484 must be duly acknowledged by the minor on a private examination before a county judge or a justice of the peace, and a certificate of the acknowledgment, showing that the same was made freely, must be indorsed upon the contract. [R. C. 1905, § 4153; Civ. C. 1877, § 150; R. C. 1899, § 2841.]

§ 4486. Assignment allowed. The master under an indenture specified in section 4152 may assign it by writing indorsed thereon and with the approval also indorsed of a magistrate mentioned in section 4485. [R. C. 1905, § 4154; Civ. C. 1877, § 151; R. C. 1899, § 2842.]

§ 4487. When indenture void. No indenture or contract for the service of an apprentice is binding upon him unless made as hereinbefore prescribed. [R. C. 1905, § 4155; Civ. C. 1877, § 152; R. C. 1899, § 2843.]

§ 4488. Duty of county commissioners. The county commissioners must see that every apprentice or other servant in their respective counties is properly treated, and that the terms of the contract are fulfilled in his favor; and it is their duty to redress any grievance of such persons in the manner prescribed by law. [R. C. 1905, § 4156; Civ. C. 1877, § 153; R. C. 1895, § 2844.]

§ 4489. Penalty for willful absence. If an apprentice for whose instruction the master receives no pecuniary consideration willfully absents himself from service without leave, he may be compelled to serve double the time of such absence unless he makes satisfaction for the injury; but such additional term of service cannot extend more than three years beyond the original term. [R. C. 1905, § 4157; Civ. C. 1877, § 154; R. C. 1895, § 2845.]

§ 4490. **Free vocation.** No person may accept from an apprentice or servant an agreement, oath or promise not to exercise his vocation in any particular place; nor may any person exact from an apprentice or servant any consideration for exercising his vocation in any place after his term of service has expired. [R. C. 1905, § 4158; Civ. C. 1877, § 155; R. C. 1899, § 2846.]

§ 4491. **Penalty for restraint.** Any consideration exacted contrary to the last section may be recovered back with interest, and every person accepting such agreement or exacting such consideration is liable to the apprentice or servant in a penalty of one hundred dollars. [R. C. 1905, § 4159; Civ. C. 1877, § 156; R. C. 1899, § 2847.]

§ 4492. **Deceased master.** The executors or administrators of the master of any apprentice bound by officers of the poor may assign the indenture with the written consent of the apprentice, acknowledged before a justice of the peace. [R. C. 1905, § 4160; Civ. C. 1877, § 157; R. C. 1899, § 2848.]

§ 4493. **Consent to assignment.** If an apprentice refuses consent to an assignment under the last section, the county or district court may authorize such assignment without his consent, upon application after fourteen days' notice to the apprentice or to his parents or guardian, if he has any in the county. [R. C. 1905, § 4161; Civ. C. 1877, § 158; R. C. 1899, § 2849.]

CHAPTER 12.

CORPORATIONS.

- ARTICLE 1. THE CREATION OF CORPORATIONS, §§ 4494—4516.
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ARTICLE 1.—THE CREATION OF CORPORATIONS.

§ 4494. **Corporation defined.** A corporation is a creature of the law, having certain powers and duties of a natural person. Being created by the law, it may continue for any length of time which the law prescribes. [R. C. 1905, § 4162; Civ. C. 1877, § 373; R. C. 1899, § 2850.]

What constitutes de facto corporation. 118 Am. St. Rep. 253.

As to similar provision in Cal. Civ. Code, § 283, see *Johnson v. Goodyear Min. Co.*, 127 Cal. 4, 47 L.R.A. 338, 78 Am. St. Rep. 17, 59 Pac. 304.

§ 4495. **Reserved power of legislative assembly.** Every grant of corporate power is subject to alteration, suspension or repeal in the discretion of the legislative assembly. [R. C. 1905, § 4163; Civ. C. 1877, § 375; R. C. 1899, § 2851.]

§ 4496. **Collateral inquiry prohibited.** The due incorporation of any company, claiming in good faith to be a corporation under this chapter, and doing business as such, or its right to exercise corporate powers shall not be inquired into collaterally in any private action to which such de facto corporation may be a party. [R. C. 1905, § 4164; Civ. C. 1877, § 376; R. C. 1899, § 2852.]

Receipt of benefits from contract with corporation estops from denying corporate existence. *Building & Loan Asso. v. Chamberlain*, 4 S. D. 271, 56 N. W. 897; *School Dist. v. Alderson*, 6 D. 145, 41 N. W. 466; *Wright v. Lee*, 2 S. D. 596, 51 N. W. 706.

Whether corporation has exceeded its authority in purchasing real estate can be inquired into only by state. *Gilbert v. Hole*, 2 S. D. 164, 49 N. W. 1.

Attempted incorporation of bank creates simply a partnership, in absence of law under which banking corporation might be formed. *Davis v. Stevens*, 104 Fed. 235.

Statute presupposes a de facto corporation; it does not preclude private persons from denying existence, de jure or de facto, of alleged corporation. *Davis v. Stevens*, 104 Fed. 235.

Due incorporation of bank cannot be inquired into in action by depositor to recover amount of deposit from incorporators after bank's insolvency. *Mason v. Stevens*, 16 S. D. 320, 92 N. W. 424.

§ 4497. Name required. Every corporation must have a corporate name which it has no power to change unless expressly authorized by law; but the misnomer of a corporation in any written instrument does not invalidate the instrument if it can be reasonably ascertained from it what corporation is intended. [R. C. 1905, § 4165; Civ. C. 1877, § 377; R. C. 1899, § 2853.]

§ 4498. Corporations classified. Corporations are either:

1. Public; or,

2. Private. [R. C. 1905, § 4166; Civ. C. 1877, § 378; R. C. 1899, § 2854.]

The state is a body politic, and not a corporation. *State v. Taylor*, 7 S. D. 533, 64 N. W. 548.

§ 4499. Public, how regulated. Public corporations are formed or organized for the government of a portion of the state. Such corporations are regulated by the political code or by local statute. [R. C. 1905, § 4167; Civ. C. 1877, § 379; R. C. 1899, § 2855.]

State is body politic and not a public corporation. *State v. Taylor*, 7 S. D. 533, 64 N. W. 548.

§ 4500. Private. Purposes. All corporations not public are private. Private corporations may be formed for any purpose for which individuals may lawfully associate themselves. [R. C. 1905, § 4168; Civ. C. 1877, § 380; R. C. 1895, § 2856.]

Corporation organized under N. D. Rev. Codes 1899, as private corporation. *Arrison v. Company D*, N. D. N. G., 12 N. D. 554, 98 N. W. 83, 1 A. & E. Ann. Cas. 368.

Restricting membership of association to persons belonging to certain fraternal order does not change the fact that it is a corporation. *Masonic Association v. Taylor*, 2 S. D. 324, 50 N. W. 93.

§ 4501. Articles. The instrument by which a private corporation is formed is called "Articles of Incorporation." [R. C. 1905, § 4169; Civ. C. 1877, § 381; R. C. 1895, § 2857.]

§ 4502. How formed. Private corporations may be formed by the voluntary association of three or more persons, except as otherwise expressly provided, upon complying with the provisions of this chapter. [R. C. 1905, § 4170; Civ. C. 1877, § 384; 1887, ch. 35, § 1; 1893, ch. 39, § 1; R. C. 1895, § 2858.]

Defective formation of corporation and its consequences. 33 Am. St. Rep. 176.

§ 4503. Religious and charitable, limited. No corporation or association for religious or charitable purposes shall acquire or hold real estate in this state of greater value than two hundred thousand dollars. [1909, ch. 65; R. C. 1905, § 4171; 1899, ch. 53; R. C. 1899, § 2859.]

Right of private persons to contest the power of a corporation to take or hold property. 32 L.R.A. 293; 9 L.R.A.(N.S.) 689.

§ 4504. Penalty for violating last section. All real estate acquired or held by such corporations contrary to the provisions of the last section shall be forfeited and escheat to the state; but existing vested rights in real estate shall not be impaired by the provisions of this section. [R. C. 1905, § 4172; Civ. C. 1877, § 385; R. C. 1895, § 2860.]

§ 4505. Contents of articles. The articles of incorporation must set forth:

1. The name of the corporation.

2. The purpose for which it is formed.

3. The place where its principal business is to be transacted.

4. The term for which it is to exist.

5. The number of its directors or trustees and the names and residences of those who are to serve until their successors are elected and qualified.

6. If there is a capital stock, its amount and the number of shares into which it is divided. [R. C. 1905, § 4173; Civ. C. 1877, § 386; R. C. 1895, § 2861.]

As to similar provision in Cal. Civ. Code, § 290, see *People ex rel. Schlinder v. Flint*, 64 Cal. 49, 28 Pac. 495; *Thomas v. Placerville Gold Quartz Min. Co.*, 65 Cal. 600, 4 Pac. 641; *Chapman v. Doray*, 89 Cal. 52, 26 Pac. 605; *Martin v. Deetz*, 102 Cal. 55, 41 Am. St. Rep. 151, 36 Pac. 368; *Porter v. Lassen County Land & Cattle Co.*, 127 Cal. 261, 59 Pac. 563; *People ex rel. Weatherly v. Golden Gate Lodge No. 6, B. P. O. E.*, 128 Cal. 257, 60 Pac. 865.

§ 4506. Articles. Roads, etc. The articles of any corporation formed for the purpose of constructing wagon roads, telegraph or telephone lines must also state:

1. The place from and to which the road or line is intended to be run and branches contemplated.

2. The counties through which it is intended to be run.

3. The estimated length and cost of the road or line. [R. C. 1905, § 4174; Civ. C. 1877, § 387; R. C. 1895, § 2862.]

§ 4507. Articles. Railways, etc. The articles of incorporation of railway corporations shall be in compliance with section 4610; of insurance corporations, in compliance with section 4837; of fraternal associations or corporations, in compliance with section 5018; of banking corporations, in compliance with section 5148. [R. C. 1905, § 4175; R. C. 1895, § 2863.]

§ 4508. Subscribed by three persons. The articles of incorporation must be subscribed by three or more persons, one-third of whom must be residents of this state, and acknowledged by each before some officer authorized to take acknowledgments of conveyances of real property. [R. C. 1905, § 4176; Civ. C. 1877, § 388; R. C. 1895, § 2864.]

As to similar provision in Cal. Civ. Code, § 292, see *People v. Montecito Water Co.*, 97 Cal. 276, 33 Am. St. Rep. 172, 32 Pac. 236; *People ex rel. Weatherly v. Golden Gate Lodge No. 6, B. P. O. E.*, 128 Cal. 257, 60 Pac. 865; *Wall v. Mines*, 130 Cal. 27, 62 Pac. 386.

§ 4509. Fees for articles. Every corporation for profit, except corporations organized for the purpose of irrigation, water users' associations, building and loan associations, county mutual insurance companies, corporations for the manufacturing of dairy products, agricultural fair associations, corporations whose capital stock does not exceed five thousand dollars, formed for the purchase and maintenance of male animals for the improvement of stock, corporations whose capital stock does not exceed two thousand dollars, formed for the purchase of musical instruments, music and uniforms for bands of musicians, and corporations whose capital stock does not exceed five thousand dollars, formed for the purpose of purchasing or leasing grounds and erecting thereon the necessary fences, buildings and seats and purchasing the necessary equipments for the use of base ball clubs, foot ball teams and other athletic associations when composed of nonsalaried members or players, shall at or before the filing of the articles of incorporation pay into the state treasury the sum of twenty-five dollars for the first twenty-five thousand dollars, or fraction thereof, of the capital stock of such corporation, and the sum of fifty dollars for twenty-five thousand dollars up to fifty thousand dollars of the capital stock of such corporation, and the further sum of five dollars for every additional ten thousand dollars, or fraction thereof, of its capital stock. [1911, ch. 105; 1909, ch. 64; R. C. 1905, § 4177; 1890, ch. 139, § 1; 1891, ch. 105, § 1; R. C. 1895, § 2865; 1905, ch. 67.]

§ 4510. Fee in case of increase of stock. No increase of the capital stock of any corporation heretofore or hereafter formed, other than those excepted in the last section, shall be valid until such corporation shall have paid into the state treasury the sum of five dollars for every ten thousand dollars, or fraction thereof, of such increase in the capital stock of such corporation. [R. C. 1905, § 4178; 1890, ch. 139, § 2; R. C. 1895, § 2866.]

§ 4511. Receipt of treasurer filed. It shall be the duty of every corporation hereafter organized, or which shall hereafter increase its capital stock, other than those excepted in section 4509, to file with the secretary of state at the time of filing the articles of incorporation, or instrument evidencing such increase, a duplicate receipt of the state treasurer for the payments herein required to be made, which receipt, in duplicate, it is made the duty of such treasurer to furnish. [R. C. 1905, § 4179; 1890, ch. 139, § 3; R. C. 1895, § 2867.]

§ 4512. Secretary's certificate. Upon the filing of the articles of incorporation with the secretary of state he shall issue to the corporation over the great seal of the state a certificate that the articles containing the required statement of facts have been filed in his office; and thereupon the persons signing the articles and their associates and successors, shall be a body politic and corporate by the name and for the purposes stated in said articles. [R. C. 1905, § 4180; Civ. C. 1877, § 389; 1885, ch. 35, § 1; R. C. 1899, § 2868.]

No capital stock need be actually subscribed or paid in at time articles are filed. *Singer Mfg. Co. v. Peck*, 9 S. D. 29, 67 N. W. 947.

Incorporated club whose articles provide that members shall not be liable for corporate debts, is owner of liquor sold by club. *State v. Mudie*, 28 S. D. 41, 115 N. W. 107.

§ 4513. Record by secretary and certifying to state examiner. Upon the filing of any articles of incorporation as in the last section prescribed, the secretary of state shall cause the same to be recorded in a book to be kept in his office for that purpose to be called the "book of corporations," with the date of filing. And upon filing and recording of any articles of incorporation of any bank, building and loan association, or any monied corporation subject to examination by the state examiner, the secretary of state shall forthwith certify to the state examiner the fact that articles of incorporation have been filed, giving the date of such filing. [R. C. 1905, § 4181; 1899, ch. 52; R. C. 1899, § 2869.]

§ 4514. Copy. Evidence. A copy of any articles of incorporation filed in pursuance of this chapter, and certified by the secretary of state, must be received in all courts and other places as prima facie evidence of the facts therein stated and of the existence of such corporation. [R. C. 1905, § 4182; Civ. C. 1877, § 391; R. C. 1899, § 2870.]

Duly authenticated copies of articles of incorporation from secretary of state and county register of deeds established corporate existence of a foreign corporation. *Dowagiac Mfg. Co. v. Higinbotham*, 15 S. D. 547, 91 N. W. 330.

§ 4515. Stockholders and members defined. The owners of shares in a corporation which has a capital stock are called stockholders. If a corporation has no capital stock the incorporators and their successors are called members. [R. C. 1905, § 4183; Civ. C. 1877, § 392; R. C. 1899, § 2871.]

Incorporated club whose articles provide that members shall not be liable for corporate debts is owner of liquor sold by club. *State v. Mudie*, 22 S. D. 41, 115 N. W. 107.

As to similar provision in Cal. Civ. Code, § 298, see *Smith v. San Francisco & N. P. R. Co.*, 115 Cal. 584, 35 L.R.A. 309, 56 Am. St. Rep. 119, 47 Pac. 582.

§ 4516. Stock of minors, etc., how represented. The shares of stock of an estate of a minor or insane person may at all elections and meetings of a corporation be represented by his guardian, and of a deceased person, by his executor or administrator. [R. C. 1905, § 4184; Civ. C. 1877, § 393; R. C. 1899, § 2872.]

As to similar provision in Cal. Civ. Code, § 313, see *Market Street R. Co. v. Hellman*, 109 Cal. 571, 42 Pac. 225; *Smith v. San Francisco & N. P. R. Co.*, 115 Cal. 584, 35 L.R.A. 309, 56 Am. St. Rep. 119, 47 Pac. 582.

ARTICLE 2.—ANNUAL REPORTS OF CORPORATE EXISTENCE.

§ 4517. Post office address. Every corporation hereafter organized under the laws of the state of North Dakota shall before receiving a certificate of organization file with the secretary of state a statement setting forth the post office address of its business office. R. C. 1905, § 4185; 1905, ch. 65, § 1.]

§ 4518. Annual report. Fees. Penalty for failure. Duties of secretary

of state. Every incorporated company or joint stock company, other than railroads, banking, insurance, religious corporations and corporations not organized for pecuniary profit and authorized to do business in this state, shall annually between the first day of July and the first day of August report to the secretary of state the location of its principal office in this state, the names of its officers with their residence and post office address, the date of the expiration of their respective terms of office, whether or not the corporation is pursuing active business under its charter, and the kind of business engaged in, if any, which said report shall be made under the seal of the company and be signed and sworn to by the president, secretary, managing agent or other officer of the corporation, and in case said corporation is in the hands of an assignee or receiver, then such report shall be signed and sworn to by such assignee or receiver, which said report, together with a fee of two dollars and a half for filing the same shall be sent to the secretary of state in whose office it shall be filed. The secretary of state shall in no case receive or file said report until said fee is paid and a failure to make said report and pay said fee shall be prima facie evidence that said corporation is out of business. And it is made the duty of the secretary of state to notify such corporation by registered letter of its default, and unless such corporation shall within sixty days thereafter file such report and pay such fee, he shall enter upon the records of his office the cancellation of such charter or certificates to do business of the corporation failing to make report at the time and in the manner herein provided. [R. C. 1905, § 4186; 1905, ch. 65, § 2.]

§ 4519. Charters validated. Reports filed with the secretary of state. All corporations heretofore organized under the laws of the state of North Dakota, whose charters have become forfeited and cancelled under the provisions of section 4518, by reason of the failure to make and file with the secretary of state reports as in said section required, be, and the same hereby are, validated for all purposes; upon condition, however, that all corporations desiring to come under the provisions hereof shall on or before the first day of August, 1913, make and file with the said secretary of state full and complete reports as in said section prescribed, pay a penalty of ten dollars and all arrearages in fees, and the charter of any corporation complying with the provisions of this statute within said period is hereby declared valid in all respects. [1913, ch. 110.]

Laws 1911, ch. 103, provided as follows: "All corporations heretofore organized under the laws of the state of North Dakota, whose charters have become forfeited and cancelled under the provisions of section 4186 of the Revised Codes of 1905 [section 4518 herein] by reason of the failure to make and file with the secretary of state, reports as in said section required, be and the same hereby are validated for all purposes upon condition, however, that all corporations desiring to come under the provisions hereof shall on or before the first day of August, 1911, make and file with the said secretary of state, full and complete reports as in said section prescribed, and the charter of any corporation complying with the provisions of this statute within said period is hereby declared valid in all respects." A similar validating act is Laws 1907, ch. 54.

§ 4520. Secretary of state to furnish blanks. The secretary of state is hereby required on or before the first day of June of each year to mail to every corporation embraced in this article proper blanks to be used in making the report hereinbefore provided for; also a copy of this article together with a notice that a failure on the part of said corporation to make such report within the time prescribed by law, shall be prima facie evidence that such corporation is out of business and that upon such failure its articles of incorporation will be cancelled upon the records in the office of the secretary of state. [R. C. 1905, § 4187; 1905, ch. 65, § 3.]

§ 4521. Corporations may be restored, how. Any corporation which is pursuing an active business under its charter or certificate of authority to do business in the state of North Dakota failing to make said report at the time provided by law, may at any time within six months from such default

be reinstated upon the record of the office of the secretary of state upon the payment of a fee in the sum of five dollars for such reinstatement and filing in said office an affidavit stating all the facts required in section 4518, and in addition thereto the fact that it was at the time of such default and still is in active business in the state of North Dakota. [R. C. 1905, § 4188; 1905, ch. 65, § 4.]

§ 4522. Record of forfeitures and publication of same. The secretary of state shall keep a record in his office showing all forfeitures and shall publish annually a list of the names and location of all corporations whose authority to do business has been forfeited by virtue of the provisions of this article. [R. C. 1905, § 4189; 1905, ch. 65, § 5.]

§ 4523. Fees, how disposed of. The secretary of state shall keep an accurate account of all moneys coming to his department, and shall turn over and pay to the state treasurer any and all moneys for fees collected by him under the provisions of this article. Such fees must be paid in advance, and when collected must be paid into the state treasury at the end of each month and placed to the credit of the general fund. [1913, ch. 106.]

ARTICLE 3.—CORPORATE STOCK.

§ 4524. Subscription enforced. A subscription to the stock of a corporation about to be formed is to be held for the benefit of the corporation when it is formed and may be enforced by it. [R. C. 1905, § 4191; Civ. C. 1877, § 395; R. C. 1899, § 2873.]

Nature and validity of subscription to stock. 136 Am. St. Rep. 736.

Distinction between subscriptions and offers or agreements to subscribe. 81 Am. Dec. 392.

Liability of stockholders upon subscription for stock. 40 Am. Dec. 358; 93 Am. St. Rep. 349.

Validity of subscription induced by false statements that certain other persons were to invest in the enterprise. 29 L.R.A.(N.S.) 477.

Withdrawal of subscription to stock. 33 L.R.A. 593.

Rescission of subscription for fraud and misrepresentation in procuring it. 33 L.R.A. 721.

—after insolvency of corporation. 31 L.R.A.(N.S.) 900.

Effect of promoter's fraud on corporation's right against subscriber. 25 L.R.A. 100.

§ 4525. Books opened for subscriptions. After the secretary of state issues the certificates of incorporation as provided in section 4512, the directors named in the articles of incorporation must proceed in the manner specified or provided in their by-laws, or, if none, then in such manner as they may by order adopt, to open books of subscription to the capital stock then unsubscribed, and to secure subscriptions to the full amount of the fixed capital; and to levy and collect assessments thereon in the manner provided by article 7 [10] of this chapter. [R. C. 1905, § 4192; Civ. C. 1877, § 396; R. C. 1895, § 2874.]

The reference at the conclusion of this section to "article 7 of this chapter" is incorrect. It should be "article 10." The error originated in R. C. 1895, § 2824, which has a marginal reference to Civ. C., § 396, and the latter correctly refers to the article constituting article 10 in the present compilation. The error in R. C. 1895 was repeated in R. C. 1899, § 2874.

§ 4526. May forfeit stock or recover subscription. When a corporation is authorized by the terms of subscription, or otherwise, to forfeit stock for nonpayment, it may either forfeit the stock, or recover the amount of the subscription, but it cannot do both. [R. C. 1905, § 4193; Civ. C. 1877, § 397; R. C. 1899, § 2875.]

Lien of corporation on stock. 11 Am. Dec. 581.

Action by corporation for unpaid balance of subscription after sale of forfeited stock. 1 L.R.A.(N.S.) 902.

§ 4527. Stock negotiable. How indorsed. All corporations for profit must issue certificates of stock when fully paid up, signed by the president and secretary, and may provide in their by-laws for the issuance of certificates prior to the full payment under such restrictions and for such purposes as their by-laws provide. Upon all certificates of stock which are fully paid

up, issued by a corporation, shall be indorsed the words "fully paid up." When certificates of stock are issued before they are fully paid up the secretary shall, before the same are issued, indorse thereon the amount which has been paid. No corporation shall issue any certificates of stock under an agreement or with the understanding that the full par value shall not be paid. Any officer of a corporation who issues certificates of stock in violation of the provisions of this chapter, or who has knowledge thereof, and does not at the time dissent therefrom in writing shall be liable to the creditors of the corporation and to purchasers in good faith of such stock for all damages they may sustain thereby. Whenever the capital stock of any corporation is divided into shares, and certificates thereof are issued, such shares of stock are personal property and may be transferred by indorsement by the signature of the proprietor or his attorney or legal representative, and delivery of the certificate; but such transfer is not valid except between the parties thereto, until the same is so entered upon the books of the corporation as to show the names of the parties by and to whom transferred, the number or designation of the shares and the date of the transfer. [R. C. 1905, § 4194; Civ. C. 1877, § 398; R. C. 1895, § 2876.]

Pledgee of stock in whose name it stands on corporate records may vote it. *Re Argus Print Co.*, 1 N. D. 434, 48 N. W. 347, 12 L.R.A. 781, 26 Am. St. Rep. 639.

Stock may be pledged; priority of transfer over judgment creditor. *Van Cise v. Bank*, 4 D. 485, 33 N. W. 897; *Doty v. Bank*, 3 N. D. 9, 53 N. W. 77.

Transfer under execution sale. *Van Cise v. Bank*, 4 D. 485, 33 N. W. 897.

Directors may not without consent of all stockholders dispose of original stock except on full payment of its par value, or under provisions for its payment in by-laws. *Anderson v. Scandia Mining Syndicate*, 26 S. D. 558, 128 N. W. 1016.

Right of pledgee of stock without transfer on corporate books is superior to that of subsequent attaching creditor of pledgor. *State Bkg. & T. Co. v. Taylor*, 25 S. D. 581, 29 L.R.A. (N.S.) 523, 127 N. W. 590.

Mandamus lies to compel record of transfer of corporate stock on corporation's books by officers. *Amidon v. Florence Farmers' Elevator Co.*, 28 S. D. 24, 132 N. W. 166.

To what extent may transfers of stock be restricted. 57 Am. St. Rep. 379.

Duty of corporation to transfer stock on books. 136 Am. St. Rep. 1027.

Mandamus to compel transfer of stock. 51 Am. Rep. 798.

Power of court to compel foreign corporation to register transfer of stock. 3 L.R.A. (N.S.) 551.

Right to the aid of equity to compel a corporation to transfer on its books stock acquired in aid of a conspiracy. 24 L.R.A. (N.S.) 108.

Duty of corporation as to transfer of stock held in trust. 15 L.R.A. 643.

Right of corporation to refuse to transfer stock on its books because of objections of former holder. 27 L.R.A. (N.S.) 200.

Validity of pledge or transfer of stock of corporation when not made in books of company, as against attachments, executions or subsequent transfers. 67 L.R.A. 656; 20 L.R.A. (N.S.) 996.

§ 4528. For what stock and bonds can be issued. No corporation shall issue stock or bonds except for money, labor done or property, estimated at its true money value, actually received by it, and all the officials of a corporation who consent to the issuance of stock or bonds for labor or property in excess of its actual cash value, or who have knowledge thereof and do not at the time dissent therefrom in writing shall be jointly and severally liable to the creditors of such corporation for the difference between the actual cash value of such labor or property at the time such stock or bonds were issued and the par value of the stock or bonds issued therefor. [R. C. 1905, § 4195; Const. § 138; R. C. 1899, § 2877.]

Right of corporation itself to complain that property purchased by it was of less value than the stock issued in exchange therefor, in the absence of actual fraud. 19 L.R.A. (N.S.) 115.

Payment for corporate stock with unpatented formula or invention. 16 L.R.A. (N.S.) 520.

Payment for stock by transfer of property as protection against liability to creditors of corporation. 42 L.R.A. 593.

§ 4529. Note for payment for stock. No note or obligation given by a stockholder, whether secured by pledge or otherwise, shall be considered as

payment of any part of the capital stock; but the capital stock shall be paid in, either in cash, or in the manner provided in this article. [R. C. 1905, § 4196; R. C. 1895, § 2878.]

Commercial paper as payment of subscription to stock. 35 L.R.A.(N.S.) 80.

§ 4530. **Excess void.** A corporation whose capital is limited by its articles of incorporation, either in amount or in number of shares, cannot issue valid certificates in excess of the limit thus prescribed. [R. C. 1905, § 4197; Civ. C. 1877, § 399; R. C. 1895, § 2879.]

Fraudulent and overissued stock. 87 Am. St. Rep. 847.

§ 4531. **Corporation may own its stock.** Unless otherwise provided, a corporation may purchase, hold and transfer shares of its own stock from its surplus profits, or as provided in the article on assessments of stock, or by the unanimous consent in writing of all its stockholders, in such manner and for such price or consideration as the said stockholders may unanimously decide upon. [R. C. 1905, § 4198; Civ. C. 1877, § 400; 1893, ch. 10, § 1; R. C. 1899, § 2880.]

Corporation in failing circumstances cannot borrow money to purchase its shares. *Adams & Westlake Co. v. Deyette*, 5 S. D. 418, 59 N. W. 214, 49 Am. St. Rep. 887; *Adams & Westlake Co. v. Deyette*, 8 S. D. 119, 65 N. W. 471, 59 Am. St. Rep. 751, 31 L.R.A. 497; *Tolman v. Mica Co.*, 4 D. 4, 22 N. W. 505.

Directors may not without consent of all stockholders dispose of original stock except on full payment of its par value, or under provisions for its payment in by-laws. *Anderson v. Scandia Mining Syndicate*, 26 S. D. 558, 128 N. W. 1016.

Conceding that contract by corporation in selling stock to repurchase it at buyer's option is ultra vires, it does not follow that statute renders void the condition under which purchaser may rescind. *Sweeny v. United Underwriters Co.*, 29 S. D. 576, 137 N. W. 379.

In suit on note given for corporate stock, it is no defense that defendant tendered back stock, with notice of rescission, and demanded return of note. *German Mercantile Co. v. Metz*, 21 N. D. 230, 130 N. W. 221.

Power of corporation to deal in its own stock. 18 L.R.A. 254.

Right of corporation to purchase its own shares of stock. 61 L.R.A. 621; 25 L.R.A. (N.S.) 50; 30 L.R.A.(N.S.) 694; 33 Am. St. Rep. 339.

§ 4532. **Dividend belongs to whom.** A dividend belongs to the person in whose name the stock stands upon the books of the corporation on the day when it becomes payable. [R. C. 1905, § 4199; Civ. C. 1877, § 401; R. C. 1899, § 2881.]

Dividends and rights and remedies of stockholders with respect thereto. 99 Am. Dec. 761.

Right of creditor of stockholder to share in dividends. 41 L.R.A.(N.S.) 999.

Right to dividends on transfer of stock. 45 L.R.A. 392.

Right, as between life tenant and remainderman, in dividends or distributions made by corporations. 45 L.R.A. 394; 12 L.R.A.(N.S.) 768; 35 L.R.A.(N.S.) 563; 24 Am. Rep. 169; 54 Am. Rep. 264; 118 Am. St. Rep. 162.

Right to increased stock and stock dividends as between owner of capital and income. 16 L.R.A. 461.

ARTICLE 4.—CORPORATE POWERS.

§ 4533. **Powers of corporations.** Every corporation as such has power:

1. To have succession by its corporate name for the period limited, not exceeding twenty years, if a corporation for profit; and if not a corporation for profit, perpetually, subject to the power of the legislative assembly as hereinafter declared.
2. To sue and be sued in any court.
3. To make and use a common seal and alter the same at pleasure.
4. To purchase, hold, transfer and convey such real and personal property as the legitimate purposes of the corporation may require, not exceeding in any case any amount limited by law.
5. To appoint such subordinate officers and agents as the business of the corporation may require, and to allow them suitable compensation.
6. To make by-laws not inconsistent with the law of the land for the management of its property, the regulation of its affairs and for the transfer of its stock.

7. To admit stockholders or members and to sell their stock or shares for the payment of assessments or installments.

8. To enter into any obligations or contracts essential to the transacting of its ordinary affairs, or for the purposes of the corporation.

9. The powers of banking corporations are prescribed in sections 4640 and 4641.

In addition to the above enumerated powers and to those expressly given in any other statute under which it is incorporated, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers enumerated and given. [R. C. 1905, § 4200; Civ. C. 1877, § 402; R. C. 1895, § 2882.]

As to similar provision in Cal. Civ. Code, § 354, see *McKiernan v. Lenzen*, 56 Cal. 61; *Anglo-California Bank v. Grangers' Bank*, 63 Cal. 359; *Underhill v. Santa Barbara Land Bldg. & Improv. Co.*, 93 Cal. 300, 28 Pac. 1049; *Bates v. Coronado Beach Co.*, 109 Cal. 160, 41 Pac. 855; *Vercoutere v. Golden State Land Co.*, 116 Cal. 410, 48 Pac. 375; *San Luis Water Co. v. Estrada*, 117 Cal. 168, 48 Pac. 1075; *Granite Gold Min. Co. v. Maginness*, 118 Cal. 131, 50 Pac. 269; *Savings Bank v. Barrett*, 126 Cal. 413, 58 Pac. 914.

2. Complaint must allege that plaintiff is corporation, or state facts showing that it is artificial person with capacity to sue. *McConnon v. Laursen*, 22 N. D. 604, 135 N. W. 213.

Right of corporation to sue for libel. 2 L.R.A.(N.S.) 741.

3. Corporate seal, adoption of and effect and necessity for its use. 50 Am. St. Rep. 150.

Effect of seal as evidence. 64 Am. St. Rep. 260.

From what contracts may seal be omitted. 13 Am. Dec. 561.

Seal as affecting negotiability of bill or note of corporation. 35 L.R.A. 606.

4. Capacity of corporation to take title to real property. 94 Am. Dec. 381.

Right to locate mining claim. 7 L.R.A.(N.S.) 816.

How and by whom may conveyances by corporation be executed. 23 Am. Dec. 743.

Conveyance by corporation of land held adversely. 35 L.R.A.(N.S.) 748.

Power to deal in stock of other corporations. 18 L.R.A. 252; 28 Am. Rep. 15; 36 Am. St. Rep. 134.

Corporations as beneficiaries of charitable bequest. 14 L.R.A.(N.S.) 140; 37 L.R.A.(N.S.) 1019.

8. Ultra vires contracts of corporations. 13 Am. Dec. 108; 70 Am. St. Rep. 156.

Contracts forbidden by their charters or other statutes. 51 Am. Dec. 341.

Power to borrow money. 111 Am. St. Rep. 309.

Power to give evidence of indebtedness and security therefor. 111 Am. St. Rep. 309.

Power of corporation to issue accommodation paper. 9 L.R.A.(N.S.) 193.

Commercial paper of corporation as payment of corporate debt. 35 L.R.A.(N.S.) 79.

Liability under continuing guaranty running to corporation for goods sold or credits extended after a change in the corporation. 14 L.R.A.(N.S.) 1231.

Power of corporation organized for the manufacture and sale of liquor to enter into contracts of guaranty or suretyship on behalf of its customers, or prospective customers. 27 L.R.A.(N.S.) 186.

Liability of corporation on contracts of promoters. 26 L.R.A. 544.

Enforceability of loan to private corporation, which alone, or in connection with existing indebtedness, exceeds the corporation's power to incur indebtedness. 11 L.R.A.(N.S.) 598.

9. Corporation as trustee for charitable trust. 14 L.R.A.(N.S.) 111; 37 L.R.A.(N.S.) 1011.

Power of corporation to insure life of officer for benefit of corporation. 16 L.R.A.(N.S.) 1020.

Practice of law or medicine by corporation. 32 L.R.A.(N.S.) 56.

§ 4534. By-laws. Who adopt. When. Every corporation formed under this chapter must within one month after filing articles of incorporation adopt a code of by-laws for its government, not inconsistent with the constitution and laws of this state. The assent of stockholders representing a majority of all the subscribed capital stock, or of a majority of the members, if there is no capital stock, is necessary to adopt by-laws, if they are adopted at a meeting called for that purpose; and in event of such meeting being called notice thereof shall be published two times, once in each week, for two successive weeks in some newspaper published in the county in which the principal place of business of the corporation is located, or if none is published therein, then in a newspaper published at the seat of government. The written assent of the holders of two-thirds of the stock, or of two-

thirds of the members, if there is no capital stock, shall be effectual to adopt a code of by-laws without a meeting for that purpose; provided, however, that any corporation incorporated in this state after the taking effect of this act may by its articles of incorporation provide that each stockholder shall have only one vote on any question arising at any of its stockholders' meetings regardless of the amount of stock owned; provided, further, that any corporation may amend its articles of incorporation at any time and adopt such provisions of unit vote by a unanimous vote of all stockholders owning stock in such corporation. [1911, ch. 104; R. C. 1905, § 4201; Civ. C. 1877, § 403; R. C. 1895, § 2883.]

Secretary can recover for extra services without showing by by-laws that services pertain to duties of office. *Edwards v. Railway Co.*, 4 D. 549, 33 N. W. 100.

By-laws, what may adopt. 85 Am. Dec. 617.

Mandamus to enforce provision of by-laws of corporation. 32 L.R.A. 575.

As to similar provision in Cal. Civ. Code, § 301, see *McFadden v. Los Angeles County*, 74 Cal. 571, 16 Pac. 397; *Vercountere v. Golden State Land Co.*, 116 Cal. 410, 48 Pac. 375; *Wells v. Black*, 117 Cal. 157, 37 L.R.A. 619, 59 Am. St. Rep. 162, 48 Pac. 1090.

§ 4535. Scope of by-laws. A corporation may by its by-laws, when no other provision is specially made, provide:

1. The time, place and manner of calling and conducting its meetings.
2. The number of stockholders or members constituting a quorum.
3. The mode of voting by proxy.
4. The time of the annual election for directors and the mode and manner of giving notice thereof.
5. The compensation and duties of officers.
6. The manner of election and the tenure of office of all officers other than the directors; and,
7. Suitable penalties for violation of by-laws, not exceeding in any case one hundred dollars for any one offense. [R. C. 1905, § 4202; Civ. C. 1877, § 404; R. C. 1899, § 2884.]

Limitations on power to enact by-laws. 43 Am. St. Rep. 152.

By-laws restricting transfer of stock. 27 L.R.A. 271.

Effect of by-law requiring transfer of stock on books. 67 L.R.A. 672.

Effect of by-law on stockholder's right to inspect corporate books. 20 L.R.A.(N.S.) 196.

Lien by by-law on corporate stock as notice of lien to pledgee or assignee. 39 L.R.A.(N.S.) 295.

As to similar provision in Cal. Civ. Code, § 303, see *Wickersham v. Brittan*, 93 Cal. 34, 15 L.R.A. 106, 28 Pac. 792, 29 Pac. 51; *People's Home Sav. Bank v. Superior Ct.*, 104 Cal. 649, 29 L.R.A. 844, 43 Am. St. Rep. 147, 38 Pac. 452; *Market Street R. Co. v. Hellman*, 109 Cal. 571, 42 Pac. 225.

3. Right to vote by proxy under by-laws. 18 L.R.A. 584; 29 L.R.A. 845.

4. Regulation by by-laws of elections by private corporations. 18 L.R.A. 582.

Modification by by-law of quorum for meeting of stockholders. 21 L.R.A. 175.

5. By-laws silent as to compensation and official duties, how construed. *Edwards v. Fargo & Southern Ry.*, 4 Dak. 549, 33 N. W. 100.

6. By-law to compel acceptance of office. 24 L.R.A. 492.

§ 4536. Religious corporations, how officered. In addition to the provisions of section 4535, religious corporations may in their by-laws provide for the number and qualifications of their officers and directors, and the time and mode of their election or appointment, their tenure of office, and the qualifications of voters at meetings of the members, for their election. The board of trustees, vestry, chapter, governing committee, or other like body, having charge of the temporal concerns and property of any religious association which has become a corporation, shall constitute the board of directors of such corporation, and shall be of such number as may be determined by the by-laws of the corporation, and may be appointed or elected, and act, at such time and in such manner as may be in conformity with, or provided by the general laws, canons, rules, regulations, usages or discipline of the religious organization to which the members of such corporation are attached. [R. C. 1905, § 4203; 1901, ch. 146.]

§ 4537. Record. Certificates. Repeal of by-laws. All by-laws adopted must be certified by a majority of the directors and secretary of the corporation and copied in a legible hand in some book kept in the office of the corporation to be known as the "book of by-laws," and no by-laws shall take effect until so copied, and the book shall then be opened to the inspection of the public during office hours of each day except holidays. The by-laws may be repealed or amended or new by-laws may be adopted at the annual meeting or at any other meeting of the stockholders or members, called for that purpose by the directors, by a vote representing two-thirds of the subscribed stock, or by two-thirds of the members; or the power to repeal and amend the by-laws and to adopt new by-laws may by a similar vote at any such meeting be delegated to the board of directors. The power when delegated may be revoked by a similar vote at any regular meeting of the stockholders or members. Whenever any amendment or new by-law is adopted it shall be copied in the book of by-laws with the original by-laws and immediately after them, and shall not take effect until so copied. If any by-law is repealed, the fact of the repeal with the date of the meeting at which the repeal was enacted shall be stated in the said book and until so stated the repeal shall not take effect. [R. C. 1905, § 4204; Civ. C. 1877, § 405; R. C. 1899, § 2885.]

Effect of by-laws as notice. 25 L.R.A. 48.

§ 4538. Election of directors. The directors of a corporation must be elected annually by the stockholders or members unless otherwise expressly provided, and if no provision is made in the by-laws for the time of election, the election must be held on the first Tuesday in June. Notice of election of directors must be given for the same time and in the same manner as provided in section 4534. [R. C. 1905, § 4205; Civ. C. 1877, § 406; R. C. 1895, § 2886.]

§ 4539. Same. At the first meeting at which by-laws are adopted, or at such subsequent meeting as may then be designated, directors must be elected to hold their offices for one year and until their successors are elected and qualified. [R. C. 1905, § 4206; Civ. C. 1877, § 406; R. C. 1899, § 2887.]

Transferee of stock upon corporate records qualified to become director, if transfer not made for fraudulent purpose. *In re Argus Printing Co.*, 1 N. D. 434, 48 N. W. 347.

§ 4540. Manner of voting. All elections of directors must be by ballot and every stockholder shall have the right to vote, in person or by proxy, the number of shares standing in his name as provided in section 4547, for as many persons as there are directors to be elected, or to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his shares of stock shall equal, or to distribute them on the same principle among as many candidates as he shall think fit. The persons receiving the highest number of votes shall be declared elected. [R. C. 1905, § 4207; Civ. C. 1877, § 406; R. C. 1895, § 2888.]

Pledgee may vote pledged stock. *Re Argus Print. Co.*, 1 N. D. 434, 48 N. W. 347, 12 L.R.A. 781, 26 Am. St. Rep. 639.

Voting by proxy. 27 Am. Dec. 60.

As to similar provision in Cal. Civ. Code, § 307, see *Wickersham v. Brittan*, 93 Cal. 34, 15 L.R.A. 106, 28 Pac. 792, 29 Pac. 51; *Dulin v. Pacific Wood & Coal Co.*, 103 Cal. 357, 35 Pac. 1045, 37 Pac. 207; *Market Street R. Co. v. Hellman*, 109 Cal. 571, 42 Pac. 225; *Smith v. San Francisco & N. P. R. Co.*, 115 Cal. 584, 47 Pac. 450, 1 Am. Neg. Rep. 9; *Krause v. Durbrow*, 127 Cal. 681, 60 Pac. 438.

§ 4541. Number and power of directors. Unless otherwise expressly provided, the corporate powers, business and property of all corporations formed under this chapter must be exercised, conducted and controlled by a board of not less than three nor more than eleven directors, to be elected from among the holders of stock; or when there is no capital stock, then, from the members of such corporation, and at least one of such directors must be a resident of this state and the removal of such resident director from the state shall create a vacancy in his office. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation. Directors of all other corporations must be members thereof.

Unless a quorum is present and acting, no business performed, or act done, is valid, as against the corporation. Whenever a vacancy occurs in the office of director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the board; provided, that the trustees or directors of any private corporation created for religious, educational, or benevolent purposes, may number not less than three nor more than twenty-one, and may be elected at such times, and for such periods, and in such manner, and their qualifications be such as may be provided by the articles of incorporation or by-laws of such corporation. [R. C. 1905, § 4208; 1897, ch. 57; R. C. 1899, § 2889.]

Transferee of stock upon corporate records qualified to become director if transfer not made for fraudulent purpose. *In re Argus Printing Co.*, 1 N. D. 434, 48 N. W. 347.

Cashier of bank must act within scope of power authorized by directors. *North Star Boot & Shoe Co. v. Stebbins*, 2 S. D. 74, 48 N. W. 833.

Adoption of agreement of promoter may be implied from acts of corporation. *Huron Printing & Binding Co. v. Kittleson*, 4 S. D. 520, 57 N. W. 233.

Has power to bring suit. Must act as board. *Minnehaha County v. Thorne*, 6 S. D. 449, 61 N. W. 688.

Stock transferable to qualify person as director if not made for fraudulent purposes. *Re Argus Print. Co.*, 1 N. D. 434, 48 N. W. 347, 12 L.R.A. 781, 26 Am. St. Rep. 639.

Power to bring suit is in board of directors. *Minnehaha County v. Thorne*, 6 S. D. 449, 61 N. W. 688.

Officers not bound by contracts unauthorized by directors. *Des Moines Mfg. Co. v. Milling Co.*, 9 S. D. 542, 70 N. W. 839.

Bank not liable for fraud of its officer in individual capacity in securing release of mortgage upon land sold bank. *Staples v. Bank*, 8 S. D. 222, 66 N. W. 314.

Cashier cannot contract for purchase of merchandise for bank. *N. S. Shoe Co. v. Stebbins*, 2 S. D. 74, 48 N. W. 833.

Adoption of promoter's agreement may be by implication. *Huron Printing Co. v. Kittleson*, 4 S. D. 520, 57 N. W. 233; *Dedrick v. Mortgage Co.*, 12 S. D. 59, 80 N. W. 153.

Officers cannot diminish capital in anticipation of insolvency. *Adams & Westlake Co. v. Deyette*, 8 S. D. 119, 65 N. W. 471, 59 Am. St. Rep. 751, 31 L.R.A. 497.

Validity of contracts between a director and his corporation. 139 Am. St. Rep. 598.

Liability of corporation on negotiable paper executed by officer or agent. 21 L.R.A. (N.S.) 1046.

Standard or degree of care of directors of a corporation. 55 L.R.A. 752.

Liability of directors for acts in excess of their power. 55 L.R.A. 758.

—for their own acts and omissions with respect to matters within their authority. 55 L.R.A. 761.

—for permitting business before capital stock is all subscribed. 35 L.R.A. (N.S.) 453.

—for corporate debts where they sell the entire corporate property and distribute the proceeds. 26 L.R.A. (N.S.) 267.

—for personal injuries resulting from tort. 39 L.R.A. (N.S.) 901.

—to corporation for amount it has been compelled to pay because of their tort. 40 L.R.A. (N.S.) 1102.

Jurisdiction of equity over suits by corporation or its representative to hold the directors liable for losses occasioned by their fraud, bad faith or negligence. 8 L.R.A. (N.S.) 739.

As to similar provision in Cal. Civ. Code, § 305, see *Salfield v. Sutter County Land Improv. & R. Co.*, 94 Cal. 546, 29 Pac. 1105; *Rozecrans Gold Min. Co. v. Morey*, 111 Cal. 114, 43 Pac. 585; *Pacific Bank v. Stone*, 121 Cal. 202, 53 Pac. 634; *Savings Bank v. Barrett*, 126 Cal. 413, 58 Pac. 914; *Porter v. Lassen County Land & Cattle Co.*, 127 Cal. 261, 59 Pac. 563; *Brown v. Valley View Min. Co.*, 127 Cal. 630, 60 Pac. 424; *Curtin v. Salmon River Hydraulic Gold Min. & Ditch Co.*, 130 Cal. 345, 80 Am. St. Rep. 132, 62 Pac. 552; *Bassett v. Fairchild*, 132 Cal. 637, 52 L.R.A. 611, 61 Pac. 791, 64 Pac. 1082.

§ 4542. Organization and election of officers. Immediately after their election the directors must organize and elect a president of the corporation, who must be one of their number, a secretary and treasurer. They must perform the duties enjoined on them by law and the by-laws of the corporation. A majority of the directors is a sufficient number to form a board for the transaction of business, and every decision of a majority of the directors forming such board, made when duly assembled, is valid as a corporate act. [R. C. 1905, § 4209; Civ. C. 1877, § 408; R. C. 1895, § 2890.]

Right to appoint receiver on failure of corporation to elect officers. 20 L.R.A. 213.

As to similar provision in Cal. Civ. Code, § 308, see *Smith v. Los Angeles Immigration & Land Co-op. Asso.*, 78 Cal. 289, 12 Am. St. Rep. 53, 20 Pac. 677; *Alta Silver*

Min. Co. v. Alta Placer Min. Co., 78 Cal. 629, 21 Pac. 373; Wickersham v. Brittan, 93 Cal. 34, 15 L.R.A. 106, 28 Pac. 792, 29 Pac. 51; Smith v. Dorn, 96 Cal. 73, 30 Pac. 1024; Pacific Bank v. Stone, 121 Cal. 202, 53 Pac. 634; Porter v. Lassen County Land & Cattle Co., 127 Cal. 261, 59 Pac. 563; Bank of National City v. Johnston, 6 Cal. Unrep. 418, 60 Pac. 776.

§ 4543. Dividends only from profits. Limitations of indebtedness. Exception. The directors of corporations must not make dividends except from the surplus profits arising from the business thereof; nor must they divide, withdraw or pay to the stockholders, or any of them, any part of the capital stock, nor must they create debts beyond the subscribed capital stock, or reduce or increase the capital stock, except as specially provided by law; provided, however, that the above limitation as to the creation of debts shall not apply to the policy risks of insurance companies on which no loss has occurred, or the notes, bonds or debentures of any loan or trust company, organized under the provisions of this chapter, when payment of such notes, bonds or debentures shall be secured by the actual transfer of real estate by trust deed or mortgage for the payment of such notes, bonds or debentures, which said real estate so transferred shall be of twice the value of the par value of such notes, bonds and debentures; provided, further, that such limitation shall not apply to any loan or trust company's guarantee of payment after transfer of any note, bond or debenture when the same is secured by trust deed or mortgage as above stated; provided, further, that the above limitation as to the creation of debts shall not apply to certificates and debentures issued by investment companies for the creation of an investment fund where the holder of such certificates or debentures shall by the terms of the same, participate in the earnings of such investment fund. [1909, ch. 63; R. C. 1905, § 4210; Civ. C. 1877, § 409; 1889, ch. 81, § 1; R. C. 1895, § 2891.]

As to similar provision in Cal. Civ. Code, § 309, see Kohl v. Lilienthal, 81 Cal. 378, 6 L.R.A. 520, 20 Pac. 401, 22 Pac. 689; Excelsior Water & Min. Co. v. Pierce, 90 Cal. 131, 27 Pac. 44; Underhill v. Santa Barbara Land Bldg. & Improv. Co., 93 Cal. 300, 28 Pac. 1049; Market Street R. Co. v. Hellman, 109 Cal. 571, 42 Pac. 225; Vercoutere v. Golden State Land Co., 116 Cal. 410, 48 Pac. 375; Sacramento Bank v. Pacific Bank, 124 Cal. 147, 45 L.R.A. 863, 71 Am. St. Rep. 36, 56 Pac. 787; Santa Rosa Nat. Bank v. Barnett, 125 Cal. 407, 58 Pac. 85; Schaafe v. Eagle Automatic Can Co., 135 Cal. 472, 63 Pac. 1025, 67 Pac. 759.

§ 4544. Penalty for violation of last section. For a violation of the provisions of the last section the directors under whose administration the same may have happened, except those who may have caused their dissent therefrom to be entered at large on the minutes of the directors at the time, or were not present when the same did happen, are, in their individual and private capacity, jointly and severally liable to the corporation, and to the creditors thereof, in the event of its dissolution, to the full amount of the capital stock so divided, withdrawn, paid out, or reduced, or debt contracted; and no statute of limitations is a bar to any action against such directors for any sums for which they are made liable by this section. There may, however, be a division and distribution of the capital stock of any corporation which remains after the payment of all its debts, upon its dissolution or the expiration of its term of existence. [R. C. 1905, § 4211; Civ. C. 1877, § 409; R. C. 1895, § 2892.]

§ 4545. False certificate or notice. Any officer of a corporation who willfully gives a certificate, or willfully makes an official report, public notice or entry in any of the records or books of the corporation concerning the corporation or its business, which is false in any material representation, shall be liable for all damages resulting therefrom to any person injured thereby; and if two or more officers unite or participate in the commission of any of the acts herein designated, they shall be jointly and severally liable. [R. C. 1905, § 4212; Civ. C. 1877, § 409; R. C. 1895, § 2893.]

False statements in reports required by statute to be made to public officers as basis of action by individuals at common law for deceit against directors personally. 6 L.R.A. (N.S.) 872.

§ 4546. Removal of directors. No director shall be removed from office, unless by a vote of two-thirds of the members, or of stockholders holding two-thirds of the capital stock, at a general meeting held after notice of the time and place and of the intention to propose such removal. Meetings of stockholders for this purpose may be called by the president, or by a majority of the directors, or by members or stockholders holding at least one-half of the votes. Such calls must be in writing and addressed to the secretary, who must thereupon give notice of the time, place and object of the meeting and by whose order it was called. If the secretary refuses to give the notice, or if there is none, the call may be addressed directly to the members or stockholders, and be served as a notice, in which case it must specify the time and place of meeting. The notice must be given in the manner provided in section 4534, unless other express provision has been made therefor in the by-laws. In case of removal the vacancy may be filled by election at the same meeting. [R. C. 1905, § 4213; Civ. C. 1877, § 410; R. C. 1899, § 2894.]

Part of board of directors cannot hold special meeting without previous notice at branch office, and transfer practically all the corporate property. *Summers v. Glenwood G. & S. Min. Co.*, 15 S. D. 20, 86 N. W. 749.

Right of attorney-general or other representative of state to maintain suit or proceeding to remove officers of private corporation. 18 L.R.A.(N.S.) 672.

Power of directors to remove their own appointee who is one of the class of officers to whom the management of the business is confided. 23 L.R.A.(N.S.) 1293.

§ 4547. Quorum. Proxy. At all elections or votes had for any purpose there must be a majority of the subscribed capital stock, or of the members, represented either in person or by proxy in writing. Every person acting therein in person, or by proxy, or representative must be a member thereof or a bona fide stockholder, having stock in his own name on the stock books of the corporation at least ten days prior to the election. Any vote or election had other than in accordance with the provisions of this article is voidable at the instance of absent stockholders or members and may be set aside by petition to the district court of the county where the same was held. Any regular or called meeting of the stockholders or members may adjourn from day to day, or from time to time, if for any reason there is not present a majority of the subscribed stock or members, or no election had, such adjournment and the reasons therefor being recorded in the journal of proceedings of the board of directors. [R. C. 1905, § 4214; Civ. C. 1877, § 411; R. C. 1895, § 2895.]

Irrevocable proxies. 56 Am. St. Rep. 138.

As to similar provision in Cal. Civ. Code, § 312, see *Wright v. Central California Colony Water Co.*, 67 Cal. 532, 8 Pac. 70; *Wickersham v. Brittan*, 93 Cal. 34, 15 L.R.A. 106, 28 Pac. 792, 29 Pac. 51; *People's Home Sav. Bank v. Superior Ct.*, 104 Cal. 649, 29 L.R.A. 844, 43 Am. St. Rep. 147, 38 Pac. 452; *Market Street R. Co. v. Hellman*, 109 Cal. 571, 42 Pac. 225; *San Diego, O. T. & P. B. R. Co. v. Pacific Beach Co.*, 112 Cal. 53, 33 L.R.A. 788, 44 Pac. 333; *Smith v. San Francisco & N. P. R. Co.*, 115 Cal. 584, 35 L.R.A. 309, 56 Am. St. Rep. 119, 47 Pac. 582; *Krause v. Durbrow*, 127 Cal. 681, 60 Pac. 438.

§ 4548. Election failing. If from any cause an election does not take place on the day appointed in the by-laws, it may be held on any day thereafter as provided for in such by-laws, or to which such election may be adjourned, or ordered by the directors. If an election has not been held at the appointed time, and no adjourned or other meeting for the purpose has been ordered by the directors, a meeting may be called by the stockholders as provided in section 4546. [R. C. 1905, § 4215; Civ. C. 1877, § 412; R. C. 1899, § 2896.]

§ 4549. Action. Election confirmed or new one ordered. Upon the application of any person or body corporate aggrieved by any election held by any corporate body, or any proceedings thereof, the district judge of the district in which such election is held must proceed forthwith summarily to hear the allegations and proofs of the parties or otherwise inquire into the matters of complaint, and thereupon confirm the election, order a new one or direct such other relief in the premises as accords with right and justice.

Before any proceedings are had under this section, five days' notice thereof must be given to the adverse party, or those to be affected thereby. [R. C. 1905, § 4216; Civ. C. 1877, § 412; R. C. 1899, § 2897.]

As to similar provision in Cal. Civ. Code, § 315, see *Wickersham v. Brittan*, 93 Cal. 84, 15 L.R.A. 106, 28 Pac. 792, 29 Pac. 51; *Dulin v. Pacific Wood & Coal Co.*, 103 Cal. 357, 35 Pac. 1045, 37 Pac. 207; *Whitehead v. Sweet*, 126 Cal. 67; 58 Pac. 376.

§ 4550. **Where meetings held.** The meetings of the stockholders and boards of directors for the election of officers of a corporation must be held at its office or principal place of business within this state, and the corporate records must be kept at such office or principal place of business. All other meetings of the board of directors may be held at such place, within or without the state, as may be provided in the by-laws; provided, that the meetings of the board of directors of a railway corporation may be held at the business office of such corporation without the state as well as at its principal place of business within the state. [R. C. 1905, § 4217; 1897, ch. 116; R. C. 1899, § 2898.]

§ 4551. **Same.** The meetings of the board of directors of any private corporation created and existing or which may hereafter be created under and by virtue of the laws of the state of North Dakota, having one or more directors, resident in this state or having duly appointed an agent resident in this state upon whom service may be made, may be held at any place mentioned and provided in its by-laws either within or without the state. [R. C. 1905, § 4218; 1895, ch. 36, § 1; R. C. 1899, § 2899.]

§ 4552. **Meetings, how called.** When no provision is made in the by-laws for regular meetings of the directors and the mode of calling special meetings, all meetings must be called by special notice in writing, to be given to each director by the secretary on the order of the president, or if there is none, on the order of two directors. [R. C. 1905, § 4219; Civ. C. 1877, § 412; R. C. 1899, § 2900.]

Provision as to giving notice of meeting not mandatory; a meeting when all are present may be legal. *Troy Min. Co. v. White*, 10 S. D. 475, 74 N. W. 236, 42 L.R.A. 549.

Validity of acts done at meetings not properly called. 18 Am. Dec. 102.

When special, notice to attend meeting may be omitted. 3 Am. St. Rep. 69.

As to similar provision in Cal. Civ. Code, § 320, see *Granger v. Original Empire Mill & Min. Co.*, 59 Cal. 678; *Smith v. Dorn*, 96 Cal. 73, 30 Pac. 1024; *Stockton Combined Harvester & Agri. Works v. Houser*, 109 Cal. 1, 41 Pac. 809; *Curtin v. Salmon River Hydraulic Gold Min. & Ditch Co.*, 130 Cal. 345, 80 Am. St. Rep. 132, 62 Pac. 552; *Relley v. Campbell*, 134 Cal. 175, 66 Pac. 220.

§ 4553. **When called by justice.** Whenever from any cause there is no person authorized to call or to preside at a meeting of a corporation, any justice of the peace of the county where such corporation is established, may, on written application of three or more of the stockholders or of the members thereof, issue a warrant to one of the stockholders or members, directing him to call a meeting of the corporation by giving the notice required, and the justice may in the same warrant direct such person to preside at such meeting until a clerk is chosen and qualified, if there is no other officer present legally authorized to preside thereat. [R. C. 1905, § 4220; Civ. C. 1877, § 412; R. C. 1899, § 2901.]

§ 4554. **Liability of stockholders. Trust funds.** Each stockholder of a corporation is individually and personally liable for the debts of the corporation to the extent of the amount that is unpaid upon the stock held by him. Any creditor of the corporation may institute joint or several actions against any or all of the stockholders of a corporation whose shares have not been fully paid up, and in such action the court must ascertain the amount that is unpaid upon the stock held by each stockholder and for which he is liable, and several judgment must be rendered against each in conformity therewith. The liability of each stockholder is determined by the amount unpaid upon the stock or shares owned by him at the time such action is commenced, and such liability is not released by any subsequent transfer of stock. The term stockholder, as used in this section, shall apply not

only to such persons as appear by the books of the corporation to be such, but also to every equitable owner of stock, although the same appears on the books in the name of another; and also to every person who has advanced the installments or purchase money of stock in the name of a minor, so long as the latter remains a minor; and also to every guardian or other trustee who voluntarily invests any trust funds in the stock. Trust funds in the hands of a guardian or trustee shall not be liable under the provisions of this section by reason of any such investment, nor shall the person for whose benefit the investment is made be responsible in respect to the stock until he becomes competent and able to control the same; but the responsibility of the guardian or trustee making the investment shall continue until that period. Stock held as collateral security, or by a trustee, or in any other representative capacity does not make the holder thereof a stockholder within the meaning of this section, except in the cases above mentioned, so as to charge him with the debts or liabilities of the corporation; but the pledgor, or person, or estate represented is to be deemed the stockholder as respects such liability. [R. C. 1905, § 4221; Civ. C. 1877, § 413; 1879, ch. 9, § 1; R. C. 1895, § 2902.]

Stockholder's liability is limited to amount due upon his stock. *Busby v. Riley*, 6 S. D. 401, 61 N. W. 164.

Creditors cannot unite distinct and independent claim in one action. *South Ben. Toy Co. v. Ins. Co.*, 4 S. D. 173, 56 N. W. 98.

Officers may by their conduct bind themselves individually. *Rust-Owen Lumber Co. v. Wellman*, 10 S. D. 122, 72 N. W. 89.

President of corporation engaged in loaning money presumed to have authority to transfer promissory note by indorsement. *Merrill v. Hurley*, 6 S. D. 592, 62 N. W. 953.

Creditor may maintain an action to enforce stockholders' liabilities, though claim not reduced to judgment. *Marshall-Wells Hardware Co. v. New Era Coal Co. et al.*, 13 N. D. 396, 100 N. W. 1084.

Liability upon subscriptions to stock. 40 Am. Dec. 358.

Effect of transfer of stock by subscriber. 14 Am. Dec. 264.

Enforcement of stockholders' liability in other state. 37 Am. St. Rep. 168.

Liability of stockholders to creditors of corporation. 3 Am. St. Rep. 806.

Liability of persons holding stock as collateral. 1 Am. St. Rep. 783; 68 Am. St. Rep. 542.

Liability of stockholders for debts of corporation. 43 Am. Dec. 694; 49 Am. Dec. 308; 99 Am. Dec. 432.

Liability of members of incorporated religious society for its debts. 69 L.R.A. 256.

Liability of stockholders of insolvent insurance company. 38 L.R.A. 110.

Effect of forfeiture of stock on stockholder's personal liability as to unpaid assessments. 27 L.R.A. 314.

Does statutory liability of stockholder or officer for debts of corporation include liability for torts. 22 L.R.A. (N.S.) 256.

Personal liability of executor, administrator or trustee on corporate stock belonging to estate or trust, but standing in his name. 30 L.R.A. (N.S.) 1092.

Issuance of stock at discount as affecting stockholder's liability for debts. 8 L.R.A. (N.S.) 263.

Effect of creditor's knowledge that stock was improperly issued as full paid upon his right to resort to holder of same. 8 L.R.A. (N.S.) 271.

As to similar provision in Cal. Civ. Code, § 322, see *Sonoma Valley Bank v. Hill*, 59 Cal. 107; *Faymonville v. McCoullough*, 59 Cal. 285; *Harmon v. Page*, 62 Cal. 448; *Mitchell v. Beckman*, 64 Cal. 117, 28 Pac. 110; *Derby v. Stevens*, 64 Cal. 287, 30 Pac. 820; *Bidwell v. Babcock*, 87 Cal. 29, 25 Pac. 752; *Potter v. Dear*, 95 Cal. 578, 30 Pac. 777; *Baines v. Babcock*, 95 Cal. 581, 29 Am. St. Rep. 158, 27 Pac. 674, 30 Pac. 776; *Kennedy v. California Sav. Bank*, 97 Cal. 93, 33 Am. St. Rep. 163, 31 Pac. 846; *Borland v. Nevada Bank*, 99 Cal. 89, 37 Am. St. Rep. 32, 33 Pac. 737; *Griffin & S. Co. v. Magnolia & H. Fruit Cannery Co.*, 107 Cal. 378, 40 Pac. 495; *Brown v. Merrill*, 107 Cal. 446, 48 Am. St. Rep. 145, 40 Pac. 557; *Winona Wagon Co. v. Bull*, 108 Cal. 1, 40 Pac. 1077; *McGowan v. McDonald*, 111 Cal. 57, 52 Am. St. Rep. 149, 43 Pac. 418; *J. I. Case Plow Works v. Montgomery*, 115 Cal. 380, 47 Pac. 108; *Grimwood v. Barry*, 118 Cal. 274, 50 Pac. 430; *Myers v. Sierra Valley Stock & Agri. Asso.*, 122 Cal. 669, 55 Pac. 689; *Sacramento Bank v. Pacific Bank*, 124 Cal. 147, 45 L.R.A. 863, 71 Am. St. Rep. 36, 56 Pac. 787; *Johnson v. Bank of Lake*, 125 Cal. 6, 73 Am. St. Rep. 17, 57 Pac. 664; *Santa Rosa Nat. Bank v. Barnett*, 125 Cal. 407, 58 Pac. 85; *Welch v. Sargent*, 127 Cal. 72, 59 Pac. 319; *Wells, F. & Co. v. Enright*, 127 Cal. 669, 49 L.R.A. 647, 60 Pac. 439; *Hurlburt v. Arthur*, 140 Cal. 103, 98 Am. St. Rep. 17, 73 Pac. 734.

§ 4555. When uncalled meeting valid. When all the stockholders or members of a corporation are present at any meeting, however called or notified and sign a written consent thereto on the record of such meeting, the doings of such meeting are as valid as if had at a meeting legally called and noticed; but this section shall not be construed to authorize the stock or bonded indebtedness of corporations to be increased, except at a meeting held after sixty days' notice. The stockholders or members of such corporation, when so assembled, may elect officers to fill all vacancies then existing, and may act upon such other business as might lawfully be transacted at regular meetings of the corporation. [R. C. 1905, § 4222; Civ. C. 1877, § 414; R. C. 1895, § 2903.]

§ 4556. Nonresident transfers. When the shares of stock in a corporation are owned by parties residing out of the state, the president, secretary and directors of the corporation before entering any transfer of the shares on its books, or issuing a certificate therefor to the transferee, may require from the attorney or agent of the nonresident owner, or from the person claiming under the transfer, an affidavit or other evidence that the nonresident owner was alive at the date of the transfer, and if such affidavit or other satisfactory evidence is not furnished, may require from the attorney, agent or claimant a bond of indemnity with two sureties satisfactory to the officers of the corporation or if not so satisfactory, then one approved by the district judge of the county in which the principal office of the corporation is situated, conditioned to protect the corporation against any liability to the legal representatives of the owner of the shares in case of his or her death before the transfer, and if such affidavit, or other evidence, or bond is not furnished when required, as herein provided, neither the corporation, nor any officer thereof, shall be liable for refusing to enter the transfer on the books of the corporation. [R. C. 1905, § 4223; Civ. C. 1877, § 415; R. C. 1895, § 2904.]

§ 4557. Powers of corporation. Increasing or diminishing stock. Every corporation may increase or diminish its capital stock at a meeting called for that purpose by the directors, as follows:

1. Notice of the time and place of the meeting stating its object and the amount to which it is proposed to increase or diminish its capital stock must be personally served on each stockholder resident in the state sixty days prior to the time of such meeting at his place of residence if known; and the notice must be given to stockholders whose place of residence is unknown or who are not residents in the state by the publication of such notice in a newspaper published in the county where the principal office of the corporation is situated, not less than once a week for sixty days prior to such meeting; provided, that the capital stock of any railway company organized under the laws of this state may be increased to such an amount as may by its stockholders be deemed necessary for the purchase or construction of any railroad which it may be legally empowered to purchase or construct; for additions to or improvements of its railroad or property; for additional equipment which may be necessary in the operation of its railroad and for real estate that may be needed by said corporation for railway purposes, by a majority vote of all its stock, in person or by proxy at any annual meeting, or at any meeting called by its directors for that purpose, by a notice in writing to each stockholder, to be served on him personally or by depositing the same in the post office, postage paid, properly directed to him at the post office nearest his usual place of residence at least forty days prior to such meeting. Such notice shall state the time and place of such meeting, its object and the amount to which it is proposed to increase such capital stock. No vote in favor of such increase shall take effect until the proceedings of such meeting, showing the names of all of the stockholders voting therefor and the amount of stock owned by each, shall be entered upon the records of such corporation. Every such corporation so increasing its capital stock, shall file with the secretary of state, whenever issues of stock shall be made under this section,

a report showing the amount issued and the purposes to which it has been, or is to be, devoted, which report shall be verified by the oath of the president or the general manager thereof and of the chief engineer.

2. The capital stock must in no case be diminished to an amount less than the indebtedness of the corporation, or the estimated cost of the works which it may be the purpose of the corporation to construct.

3. At least two-thirds of the entire capital stock, except as hereinbefore provided, must be represented by the vote in favor of the increase or diminution before it can be effected.

4. A certificate must be signed by the chairman and the secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the amount to which the capital stock has been increased or diminished, the amount of stock represented at the meeting and the vote by which the object was accomplished.

5. The certificate must be filed in the office of the secretary of state, there to be recorded in the book of corporations, and thereupon the capital stock shall be so increased or diminished. [1907, ch. 53; R. C. 1905, § 4224; Civ. C. 1877, § 416; R. C. 1899, § 2905.]

Right of existing stockholder to subscribe for increase of capital stock. 13 L.R.A. (N.S.) 969.

Injunction against reduction of capital stock. 1 L.R.A. (N.S.) 571.

Reduction of preferred, guaranteed and interest-bearing stock. 27 L.R.A. 151.

As to similar provision in Cal. Civ. Code, § 359, see *Jefferson v. Hewitt*, 103 Cal. 624, 37 Pac. 638; *Market Street R. Co. v. Hellman*, 109 Cal. 571, 42 Pac. 225; *Kellerman v. Maier*, 116 Cal. 416, 48 Pac. 377; *Boyd v. Heron*, 125 Cal. 453, 58 Pac. 64; *Richardson v. Chicago Packing & Provision Co.*, 6 Cal. Unrep. 606, 63 Pac. 74.

§ 4558. Kind of stock. Every corporation shall have power to create two or more kinds of stock of such classes, with such designations, preferences and voting powers, or restriction or qualification thereof, as shall be stated and expressed in the articles of incorporation; and preferred stock may, if desired, be made subject to redemption at no less than par, at a fixed time and price, to be expressed in the certificate thereof; and the holders thereof shall be entitled to receive and the corporation shall be bound to pay thereon a fixed yearly dividend, to be expressed in the certificate, payable quarterly, half yearly or yearly before any dividend shall be set apart or paid on the common stock, and such dividends may be made cumulative. [1909, ch. 61.]

§ 4559. Bonds, how issued. At a meeting of the stockholders of the corporation called for that purpose by the directors a corporation may issue bonds, as follows:

1. Notice of the time and place of the meeting, stating its object and the amount of bonds to be issued, must be served in the manner provided in the last section.

2. At least two-thirds of the entire capital stock must be represented by the vote in favor of the issuance of bonds.

3. The certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the amount of bonds to be issued, the amount of stock represented at the meeting and the vote by which the object was accomplished, which certificate shall be filed in the office of the secretary of state, there to be recorded in the book of corporations.

A violation of any of the provisions of this section shall render every director, officer and stockholder of the corporation, who had knowledge of such violation and did not dissent therefrom and cause his dissent to be entered at large upon the journal of the corporation, jointly and severally liable for all debts so created. [R. C. 1905, § 4225; R. C. 1895, § 2906.]

ARTICLE 5.—CORPORATE RECORDS.

§ 4560. Record of business transactions. Stock book. Publicity. All corporations for profit are required to keep a record of all their business

transactions; a journal of all meetings of their directors, members or stockholders, with the time and place of holding the same, whether regular or special, and, if special, its object, how authorized and the notice thereof given. The record must embrace every act done, or ordered to be done; who were present and who were absent; and if requested by any director, member or stockholder, the time shall be noted when he entered the meeting or obtained leave of absence therefrom. On a similar request the yeas and nays must be taken on any proposition and a record thereof made. On a similar request the protest of any director, member or stockholder to any action or proposed action must be entered in full. All such records shall be open to the inspection of any director, member or stockholder or creditor of the corporation. In addition to the records above required to be kept corporations for profit must keep a book to be known as the "stock and transfer book," in which must be kept a record of all stock; the names of the stockholders or members alphabetically arranged; installments paid or unpaid; assessments levied and paid or unpaid; a statement of every alienation, sale or transfer of stock made, the date thereof, and by and to whom, and all such other records as the by-laws prescribe. Corporations for religious and benevolent purposes must provide in their by-laws for such records to be kept as may be necessary. Such stock and transfer book must be kept open to the inspection of any stockholder, member or creditor. [R. C. 1905, § 4226; Civ. C. 1877, § 417; R. C. 1899, § 2907.]

Legislature cannot limit or interfere with transferability of national bank stock. *Doty v. Bank*, 3 N. D. 9, 53 N. W. 77, 17 L.R.A. 259.

Transfer of pledged stock need not be made on books. *Van Cise v. Bank*, 4 D. 485, 33 N. W. 897.

Is not public registration act and right of pledgee of corporate stock is superior to that of subsequent attaching creditor of pledgor. *State Bkg. & T. Co. v. Taylor*, 25 S. D. 577, 29 L.R.A. (N.S.) 523, 127 N. W. 590.

Mandamus lies to compel record of transfer of corporate stock on corporation's books by officers. *Amidon v. Florence Farmers' Elevator Co.*, 28 S. D. 24, 132 N. W. 166.

Conclusiveness of records and the power to amend. 13 Am. St. Rep. 550.

Effect of failure to enter resolutions and acts in records. 74 Am. Dec. 309.

Right to inspect corporate books. 45 L.R.A. 446; 20 L.R.A. (N.S.) 185; 30 L.R.A. (N.S.) 291; 42 L.R.A. (N.S.) 332.

Right of stockholder to inspect books and remedies for its enforcement. 107 Am. St. Rep. 674.

May the right of a stockholder in a corporation, to inspect the books of the corporation, be delegated to an agent. 2 B. R. C. 976.

Power to compel production of corporate books to aid in assessing holder of stocks or his estate. 8 L.R.A. (N.S.) 788.

As to similar provision in Cal. Civ. Code, §§ 377, 378, see *Knowles v. Sandercock*, 107 Cal. 629, 40 Pac. 1047; *Middleton v. Arastraville Min. Co.*, 146 Cal. 219, 79 Pac. 889.

ARTICLE 6.—AMENDING ARTICLES OF INCORPORATION.

§ 4561. Amending articles of incorporation. Any private corporation created or existing, or which may hereafter be created under the laws of the state of North Dakota, may amend or change its articles of incorporation at a meeting called for that purpose by the directors, as follows:

1. Notice of the time and place of the meeting, stating its object, must be served in the manner prescribed in section 4557.

2. At least two-thirds of the entire capital stock must be represented by the vote in favor of the amendment or change in the articles of incorporation.

3. A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the articles to be amended or changed, the amount of stock or the number of members represented at the meeting and the vote by which the object was accomplished.

4. The certificate must be filed in the office of the secretary of state, there to be recorded in the book of corporations, and thereupon the articles shall be so amended.

5. The written assent of the holders of three-fourths of the capital stock or members shall be as effectual to authorize the change or amendment of the articles of incorporation as if a meeting of the stockholders, as prescribed by this section, was called and held and upon such written assent the directors may proceed to make the certificate to the secretary of state as herein provided. [R. C. 1905, § 4227; 1893, ch. 40, § 1; R. C. 1895, § 2908.]

§ 4562. **Renewal of corporate existence.** Any private corporation now existing in this state or which may hereafter be created under the laws of this state may at any time prior to the expiration of the period of its corporate existence as limited by its articles of incorporation or by this chapter renew the term of its corporate existence for another term of years, not exceeding the period limited by law, by amending its articles of incorporation in the manner and upon the notice prescribed in section 4561. [R. C. 1905, § 4228; R. C. 1895, § 2909.]

ARTICLE 7.—CHANGING CORPORATE NAME.

§ 4563. **Changing corporate name.** Every private corporation created and existing, or which may hereafter be created under the laws of the state of North Dakota, may change its name at a meeting called for that purpose by the directors, as follows:

1. Notice of the time and place of the meeting, stating its object, must be served in the manner prescribed in section 4557.

2. At least two-thirds of the entire capital stock must be represented by the vote in favor of the change of name.

3. A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the name adopted as the new name of such corporation, the amount of stock or the number of the members represented at the meeting and the vote by which the change of name was accomplished.

4. The certificate must be filed in the office of the secretary of state, there to be recorded in the book of corporations, and thereupon the name of such corporation shall be so changed.

5. The written assent of the holders of three-fourths of the subscribed capital stock shall be as effectual to authorize the change of name as if a meeting was called and held, as prescribed by this section, and upon such written assent the president and secretary may proceed to make the certificate to the secretary of state as herein provided.

6. Every proceeding, act, liability or thing done, undertaken or incurred by or on behalf of the corporation, under its former name, shall be and continue of the same validity and obligation under such new name as if the name had remained unchanged. [R. C. 1905, § 4229; 1893, ch. 41, § 1; R. C. 1895, § 2910.]

Change in name of corporation by amendment has no effect upon its identity. *Peever Mercantile Co. v. State Mut. F. Asso.*, 23 S. D. 1, 119 N. W. 1008.

ARTICLE 8.—CHANGING CORPORATE HEADQUARTERS.

§ 4564. **Changing corporate headquarters.** Every private corporation created and existing, or which may hereafter be created under the laws of the state of North Dakota, except banking and building and loan associations, annuity, safety deposit and trust companies, and all corporations subject under the laws to examination by the state examiner, may change the place where its principal business is to be transacted at a meeting called for that purpose by the directors, as follows:

1. Notice of the time and place of the meeting, stating its object, must be served in the manner specified in section 4557.

2. At least two-thirds of the entire capital stock must be represented by the vote in favor of the change of the place where the principal business of the corporation is to be transacted.

3. A certificate must be signed by the chairman and secretary of the meeting and a majority of the directors, showing a compliance with the requirements of this section, the place to which the place where the principal business of the corporation is to be transacted has been changed, the amount of stock or the number of the members represented at the meeting, and the vote by which the object was accomplished.

4. The certificate must be filed in the office of the secretary of state, there to be recorded in the book of corporations, and thereupon the place where the principal business of the corporation is to be transacted shall be so changed.

5. The written assent of the holders of three-fourths of the subscribed capital stock shall be as effectual to authorize such change as if a meeting was called and held; and upon such written assent the directors may proceed to make the certificate herein provided for. [R. C. 1905, § 4230; 1890, ch. 49; R. C. 1895, § 2911; 1905, ch. 66.]

ARTICLE 9.—DISSOLUTION OF CORPORATIONS.

§ 4565. **Involuntary. Voluntary, how.** A corporation is dissolved:

1. By the expiration of the time limited by its articles of incorporation.
2. Its involuntary dissolution is provided for in chapter 27 of the code of civil procedure.

3. If voluntary, its dissolution may be effected in the following manner:

(a) A corporation may be dissolved by the district court of the county where its office or principal place of business is situated, upon its voluntary application for that purpose.

(b) The application must be in writing and must set forth, that at a meeting of the stockholders or members called for that purpose the dissolution of the corporation was resolved upon by a two-thirds vote of all the stockholders or members, and that all claims and demands against the corporation have been satisfied and discharged.

(c) The application must be signed by a majority of the board of directors, trustees or other officers having the management of the affairs of the corporation and must be verified in the same manner as a complaint in a civil action.

(d) If the court is satisfied that the application is in conformity with this article, it must order the application to be filed and that the clerk give not less than thirty nor more than fifty days' notice of the application by publication in some newspaper published in the county and if there are none such, then by advertisement posted in five of the principal places in the county.

(e) At any time before the expiration of the time of publication any person may file objections to the application.

(f) After the time of publication has expired the court may upon five days' notice to the persons who have filed objections, or without further notice, if no objections have been filed, proceed to hear and determine the application; and if all the statements therein made are shown to be true, the court must declare the corporation dissolved.

(g) The application, notices and proof of publication, objections, if any, and declaration of dissolution constitute the judgment roll, and from the judgment an appeal may be taken in the same manner as in other actions. [R. C. 1905, § 4231; Civ. C. 1877, § 418; R. C. 1899, § 2912.]

Where by statute directors become trustees for creditors and stockholders upon dissolution, they may maintain action in other state where corporation could have done so. *Root v. Sweeney*, 12 S. D. 43, 80 N. W. 149.

Acts and proceedings to dissolve. 134 Am. St. Rep. 309.

Effect of dissolution. 12 Am. Dec. 239; 7 Am. St. Rep. 717.

—upon debts and pending actions. 40 Am. Dec. 737.

Effect of proceedings for dissolution of corporation upon its rights of action. 15 L.R.A. 627.

Dissolution as excusing creditor from exercising remedies against corporation as condition of enforcing stockholder's liability on unpaid subscription. 24 L.R.A. (N.S.) 628.

Effect of winding up proceedings on right to rescind subscription for fraud or misrepresentation. 33 L.R.A. 727.

Recovering for services and expenses under a running contract with a corporation ended by its dissolution. 69 L.R.A. 124.

1. Abatement of action by or against corporation in absence of a saving statute by expiration of charter. 32 L.R.A.(N.S.) 446.

2. Right of stockholder to maintain a bill to dissolve and to distribute assets. 91 Am. St. Rep. 33.

Power of courts to decree dissolution. 96 Am. Dec. 756.

3. Right of minority stockholder to restrain voluntary dissolution of corporation by directors or other stockholders. 23 L.R.A.(N.S.) 1177.

§ 4566. Lapse by nonuser. If a corporation does not organize and commence the transaction of business or the construction of its works within one year from the date of its incorporation, its corporate powers cease. [R. C. 1905, § 4232; Civ. C. 1877, § 419; R. C. 1899, § 2913.]

§ 4567. Directors trustees on dissolution. Unless other persons are appointed by the court, the directors or managers of the affairs of such corporation at the time of its dissolution, are trustees of the creditors and stockholders or members of the corporation dissolved, and have full power to settle the affairs of the corporation, and to collect and pay debts, and divide among the stockholders the property which remains after the payment of debts and necessary expenses; and for such purposes may maintain or defend actions, in their own names, by the style of the trustees of such corporation dissolved, naming it, and no action whereto any such corporation is a party shall abate by reason of such dissolution. And the said trustees, for the purposes aforesaid, may convey, in the name of such corporation dissolved, any real or personal property owned by it at the time of such dissolution, and execute proper instruments of conveyance for the transfer thereof, and satisfy any real estate or chattel mortgages and other liens, which may appear of record in favor of such corporation dissolved, which instruments shall be acknowledged, in the form as near as may be, as prescribed for the acknowledgment of instruments by corporations, such trustees being treated as officers. The form of signature shall be as follows, viz.:

The

A Corporation Dissolved.

By

Trustees.

[R. C. 1905, § 4233; Civ. C. 1877, § 420; R. C. 1899, § 2914; 1903, ch. 59.]

May maintain action in another state where corporation could have done so. Root v. Sweeney, 12 S. D. 43, 80 N. W. 149.

Disposition of real estate upon the dissolution of a corporation created for benevolent or social purposes. 35 L.R.A.(N.S.) 895.

Liability of directors for corporate debts where they sell the entire corporate property and distribute the proceeds. 26 L.R.A.(N.S.) 267.

As to similar provision in Cal. Civ. Code, § 400, see Havemeyer v. Superior Ct., 84 Cal. 327, 10 L.R.A. 627, 18 Am. St. Rep. 192, 24 Pac. 121; State Invest. & Ins. Co. v. Superior Ct., 101 Cal. 135, 35 Pac. 549.

§ 4568. Liability of trustees. The trustees mentioned in the preceding section are jointly and severally responsible to the creditors, stockholders and members of the corporation to the extent of its property in their hands. [R. C. 1905, § 4234; Civ. C. 1877, § 421; R. C. 1899, § 2915.]

§ 4569. How revived. A corporation once dissolved can be revived only by the same power by which it could be created. [R. C. 1905, § 4235; Civ. C. 1877, § 422; R. C. 1899, § 2916.]

ARTICLE 10.—ASSESSMENTS OF STOCK.

§ 4570. When levied. The directors of any corporation formed or existing under the laws of this state, after one-fourth of its capital stock has been subscribed, may for the purpose of paying expenses, conducting business or paying debts, levy and collect assessments upon the subscribed capital stock

thereof in the manner and form and to the extent provided herein. [R. C. 1905, § 4236; Civ. C. 1877, § 423; R. C. 1899, § 2917.]

As to similar provision in Cal. Civ. Code, § 331, see *Younglove v. Steinman*, 80 Cal. 375, 22 Pac. 189; *Lankershim Ranch Land & Water Co. v. Herberger*, 82 Cal. 600, 23 Pac. 134; *Arroyo Ditch & Water Co. v. Superior Ct.*, 92 Cal. 47, 27 Am. St. Rep. 91, 28 Pac. 54; *San Joaquin Land & Water Co. v. Beecher*, 101 Cal. 70, 35 Pac. 349; *San Bernardino Invest. Co. v. Merrill*, 108 Cal. 490, 41 Pac. 487; *Market Street R. Co. v. Hellman*, 109 Cal. 571, 42 Pac. 225; *Ventura & O. Valley R. Co. v. Hartman*, 116 Cal. 260, 48 Pac. 65; *Herbert Kraft Co. Bank v. Bank of Orland*, 133 Cal. 64, 65 Pac. 143.

§ 4571. Limitation of. No assessment must exceed ten per cent of the amount of the capital stock named in the articles of incorporation, except in the cases in this section otherwise provided for, as follows:

1. If the whole capital of a corporation has not been paid up, and the corporation is unable to meet its liabilities or to satisfy the claims of its creditors, the assessment may be for the full amount unpaid upon the capital stock; or if a less amount is sufficient then it may be for such a percentage as will raise that amount.

2. The directors of railroad corporations may assess the capital stock in installments of not more than ten per cent per month, unless in the articles of incorporation it is otherwise provided.

3. The directors of fire or marine insurance corporations may assess such a percentage of the capital stock as they deem proper. [R. C. 1905, § 4237; Civ. C. 1877, § 424; R. C. 1899, § 2918.]

Right to make assessment of stock. 76 Am. St. Rep. 126.

Effect of transfer of shares of stock on liability for unpaid subscriptions. 47 L.R.A. 246; 30 L.R.A.(N.S.) 283.

Liability of pledgee of stock as a shareholder. 36 L.R.A. 139; 19 L.R.A.(N.S.) 249.

As to similar provision in Cal. Civ. Code, § 332, see *Santa Cruz R. Co. v. Spreckles*, 65 Cal. 193, 3 Pac. 661, 802; *Marysville Electric Light & P. Co. v. Johnson*, 93 Cal. 538, 27 Am. St. Rep. 215, 29 Pac. 126; *Kohler v. Agassiz*, 99 Cal. 9, 33 Pac. 741; *Shively v. Eureka Tellurium Gold Min. Co.*, 129 Cal. 293, 61 Pac. 939.

§ 4572. When new assessment can be levied. No assessment must be levied while any portion of a previous one remains unpaid, unless:

1. The power of the corporation has been exercised in accordance with the provisions of this article for the purpose of collecting such previous assessment.

2. The collection of the previous assessment has been enjoined; or,

3. The assessment falls within the provisions of either the first, second or third subdivision of section 4571. [R. C. 1905, § 4238; Civ. C. 1877, § 425; R. C. 1899, § 2919.]

Right to make successive assessments on stockholders to pay debts. 66 L.R.A. 971.

Assessments on paid-up stock. 45 L.R.A. 648; 22 L.R.A.(N.S.) 1013.

As to similar provision in Cal. Civ. Code, § 333, see *Santa Cruz R. Co. v. Spreckles*, 65 Cal. 193, 3 Pac. 661, 802; *Shively v. Eureka Tellurium Gold Min. Co.*, 129 Cal. 293, 61 Pac. 939; *Strouse v. Sylvester*, 6 Cal. Unrep. 798, 66 Pac. 660.

§ 4573. Requisites of assessment. Every order levying an assessment must specify the amount thereof, when, to whom and where payable, fix a day subsequent to the full term of publication of the assessment notice on which the unpaid assessments shall be delinquent, not less than thirty nor more than sixty days from the time of making the order of levying the assessment; and a day for the sale of delinquent stock, not less than fifteen nor more than sixty days from the day the stock is declared delinquent. [R. C. 1905, § 4239; Civ. C. 1877, § 426; R. C. 1899, § 2920.]

As to similar provision in Cal. Civ. Code, § 334, see *Shively v. Eureka Tellurium Gold Min. Co.*, 129 Cal. 293, 61 Pac. 939; *San Bernardino Invest. Co. v. Merrill*, 108 Cal. 490, 41 Pac. 487.

§ 4574. Form of notice. Upon the making of the order the secretary shall cause to be published a notice thereof in the following form:

(Name of corporation in full. Location of principal place of business.)

Notice is hereby given that at a meeting of the directors, held on the (date), an assessment of (amount) per share was levied upon the capital stock of the corporation, payable (when, to whom and where). Any stock upon which this assessment shall remain unpaid on the (day fixed) will be delinquent and

advertised for sale at public auction and unless payment is made before, will be sold on the (day appointed), to pay the delinquent assessment together with costs of advertising and expenses of sale.

(Signature of secretary with location of office.)

[R. C. 1905, § 4240; Civ. C. 1877, § 427; R. C. 1899, § 2921.]

As to similar provision in Cal. Civ. Code, § 335, see *San Joaquin Land & Water Co. v. Beecher*, 101 Cal. 70, 35 Pac. 349; *Shively v. Eureka Tellurium Gold Min. Co.*, 129 Cal. 293, 61 Pac. 939.

§ 4575. Service of notice. The notice must be personally served upon each stockholder, or in lieu of personal service, must be sent through the mail, addressed to each stockholder at his place of residence, if known, and if not known, at the place where the principal office of the corporation is situated, and be published once a week for four successive weeks in some newspaper of general circulation and devoted to the publication of general news, published at the place designated in the articles of incorporation as the principal place of business, and also in some newspaper published in the county in which the works of the corporation are situated, if a paper is published therein. If the works of the corporation are not within a state or territory of the United States, publication in a paper of the place where they are situated is not necessary. If there is no newspaper published at the place designated as the principal place of business of the corporation, then the publication must be made in some other newspaper of the county, if there is one, and if there is none, then in a newspaper published in an adjoining county. [R. C. 1905, § 4241; Civ. C. 1877, § 428; R. C. 1899, § 2922.]

As to similar provision in Cal. Civ. Code, § 336, see *Shively v. Eureka Tellurium Gold Min. Co.*, 129 Cal. 293, 61 Pac. 939.

§ 4576. Notice of delinquency. If any portion of the assessment mentioned in the notice remains unpaid on the day specified therein for declaring the stock delinquent, the secretary must, unless otherwise ordered by the board of directors, cause to be published in the same papers in which the notice hereinbefore provided for shall have been published a notice substantially in the following form:

(Name in full. Location of principal place of business.)

Notice. There is delinquent upon the following described stock on account of assessment levied on the (date), (and assessments levied previous thereto, if any), the several amounts set opposite the names of the respective shareholders, as follows: (Names, number of certificate, number of shares, amount). And in accordance with law (and an order of the board of directors made on the (date), if any such order shall have been made), so many shares of each parcel of such stock as may be necessary, will be sold, at the (particular place), on the (date), at (the hour) of such day, to pay delinquent assessments thereon, together with costs of advertising and expenses of the sale.

(Name of secretary with location of office.)

[R. C. 1905, § 4242; Civ. C. 1877, § 429; R. C. 1899, § 2923.]

As to similar provision in Cal. Civ. Code, § 337, see *San Joaquin Land & Water Co. v. Beecher*, 101 Cal. 70, 35 Pac. 349; *San Bernardino Invest. Co. v. Merrill*, 108 Cal. 490, 41 Pac. 487; *Stockton Combined Harvester & Agri. Works v. Houser*, 109 Cal. 1, 41 Pac. 809; *Shively v. Eureka Tellurium Gold Min. Co.*, 129 Cal. 293, 61 Pac. 939.

§ 4577. Contents of notice. The notice must specify every certificate of stock, the number of shares it represents and the amount due thereon, except when certificates may not have been issued to parties entitled thereto, in which case the number of shares and amount due thereon together with the fact that the certificate for such shares has not been issued must be stated.

[R. C. 1905, § 4243; Civ. C. 1877, § 430; R. C. 1899, § 2924.]

As to similar provision in Cal. Civ. Code, § 338, see *San Joaquin Land & Water Co. v. Beecher*, 101 Cal. 70, 35 Pac. 249; *San Bernardino Invest. Co. v. Merrill*, 108 Cal. 293, 61 Pac. 939.

§ 4578. Publication thereof. The notice when published in a daily paper must be published for ten days, excluding Sundays and holidays, previous to the day of sale. When published in a weekly paper it must be published

in each issue for two weeks previous to the day of sale. The first publication of all delinquent sales must be at least fifteen days prior to the day of sale. [R. C. 1905, § 4244; Civ. C. 1877, § 431; R. C. 1899, § 2925.]

As to similar provision in Cal. Civ. Code, § 339, see *San Joaquin Land & Water Co. v. Beecher*, 101 Cal. 70, 35 Pac. 249; *San Bernardino Invest. Co. v. Merrill*, 108 Cal. 490, 41 Pac. 487.

§ 4579. **Jurisdiction to sell stock.** By the publication of the notice the corporation acquires jurisdiction to sell and convey a perfect title to all of the stock described in the notice of sale upon which any portion of the assessment or costs of advertising remains unpaid at the hour appointed for the sale, but must sell no more of such stock than is necessary to pay the assessments due and costs of sale. [R. C. 1905, § 4245; Civ. C. 1877, § 432; R. C. 1899, § 2926.]

§ 4580. **Manner of sale.** On the day, at the place and at the time appointed in the notice of sale the secretary must, unless otherwise ordered by the directors, sell or cause to be sold at public auction to the highest bidder for cash so many shares of each parcel of the described stock as may be necessary to pay the assessment and charges thereon according to the terms of sale; if payment is made before the time fixed for sale, the party paying is only required to pay the actual cost of advertising in addition to the assessment. [R. C. 1905, § 4246; Civ. C. 1877, § 433; R. C. 1899, § 2927.]

§ 4581. **Highest bidder defined.** The person offering at such sale to pay the assessment and costs for the smallest number of shares or fraction of a share is the highest bidder and the stock purchased must be transferred to him on the stock books of the corporation on payment of the assessment and costs. [R. C. 1905, § 4247; Civ. C. 1877, § 434; R. C. 1899, § 2928.]

§ 4582. **When corporation may bid.** If at the sale of stock no bidder offers the amount of the assessment and costs and charges due, the same may be bid in and purchased by the corporation through the secretary, president or any director thereof at the amount of the assessment, costs and charges due; and the amount of the assessments, costs and charges must be credited as paid in full on the books of the corporation and an entry of the transfer of the stock of the corporation must be made on the books thereof. While the stock remains the property of the corporation it is not assessable, nor must any dividend be declared thereon; but all assessments and dividends must be apportioned upon the stock held by the stockholders of the corporation. [R. C. 1905, § 4248; Civ. C. 1877, § 435; R. C. 1899, § 2929.]

§ 4583. **Title to stock in corporation.** All purchases of its own stock made by any corporation vest the legal title to the same in the corporation; and the stock so purchased is held subject to the control of the stockholders, who may make such disposition of the same as they deem fit, in accordance with the by-laws of the corporation or vote of a majority of all the remaining shares. Whenever any portion of the capital stock of a corporation is held by the corporation by purchase, a majority of the remaining shares is a majority of the stock for all purposes of election or voting on any question at a stockholders' meeting. [R. C. 1905, § 4249; Civ. C. 1877, § 436; R. C. 1899, § 2930.]

As to similar provision in Cal. Civ. Code, § 344, see *Robinson v. Spaulding Gold & S. Min. Co.*, 72 Cal. 32, 13 Pac. 65; *Market Street R. Co. v. Hellman*, 109 Cal. 571, 42 Pac. 225.

§ 4584. **Time extended by publication.** The dates fixed in any notice of assessment or notice of delinquent sale, published according to the provisions hereof, may be extended from time to time for not more than thirty days by order of the directors entered on the records of the corporation; but no order extending the time for the performance of any act specified in any notice is effectual unless notice of such extension or postponement is appended to and published with the notice to which the order relates. [R. C. 1905, § 4250; Civ. C. 1877, § 437; R. C. 1899, § 2931.]

§ 4585. **Irregularities do not invalidate.** No assessment is invalidated by a failure to make publication of the notices hereinbefore provided for, nor

by the nonperformance of any act required in order to enforce the payment of the same; but in case of any substantial error or omission in the course of proceedings for collection, all previous proceedings except the levying of the assessment, are void and publication must be begun anew. [R. C. 1905, § 4251; Civ. C. 1877, § 438; R. C. 1899, § 2932.]

As to similar provision in Cal. Civ. Code, § 346, see *Burham v. San Francisco Fuse Mfg. Co.*, 76 Cal. 26, 17 Pac. 940; *San Bernardino Invest. Co. v. Merrill*, 108 Cal. 490, 41 Pac. 487; *Stockton Combined Harvester & Agri. Works v. Houser*, 109 Cal. 1, 41 Pac. 809.

§ 4586. Redemption. Limitation. No action must be sustained to recover stock sold for delinquent assessments upon the ground of irregularity in the assessment, irregularity or defect of the notice of sale, or defect or irregularity in the sale, unless the party seeking to maintain such action first pays or tenders to the corporation, or the party holding the stock sold, the sum for which the same was sold, together with all subsequent assessments which may have been paid thereon and interest on such sums from the time they were paid; and no such action must be sustained unless the same is commenced by the filing of a complaint and the issuing of a summons thereon within six months after such sale is made. [R. C. 1905, § 4252; Civ. C. 1877, § 439; R. C. 1895, § 2933.]

As to similar provision in Cal. Civ. Code, § 347, see *Burham v. San Francisco Fuse Mfg. Co.*, 76 Cal. 26, 17 Pac. 940; *Herbert Kraft Co. Bank v. Bank of Orland*, 133 Cal. 64, 65 Pac. 143.

§ 4587. Proof of publication and sale. The publication of notice required by this article may be proved by the affidavit of the printer, foreman or principal clerk of the newspaper in which the same was published; and the affidavit of the secretary or auctioneer is prima facie evidence of the time and place of sale, of the quantity and particular description of the stock sold, and to whom, and for what price and of the fact of the purchase money being paid. The affidavits must be filed in the office of the corporation and copies of the same certified by the secretary thereof are prima facie evidence of the facts therein stated. Certificates signed by the secretary and under the seal of the corporation are prima facie evidence of the contents thereof. [R. C. 1905, § 4253; Civ. C. 1877, § 440; R. C. 1899, § 2934.]

§ 4588. Stock may be declared delinquent or action brought. On the day specified for declaring the stock delinquent, or at any time subsequent thereto and before the sale of the delinquent stock, the board of directors may elect to waive further proceedings under this article for the collection of delinquent assessments, or any part or portion thereof, and may elect to proceed by action to recover the amount of the assessment and the costs and expenses already incurred, or any part or portion thereof. [R. C. 1905, § 4254; Civ. C. 1877, § 441; R. C. 1899, § 2935.]

As to similar provision in Cal. Civ. Code, § 349, see *San Joaquin Land & Water Co. v. Beecher*, 101 Cal. 70, 35 Pac. 349; *San Bernardino Invest. Co. v. Merrill*, 108 Cal. 490, 41 Pac. 487; *Visalia & T. R. Co. v. Hyde*, 110 Cal. 632, 52 Am. St. Rep. 136, 43 Pac. 10; *Bank of National City v. Johnston*, 6 Cal. Unrep. 418, 60 Pac. 776.

ARTICLE 11.—JUDGMENT AGAINST AND SALE OF CORPORATE FRANCHISES.

§ 4589. Franchise salable. No exemption. For the satisfaction of any judgment against a corporation authorized to receive tolls its franchise and all the rights and privileges thereof may be levied upon and sold under execution in the same manner and with the same effect as any other property, but without any exemption. [R. C. 1905, § 4255; Civ. C. 1877, § 442; R. C. 1899, § 2936.]

Judicial sale of corporate franchise or property necessary for its enjoyment. 20 L.R.A. 737; 31 L.R.A.(N.S.) 636.

As to similar provision in Cal. Civ. Code, § 388, see *Gregory v. Blanchard*, 98 Cal. 311, 33 Pac. 199.

§ 4590. Certificate of purchase. Rights of purchaser. The purchaser at the sale must receive a certificate of purchase of the franchise and be imme-

diately let into the possession of all property necessary for the exercise of the powers and the receipt of the proceeds thereof and must thereafter conduct the business of such corporation with all its powers and privileges and subject to all its liabilities, until the redemption of the same as hereinafter provided. [R. C. 1905, § 4256; Civ. C. 1877, § 443; R. C. 1899, § 2937.]

§ 4591. Further rights. The purchaser or his assignee is entitled to recover any penalties imposed by law and recoverable by the corporation for an injury to the franchise or property thereof, or for any damages or other cause occurring during the time he holds the same and may use the name of the corporation for the purpose of any action necessary to recover the same. A recovery for damages or any penalties thus had is a bar to any subsequent action by or on behalf of the corporation for the same. [R. C. 1905, § 4257; Civ. C. 1877, § 444; R. C. 1899, § 2938.]

§ 4592. Other powers of corporation remain. The corporation whose franchise is sold, as in this article provided, in all other respects retains the same powers, is bound to the discharge of the same duties and is liable to the same penalties and forfeitures as before such sale. [R. C. 1905, § 4258; Civ. C. 1877, § 445; R. C. 1899, § 2939.]

§ 4593. Corporation may redeem. The corporation may at any time within one year after such sale redeem the franchise by paying or tendering to the purchaser thereof the sum paid therefor with twelve per cent interest thereon, but without any allowance for the toll which he may in the meantime have received; and upon such payment or tender the franchise and all the rights and privileges thereof revert and belong to the corporation as if no such sale had been made. [R. C. 1905, § 4259; Civ. C. 1877, § 446; R. C. 1899, § 2940.]

§ 4594. Where sold. The sale of any franchise under execution must be made in the county in which the corporation has its principal place of business, or in which the property, or some portion thereof, upon which the taxes are paid is situated. [R. C. 1905, § 4260; Civ. C. 1877, § 447; R. C. 1899, § 2941.]

ARTICLE 12.—EXAMINATION OF CORPORATIONS, ETC.

§ 4595. Examination by legislative assembly. The legislative assembly or either branch thereof, may examine into the affairs and condition of any corporation in this state at all times; and for that purpose any committees appointed by the said assembly or either branch thereof, may administer all necessary oaths to the directors, officers and stockholders of such corporation, and may examine them on oath in relation to the affairs and condition thereof, and may examine the safes, books, papers and documents belonging to such corporation, or pertaining to its affairs and condition and compel the production of all keys, books, papers and documents by summary process to be issued on application to any district court or any judge thereof under such rules and regulations as the court may prescribe. [R. C. 1905, § 4261; Civ. C. 1877, § 448; R. C. 1899, § 2942.]

§ 4596. Power reserved by legislative assembly. The legislative assembly may at any time amend or repeal this chapter, or any article or section thereof and dissolve all corporations thereunder; but such amendment or repeal does not, nor does the dissolution of any such corporation, take away or impair any remedy given against such corporation, its stockholders or officers, for any liability which has been previously incurred. [R. C. 1905, § 4262; Civ. C. 1877, § 449; R. C. 1895, § 2943.]

Corporation retains existence for purpose of suit even though its charter has been violated and is subject to cancellation therefor. *Murphy v. Minot Foundry & Mach. Co.*, 24 N. D. 185, 139 N. W. 518.

ARTICLE 13.—REGULATING CORPORATION INDEBTEDNESS.

§ 4597. Reports to state bank examiner by certain corporations. All corporations engaged in transacting business in this state, which issue, sell or offer for sale, their stocks, securities, notes, obligations, bonds or other evi-

dence of indebtedness by whatever name the same may be designated, shall on demand of the state bank examiner furnish him with a detailed itemized report of their assets, liabilities and business transacted, which reports shall be made to the state examiner in such form as he may prescribe, and shall be made and filed in his office for the information of the public. Such reports shall be verified by the oath of the secretary or chief executive officer of such corporation. [1911, ch. 102, § 1.]

§ 4598. Examination of financial condition by state examiner. When requested in good faith by any resident of this state and when good faith and sufficient reasons are given therefor, the state examiner may, if necessary, cause an examination of the financial condition of any such corporation to be made and he shall report the findings thereof to the person applying for such examination. His powers and duties in connection therewith shall be the same as in the examination of banks and the same fees shall be charged and paid therefor as for the examination of banks. His report shall be submitted to and filed with the state banking board. [1911, ch. 102, § 2.]

§ 4599. When state banking board may take charge. Winding-up action. The state banking board on being satisfied of the insolvency, mismanagement, fraud or breach of trust of any such corporation or of any violation of any provision of this article by any such corporation, may forthwith take charge of such corporation pending action in the district court to dissolve and wind it up, which action shall be brought by the attorney-general, in the name of the state under the direction of such board. [1911, ch. 102, § 3.]

§ 4600. Penalty for false report or for hindrance of examiner. Any officer, agent or employe of any such corporation who makes or subscribes any false report under this article, or who hinders, deceives or obstructs the state examiner or his deputy in the discharge of any lawful duty hereunder, shall on conviction for each offense be punished by fine of not less than fifty dollars, and not more than one thousand dollars, or by imprisonment in the county jail of the county for not more than one year or by both such fine and imprisonment. [1911, ch. 102, § 4.]

False statements in reports required by statute to be made by corporation to public officers as basis of action by individuals at common law for deceit against officers personally. 6 L.R.A.(N.S.) 872.

§ 4601. Application of this article limited. The provisions of this article shall not apply to any banking corporation organized and existing under chapter 21 of the Civil Code, Revised Codes of 1905 [chapter 28 herein], or to any building and loan association, organized and existing under chapter 19 of such Civil Code [chapter 26 herein]. [1911, ch. 102, § 5.]

§ 4602. Further limitation of provisions of this article. The provisions of this article shall not apply to corporations heretofore or hereafter placed by law under jurisdiction of the banking department of the state. [1911, ch. 102, § 6.]

CHAPTER 13.

INCORPORATION OF CO-OPERATIVE ASSOCIATIONS.

§ 4603. How formed. Purposes. Term of existence. A co-operative association may be formed for the purpose of engaging in any lawful mercantile, manufacturing, agricultural or other industrial pursuit upon complying with the provisions of this chapter, and the provisions of chapter 11 of the civil code of the state of North Dakota, 1905 [chapter 12 herein], shall be applied to and be observed by persons organized under this chapter, except as herein otherwise provided, and except as to provisions thereof inconsistent with the provisions of this chapter. Its certificate of articles of incorporation shall be filed for record in the office of the secretary of state, for which the secretary of state shall be paid a filing fee of ten dollars, and thereupon it shall become a corporation and such association shall have the right and be subject to all the duties, restrictions and liabilities prescribed in chapter 11 of the

civil code [chapter 12 herein], so far as the same apply or relate to such association. A majority of the incorporators shall be residents of the county of its principal place of business, and the term of existence of any such association without renewal shall not exceed twenty years. [1909, ch. 62, § 1.]

§ 4604. Purpose must be stated. Cannot loan to stockholders. Penalty. The purpose for which any association shall be formed must be distinctly and definitely specified in the articles of incorporation, together with its principal place of business, and it must not appropriate its funds to any other purpose, or must it loan any of its money to any stockholder therein, and if any such loan or misappropriation is made the officer who shall make it or who shall consent thereto shall be jointly and severally liable to the extent of such loan or misappropriation and interest and for all debts of the association contracted before repayment of the sum so loaned or misappropriated. [1909, ch. 62, § 2.]

§ 4605. Officers. Management. Every such association shall have a president, a secretary and treasurer and not less than three directors, who shall together constitute a board of managers and conduct its business. Such officers shall be chosen annually by the stockholders, and hold their offices until others have been chosen and qualified. The association shall make its own by-laws, not inconsistent with law, and may therein provide for any other officers deemed necessary, and the mode of their selection. It may amend its certificate of incorporation at any general stockholders' meeting, or at any special meeting called for that purpose, upon ten days' notice to the stockholders. [1909, ch. 62, § 3.]

§ 4606. Capital. Limit of interest. Shares. The amount of capital stock shall be fixed by the articles of incorporation, which amount and the number of shares may be increased or diminished at a stockholders' meeting specially called for that purpose; but the whole amount of stock shall never exceed fifty thousand dollars. Within thirty days after the adoption of an amendment increasing or diminishing its capital, it shall cause the vote so adopting it, together with a record of the minutes of said meeting, to be filed for record in the office of the secretary of state with its original certificate. No share shall be issued for less than its par value, and no member shall own shares of greater par value than one thousand dollars, or be entitled to more than one vote. It may commence business whenever thirty per cent of the stock has been subscribed for and paid in, but no certificate of shares shall be issued to any person until the full amount thereof has been paid in cash, and no person shall become a shareholder therein except by consent of the managers. [1909, ch. 62, § 4.]

§ 4607. Liability of officers. Dissolution. If such board of managers, or the directors or officers having control of such an association, for five consecutive years after its organization shall fail to declare a dividend upon its capital or shares, five or more stockholders, by petition setting forth such facts, may apply to the district court of the county of its principal place of business, for its dissolution. If, upon hearing, the allegations of the petition are found to be true, the court may adjudge a dissolution of the association. [1909, ch. 62, § 5.]

§ 4608. Dissolution of profits. The profits of the earnings of such association shall be distributed to those entitled thereto by its by-laws, and in the proportions and at the times therein prescribed, which shall be as often as once in twelve months. [1909, ch. 62, § 6.]

§ 4609. Annual report to dairy commissioner. Every creamery association, on or before January first in each year, in addition to the report provided for in chapter 11 of the civil code [chapter 12 herein], shall make a report to the state dairy commissioner, or such officer as may at any time, by law, be given the supervision of dairy products. Such report shall contain the name of the corporation, its principal place of business, the location of its creamery and the number of pounds of butter or other dairy products manufactured by it during the preceding year. [1909, ch. 62, § 7.]

CHAPTER 14.

RAILROAD CORPORATIONS.

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ARTICLE 1.—INCORPORATION AND REGULATION.

§ 4610. **Who may form. Articles.** Any number of persons, not less than five, may form a corporation for the purpose of constructing, maintaining and operating a railroad for the transportation of freight and passengers and for the purpose of maintaining and operating any railroad already constructed for the like purpose.

The articles of incorporation shall state:

1. The name of the corporation.
2. The place from and to which such railroad is to be constructed, or maintained and operated as the case may be.
3. The estimated length of such railroad and the name of each county in this state through or into which it is made or intended to be made.
4. The amount of the capital stock of the corporation, the number of shares of which it shall consist, and if such stock shall consist of common and preferred stock, the number and amount of each class.
5. The names and residences of the directors of the corporation, who shall manage its affairs for the first year and until others are chosen in their places, and who shall not be less than five nor more than thirteen in number; and each such person shall subscribe thereto his name, place of residence and the

number of shares of stock he agrees to take in such corporation. There shall be annexed to such articles an affidavit of at least three of the directors therein named, that the signatures thereto are genuine and that it is intended in good faith to construct or maintain and operate the railroad therein mentioned; and thereupon said articles and affidavits shall be filed in the office of the secretary of state. [R. C. 1905, § 4263; 1879, ch. 46, § 1; R. C. 1895, § 2944.]

§ 4611. Number and term of directors. There shall be a board of not less than five nor more than thirteen directors of every such corporation, who shall be elected at such time, in such manner and for such term as shall be prescribed by its by-laws and shall hold their office until their respective successors shall be chosen. [R. C. 1905, § 4264; 1879, ch. 46, § 3; R. C. 1895, § 2945.]

§ 4612. Stock not transferable until calls paid. No stock of a railroad corporation is transferable, until all previous calls thereon shall have been fully paid in. [R. C. 1905, § 4265; 1879, ch. 46, § 6; R. C. 1899, § 2946.]

§ 4613. Powers. Every corporation formed under this article, and every railroad corporation authorized to construct, operate or maintain a railroad within this state, shall have in addition to the powers mentioned in section 4533 the following powers:

1. To cause such examination and surveys for its proposed railroad, as may be necessary to the selection of the most advantageous route; and for such purpose by its officers or agents and servants to enter upon the lands or waters of any person, but subject to responsibility for all damage which shall be done thereto.

2. To take and hold such voluntary grants of real estate and other property as may be made to it to aid in the construction, maintenance and accommodation of its railroad; but the real estate received by voluntary grant shall be held and used for the purposes of such grant only.

3. To acquire under the provisions of the chapter on eminent domain or by purchase all such real estate and other property as may be necessary for the construction, maintenance and operation of its railroads and the stations, depot grounds and other accommodations reasonably necessary to accomplish the objects of its incorporation; to hold and use the same, to lease or otherwise dispose of any part or parcel thereof, to sell the same when not required for railroad uses and no longer necessary to its use.

4. To lay out its road not exceeding one hundred feet in width and to construct the same; and for the purpose of cuttings and embankments and of obtaining gravel and other material to take as much land as may be necessary for the proper construction, operation and security of the road, and for the protection of such road from snow, and to cut down any standing trees that may be in danger of falling on the road, making compensation therefor as provided by law for land taken for the use of the corporation.

5. Subject to the provisions of section 4622, to construct its railroad across, along or upon any stream of water, water course, street, highway, toll or wagon road, plank road, turnpike, wharf, levee, river front, steamboat or other public landing or canal which its route shall intersect or touch; to carry any highway, street, toll or wagon road, plank road or turnpike which it shall touch, intersect or cross, over or under its track, as may be most expedient for the public good; to change the course or direction of any highway, street, turnpike, toll or wagon road or plank road when made necessary or desirable to secure more easy ascent or descent by reason of any embankment or cut made in the construction of the railroad and to take land necessary therefor; provided, such highway or road is not so changed from its original course more than six rods nor its distance thereby lengthened more than five rods.

6. To cross, intersect, join and unite its railroad with any railroad heretofore or hereafter constructed at any point on its route and upon the grounds

of such railroad corporation, with the necessary turn-outs, sidings and switches and other conveniences in furtherance of the objects of its connections. And every corporation whose railroad is or shall be hereafter intersected by any new railroad shall unite with the owners of such new railroad in forming such intersections and connections and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in the manner provided by law for the ascertainment and determination of damages for the taking of real property. But the making of such crossing by the railway corporation constructing said new railroad shall not be hindered, delayed or prevented pending the ascertainment and determination of said matter; provided, said railroad company proposing to make such crossing shall execute and file with the clerk of the district court in which such proceedings are pending, a bond in such amount as the judge of said court may order, conditioned that the railroad company executing the same shall pay whatever amount may be so ascertained and determined, and shall abide any judgment or order of the court made in relation to the matter in controversy; the sufficiency of said bond and the sureties thereof shall be approved by said judge, but no corporation which shall have obtained the right of way and constructed its road at the point of intersection before the commencement of an action under the provisions of the chapter on eminent domain shall be required to alter the grade or change the location of its road or be required to bear any part of the expense of making and maintaining such crossing.

7. To have and use equal room, ground rights, privileges and conveniences for tracks, switches, sidings and turn-outs upon any levee, river bank, or front, steamboat or other public landing and upon any street, block, alley, square or public ground within any incorporated town or city, any charter or ordinance of any such city or town to the contrary notwithstanding; and to accomplish this may adjust with other corporations the ground to be occupied by each with such tracks, switches, sidings and turn-outs, and if such corporations cannot agree upon such adjustment and the amount of compensation to be paid for the purchase or necessary change of location and removal of any track previously laid, the same shall be ascertained and determined and the common, mutual and separate rights adjusted in the manner provided by law for the ascertainment and determination of damages for the taking of real property. The court, or a judge thereof, may employ a competent engineer and define, locate and plat the ground and assign to each corporation the part for the tracks and other conveniences for each, and may require the removal or purchase of tracks previously laid so as to justly settle the rights of such corporation upon such ground, the damages to be paid being assessed in accordance with the chapter on eminent domain.

8. To take and convey persons or property over its road by the power or force of steam, or of animals, or by any mechanical power and to receive compensation therefor; and to do all business incident to railroad corporations.

9. To erect and maintain all necessary and convenient buildings, stations, fixtures and machinery for the accommodation and use of its passengers, freight and business, subject to the statutes in relation thereto.

10. To regulate the time and manner in which passengers and property shall be transported and the compensation to be paid therefor.

11. To borrow from time to time such sums of money at such rates of interest and upon such terms as the corporation or board of directors shall agree upon and authorize as necessary or expedient, and to execute deeds or mortgages, or both, as occasion may require on any railroads or parts thereof constructed or in process of construction, for amounts borrowed or owing by the corporation, and therein to make provisions granting, transferring or mortgaging its railroad track, right of way, depot grounds, rights,

privileges, franchises, immunities, exemptions, machine houses, rolling stock, furniture, tools, implements, appendages and appurtenances used in connection with such railroads, in any manner whatever then belonging to the corporation or which may thereafter belong to it as security for any bonds or evidences of debt therein mentioned, in such manner as the corporation or directors shall think proper, and such instruments shall fully convey the same, or so much thereof as shall be therein described. In case of sale by virtue of any such trust deed, or upon foreclosure of any such mortgage the persons acquiring title under such sale and their associates, successors and assigns, or such corporation as they shall organize according to section 4610, with all the powers conferred upon corporations by this chapter, shall thereafter have, exercise and enjoy all such described grants which were purchased at such sale, including all rights, privileges, grants, franchises, immunities and advantages mentioned in such instruments which were possessed by such corporation making the same or contracting such debts, so far as the same relate or appertain to that portion or line of road granted or mortgaged and purchased at such sale, and no further, as fully and absolutely in all respects as such corporation, its shareholders, officers and agents might have done if such sale had not taken place. And whenever the person so acquiring title under any such sale shall own or represent a majority in amount of the bonds or other evidences of debt secured by any such trust deed or mortgage, and shall also include the persons who owned at the time of the sale a majority in amount of the capital stock of such mortgagor corporation, such purchasers and such corporation as they shall organize as aforesaid, shall also have, possess and enjoy any exemption, privilege or immunity previously granted by any law to such former corporation relating to any of the property so acquired to the same extent as if such latter corporation had been named in such law as the grantee thereof. [R. C. 1905, § 4266; 1897, ch. 46, §§ 9, 10; 1883, ch. 92, § 1; R. C. 1895, § 2947; 1905, ch. 150.]

Right of way (roadway) includes all ground necessary for construction of side tracks and freight and station houses. *C. M. & St. P. R. Co. v. Cass County*, 8 N. D. 18, 76 N. W. 239.

Railway right of way constitutes interest in land under statute of frauds which must be evidenced by grant in writing. *Spawn v. South Dakota C. R. Co.*, 26 S. D. 1, 127 N. W. 648, Ann. Cas. 1912D, 979.

As to similar provision in Cal. Civ. Code, §§ 456, 465, see *Southern P. R. Co. v. Raymond*, 53 Cal. 223; *Weyl v. Sonoma Valley R. Co.*, 69 Cal. 202, 10 Pac. 510; *Arcata v. Arcata & M. River R. Co.*, 92 Cal. 639, 28 Pac. 676; *Southern P. R. Co. v. Southern California R. Co.*, 111 Cal. 221, 43 Pac. 602; *Robinson v. Southern California R. Co.*, 129 Cal. 8, 61 Pac. 947; *Bishop v. McKillican*, 124 Cal. 321, 71 Am. St. Rep. 68, 57 Pac. 76; *Boyd v. Heron*, 125 Cal. 453, 58 Pac. 64; *Southern California Motor-Road Co. v. Union Land & T. Co.*, 12 O. C. A. 215, 29 U. S. App. 110, 64 Fed. 450.

2. As to when sale of land by guardian of minors to corporation for railroad purposes passes unconditional fee title. *Sherman v. Sherman*, 23 S. D. 486, 122 N. W. 439.

Right of reversion on abandonment of road deeded to railroad company. 1 L.R.A. (N.S.) 806.

3. Riparian owner's right to have natural stream flow over his land may be condemned. *Bigelow v. Draper*, 6 N. D. 152, 69 N. W. 570.

Taking of property by eminent domain for railroad purposes is taking for public use. *Northern P. R. Co. v. Boynton*, 17 N. D. 203, 115 N. W. 679.

Degree of necessity requisite to exercise power of eminent domain. 22 L.R.A. (N.S.) 58.

Necessity of taking particular land by eminent domain as a judicial question. 11 L.R.A. (N.S.) 940.

Power of railroad company to condemn right of way for spur or siding to private establishment. 20 L.R.A. 434; 22 L.R.A. 181; 35 L.R.A. 636.

Uses to which railroad right of way may be devoted as against the owner of the fee. 36 L.R.A. (N.S.) 512.

4. Power of railroad to condemn property to obtain construction material. 40 L.R.A. (N.S.) 793.

5. Right of railroad company to cut off access by owner of upland to navigable water. 40 L.R.A. 604.

Liability of railroad company in constructing its roadway, for removal of lateral support to adjoining property. 21 L.R.A. (N.S.) 318.

Liability of railroad company to abutting owner for damages from change of grade of highway necessary to carry it across tracks. 26 L.R.A. (N.S.) 226.

Right of landowner to damages for obstruction of street or highway by railroad not adjacent to his property. 9 L.R.A.(N.S.) 496.

Liability of railroad for injury by damming back water of stream. 59 L.R.A. 853.

Presumption as to statutory authority to commit nuisance by obstruction of water by railroads. 70 L.R.A. 586.

6. Right of railroad to condemn a right of way over or across the tracks of another company for a spur track to private establishments. 5 L.R.A.(N.S.) 512.

Constitutionality of statute conferring power of eminent domain on private person or corporation other than railroad company for spur or lateral track. 35 L.R.A.(N.S.) 646.

8. Implied power of railroad to engage in or guarantee enterprise other than transportation of goods or passengers. 2 L.R.A.(N.S.) 887; 38 L.R.A.(N.S.) 830.

Right of railroad to contract for the use of its cars for advertising purposes. 24 L.R.A.(N.S.) 1010.

§ 4614. Right of way through state lands. Conditions. Every railroad company duly organized under the laws of any state or territory, or by the United States authorized to build and operate a railroad within this state, which shall have filed with the secretary of state a copy of its articles of incorporation properly certified, shall have the right to take, hold and use for the purposes of a railroad a strip of land one hundred feet wide, fifty feet on each side of the center line of such railroad, through each and every tract of public land owned or held by the state across which its road has been or shall be located or constructed; provided, that when it shall be necessary to protect such railroad from snow, or to use extra width in its construction such company shall have the right to take, hold and use a strip of land not exceeding two hundred feet in width, one hundred feet on each side of such center line, through such public lands; provided, further, that at all its regular stations established upon such land such company shall have the right to take a strip of land one thousand six hundred feet long and three hundred feet wide for station purposes. [R. C. 1905, § 4267; 1893, ch. 99, § 1; R. C. 1895, § 2948.]

§ 4615. School lands at appraised value. Whenever any school or state lands are taken for railway purposes as provided in the preceding section, the railway company so taking such lands shall pay to the state treasurer the appraised value thereof, but in no case any sum less than ten dollars per acre for all such lands so taken. [R. C. 1905, § 4268; 1893, ch. 99, § 2; R. C. 1899, § 2949.]

§ 4616. How right of way obtained. Any railway company desiring to secure the benefits of section 4614 shall within ninety days after the definite location of its road across any section of such lands file in the office of the board of university and school lands a plat of such section of land, showing the location of such road through the same and all stations located thereon; and thereafter all such lands over which such roads shall pass shall be disposed of subject to this grant; and every certificate or patent for such lands thereafter sold shall contain an express reservation to the use of such company of all lands which it shall have appropriated in accordance with the provisions of this article; provided, that if such road shall not be completed across any such section within five years after the location of the same thereon the rights herein granted shall be forfeited as to any such section of land. [R. C. 1905, § 4269; 1893, ch. 99, § 3; R. C. 1895, § 2950.]

§ 4617. When right of way reverts to state. If any railway company appropriating any public lands by virtue of section 4614 shall at any time abandon the use thereof for railway purposes for a period of one year the same shall revert to the state. [R. C. 1905, § 4270; 1893, ch. 99, § 4; R. C. 1899, § 2951.]

§ 4618. Extensions and branches. Any railroad corporation may, under the provisions of this article, extend its road from any point named in its articles of incorporation or may build branch roads, either from any point on its line of road, or from any point on the line of any other road connecting or to be connected with its road, the use of which other road between

such points and the connection with its own road such corporation shall have secured by a lease or agreement for a term of not less than ten years from its date. Before making such extension or building any such branch road such corporation shall by resolution of its directors, to be entered in the record of its proceedings, designate the route of such proposed extension or branch in the manner provided in section 4610 and file a copy of such record certified by the president and secretary in the office of the secretary of state and cause the same to be recorded as provided in such section. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch and receive aid thereto which it would have had if it had been authorized in its articles of incorporation. But this section shall not be construed to authorize railroad corporations to consolidate with each other. [R. C. 1905, § 4271; 1879, ch. 46, § 11; R. C. 1895, § 2952.]

§ 4619. Directors may alter route. The board of directors of every railroad corporation may by a vote of two-thirds of the whole number at any time alter the route, or any portion of the route of its road, or any extension or branch thereof, or part of its road, or any extension or branch as constructed, if it shall appear to it that the line can be improved thereby; but no railroads shall be so diverted from any county, town, city or village which in its corporate capacity shall have extended aid to such road, either while in the hands of the then present owner or any former person or corporation; and no such alteration shall be made in any city or village after the road shall have been constructed therein, unless the same shall have been sanctioned by a vote of two-thirds of the council of such city or the trustees of such village. Before making any such alterations the board of directors shall designate the route thereof by resolution, to be entered in its records, filed and recorded in the office of the secretary of state, as provided in the preceding section; thereupon it shall have the same rights and privileges to build such road as altered as if it was the original line. [R. C. 1905, § 4272; 1879, ch. 46, § 12; R. C. 1895, § 2953.]

Right to change railroad location before construction of road. 36 L.R.A. 511.

§ 4620. Consolidation, leasing and purchase of noncompeting lines. Any railroad corporation organized and existing under the laws of the territory of Dakota or state of North Dakota, or existing by consolidation of different railway companies under the laws of such territory or state and of any other territory or state, may consolidate its stock, franchises and property with any other railroad corporation, whether within or without the state, when their respective railroads can be lawfully connected and operated together to constitute one continuous main line with or without branches upon such terms as may be agreed upon, and become one corporation by any name selected, which within this state shall possess all the powers, franchises and immunities, including the right of further consolidation with other corporations under this section, and be subject to all liabilities and restrictions of this chapter. Articles stating the terms of consolidation shall be approved by each corporation by a vote of the stockholders owning a majority of the stock in person or by proxy at a meeting called for that purpose of which notice, stating the object of the meeting, shall be given in the manner prescribed in section 4557, and a copy thereof with a copy of the record of such approval and accompanied by lists of their stockholders and the number of shares held by each, duly certified by their respective presidents and secretaries with the respective seals of such corporations affixed, shall be filed for record in the office of the secretary of state before any such consolidation shall have any validity or effect. Any such railroad corporation may lease or purchase and take a conveyance or assignment of the railroad, franchises, immunities and all other property and appurtenances of any other railroad corporation, or any portion thereof within or without this state, when their respective railroads can be lawfully connected and operated together to con-

stitute one continuous main line, or when the road so purchased will constitute branches or feeders of any road maintained and operated by such purchasing corporation. Such purchase or lease must be authorized by the stockholders of the respective corporations at a meeting called as herein provided for the consolidation of railroads and by the same vote. But no railroad corporation shall consolidate with, or lease or purchase, or in any way become owner of, or control any other railroad corporation or any stock, franchises, rights or property thereof which owns and controls a parallel and competing line. In no case shall the capital stock of the company formed by such consolidation exceed the sum of the capital stock of the companies consolidated at the par value thereof, nor shall any bonds or other evidences of debt be issued as a consideration for or in connection with such consolidation. [R. C. 1905, § 4273; 1879, ch. 46, § 13; 1883, ch. 91, § 1; R. C. 1895, § 2954.]

- Combinations between railroads to prevent competition. 74 Am. St. Rep. 250.
- Restrictions on consolidation of parallel or competing railroads. 45 L.R.A. 271.
- Consolidation of railroads and its effect on pre-existing debts and liens. 59 Am. St. Rep. 554; 23 L.R.A. 231.
- Liability of one railroad corporation possessing stock control of another for acts and contracts of the latter. 35 L.R.A. (N.S.) 770.
- Liability of railroads leasing their property. 48 Am. Rep. 580.
- Liability of lessor to persons other than lessees. 58 Am. St. Rep. 147.
- for torts of lessees. 71 Am. Dec. 295.
- Liability of lessor of railroad for injuries caused by negligence of another company using road under another contract. 44 L.R.A. 737.
- Duty of lessee of railroad as to condition of track. 6 L.R.A. (N.S.) 787.

§ 4621. Highways, etc., to be restored to former state. Every corporation constructing, owning or using a railroad shall restore every stream of water, water course, street, highway, plank road, toll or wagon road, turnpike or canal across, along or upon which such railroad may be constructed to its former state or to such condition as that its usefulness shall not be materially impaired, and thereafter maintain the same in such condition against any effects in any manner produced by such railroad. [R. C. 1905, § 4274; 1879, ch. 46, § 15; R. C. 1895, § 2955.]

- Artificial irrigation ditch as stream of water, water course or canal within meaning of this section. *Taylor v. White River Valley R. Co.*, 27 S. D. 528, 132 N. W. 152.

§ 4622. Clear passage over highways. When it shall be necessary in the construction of a railroad to erect a bridge or culvert over any highway, street, turnpike or plank road, toll or wagon road it shall be sufficient to construct the same so as to give a clear passage way of twenty feet or two passage ways of fourteen feet each. [R. C. 1905, § 4275; 1879, ch. 46, § 16; R. C. 1899, § 2956.]

- Power to compel railroad to establish or maintain at its own expense overhead or underground crossing, as affected by the fact that the street or highway is opened subsequently to construction of railroad. 28 L.R.A. (N.S.) 298.

- Liability for cost of changing grade of street to prevent the crossing of a railroad at grade. 26 L.R.A. 92.

§ 4623. Fixtures defined. What subject to mortgage. All rolling stock of any railroad corporation organized under the provisions of this article used and employed in connection with its railroad and all fuel necessary to the operation of the same are declared and shall be held to be fixtures; and all such property and all additional rights of way, depot grounds and other real property acquired subsequently to the execution of any trust deed or mortgage which shall have been described or provided for therein shall be subject to the lien thereof to the same extent as the property therein described which the corporation owned at the time of its execution. [R. C. 1905, § 4276; 1879, ch. 46, § 17; R. C. 1899, § 2957.]

- Nature of railroad, whether real estate or personal property. 66 L.R.A. 33.

§ 4624. Conveyances, etc., how executed and recorded. Every conveyance or lease, deed of trust, mortgage or satisfaction thereof made by any railroad corporation of any franchises, real estate, fixtures or other real property in pursuance of law, shall be executed and acknowledged in the manner in which

conveyance of real estate by corporations is required to be to entitle the same to be recorded and shall be recorded in the office of the secretary of state who shall indorse thereon his certificate thereof, specifying the day and hour of its reception and the volume and page where recorded, which shall be evidence of such facts. Every such record of any such instrument shall from the time of reception have the same effect as to any property in this state described therein as the record of any similar instrument in the office of a register of deeds may have by law as to property in his county and shall be notice of the rights and interests of the grantee, lessee or mortgagee by such instruments to the same extent as if it was recorded in each and all of the several counties in which any property therein described may be situated. And provided, further, that every conveyance or lease, deed of trust or mortgage thus made which covers any real property other than that used by said railroad company as right of way for its railroad, shall likewise be recorded in the office of register of deeds for each and every county wherein such real estate or any part thereof is situated; and provided, further, that such conveyance, lease, deed of trust or mortgage shall not operate as a conveyance of, or as creating any lien upon, any such real estate other than railroad right of way, until such instrument has been duly recorded in the office of the register of deeds of the county in which the same is situated. [1911, ch. 246; R. C. 1905, § 4277; 1879, ch. 46, § 18; R. C. 1899, § 2958.]

Validity of sale of real estate by railroad corporation. 25 L.R.A. 139.

§ 4625. Conditional sale valid. In all cases where railroad equipment and rolling stock may have been or shall be sold to any person, firm or corporation to be paid for in whole or in part in installments, or shall be leased, rented, hired or delivered on condition that the same may be used by the person, firm or corporation purchasing, leasing, renting, hiring or receiving the same, and that the title to the same shall remain in the vendor, lessor, renter, hirer or deliverer of the same until the price agreed upon or rent for such property shall have been fully paid, such condition in regard to the title so remaining in the vendor, lessor, renter, hirer or deliverer until such payments are fully made shall be valid for all intents and purposes as to subsequent purchasers in good faith, and creditors; provided, that the term during which the installments or rents are to be paid shall not exceed ten years and such contract shall be in writing and acknowledged. [R. C. 1905, § 4278; 1883, ch. 93, § 1; R. C. 1895, § 2559.]

§ 4626. Where recorded. Cars, etc., how marked. Such contract shall be recorded in the office of the secretary of state and on each locomotive or car that may have been or may be sold or leased the name of the vendor or lessor or assignee of the vendor or lessor shall be marked in a conspicuous place followed by the word "owner" or "lessor," as the case may be. [R. C. 1905, § 4279; 1883, ch. 93, § 2; R. C. 1895, § 2960.]

§ 4627. Sinking fund. The board of directors of any railroad corporation may annually or oftener, as may be deemed expedient, set apart and appropriate a sum of money not exceeding fifty per cent of its net earnings as resources for any one year, after paying the current expense of its road and the interest on its outstanding indebtedness, in order to sink, redeem, pay off, cancel or discharge the indebtedness of such corporation; and the said sums so set apart shall be annually applied to the payment and discharge of such debts of such corporation as shall be due, and to the purchase and redemption of the outstanding evidences of indebtedness of such corporation, as the board of directors thereof shall deem most for the interest of such corporation and for no other purpose. [R. C. 1905, § 4280; 1879, ch. 46, § 19; R. C. 1899, § 2961.]

§ 4628. Defense of usury prohibited. No railroad corporation shall be allowed to make the defense of usury against the holder of any bond or other

obligation for the payment of money issued by such corporation. [R. C. 1905, § 4281; 1879, ch. 46, § 20; R. C. 1899, § 2962.]

§ 4629. May classify directors. Any railroad corporation may by a vote of a majority in amount of the stockholders present or represented at any annual meeting classify its directors into three classes, each of which shall be composed, as nearly as may be, of one-third of the directors; the term of office of the first class to expire in one year, of the second in two years and of the third in three years. At each annual election thereafter a number of directors shall be elected for three years equal to the number whose term of office shall then expire; all other vacancies shall be filled in accordance with the by-laws. [R. C. 1905, § 4282; 1879, ch. 46, § 21; R. C. 1899, § 2963.]

§ 4630. Annual report must be made. Contents. Every railroad corporation shall make an annual report to the stockholders of its operations during the year ending on the thirtieth day of June, which report shall be verified by the affidavit of the secretary, treasurer, superintendent and directors of the corporation and shall state:

1. The length of road in operation, the length of single track, the length of double track, the weight of the rail per yard.

2. The capital stock actually subscribed and the amount paid thereon.

3. The whole cost of the road, showing the amount expended for the right of way, bridging, grading, iron and buildings, respectively, and for all other purposes incidental to the construction of such road.

4. The amount and nature of its indebtedness, distinguishing the first, second and third mortgage bonds, and the unsecured indebtedness and the amount due the corporation.

5. The amount received for the transportation of passengers, property and mails, for interest and from other sources, respectively.

6. The amount of freight, specifying the quantity in tons or other usual mode of measurement.

7. The amount paid for the repairs of the road, buildings, engines and cars, respectively, for fuel, taxes and interest, specifying the indebtedness on which the same is paid; for wages of employes; the aggregate amount paid for salaries of officers and for any other purpose incidental to the business of transportation so as to give a complete statement of the entire annual expense of the corporation.

8. The amount of loss to the corporation paid for loss and damage to freight and injury to person and property.

9. The number and amount of dividends and when made and in what manner such dividends have been paid.

10. The amount appropriated to sinking fund and the manner in which the same has been applied and the total amount then held by such sinking fund.

11. The number of persons killed or injured, the causes thereof and whether passengers or persons employed by the corporation.

12. Whether any such accidents have arisen from carelessness or negligence of any person in the employ of the corporation and whether such person is retained in the service of such corporation. The secretary of each railroad corporation shall mail to every stockholder thereof, whose post office address is known, a copy of its annual report and shall file a certified copy thereof with the commissioners of railroads on or before the fifteenth day of September in each year. [R. C. 1905, § 4283; 1879, ch. 46, § 22; R. C. 1899, § 2964.]

§ 4631. Must maintain office in the state. Every railroad corporation organized and doing business in this state under the laws or authority thereof shall have and maintain a public office or place in the state for the transaction of its business, where transfers of its stock shall be made and in which shall be kept for public inspection books in which shall be recorded the amount of capital stock subscribed and by whom, the names of the owners of its stock

and the amount owned by them, respectively; the amount of stock paid in and by whom, and the transfers of said stock; the amount of its assets and liabilities and the names and places of residence of its officers. Any corporation violating any of the provisions of this section or of section 4630 shall, upon conviction thereof in any district court, be subject to a penalty of not less than one hundred and not more than five thousand dollars and its corporate rights shall be subject to forfeiture. [R. C. 1905, § 4284; Const. § 140; R. C. 1899, § 2965.]

§ 4632. How foreign corporation may extend its road into this state. Any railroad corporation chartered by or organized under the laws of the United States or of any state or territory, whose constructed railroad shall reach or intersect the boundary line of this state at any point may extend its railroad into the state from any such point or points to any place or places within the state, and may build branches from any point on such extension. Before making such extension or building any such branch road such corporation shall by resolution of its directors to be entered in the records of its proceedings, designate the route of such proposed extension or branch in the manner provided in section 4610 and file a copy of such record certified by the president and secretary in the office of the secretary of state. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch and receive such aid thereto as it would have had had it been authorized so to do by articles of association duly filed in accordance with the provisions of this article. [R. C. 1905, § 4285; 1879, ch. 46, § 27; R. C. 1895, § 2966.]

§ 4633. Train to be run each week day. Every railway company owning or operating a railway line in this state, excepting railways or branch lines that may hereafter be constructed or extensions of railways or branch lines now in operation, for five years after construction of same, and also railways or branch lines whose total length does not exceed twenty-five miles, is required to run a train of cars over its lines and branches of any line one way during each week day of the year unless prevented by storm, accident or other cause over which the railroad company has no control. [R. C. 1905, § 4286; 1893, ch. 103, § 1; R. C. 1895, § 2967; 1905, ch. 152.]

§ 4634. Penalty. For each and every violation of the provisions of the last section the railway company shall be subject to a fine of five hundred dollars. [R. C. 1905, § 4287; 1893, ch. 103, § 2; R. C. 1895, § 2968.]

§ 4635. Trains to be run at regular times. Every such railroad corporation shall start and run its cars for the transportation of persons or property at regular times to be fixed by public notice and shall furnish sufficient accommodation for the transportation of all such passengers and property as shall within a reasonable time previous thereto offer or be offered for the transportation at the place of starting or at the junction of other railroads and at siding and stopping places established for receiving and discharging way passengers and freight and shall take, transport and discharge passengers and property at, from and to such places on the due payment of tolls, freight or fare therefor. [R. C. 1905, § 4288; Civ. C. 1877, § 474; R. C. 1899, § 2969.]

Obligation to stop for passengers at the times advertised. 66 Am. Dec. 603.

§ 4636. Penalty. In case of the refusal by such corporation or its agents to take or transport any passenger or property as provided in the preceding section, or in case of the neglect or refusal of such corporation or its agents to discharge or deliver passengers or property at the regularly appointed place under the laws which regulate common carriers such corporation shall pay to the party aggrieved all damages which shall be sustained thereby with costs of action. [R. C. 1905, § 4289; Civ. C. 1877, § 475; R. C. 1899, § 2970.]

Contract duty of carrier to stop at particular station. 2 L.R.A.(N.S.) 505.

Duty to give regular train service on Sunday. 30 L.R.A.(N.S.) 401.

Liability to passenger for default or delay in running train. 32 L.R.A. 543; 49 L.R.A.(N.S.) 423.

Liability for failure to provide train for crowd. 24 L.R.A. 711.

Right to discontinue receipt of freight at place other than regular station. 38 L.R.A.(N.S.) 932.

Duty of carrier to accept freight originating and terminating within city limits. 33 L.R.A.(N.S.) 443.

Effect of strike on carrier's duty to accept freight. 35 L.R.A. 623; 22 L.R.A.(N.S.) 1200.

Right to refuse to transport dangerous articles. 36 L.R.A. 649.

Duty of carrier to accept liquor for transportation to points where its sale is prohibited or restricted. 40 L.R.A.(N.S.) 798; 45 L.R.A.(N.S.) 120.

§ 4637. When not liable for personal injuries. In case any passenger on any railroad shall be injured while on the platform of a car while in motion, or in any baggage, wood or freight car in violation of the printed regulations of the corporation posted up at the time in a conspicuous place inside of its passenger cars then in the train, such corporation shall not be liable for the injury; provided, it had furnished room inside its passenger cars sufficient for the accommodation of its passengers. [R. C. 1905, § 4290; Civ. C. 1877, § 476; R. C. 1899, § 2971.]

Contributory negligence of passengers in riding on platforms, etc. 37 Am. Rep. 710; 41 Am. Rep. 347.

Riding on platform of railroad car as negligence. 29 L.R.A.(N.S.) 325.

—where railroad train is crowded. 24 L.R.A. 710.

Negligence in riding on platform or steps of car just before reaching station. 21 L.R.A.(N.S.) 715.

Riding on platform as affecting right to recover for injury through accident to train or car. 17 L.R.A.(N.S.) 158.

Passenger's riding in baggage or express car as contributory negligence. 16 L.R.A. 631.

Power of conductor to waive rule prohibiting passengers from riding in baggage car. 16 L.R.A. 631.

As to similar provision in Cal. Civ. Code, § 484, see *Mitchell v. Southern P. R. Co.*, 87 Cal. 62, 11 L.R.A. 130, 25 Pac. 245, 9 Am. Neg. Cas. 85.

§ 4638. Same responsibility on all trains carrying passengers. When fare is taken by any railroad corporation for transporting passengers on any mixed train of passenger and freight cars or on any baggage, wood, gravel or freight car the same care must be taken and the same responsibility and duties are assumed by the corporation as for passengers on passenger cars. [R. C. 1905, § 4291; Civ. C. 1877, § 477; R. C. 1899, § 2972.]

What risk is assumed by passengers on freight trains. 19 L.R.A. 310.

Extent of ticket agent's authority as to carriage on freight train. 31 L.R.A.(N.S.) 233.

Liability for injuries to passenger from sudden starting or stopping of freight train. 34 L.R.A.(N.S.) 230.

§ 4639. Temporary ways while changing highway. Every railroad corporation while employed in raising or lowering any turnpike or other way, or in making any other alterations, by means of which the said way may be obstructed shall provide and keep in good order suitable temporary ways to enable travelers to avoid or pass such obstructions. [R. C. 1905, § 4292; Civ. C. 1877, § 479; R. C. 1899, § 2973.]

§ 4640. Bridges must be in good repair. Every railroad corporation shall maintain and keep in good repair all bridges with their abutments which such corporation shall construct for the purpose of enabling its road to pass over or under any turnpike road, canal, water course or other way. [R. C. 1905, § 4293; Civ. C. 1877, § 480; R. C. 1899, § 2974.]

Liability for injuries to employees by low bridges. 53 Am. Rep. 699.

§ 4641. Signs at crossings. Every railroad corporation operating a line of road within this state must erect suitable signs of caution at each crossing of its road with a public highway, which signs shall be painted with black Roman or block letters on white background, said letters to be at least eight inches in length and proportionately broad; said signs shall be placed at the top of posts at least fifteen feet high. [R. C. 1905, § 4294; Civ. C. 1877, § 481; R. C. 1895, § 2975.]

§ 4642. Bell and whistle. A bell of at least thirty pounds in weight or a steam whistle shall be placed on each locomotive engine and shall be rung or whistled at the distance of at least eighty rods from the place where the said railroad shall cross any other road or street and be kept ringing or whistling until it shall have crossed said road or street under a penalty of fifty dollars for every neglect, to be paid by the corporation owning the railroad, one-half thereof to go to the informer, and the other half to this state, and also be liable for all damages which shall be sustained by any person by reason of such neglect. [R. C. 1905, § 4295; Civ. C. 1877, § 483; R. C. 1899, § 2976.]

Whistling not required at private crossing, though on section line which might be opened as road. *Reynolds v. Great Northern Ry. Co.*, 69 Fed. 808, 16 C. C. A. 435.

Failure to give signals; no recovery for injury in absence of evidence that such failure was the cause. *Mankey v. C. M. & St. P. Ry. Co.*, 14 S. D. 468, 85 N. W. 1013.

Killing stock prima facie evidence of negligence. See Rev. Code Civ. Proc. S. D. 748.

Failure to ring bell or sound whistle does not constitute negligence per se. *Reeves v. Chicago, M. & St. P. R. Co.*, 24 S. D. 84, 123 N. W. 498.

Use of either bell or whistle all the time occupied by train in passing from one public crossing to another a mile distant is permissible. *Lyons v. Chicago, M. & St. P. R. Co.*, 28 S. D. 31, 35 L.R.A.(N.S.) 1219, 132 N. W. 679.

Not the sole measure of duty at public crossings to ring bell and blow whistle. Effect of city ordinances. *Coulter v. G. N. Ry.*, 5 N. D. 568, 67 N. W. 1046.

The term "any other road" refers only to public highways, and not to private crossing. *Reynolds v. Great Northern R. Co.*, 69 Fed. 808.

The duty to give signals does not extend to a person driving along a highway parallel to the railroad, who has not lately used and does not intend to use any crossing. *Reynolds v. Great Northern R. Co.*, 69 Fed. 808.

Defense of contributory negligence may be interposed in action brought for violation of section 2223, Revised Codes 1905 [section 3076 herein], for damages resulting from explosion. *Morrison v. Lee*, 22 N. D. 251, 38 L.R.A.(N.S.) 412, 133 N. W. 548, 1 N. C. C. A. 258.

Statutory signals as measure of duty of railroad company. 15 L.R.A. 427.

For whose benefit signals by approaching trains are required by statute at railway crossings. 17 L.R.A. 254.

Failure to give signal as affecting liability for injury to small children on track. 25 L.R.A. 788.

Right of employe to rely on statute requiring signal to be given by train approaching crossing. 40 L.R.A.(N.S.) 1105.

Duty as to signals by locomotive approaching overhead crossings. 1 L.R.A.(N.S.) 307; 22 L.R.A.(N.S.) 915.

Duty to give crossing signals for protection of animals. 46 L.R.A.(N.S.) 881.

Liability for failure to give statutory signals when they would not have prevented the injury. 21 L.R.A. 723.

Violation of rule as to giving of signals as evidence of negligence toward member of public. 8 L.R.A.(N.S.) 1063.

Private action for violation of ordinances requiring warning signals. 5 L.R.A.(N.S.) 240.

Private action for violation of statutory duty to signal approach of crossings. 9 L.R.A.(N.S.) 365.

Failure to give crossing signals as proximate cause of injury by running into side of train. 38 L.R.A.(N.S.) 1153.

As to similar provision in Cal. Civ. Code, § 486, see *Meeks v. Southern P. R. Co.*, 52 Cal. 602; *Strong v. Sacramento & P. R. Co.*, 61 Cal. 326, 11 Am. Neg. Cas. 196; *Orcutt v. Pacific Coast R. Co.*, 85 Cal. 291, 24 Pac. 661, 11 Am. Neg. Cas. 216; *Toomey v. Southern P. R. Co.*, 86 Cal. 374, 10 L.R.A. 139, 24 Pac. 1074; *Hager v. Southern P. Co.*, 98 Cal. 309, 33 Pac. 119.

§ 4643. Trains must stop before crossing other railroads or drawbridges.

Exception. Every train of cars, and every locomotive about to cross the track of another railroad, shall come to a full stop before arriving at or crossing the track of such other and within four hundred feet thereof; and the train or locomotive arriving near such crossing first shall cross and move on first; and every such train or locomotive shall also come to a full stop before crossing or running upon any drawbridge over a stream which is regularly navigated by vessels during the season when such stream is so used for navigation, and the use of such draw is necessary for the passage of boats, vessels and other crafts navigating the waters of such stream at a distance from such bridge of not more than six hundred feet; provided, that no such

stop need be made before crossing such drawbridge or railroad crossing of railroads operated by the same company, if at the time an employe of the company shall be standing on such drawbridge or crossing with a proper light by night, or flag by day, and signal such train to proceed; provided, however, that in case any two railroads which cross each other, or in any way connect at a common grade, shall by any works or fixtures to be erected and maintained by them, or either of them, render it safe to pass over said crossings without stopping, and such work or fixtures shall first be approved by the commissioners of railroads of this state, and the plan of such works or fixtures for such crossing, designating the place of such crossing, shall be filed with the said commissioners of railroads; then in that case the foregoing provisions of this section requiring the stoppage of trains at such railroad crossings shall not apply; but if said commissioners of railroads shall disapprove such plan, or fail to approve the same within twenty days after the filing thereof with them, such railroad companies, or either of them, may apply in the county where such crossing is situated, to the judge of the district court in and for said county, either in term or vacation, by a petition in writing, setting forth the object of said application, and said court or judge shall thereupon appoint a time and place for the hearing of said petition, and a copy of the order appointing such time and place, together with a copy of said petition, shall be served upon the commissioners of railroads at least ten days before the day appointed for such hearing; and the said district court or any judge thereof, either in term time or vacation, shall have full power upon the hearing of said petition to grant the prayer thereof or to make such other order thereon as may be proper in the premises. [R. C. 1905, § 4296; R. C. 1895, § 2977; 1903, ch. 148.]

§ 4644. Killing of stock prima facie evidence of negligence. The killing or damaging of any horses, cattle or other stock by the cars or locomotives along a railroad shall be prima facie evidence of carelessness and negligence on the part of the corporation. [R. C. 1905, § 4297; Civ. C. 1877, § 679; R. C. 1895, § 2978.]

Injury to stock by locomotive as prima facie evidence of negligence. *Anderson v. Minneapolis, St. P. & S. Ste. M. R. Co.*, 18 N. D. 462, 123 N. W. 281; *Carr v. Minneapolis, St. P. & S. Ste. M. R. Co.*, 16 N. D. 217, 112 N. W. 972.

Presumption of negligence created by fact of killing by cars. *Wright v. Minneapolis, St. P. & S. Ste. M. R. Co.*, 12 N. D. 159, 96 N. W. 324.

As to prima facie case, how overcome. *Hodgins v. R. R. Co.*, 3 N. D. 382, 56 N. W. 139. Contributory negligence, what is. *Wright v. M., St. P. & S. Ste. M. Ry.*, 12 N. D. 159, 96 N. W. 324.

Sufficiency of a complaint. *John R. Jones & Son v. G. N. Ry.*, 12 N. D. 343, 97 N. W. 535.

It is not error to deny motion for directed verdict where evidence, although undisputed, is such that impartial men might fairly and reasonably differ in conclusions to be drawn from such evidence. *Clair v. Northern P. R. Co.*, 22 N. D. 120, 132 N. W. 776.

Whether presumption arising under statute that railroad company killing cattle on track was negligent, is overcome by company's evidence, is in first instance question of law. *Corbett v. Great Northern R. Co.*, 19 N. D. 457, 125 N. W. 1054.

Presumption of law that killing was caused by defendant's negligence is raised by proof of ownership and killing. *Reinke v. Minneapolis, St. P. & S. Ste. M. R. Co.*, 23 N. D. 182, 135 N. W. 779.

Duty to animals on the track. 49 Am. Dec. 261; 20 Am. St. Rep. 161.

Presumption of negligence from injury to live stock by railway train. 15 L.R.A. 39.

Power of legislature to make the killing of stock prima facie evidence of negligence. 32 L.R.A.(N.S.) 227.

§ 4645. Crossings over railroads. Penalty for failure to provide. When any person owns land on both sides of any railway the corporation or individual owning or operating such railway shall, when requested to do so in writing, make and keep in good repair a proper cattle guard and cause-way or other adequate means of crossing such railway at such reasonable place or places as may be designated by the land owner or his agent; provided, that the type of all cattle guards required by law to be constructed in this state shall, before being installed, be approved by the commissioners of rail-

roads. The owner or person in possession of the land through which the railroad passes may recover, of the person or corporation operating such railroad, the sum of twenty-five dollars for every thirty days of default on the part of the person or corporation operating the railroad, after written demand served on an officer, roadmaster or section foreman of the operating company has designated the place for the erection of the cattle guarded crossings of the road crossing requested, and a like penalty for failure to keep such cattle guards, or road crossings, in good repair, after written notice has been served upon the operating company that such repairs are necessary. [1909, ch. 191; R. C. 1905, § 4298; Civ. C. 1877, § 484; R. C. 1899, § 2979.]

§ 4646. When required to fence. Whenever the owner of any tract of land abutting against any line of railroad within this state shall desire to inclose any such tract of land for pasturage or other purposes and shall construct a good and sufficient fence about said tract of land on all sides except along the side abutting against such railroad it shall be the duty of such railroad company to construct a good and sufficient fence not less than four and one-half feet high on the side of such tract or lot as far as the same extends along the line of such railroad and to maintain the same in good repair and condition, until released therefrom by the owner of said tract or until the owner of said tract shall have ceased to maintain, in good repair and condition for the term of one year, his portion of the fence around such inclosure. [R. C. 1905, § 4299; 1883, ch. 57, § 1; R. C. 1899, § 2980.]

Inapplicable to lessee of school lands. *Crary v. Chicago, M. & St. P. R. Co.*, 18 S. D. 237, 100 N. W. 18.

Railroad is liable for killing of cow when it has failed to provide cattle guard, where it had right to do so. *Lidel v. South Dakota C. R. Co.*, 25 S. D. 462, 127 N. W. 653.

Railroad corporations need not erect fences unless required by statute. 7 Am. Rep. 47.

Constitutionality of statute requiring fence. 31 L.R.A.(N.S.) 862.

Mandamus to compel company to construct fences. 12 L.R.A. 181.

Measure of care of railroad company to maintain fence once constructed. 11 L.R.A.(N.S.) 228.

Private action for violation of statutory duty to fence right of way. 9 L.R.A.(N.S.) 347.

Duty to keep gates in railroad fence closed. 49 L.R.A. 625.

Liability for injury to stock other than by trains, because of breach of statutory duty to fence. 37 L.R.A.(N.S.) 1181.

Liability of railroad whose failure to maintain fences permits escape of live stock which is killed or injured outside its right of way. 29 L.R.A.(N.S.) 573.

As to similar provision in Cal. Civ. Code, § 485, see *Hynes v. San Francisco & N. P. R. Co.*, 65 Cal. 316, 4 Pac. 28; *Los Angeles, P. & G. R. Co. v. Rumpp*, 104 Cal. 20, 37 Pac. 859; *Baker v. Southern California R. Co.*, 110 Cal. 455, 42 Pac. 975; *Baker v. Southern California R. Co.*, 114 Cal. 501, 46 Pac. 604; *Boyd v. Southern California R. Co.*, 126 Cal. 571, 58 Pac. 1046.

§ 4647. Notice from owner. Whenever the owner of any tract of land shall have completed his portion of the fence about such proposed inclosure he shall give written notice of its completion to the railroad company upon whose line said tract is situated by personal service upon the agent of said company at the station nearest to the proposed inclosure describing in said notice the situation of said tract and the number of acres to be inclosed, as near as may be, and the length of the fence required along the line of such railroad to complete the proposed inclosure; and it shall be the duty of the railroad company to construct and complete its portion of such fence within sixty days after the service of such notice. [R. C. 1905, § 4300; 1883, ch. 57, § 2; R. C. 1899, § 2981.]

Railroad company liable for defective fence although notice to construct was not given. *Wold v. South Dakota C. R. Co.*, 23 S. D. 521, 122 N. W. 583.

§ 4648. Liability of company. If any railroad company shall neglect or refuse to comply with any of the requirements of the last two sections it shall be lawful for the owner of such tract to construct or repair the fence along the line of such railroads and the railroad company shall be liable to the owner thereof to an amount not exceeding one dollar and twenty-five cents

per rod to be recovered in a civil action; and such railroad company shall be liable for all damages accruing by reason of such neglect or refusal. [R. C. 1905, § 4301; 1883, ch. 57, § 3; R. C. 1895, § 2982.]

Railroad company's liability for damages from neglect to repair fence covers damages to stock on track. *Wold v. South Dakota C. R. Co.*, 23 S. D. 521, 122 N. W. 583.

Double damages are provided for regardless of whether owner gave notice. *Bekker v. White River Valley R. Co.*, 28 S. D. 84, 132 N. W. 797.

ARTICLE 2.—RAILROAD COMPANIES REPORT WRECKS.

§ 4649. Duty to report. It shall be the duty of every railroad company operating a line of railway in this state to report to the railroad commissioners of this state all accidents, wrecks or casualties occurring in the operation of trains on said line or lines of railway within this state, coming within the knowledge of the company, wherein any person is either killed or injured, within reasonable time, not exceeding sixty days, in such form as the railroad commissioners may require. [1907, ch. 205, § 1.]

§ 4650. Railroad commissioners examine into causes of wrecks. Make report to legislature. Whenever any such report is made to such railroad commissioners they shall forthwith examine into the causes and circumstances of such wreck, accident or casualty, and it shall thereupon be the duty of said railroad commissioners to order such railroad company to comply with any reasonable requirements prescribed by said railroad commissioners, calculated to prevent the recurrence of any such wreck, accident or casualty, and it shall be the duty of said railroad commissioners to report to the legislature biennially a summarized statement of all wrecks, accidents or casualties that have come to their knowledge by reason of this article, together with a recommendation of such additional legislation as they deem proper for the greater protection of passengers and employes of such railroads. [1907, ch. 205, § 2.]

As to biennial reports to the legislature, see in general sections 95, 97, 98.

§ 4651. Penalty for violation. Every person who shall violate any of the provisions of this article shall be guilty of a misdemeanor and shall be punished by a fine of not less than five hundred dollars, nor more than two thousand dollars, or imprisonment in the county jail for not less than thirty days, nor more than one year, or shall suffer both such fine and imprisonment in the discretion of the court. [1907, ch. 205, § 3.]

ARTICLE 3.—STOPPING OF PASSENGER TRAINS AT COUNTY SEATS.

§ 4652. Stop at county seats. Every person, company or corporation operating a railroad within or through this state, shall cause all its regular passenger trains to stop upon their arrival at its station at each county seat, through or by which such trains run wherever such person, company or corporation operating such railroad has heretofore established, or shall hereafter establish, a station within one mile of the corporate limits of such county seat, a sufficient length of time to receive and let off passengers with safety; provided, the same shall not apply to any passenger train which does not carry passengers whose trip both begins and terminates within the boundaries of the state of North Dakota. [1911, ch. 253, § 1; 1907, ch. 202; R. C. 1905, § 4302; 1901, ch. 130.]

Power to compel stopping of trains at stations. 17 L.R.A.(N.S.) 821; 29 L.R.A.(N.S.) 159.

Right to require the stopping of interstate and mail trains. 14 L.R.A.(N.S.) 293; 29 L.R.A.(N.S.) 159.

§ 4653. Penalty. Every person, company or corporation failing to comply with the provisions of the last section shall be subject to a penalty of five hundred dollars for each and every offense, to be recovered in a civil action in the name of the state, and to be paid, when collected, to the state of North Dakota, to be credited to the common school fund; and it is hereby made

the duty of the state's attorney of the county, upon complaint of any citizen, to commence and prosecute such action on behalf of the state. [1911, ch. 253, § 2; 1907, ch. 202; R. C. 1905, § 4302; 1901, ch. 130.]

ARTICLE 4.—LIABILITY OF RAILROADS FOR CAUSING FIRES.

§ 4654. **Liability for damages from fire.** All railroad companies or corporations operating or running cars or steam engines over roads in this state shall be liable to any party aggrieved for all damages resulting from fire escaping or being scattered or thrown from said cars or engines; provided, that such railroad company or corporation shall not be liable for said damages when the same results from the default or negligence of the party injured. [1911, ch. 248; R. C. 1905, §§ 4303, 4304; 1893, ch. 102, §§ 1, 2; R. C. 1899, §§ 2983, 2984.]

Presumption of negligence one of law. Mere fact that fire started 118 feet from track not in itself sufficient to warrant submission of question of negligence to jury. *Smith v. N. P. Ry. Co.*, 3 N. D. 17, 53 N. W. 173.

Liability for fire when caused by coals or sparks from locomotives. 38 Am. Dec. 70; 78 Am. Dec. 185; 6 Am. Rep. 597.

Liability for burning property stored or piled on railroad right of way by licensee. 1 L.R.A.(N.S.) 533.

Liability for fire set by engines of other company permitted to use road. 10 L.R.A.(N.S.) 1175.

Liability of railroad company for personal injury to person struck by sparks or cinders escaping from locomotive. 18 L.R.A.(N.S.) 241.

Constitutionality of statute imposing absolute liability for damages caused by fire. 25 L.R.A. 161; 35 L.R.A.(N.S.) 1016; 42 Am. St. Rep. 538.

Sufficiency of general allegations of negligence in case of injury to property from fires. 59 L.R.A. 234.

Right to interest on sum allowed as damages from railway fires. 18 L.R.A. 449.

Duty of abutting owner to prevent accumulation of combustible materials near right of way. 12 L.R.A.(N.S.) 624.

Duty of owner of property adjoining a railroad right of way to protect it from fires set out by passing locomotives. 12 L.R.A.(N.S.) 526.

Presumption as to negligence in case of railway fires. 15 L.R.A. 40.

Effect of presumption from fact that fire was set by locomotive to carry question of negligence to jury. 5 L.R.A.(N.S.) 99.

Power of legislature to make injury by fire from locomotives prima facie evidence of negligence. 32 L.R.A.(N.S.) 227.

Admissibility of evidence of other fires. 32 L.R.A.(N.S.) 1146.

Distance within which sparks from a properly equipped engine will set fire as a subject of expert testimony. 22 L.R.A.(N.S.) 1039.

Duty of railroad company to keep cattle guards in condition. 36 L.R.A.(N.S.) 997.

Effect of contributory negligence of owner of stock getting on track through defects in cattle guards. 36 L.R.A.(N.S.) 100.

Constitutionality of statute requiring railroad company to build cattle guards. 31 L.R.A.(N.S.) 861.

Constitutionality of statutes excluding defense of contributory negligence and assumption of risk on failure to build cattle guards. 31 L.R.A.(N.S.) 867.

ARTICLE 5.—CATTLE GUARDS AT RAILROAD CROSSINGS.

§ 4655. **Cattle guards, how constructed. Speed of trains at depot grounds.** All railway corporations owning or operating a line of railway within this state shall construct, maintain and keep in repair a suitable fence of posts and barb wire, or posts and boards, on each side of the track so connected with cattle guards at all public road crossings as to prevent cattle, horses and other live stock from getting on the railroad tracks; such fence when of barb wire shall be of five wires securely fastened to posts set not more than twenty feet apart, the top wire not to be less than fifty-four inches high, said wires to be not more than fourteen inches apart; or of five boards securely fastened to posts set not more than eight feet apart, said fence to be not less than fifty-four inches high and the boards not more than one foot apart. Any corporation operating a railroad and failing to fence same against live stock running at large and maintaining proper and sufficient

cattle guards at all points where the right to fence or maintain cattle guards exists shall be liable to the owner of any stock killed or injured by reason of the want of such fence or cattle guard for the full amount of the damages sustained by the owner on account thereof, unless it was occasioned by his grossly negligent act or that of his agent, and to recover the same it shall only be necessary for him to prove the loss of or injury to his property. If such corporation fails or neglects to pay such damages within ninety days after notice in writing that a loss or injury has occurred accompanied by an affidavit thereof served upon an officer or a station or ticket agent employed by said corporation in the county where such loss or injury occurred such owner shall be entitled to recover from the corporation double the amount of damages actually sustained by him, and twenty-five dollars as attorney's fee when it shall be adjudged by a court of competent jurisdiction that the claimant is entitled to the amount claimed. No law of the state or any local or police regulations of any county, township, city or town relating to the restraint of domestic animals, or in relation to the fences of farmers or land owners shall be applicable to railway tracts unless specifically so stated in such law and regulation. Upon depot grounds necessarily used by the public and the corporation the operating of trains at a greater rate of speed than eight miles an hour where no fence is built shall be negligence and shall render such corporation liable for all damages occasioned thereby in the same manner and to the same extent except as to double damages, as in cases where the right to fence exists. [1907, ch. 209.]

ARTICLE 6.—MAINTENANCE OF STATION HOUSES.

§ 4656. **When stations to be maintained.** Every railroad corporation in the state of North Dakota shall build a station house and keep a station agent twelve months each year when so ordered by the railroad commissioners at all of its sidings where there is grain and merchandise of any description to be shipped, when the outgoing and incoming freight, and all other receipts at said station amounts to twelve thousand dollars or more in any one year. Provided, that said stations are not less distant than five miles apart upon the same line of railway. [1911, ch. 254; R. C. 1905, § 4305; 1895, ch. 97, § 1; R. C. 1899, § 2985; 1901, ch. 179; 1903, ch. 147.]

Power to compel establishment of railroad stations. 17 L.R.A.(N.S.) 821.

May railroad companies be required to establish or maintain a station that will not pay expenses. 26 L.R.A.(N.S.) 444.

§ 4657. **Penalty.** Any railroad company or corporation failing to comply with the provisions of the last section shall be punished by a fine of not less than two thousand dollars and it shall be the duty of the commissioners of railroads to enforce the provisions of such section in the name of the state of North Dakota. [R. C. 1905, § 4306; 1895, ch. 97, § 2; R. C. 1899, § 2986.]

ARTICLE 7.—LIGHTING OF DEPOT PLATFORMS.

§ 4658. **Railroad depot lamps must be provided.** All railroad companies using steam as a motor power and engaged in the business of carrying passengers to and from stations located in this state shall provide for the lighting of each and every depot platform used by passengers in getting on and off from trains. At least one lamp, with a lighting power equal to that of the ordinary street lamp shall be placed at each end of each and every said platform. During the hours of night said lamp or lamps shall be lighted for a period of at least one hour before and thirty minutes after the arrival of each and every train, providing that said train stops at such depot or platform for the purpose of letting passengers on and off. [1907, ch. 210, § 1.]

§ 4659. **Penalty.** In each and every town, village or city where a railroad company violates the provisions of section 4658, such company shall upon conviction thereof be subject to a fine of not less than five dollars nor more

than ten for each and every day during the time such violations continue to be made, said fine to be recovered in civil action by any competent court and it is hereby made the duty of the attorney-general and the various state's attorneys of the counties wherein such violations take place to prosecute the violators of this article. [1907, ch. 210, § 2.]

ARTICLE 8.—SANITARY REGULATIONS FOR RAILROAD STATIONS.

§ 4660. **Closets, where provided.** All railroad companies operating railroads in North Dakota shall provide and maintain at any and all railroad stations in the state where passengers' tickets are sold, within reasonable access of the depot, a water closet, earth closet or privy for the accommodation of railroad employes and the traveling public, or where a sewerage system is maintained within three hundred feet of such station waiting room then and in that case the water closet shall be within the station house. Entirely separate compartments for men and women shall be provided. The water closet, earth closet or privy for males shall also have urinals arranged with conduits of galvanized iron, or other impervious material, draining into a sewer, vault or other suitable place which will prevent the creation of a nuisance. [1913, ch. 232, § 1; 1911, ch. 238.]

§ 4661. **Authority to inspect.** The board of railroad commissioners of the state, or the local health officer, or health commissioner of the township, incorporated village or city in which the depot is located shall have authority to inspect such water closets, earth closets or privies from time to time, and if they are found to be in an unsanitary condition he or they shall notify the proper officials of the railroad company, stating in what respect such water closets, earth closets or privies are unsanitary, and it shall be the duty of the railroad company within a reasonable time to make such alterations or repairs as will remove the unsanitary conditions complained of. [1913, ch. 232, § 2.]

§ 4662. **Waiting rooms, how and when cleaned.** The waiting rooms at the railroad stations in this state shall be scrubbed or washed at least once a week with some standard disinfectant, and such waiting rooms shall at all times be maintained in a comfortable and sanitary condition. [1913, ch. 232, § 3.]

§ 4663. **Penalty.** Any person, firm or corporation failing to comply with the provisions of this act shall upon conviction be punished by a fine of not less than twenty dollars or more than one hundred dollars. [1913, ch. 232, § 5; 1911, ch. 238, § 2.]

ARTICLE 9.—SWEEPING PASSENGER COACHES.

§ 4664. **Dustless sweeping required.** The sweeping of railroad coaches or cars while occupied by passengers, except such sweeping be done with a vacuum cleaner or other similar device, or except when the floor of such car shall previously have been thoroughly moistened with water or oil, or by the use of sufficient sweeping compound to keep down the dust, is hereby prohibited. [1913, ch. 231, § 1.]

§ 4665. **Penalty.** Any person or corporation violating the provisions of this act shall be punishable by a fine not exceeding twenty-five dollars. [1913, ch. 231, § 2.]

ARTICLE 10.—REGULATING NUMBER OF TRAIN MEN.

§ 4666. **Number of train men.** It shall be the duty of every corporation operating a railway within the limits of this state which has not complete air equipments in good order on all rolling stock in use on said road to furnish at least two brakemen to each freight train consisting of forty-five cars and it shall be the duty of said company to furnish an extra brakeman

on said freight train for every ten cars or fraction thereof in excess of said forty-five cars; provided, that this section shall not apply to any train which has therein, equipped with air brakes, a sufficient number of cars to render hand brakes unnecessary in the ordinary stoppage of trains. [R. C. 1905, § 4307; 1895, ch. 94, § 1; R. C. 1899, § 2987.]

Full crew bill. 49 L.R.A.(N.S.) 977.

§ 4667. Penalty. For each and every violation of the last section the railroad corporation so offending shall be subject to a penalty of fifty dollars to be recovered in a civil action and paid to the state of North Dakota and it is made the duty of the attorney-general upon complaint of any citizen to commence and prosecute this action in his own name as attorney-general on behalf of the state. [R. C. 1905, § 4308; 1895, ch. 94, § 2; R. C. 1899, § 2988.]

ARTICLE 11.—HOURS OF SERVICE OF RAILROAD EMPLOYEES.

§ 4668. Hours limited. It shall be unlawful for any railroad, railroad corporation or common carrier, engaged in commerce in whole or in part within this state, or any of its officers or agents, to require or permit any employees engaged in or connected with the movement of any train in which commerce is hauled within the state, or to require or permit any employee engaged in or connected with the movement of any train carrying freight or passengers within the state, to remain on duty more than sixteen consecutive hours, except when by casualty, storms, wrecks, washouts, snow blockades or any unavoidable delay arising from like causes he is prevented from reaching his terminal; or to require or permit any such employee who has been on duty sixteen consecutive hours to go on any duty without having at least eight hours' rest. [1907, ch. 207, § 1.]

Construction and application of statute limiting hours of labor. 65 L.R.A. 33.

Constitutionality of statutes limiting hours of labor. 19 L.R.A. 141; 21 L.R.A. 796; 65 L.R.A. 38; 12 L.R.A.(N.S.) 1130; 26 L.R.A.(N.S.) 242; 35 L.R.A.(N.S.) 628; 40 L.R.A. 893.

Statute limiting hours of labor of railroad employees as interference with interstate commerce. 29 L.R.A.(N.S.) 240.

§ 4669. Penalty. Any such railroad, railroad corporation, common carrier, or any of its officers or agents, violating any of the provisions of this article shall be deemed guilty of misdemeanor and shall, upon conviction thereof in any district court of the state of competent jurisdiction, be subject to a fine of not less than one hundred dollars nor more than one thousand dollars for each offense; and it shall be the duty of the railroad commissioners to fully investigate all cases of any violation of this article and said railroad commissioners shall forthwith notify the attorney-general of such violation thereof as may come to their knowledge, and it shall be the duty of the attorney-general to prosecute or cause to be prosecuted all violations thereof. [1907, ch. 207, § 2.]

Criminal liability for violation of statute limiting hours of labor. 65 L.R.A. 50.

ARTICLE 12.—SIZE AND CONSTRUCTION OF CABOOSE CARS.

§ 4670. To whom this article shall apply. The provisions of this article shall apply to any railroad corporation, or any person or persons while engaged as common carriers in the transportation of passengers or property within this state to which the regulative power of this state extends. [1911, ch. 245, § 1.]

§ 4671. When to take effect, how constructed. That from and after the first day of June, 1914, it shall be unlawful, except as otherwise provided in this article, for any such common carrier by railroad to use on its lines any caboose car or other car used for like purposes unless such caboose or other car shall be at least twenty-four feet in length exclusive of the platform and equipped with two four-wheeled trucks, and said caboose car or other car shall be of constructive strength equal to that of the thirty-ton capacity freight cars constructed according to M. C. B. standards, and shall

be provided with a door in each end thereof and an outside platform across each end of said car; each platform shall not be less than twenty-four inches in width and shall be equipped with proper guard rails, and with grab irons and steps for safety of the persons getting on and off said car. Said steps shall be equipped with a suitable rod, board or other guard at each end and at the back thereof, properly designed to prevent slipping from said steps. [1911, ch. 245, § 2; 1909, ch. 190, § 1.]

§ 4672. **Repairs, how made.** Whenever any caboose cars now in use by such common carriers as provided by section 4670 shall, after this article goes into effect, be brought into any shop for general repairs, it shall be unlawful to again put the same into service of such common carrier within this state, unless it be equipped as provided in section 4671. [1911, ch. 245, § 3.]

§ 4673. **Extensions, how granted.** That the state railroad commission is hereby authorized to grant to any common carrier aforesaid, upon full hearing and for good cause shown, a reasonable extension of time in which to comply with the provisions of this article; provided, that in no case shall such extension in the aggregate exceed a period of one year from the time herein limited for compliance with this article. [1911, ch. 245, § 4.]

§ 4674. **Penalty.** Any common carrier as provided in section 4670, violating any of the provisions of this article, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars for each offense. [1911, ch. 245, § 5; 1909, ch. 190, § 2.]

ARTICLE 13.—LICENSING TICKET AGENTS.

§ 4675. **Agents to obtain state license. Fee.** It shall be the duty of the owners of any railroad or steamboat for transportation of passengers, to provide each agent who may be authorized to sell within the state tickets or other evidence thereof entitling the holder thereof to travel upon his or their railroad or steamboat, with certificate setting forth the authority of such agent to make such sales, which certificate shall be duly attested by the corporate seal of any corporate owner of such railroad or steamboat, and shall for the information of travelers be kept in a conspicuous place in the office of such agent. After issue of such certificate as aforesaid, such agent or a superintendent or general officer of such owners shall within ten days thereafter exhibit the same to the board of railroad commissioners of the state of North Dakota, and at the same time shall pay to said board of railroad commissioners a license fee of five dollars, which fee shall be turned over to the state treasurer monthly, whereupon said board of railroad commissioners shall issue to such agents so presenting said certificate a license under the seal of the board of railroad commissioners of the state of North Dakota, authorizing such agent to engage in the business of selling transportation tickets of said common carrier, and said license so issued to such agent by said board of railroad commissioners shall also be kept posted in a conspicuous place in the office of such agent, for the information of travelers and of the public. Whenever any agent so authorized as aforesaid shall by death, resignation or otherwise cease to be such agent, his successor, appointed by the railroad or steamboat company, or the owner or owners thereof, shall be authorized to sell tickets for said company and act as the agent thereof under the provisions of this article. [1913, ch. 237; R. C. 1905, § 4309; 1893, ch. 104, § 1; R. C. 1899, § 2989.]

§ 4676. **No transfer of ticket without license.** It shall not be lawful for any person not in the possession of such certificate and license so posted as aforesaid to sell, barter or transfer within this state for any consideration the whole or any part of any ticket or other evidence of the owner's title or right to travel on said railroad or steamboat, whether such railroad or

steamboat is situated, operated or owned within or without the limits of this state. [R. C. 1905, § 4310; 1893, ch. 104, § 2; R. C. 1899, § 2990.]

Statutes against ticket brokerage or "scalping." 24 L.R.A. 152.

Injunction against dealing in nontransferable railroad tickets. 10 L.R.A.(N.S.) 437.

Constitutionality of anti-scalping legislation. 3 L.R.A.(N.S.) 558; 4 L.R.A.(N.S.) 480.

§ 4677. Penalty for violation. Whoever shall violate the provisions of section 4676 shall be deemed guilty of a misdemeanor and shall be punishable by a fine not exceeding five hundred dollars or by imprisonment not exceeding one year, or either or both, in the discretion of the court in which such offender shall be convicted. [R. C. 1905, § 4311; 1893, ch. 104, § 3; R. C. 1899, § 2991.]

§ 4678. Agent to exhibit license. It shall be the duty of any agent residing or acting within this state who shall be authorized to sell therein tickets or other evidences of the holder's title to travel upon any railroad or steamboat to exhibit to any person desiring to purchase a ticket or any officer of the law who may request him so to do such certificate of his authority thus to sell and such license. [R. C. 1905, § 4312; 1893, ch. 104, § 4; R. C. 1899, § 2992.]

§ 4679. Redemption. Violation. Penalty. It shall be the duty of the owners of every railroad or steamboat situated or operated in whole or in part within this state to provide for the redemption under reasonable precautions of the whole or of any coupon or coupons of any ticket theretofore sold by any agent authorized as aforesaid, which the purchaser for any reason, other than the expiration of the time limited in said ticket for the use thereof, has not used, in case of a ticket not used and, in case of a coupon or a ticket partially used, at a rate which shall be equal to the difference between the price paid for the whole ticket and the cost of a ticket between the points for which the used portion of said ticket was actually used; provided, that such ticket or coupon or coupons shall be presented for such redemption to any agent authorized as aforesaid before the time therein limited for the use thereof shall have expired and the deposit of such ticket or part of ticket in the post office, addressed to any such agent, with postage thereon duly paid, before the expiration of the time limited on any such ticket or part of ticket shall be deemed such presentation; and the sale by any person of such ticket or the unused portion of any such ticket or coupon or coupons, otherwise than by the presentation of the same for redemption, as hereinbefore provided, shall be deemed to be a violation of the provisions of this article and any person guilty of such violation shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding one year, or either or both, in the discretion of the court in which such offender shall be convicted; provided, however, that when any ticket selling agent so licensed as aforesaid or any common carrier subject to the provisions of this article shall sell, barter or transfer to any person any mileage book or commutation ticket or excursion ticket at any reduced rate authorized by law, and when such mileage book, commutation ticket or excursion ticket shall by the terms thereof be limited in respect to the time in which the same shall be used, then and in that case such mileage book, commutation ticket or excursion ticket shall be redeemed by said common carrier, subject to the provisions of this article. [R. C. 1905, § 4313; 1893, ch. 104, § 5; R. C. 1899, § 2993.]

§ 4680. Refusal to redeem. Penalty. Any railroad company or steamboat company which shall by any of its authorized ticket selling agents within this state unreasonably refuse to redeem any coupon of a ticket or any ticket as required by section 4679 shall pay to the state of North Dakota a fine not exceeding five hundred dollars for each offense. [R. C. 1905, § 4314; 1893, ch. 104, § 6; R. C. 1899, § 2994.]

§ 4681. Penalty for fraudulent use of transfer. Whenever any person in the employ of any railroad or steamboat company doing business in this

state shall fraudulently neglect to cancel or return to the proper officer of the company or agent of such railroad or steamboat company any coupon, or any ticket, or pass with intent to permit the same to be used in fraud of any railroad company or steamboat company; or if any person shall steal or embezzle any such coupon or other ticket or pass, or shall fraudulently stamp or print or sign any such ticket, coupon or pass, or shall fraudulently sell or put in circulation any such ticket, coupon or pass said person shall be deemed guilty of a felony and upon conviction thereof shall be punished by imprisonment in the penitentiary for a period not exceeding five years. [R. C. 1905, § 4315; 1893, ch. 104, § 7; R. C. 1899, § 2995.]

§ 4682. Discrimination in price. Penalty. It is unlawful for any ticket selling agent so authorized and licensed as aforesaid or for any common carrier subject to the provisions of this article to charge, demand, collect, receive from, or to sell, barter, transfer or assign to any person or persons, firm or company, corporation or association any tickets of any class whatever entitling the purchaser or holder thereof to transportation by the common carrier issuing such ticket or tickets for a greater or less sum or price than is charged, demanded, collected or received by such ticket selling agent or common carrier subject to the provisions of this article for a similar ticket or tickets of the same class. Any person, ticket selling agent or common carrier subject to the provisions of this article who shall violate the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined in a sum not exceeding one thousand dollars for each offense. [R. C. 1905, § 4316; 1893, ch. 104, § 8; R. C. 1899, § 2996.]

Is pass issued as part of consideration for contract within statute prohibiting free transportation of passengers or discrimination in passenger rates. 23 L.R.A.(N.S.) 217; 31 L.R.A.(N.S.) 657.

ARTICLE 14.—MAPS OF RIGHT OF WAY.

§ 4683. To file maps of right of way. All railroad corporations doing business in this state shall file with the county auditor of each county in which such railroad or any part thereof may be located a map showing the correct location of all right of way and side tracks in such county owned or occupied by such railroad corporation and also showing the number of acres in each parcel of land included by such railroad corporation or any of them in such county as right of way. [R. C. 1905, § 4317; 1890, ch. 130, § 1; R. C. 1895, § 2997.]

§ 4684. Same. Any railroad corporation, which may hereafter acquire any right of way or other property as set forth in the last section, shall file within six months after the location of its right of way a map as provided for in the last section. [R. C. 1905, § 4318; 1890, ch. 130, § 2; R. C. 1895, § 2998.]

§ 4685. Penalty. Any railroad corporation which shall violate any of the provisions of the last two sections shall upon conviction thereof be fined in a sum of not less than one hundred dollars nor more than five hundred dollars. [R. C. 1905, § 4319; 1890, ch. 130, § 3; R. C. 1899, § 2999.]

ARTICLE 15.—CROSSINGS.

§ 4686. To maintain sufficient crossings. All railway companies operating a line of railway in this state shall build or cause to be built and kept in repair good and sufficient crossings over such line at all points where any public highway in use is now or may hereafter be intersected by the same. [R. C. 1905, § 4320; 1890, ch. 127, § 1; R. C. 1899, § 3000.]

Defective condition of railroad crossing as affecting traveler's right to recover for injuries sustained in collision with train. 14 L.R.A.(N.S.) 312; 20 L.R.A.(N.S.) 426.

Compensation for construction and maintenance of crossing and safeguards as element of damages for laying out street across railway property. 24 L.R.A.(N.S.) 1232.

§ 4687. How to be constructed. Such crossings shall be constructed as follows:

1. Of a grade of earth on one or both sides of the railroad track as the location may require, twenty feet in width, the middle point of which shall be as nearly as practicable at the middle point of the highway and such grade shall be of such slope as shall be necessary for the safety and convenience of the traveling public.

2. Plank shall be firmly spiked on and for the full length of the ties used in the roadbed of such railway where such crossing occurs and shall be laid not more than one inch apart except where the rail prevents; the plank next inside of the rail shall not be more than two and one-half inches from the inside surface of such rail and the plank used in the crossing shall not be less than three inches in thickness and so laid that the upper surface of the plank shall be on a level with the upper surface of the rail; such plank shall extend along the railway the entire width of the highway grade and in no case less than twenty feet. [R. C. 1905, § 4321; 1890, ch. 127, § 2; R. C. 1895, § 3001.]

§ 4688. **Penalty for violation.** Any railroad company which shall violate any of the provisions of the last two sections shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars and shall be liable for all damages caused thereby. [R. C. 1905, § 4322; 1890, ch. 127, § 5; R. C. 1895, § 3002.]

ARTICLE 16.—SAFETY DEVICES BY RAILROAD COMPANIES.

§ 4689. **Complaint.** Upon written complaint authorized by a majority vote of all the members of the city council being filed with the railroad commissioners of this state by the chief executive officer of any village or city in the state of North Dakota on its behalf, that the crossing of any railroad company, naming it, with any street in said village or city, describing it as dangerous to life and property and giving the reason thereof, said railroad commissioners shall forthwith investigate the same, and to that end shall have at least one (1) public hearing in the village or city making such complaint, at a time to be fixed by said commissioners, and a place to be held upon notice to be given by said railroad commissioners to all parties interested, and shall be held in not less than thirty (30) nor more than sixty (60) days after the date of filing of such complaint. [1911, ch. 239, § 1.]

§ 4690. **Findings, how certified.** Within ten (10) days after such public hearing said commissioners, by a majority vote of the members thereof, shall decide the matter set forth in said complaint, and shall make a report in writing in respect thereto, which shall include the findings of fact which the conclusions of the commissioners are based upon, together with the recommendation of said commissioners as to what kind of safety device, if any, should be installed at said crossing to make the same safe to life and property. Said findings shall be in writing and signed by the members of said commission in favor thereof, and shall be filed with the secretary of said commission and entered for record in his office. If said commission shall find in favor of further protection for said crossing it shall issue an order to the railroad company named in said petition directing said railroad company within sixty (60) days after such order to establish and thereafter maintain at such crossings such gates, flagmen or safety devices as such commission may therein direct, and such as will render such crossing safe to life and property. Service of such order shall be made upon any railroad company in the same manner as a summons in a civil action is served. [1911, ch. 239, § 2.]

Power of municipality to require safety gates at crossing. 3 L.R.A.(N.S.) 141.

Delegation of power to make regulations as to safety gates and flagman. 32 L.R.A.(N.S.) 646.

Violation of police ordinance as to flagman or safety gates as ground for private action. 5 L.R.A.(N.S.) 245.

§ 4691. **Order.** Whenever any such order is made such railroad company may appeal therefrom in the same manner as appeals are allowed to be taken

from orders made by said commission fixing rates of railroad companies, and where no appeal is taken the order of the commission may be enforced by the attorney-general the same as orders relating to the control of railroads. [1911, ch. 239, § 3.]

§ 4692. Appeal. In addition to the foregoing, any railroad company failing to comply with the order of said commission if not appealed from as hereinbefore provided, or if appealed from and confirmed on appeal shall be liable to a penalty of fifty dollars (\$50) per day for each and every day that said railroad company does not so conform to said order, to be recovered as damages in a civil action by and for the benefit of the village or city making such complaint. [1911, ch. 239, § 4.]

§ 4693. Flagman. Whenever it shall appear that owing to any construction work or repair work, or for any other cause an unusual number of trains are being operated in or through any village or city in this state, the state railroad commissioners shall have the power, upon complaint by any village or city council through its chief executive officer to compel the installation of a flagman or flagmen, as the case may be, without a hearing, and such order shall be complied with within five days; provided, that such railroad companies may remove such flagmen whenever the movement of trains through such village or cities assumes its normal conditions. [1911, ch. 239, § 5.]

ARTICLE 17.—HEADLIGHTS ON LOCOMOTIVES.

§ 4694. Railroads. Employees, who. The provisions of this article shall apply to any common carrier or carriers, their officers, agents and employes engaged in the transportation of passengers or property by a railroad in the state of North Dakota. The term "railroad" as used in this article shall include all roads in use by common carriers operating a railroad, whether owned or operated under a contract, agreement or lease; and the term "employees" as used in this article, shall be held to mean persons who are engaged in or connected with the movement of any trains. Provided, however, that in passing through or working within the yard limits of any station or terminal a light of lesser candle power may be used. [1913, ch. 233, § 1.]

§ 4695. Steam locomotives. Headlights. That from and after the first day of July, 1914, it shall be unlawful for a common carrier, its officers and agents subject to this article, to use any locomotive engine propelled by steam in moving traffic or in the transportation of passengers or property within this state in main line service, between the hours of sunset and sunrise, unless said locomotive engine shall be equipped with a headlight of at least 1,200 candle power of light, when measured without the aid of a reflector. Provided, however, that in passing through or working within the yard limits of any station or terminal a light of lesser candle power may be used. Provided, however, that said common carrier may use its switch engines for switching purposes only, without having provided the same with a headlight as herein required, if said carrier shall so determine. Provided, that this article shall not apply to any engine, the equipment of which shall have failed during the trip, if it is shown that the equipment was in efficient and effective working condition when the trip was begun. [1913, ch. 233, § 2.]

Liability for killing or injuring live stock on railroad track because of lack of proper headlight. 39 L.R.A.(N.S.) §71.

§ 4696. Penalty. That any common carrier or carriers violating this article, or any provision thereof, shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered in a suit to be brought by the attorney-general of the state of North Dakota; and it shall be the duty of such attorney-general to bring suit upon duly verified information being lodged with him that such violations have occurred. [1913, ch. 233, § 3.]

§ 4697. Cumulative. No repeal. Nothing in this article contained shall in any manner be construed as repealing, on (or) in any manner altering any

other act or part of acts heretofore adopted by the legislature of this state; but the remedies herein provided shall be cumulative and in addition to all other requirements now existing in relation thereto. [1913, ch. 233, § 4.]

ARTICLE 18.—RAILROADS, CLEARANCE OF OBSTRUCTIONS.

§ 4698. To whom applicable. That the provisions of this article shall apply to any railroad corporation or to any person or persons while engaged as common carriers in the transportation by railroad of passengers or property within the state, to which the regulative power of this state extends. [1913, ch. 230, § 1.]

§ 4699. When to take effect, size of engines, motors and cars, and what exempt. That on and after the first day of January, 1915, it shall be unlawful for any such common carrier to haul or permit to be hauled or used on its lines, any engine, motor or car used in commerce to which this article applies or to which the regulative power of this state extends, which shall exceed a maximum width of ten feet and six inches over all its widest outside dimension, or which shall exceed a maximum height of fourteen feet and two inches, measured from the top of the track rail to the top of the car loaded or empty without extending the clearance as provided for in section 4700 in the same proportion, unless authorized by the railroad commissioners; and the provisions of this section shall not apply to the loaded contents of open flat cars and cars without roofs and foreign cars, wrecking cars, snow plows, pile drivers and caboose cupolas. Provided, however, this shall not apply to rolling stock now in service. [1913, ch. 230, § 2.]

§ 4700. Clearance required. That on or after the first day of January, 1915, it shall be unlawful for any such common carrier to erect or maintain on any standard gauge road on its line or on any standard gauge side track used in connection therewith, for use in any traffic mentioned in section 4698, any coal chute, stock pen, pole, mail crane, stand pipe, hog drencher, embankment of earth or natural rock, or any fixed or permanent structure or obstruction upon its line of railroad, or on any side track used in connection therewith at a distance less than eight feet, measured from the center line of track, which said structure or obstruction adjoins on standard gauge roads; nor shall any overhead wires, bridges, viaducts or other obstructions passing over and above its tracks, as aforesaid, be maintained at a less height than twenty-one feet, measured from the top of the track rail; provided, that station freight house platforms which have a vertical height of not more than four feet, measured from the top of the track rail, may be erected and maintained at a less distance from the center of the track which they may adjoin than herein specified. Provided, further, that this article shall not apply to any warehouse, storehouse, elevator or other permanent structure now situated or located upon the right of way of any railroad in this state, which is leased, owned or used by any person or corporation doing business with any railroad, or any railroad terminal or yard now established. And provided, further, that this article shall not apply to loading platforms erected at sidings or stations between terminals now in use. [1913, ch. 230, § 3.]

§ 4701. Report of obstructions. How made. That on or before the first day of January, 1914, every common carrier subject to the provisions of this article, shall report to said railroad commission the number of coal chutes, bins, stock chutes, standpipes, hog drenchers, embankments of earth or natural rock or other fixed and permanent structure or obstruction overhead or otherwise upon its line of railroad that do not conform with the minimum clearance line specified in sections 4699 and 4700, giving exact location and kind of such structures and the material used in their construction; also the reason, if any, why such structures, or any of them, should not be made to conform to the clearance established by this article; and the said railroad commission is hereby authorized, after a thorough investigation, to exempt

from the provisions of this article any warehouse, storehouse, permanent structure, elevator, loading or unloading platform, bridge, tunnel, retaining wall of masonry, embankment of earth, natural rock or permanent overhead structure or any obstruction erected or established prior to the passage of this article, that is in closer proximity to the tracks of such carrier than minimum side and top clearance specified by this article. [1913, ch. 230, § 4.]

§ 4702. Distance between tracks. That on and after the first day of January, 1915, it shall be unlawful for any such common carrier to construct any track used for the purpose of switching or moving any cars engaged in the movement of traffic within the regulative power of this state, where the center line of such track is at a distance of less than 13 feet from the center line of any other parallel track which it adjoins; provided, that the distance between said tracks specified in this section may be diminished or closed up a necessary distance from track intersections, turnouts and switch points. [1913, ch. 230, § 5.]

§ 4703. Obstructions to be removed. It shall be unlawful for any such common carrier to permit the space between such of its tracks as are ordinarily used by yard men and their employes in the discharge of their duties, to become or remain obstructed by any obstacle that will interfere with the work of said employes or subject such employes to unnecessary hazard. Such space between said tracks as aforesaid, and between the rails of said track must be kept in such condition as to permit said employes to pass safely over and between said tracks or to use the same day or night and under all weather conditions, without unnecessary hazard. [1913, ch. 230, § 6.]

§ 4704. Penalty. That any common carrier subject to the provisions of this article violating any of the provisions thereof, shall be liable to a penalty of one hundred dollars for each and any such violation; and each day that any locomotive engine or car is operated or used, or structure or obstruction is maintained in violation of this article, shall constitute a separate offense; such penalty to be recovered in a suit or suits to be brought by the state's attorney in the district court having jurisdiction in the locality where such violation shall have been committed, and it shall be the duty of said state's attorney under the direction of the railroad commission to bring such suits upon duly verified information being lodged with him by any person of such violation being committed, and it shall also be the duty of such railroad commission to lodge with such state's attorney information of any such violation as may come to its knowledge. [1913, ch. 230, § 7.]

§ 4705. Contributory negligence cannot be charged. That any employe of such common carrier who, while in the performance of his duty and while engaged in any commerce mentioned, subject to the regulative power of this act in section 4698, may be injured or killed by any locomotive, car, structure or obstruction used or retained contrary to the provisions of this article, shall not be deemed to have assumed the risk thereby occasioned or to have been guilty of contributory negligence, although the employe continued in the employ of such common carrier after the unlawful use of such locomotive, car, permanent overhead structure, or obstruction of any kind or character mentioned in this article shall have been brought to his knowledge; and the retention under the exemption authorized in section 4701 shall be at the sole risk of the carrier, and the permission granted in this article to the carrier to construct station or freight house platforms four feet high measured from the top of the track rail and near to the center line of the track or tracks as provided in section 4700, shall be at the sole risk of carrier, as aforesaid in this section. [1913, ch. 230, § 8.]

ARTICLE 19.—TRANSFER FACILITIES.

§ 4706. Transfer facilities. All common carriers, doing business in the state of North Dakota, shall provide at all points of connection, crossing or

intersection at grade where it is practicable and necessary for the interest of traffic, ample facilities by track connections for transferring any cars used in the regular business of their respective lines of road, from their lines or tracks to those of any other common carrier whose lines or track may connect with, cross or intersect their own, and shall provide equal and reasonable facilities for the interchange of cars and traffic between their respective lines, and for the receiving, forwarding and delivering of property and cars to and from their several lines and those of other common carriers connecting therewith, and shall not discriminate in their rate or charges between such connecting lines, or on freight coming over such lines; but this shall not be construed as requiring any common carrier to furnish for another common carrier its tracks, equipment or terminal facilities without reasonable compensation. Each of said connecting lines shall pay its proportionate share for the building and maintenance of such track and switches as may be necessary to furnish the transfer facilities required by this article, and in case they cannot agree on the amount which each line shall pay, then said amount shall, upon application by either party, be determined and adjusted by the board of railroad commissioners, and either party shall have the right to appeal from the order of said board, fixing the amount so to be paid, to the district court of the county where said transfer facilities are furnished, by serving a notice in writing on the adverse party within ten days after the making and filing of such order by said board, and upon the service of such notice there shall be pending in said district court a civil action for the adjustment and determination of the amount to be paid by each carrier for the expense of the building and maintenance of such transfer facilities. Pleadings shall be made, served and filed in said action in conformity to those required by law and rules of practice in said court, and said cause shall be tried in the manner provided for the trial of civil actions in the district courts of this state. [R. C. 1905, § 4323; 1901, ch. 195.]

ARTICLE 20.—COOPERAGE OF CARS.

§ 4707. Carriers to furnish lined or coopered cars to grain or flour shippers. Every railroad corporation or common carrier doing business in this state shall when requested by any shipper of wheat, flax or other grain, flour or flour mill products, furnish to such shipper a box car or box cars properly lined or coopered for receiving and containing the kind of grain flour or flour mill products sought to be shipped and if such railroad, railroad corporation or common carrier shall furnish any car not so lined or coopered to such shipper and shall fail to prepare and put in readiness such car within four hours after notice by such shipper to its agent at point of shipment that such car is not in proper condition such shipper may repair such car at his own expense and recover such sum so expended in a civil action against such railroad corporation or common carrier. [1913, ch. 234.]

ARTICLE 21.—TO REGULATE COMMON CARRIERS AND DEFINE THE DUTIES OF THE COMMISSIONERS OF RAILROADS.

§ 4708. To whom article applies. The provisions of this article shall apply to the transportation of passengers, property and the transmission of messages between points within this state, and to the receiving, switching, delivering, storing and hauling of such property and receiving and delivering and carrying all messages and of all charges connected therewith, including icing and mileage charges, and shall apply to all railroad corporations, express companies, car companies, freight and freight-line companies and to all associations of persons, whether incorporated or otherwise, that shall do business within this state and to any common carrier within the state that shall do business upon or from any line or railroad within the state and to any common carrier engaged in the transportation of persons or property wholly by rail or partly by rail or water. The term "common carrier" whenever used

in this article shall be construed to include telephone and telegraph companies and associations engaged in the receiving, transmitting and delivering of messages. [1911, ch. 255, § 1; R. C. 1905, § 4324; 1897, ch. 115, § 14; R. C. 1899, § 3011.]

Has no application to interstate commerce. *House v. Chicago & N. W. R. Co.*, 30 S. D. 321, 138 N. W. 809.

§ 4709. Railroad and transportation defined. The term "railroad" as used in this article shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation, receiver, trustee or other person used as a common carrier or operated as a railroad, whether owned or operated under contract, agreement, lease or otherwise, and the term "transportation" shall include all the instrumentalities of shipment or carriage, and the term "railroad corporation" contained in this article shall be deemed and taken to mean all corporations, companies or individuals now owning or operating or using or which may hereafter own, operate or use as a common carrier any railroad operated by steam in whole or in part in this state, or leases cars by whatever name known for the purpose of transportation; and the provisions of this article shall apply to all persons, firms and companies and to all associations of persons whether incorporated or otherwise that shall do business as common carriers upon any of the lines of railway operated by steam in this state the same as to railroad corporations herein mentioned. Nothing in this article shall be construed to stop or hinder any persons or corporations from bringing suit against any railroad company for any violation of any of the laws of this state or of the United States for the government of railroads, except as hereinafter provided. [R. C. 1905, § 4325; 1897, ch. 115, §§ 10, 14; R. C. 1899, §§ 3012, 3013.]

§ 4710. Duty of railroad to furnish and transport cars. It shall be the duty of any railroad corporation, when within its power to do so, and upon reasonable notice, to furnish suitable cars to any and all persons who may apply therefor, for the transportation of any and all kinds of freight or express, and to receive and transport such freight with all reasonable dispatch, and to provide and keep suitable facilities for the receiving and handling the same at any depot or receiving office of such corporation on the line of its road; and also to receive and transport in like manner the empty or loaded cars, furnished by any connecting road, to be delivered at any station on the line of its road, to be loaded or discharged, or reloaded and returned to the road so connecting; and for compensation it shall not demand or receive any greater sum than is accepted by it from any other connecting railroad for a similar service. [R. C. 1905, § 4326; 1897, ch. 115, § 5; R. C. 1899, § 3014.]

Statutory duty of railroad company to furnish cars. 43 L.R.A. 225.

Right of state to require railroad company to equip its road. 13 L.R.A.(N.S.) 320.

State regulations requiring carriers to furnish cars to shippers as interference with interstate commerce. 17 L.R.A.(N.S.) 364; 29 L.R.A.(N.S.) 802; 42 L.R.A.(N.S.) 984.

Mandamus to compel performance of duties by railroad. 37 Am. St. Rep. 321.

§ 4711. Charges to be reasonable. All charges made for any service rendered or to be rendered by any railroad, railroad corporation or common carrier subject to the provisions of this article, in the transportation of passengers or property in this state as aforesaid, or in connection therewith, or for the receiving, delivering, storage or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful. [R. C. 1905, § 4327; 1897, ch. 115, § 6; R. C. 1899, § 3015.]

Recovery back of excessive freight paid. 18 L.R.A.(N.S.) 124.

§ 4712. Penalty for extortion or unjust discrimination. Any railroad, railroad corporation or common carrier, which shall violate any of the provisions of this article, as to extortion or unjust discrimination, shall forfeit for every such offense to the person, company or corporation aggrieved thereby three times the actual damages sustained or overcharges paid by said party

aggrieved, together with the cost of suit and a reasonable attorney's fee to be fixed by the court, and if an appeal be taken from the judgment or any part thereof, it shall be the duty of the appellate court to include in the judgment an additional reasonable attorney's fee for service in the appellate court or courts, or the same may be recovered in a civil action therefor. And in all cases where complaint shall be made, in accordance with the provisions of this article, that an unreasonable charge is made, the commissioners shall require a modified charge for the service rendered, such as they shall deem to be reasonable, and all cases of a failure to comply with the recommendation of the commissioners shall be embodied in the report of the commissioners to the governor; and the same shall apply to any unjust discrimination, extortion or overcharge by said railroad, railroad corporation or common carrier or other violation of law. [R. C. 1905, § 4328; 1897, ch. 115, § 7; R. C. 1899, § 3016.]

§ 4713. **Examination of rates.** It shall be the duty of said commissioners upon the complaint and application of the mayor and aldermen of any city or the president and trustees of any incorporated town or the supervisors of any township, to make an examination of the rate of passenger fare, express or freight tariff charged by any railroad, railroad corporation or common carrier, subject to the provisions of this article, and of the condition or operation of any railroad, railroad corporation or common carrier, any part of whose location or route lies within the limits of such city, town or township, and if twenty-five or more legal voters in any city, town or township shall, by petition in writing, request the mayor and aldermen of such city, the president and trustees of such town or the supervisors of such township, to make said complaint and application, and the said mayor and aldermen, president and trustees or supervisors refuse or decline to comply with the prayer of the petition, they shall state the reason for such noncompliance in writing upon the petition, and return the same to the petitioners; and the petitioners may thereupon, within ten days from the date of such refusal and return, present such petition to said commissioners and said commissioners shall, if upon due inquiry and hearing of the petitioners, they think the public good demands the examination, proceed to make it in the same manner as if called upon by the mayor and aldermen of any city, the president and trustees of any town or the supervisors of any township. Before proceeding to make such examination, in accordance with such application or petition, said commissioners shall give to the petitioners and the railroad, railroad corporation or common carrier reasonable notice, in writing, of the time and place of entering upon the same. If, upon such an examination, it shall appear to said commissioners that the complaint alleged by the applicant or petitioners is well founded, they shall so adjudge, and shall inform the corporation operating such railroad or such railroad corporation or common carrier of their adjudication within ten days and shall also report their doings to the governor, as provided in section 4748. [R. C. 1905, § 4329; 1897, ch. 115, § 8; R. C. 1899, § 3017.]

§ 4714. **Ample facilities for transferring.** All railroads, railroad corporations and common carriers subject to the provisions of this article, shall according to their respective powers afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and switching of cars, and the receiving, forwarding and delivering of passengers and property to and from their several lines; and to and from other lines and places connected therewith; and shall not discriminate in their accommodations, rates and charges between such connecting lines. Any railroad, railroad corporation or common carrier may be required to switch and transfer cars for another for the purpose of being loaded or unloaded, upon such terms and conditions as may be prescribed by the board of commissioners of railroads. [R. C. 1905, § 4330; 1897, ch. 115, § 16; R. C. 1899, § 3018.]

Right of carrier as to furnishing equal connecting facilities to different carriers. 12 L.R.A.(N.S.) 513.

Right of carrier to grant exclusive train privilege to baggage or passenger transfer companies. 32 L.R.A.(N.S.) 1181.

Right of railroad to give exclusive or preferential facilities to an express company for express business. 5 L.R.A.(N.S.) 783.

Duty of railroad company to give equal facilities to express companies. 18 L.R.A. 393.

§ 4715. Shall furnish, start and run cars without delay. Every common carrier operating a railway in this state shall without unreasonable delay furnish, start and run cars for the transportation of persons and property, which within a reasonable time theretofore is offered for transportation at any of its stations on its line of road and at the junctions of other railroads and at such stopping places as may be established for receiving and discharging passengers and freights; and shall take, receive, transport and discharge such passengers and property at, from and to such stations, junctions and places on and from all trains advertised to stop at the same for passengers and freight respectively, upon the due payment or tender of payment of tolls, freight or fare therefor, if such payment is demanded. [1913, ch. 238, § 1; R. C. 1905, § 4331; 1890, ch. 122, § 3; R. C. 1895, § 3019.]

The preamble to this act amending R. C. 1905, § 4331, is as follows: "Whereas, section 2261 of the Revised Codes of North Dakota of 1905 [section 3125 herein] confers upon the commissioners of railroads the right to require railroad companies to construct and maintain a side track for the use of shippers between regular stations, where such stations are ten miles or more apart; and,

"Whereas, the last clause of section 4331 of the Revised Codes of North Dakota of 1905 is in apparent conflict with said section 2261; now, therefore," etc. Section 2 of the act repeals all acts or parts of acts in conflict therewith, "except section 2261 of said Revised Codes" [section 3125 herein].

§ 4716. Time schedule of trains. Every corporation, company or person, operating a railroad within this state, shall, immediately after the taking effect of this act [sections 4716, 4717], cause to be placed in a conspicuous place in each passenger depot of such company, located at any station in this state, at which there is a telegraph office, a blackboard of suitable size, upon which such company or person shall cause to be written, at least thirty minutes before the schedule time for the arrival of each passenger train stopping upon such route at such station, the fact whether such train is on schedule time or not, and if late, how much, and the figures on said blackboard shall be changed at intervals of one hour to correspond with the facts until the arrival of such delayed train; provided, also, that any passenger trains not more than fifteen minutes late shall be deemed to be on time as to the operation of this act. [1907, ch. 201, § 1.]

§ 4717. Penalty for false reports or failure to bulletin trains. For each violation of the provisions of this act [sections 4716, 4717] in failing to report, or in making a false report, such corporation, company or person, so failing or refusing to comply with the provisions of this act, shall forfeit and pay the sum of twenty-five dollars, together with all taxable costs, to be recovered in a civil action to be prosecuted by the state's attorney of the county in which the neglect or refusal occurs, in the name of the state of North Dakota, which shall be paid over to the county in which such proceedings are had, and shall be a part of the common school fund. [1907, ch. 201, § 2.]

§ 4718. Continuous shipments. It shall be unlawful for any railroad, railroad corporation or common carrier subject to the provisions of this article, to enter into any combination, contract or agreement, expressed or implied, to prevent by change in time schedules, carriage in different cars or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination in this state; and no break of bulk, stoppage or interruption made by such railroad, railroad corporation or common carrier shall prevent the carriage of freight from being, and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage or interruption was made in good

faith for some necessary purpose and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this article. [R. C. 1905, § 4332; 1897, ch. 115, § 20; R. C. 1899, § 3020.]

§ 4718a. No preference or advantage. It shall be unlawful for any railroad, railroad corporation or common carrier, subject to the provisions of this article, to make or give any preference or advantage to any particular person, company, firm, corporation or locality or any particular description of traffic, in any respect whatsoever or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic to any prejudice or disadvantage in any respect whatsoever; provided, however, that nothing herein shall be construed to prevent any railroad, railroad corporation or common carrier from giving preference as to time of shipment of live stock, uncured meats and other perishable property. [R. C. 1905, § 4333; 1897, ch. 115, § 16; R. C. 1899, § 3021.]

This section does not invalidate a contract made by a circus company in consideration of reduced rates to absolve the carrier from liability for damages caused by the carrier's negligence. *Sager v. Northern Pac. R. Co.*, 166 Fed. 526.

Carrier's discrimination against colored persons. 18 L.R.A. 639.

Right of carrier at common law to discriminate between shippers. 18 L.R.A. 105.

Liability of lessor of railroad for discrimination by lessee against shippers. 40 L.R.A.(N.S.) 519.

Carrier's discrimination as to pens and yards for live stock at stations. 44 L.R.A. 296.

Discrimination in furnishing cars to shippers. 8 L.R.A.(N.S.) 112.

Right of carrier to discriminate as to special or unusual service. 12 L.R.A.(N.S.) 506.

Discrimination by requiring prepayment of freight charges. 21 L.R.A.(N.S.) 982.

Carrier's right to make discriminating rate for material to be employed in manufacture of a finished product which will be shipped over its road. 6 L.R.A.(N.S.) 225.

§ 4719. What constitutes unjust discrimination. If any railroad, railroad corporation or common carrier subject to the provisions of this article shall directly or indirectly, by any special rate, rebate, drawback or other device charge, demand, collect or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property subject to the provisions of this article, than it charges, demands, collects or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic, it shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared unlawful; this section, however, is not to be construed as prohibiting a less rate per one hundred pounds in a carload lot than is charged, collected or received from the same kind of freight in less than a carload lot. [R. C. 1905, § 4334; 1897, ch. 115, § 15; R. C. 1899, § 3022.]

§ 4720. Long and short hauls. It shall be unlawful for any railroads, railroad corporations or common carriers, subject to the provisions of this article, to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of a like kind of freight or property, for a shorter than for a longer distance over its railroads, all or any portion of the shorter haul being included within the longer; and said railroad, railroad corporations or common carriers shall charge no more for transporting passengers or freight to or from any point on its railroads than a fair and just rate as compared with the price it charges for the same kind of transportation to or from any other point; provided, that all the provisions of this section shall apply to the transportation of passengers and all kinds of freight and property shipped and transported over one or more connecting lines; provided, further, that such connecting lines shall transfer car lots without extra compensation, and shall transfer less than car lots at actual cost for such transfer; and provided, further, that rates shall be made and published by such connecting lines for such continuous shipment upon demand of any shipper or shippers and that such rates so made by two or more connecting lines shall be no greater in the aggregate than the rate would be if shipped continuously upon

one line of road. [R. C. 1905, § 4335; 1897, ch. 115, § 17; R. C. 1899, § 3023; 1903, ch. 143.]

§ 4721. Freight pooling. It shall be unlawful for any railroad, railroad corporation or common carrier, subject to the provisions of this article, to enter into any contract, agreement or combination with any other railroad, railroad corporation or common carrier for the pooling of freight of different and competing railroads or railroad corporations or common carriers, or divide between them the aggregate or net proceeds of the earnings of such railroads or railroad corporations or common carriers or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense. [R. C. 1905, § 4336; 1897, ch. 115, § 18; R. C. 1899, § 3024.]

§ 4722. Distribution of cars. When any railroad company doing business in this state shall be unable from any reasonable cause to furnish cars at any railway station or side track in accordance with the demands made by all persons demanding cars at such station or side track for the shipment of freight in carload lots, such cars as are furnished shall be divided daily equally among the applicants in the order of their application until each shall have received one car, when the remainder shall be divided ratably among the several shippers in the proportion that the carload lots of freight offered by each bear to the entire number of carload lots of freight offered at such station or side track on that day; provided, that every application made in good faith on an earlier day shall be filled before supplying any to any applicant of a succeeding day. [R. C. 1905, § 4337; 1899, ch. 110, § 7; R. C. 1895, § 3025.]

Discriminating in furnishing cars to shippers. 44 L.R.A.(N.S.) 648.

§ 4723. But one terminal charge for switching or transferring. There shall in no case be more than one terminal charge for switching or transferring any car, whether the same is loaded or empty, within the limits of any one city or town. If it is necessary for any car to pass over the tracks of more than one company within such city or town limits in order to reach its final destination or to be returned therefrom to its owner or owners, then the company first switching or transferring such car shall be entitled to receive the entire charge to be made therefor and shall be liable to the company or companies doing the subsequent switching or transferring thereof for its or their reasonable and equitable share of the compensation received and if the companies so jointly interested therein cannot agree upon the share thereof which each is entitled to receive, the same shall be determined by the commissioners of railroads, whose decision thereon shall be final and conclusive upon all parties interested and the said commissioners are authorized to establish such rules and regulations in that behalf as to them may seem just and reasonable and not in conflict with this article. [R. C. 1905, § 4338; 1890, ch. 122, § 7; R. C. 1899, § 3026.]

§ 4724. Schedules of rates and fares. Every railroad, railroad corporation or common carrier, subject to the provisions of this chapter, shall print and keep for public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such railroad, railroad corporation or common carrier has established, and which are in force at the time upon its railroads as defined by this chapter. The schedules printed as aforesaid by any such railroad, railroad corporation or common carrier shall plainly state the places upon its railroads between which property and passengers will be carried and shall contain the classification of freight or express in force upon it, and shall also state separately any terminal charges and any rules or regulations which in any wise change, affect or determine any part of the aggregate of such aforesaid rates, fares and charges. Such schedules shall be plainly printed in large type of at least the size of ordinary pica, and a copy for the use of the public shall be kept in every freight, express or receiving office or passenger station of such railroad, rail-

road corporation or common carrier where it can be conveniently inspected, and it shall keep a printed notice posted in every such office and passenger station indicating where therein such schedules can be found. [R. C. 1905, § 4339; 1897, ch. 115, § 19; R. C. 1899, § 3027.]

§ 4725. Notice of changes in schedules. No advance shall be made in the rates, fares and charges which have been established and published as aforesaid by any railroad, railroad corporation or common carrier in compliance with the requirements of this article, except after ten days' notice in writing to the commissioners of railroads, which shall plainly state the changes proposed to be made in the schedules then in force and the time when the increased rates, fares or charges will go into effect; and the proposed charges shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept for public inspection. Reduction in such published rates, fares or charges may be made without previous notice, but whenever any such reduction is made, notice of the same shall immediately be publicly posted, and the change made shall immediately be made public by printing new schedules, or shall immediately be plainly indicated upon the schedules at the time in force and kept for public inspection. [R. C. 1905, § 4340; 1897, ch. 115, § 19; R. C. 1899, § 3028.]

§ 4726. No charge greater than the schedule. When any such railroad, railroad corporation or common carrier shall have established and published its rates, fares and charges, in compliance with the provisions of this article, it shall be unlawful for it to charge, demand, collect or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any service in connection therewith than is specified in such published schedule of rates, fares and charges as may at the time be in force. [R. C. 1905, § 4341; 1897, ch. 115, § 19; R. C. 1899, § 3029.]

§ 4727. Schedules and contracts to be filed. Every railroad, railroad corporation or common carrier subject to the provisions of this article shall file with the board of commissioners of railroads of this state copies of its schedules of rates, fares and charges which have been established and published in compliance with the requirements of this article, and shall promptly notify said commissioners of all changes made in the same. Every such railroad, railroad corporation or common carrier shall also file with said commissioners copies of all contracts, agreements or arrangements with other railroads, railroad corporations or common carriers in relation to any traffic affected by the provisions of this article to which it may be a party. In cases where passengers and freight pass over continuous lines or routes in this state operated by more than one person or company and the several railroads, railroad corporations or common carriers operating such lines or routes have established joint tariffs or rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also in like manner be filed with said commissioners. Such joint rates, fares and charges on such continuous lines so filed as aforesaid shall be made public by such railroads, railroad corporations or common carriers when directed by said commissioners, in so far as may, in the judgment of the commissioners, be deemed practicable; and said commissioners shall, from time to time, prescribe the measures of publicity which shall be given to such rates, fares and charges, or to such parts of them as they may deem it practicable for such railroads, railroad corporations or common carriers to publish and the places in which they shall be published; but no railroad, railroad corporation or common carrier, party to any such joint tariff shall be liable for the failure of any other railroad, railroad corporation or common carrier party thereto, to observe and adhere to the rates, fares or charges thus made and published. If any such shall neglect or refuse to file or publish its schedules or tariff of rates, fares and charges as provided in this article or any part of the same, it shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus to be issued

by any district court of this state in the judicial district wherein such offense may be committed. And if such railroad, railroad corporation or common carrier be a foreign corporation then such writ may be issued by any district court, in the judicial district where such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this article, and such writ shall issue in the name of the state of North Dakota at the relation or upon the petition of the said board of commissioners of railroads of this state; and failure to comply with its requirements shall be punishable as and for a contempt; and shall make said railroad, railroad corporation or common carrier liable to a penalty of five hundred dollars for each day's failure to comply therewith and when any such writ of mandamus shall be so applied for by said commissioners, no bond shall be required of them by any court or judge, in which or before whom any such application may be made. [R. C. 1905, § 4342; 1897, ch. 115, § 19; R. C. 1899, § 3030.]

§ 4728. **Commissioners to make and revise schedules.** The board of railroad commissioners shall have power to prescribe just and reasonable classifications of freight and to fix and prescribe just and reasonable schedules of charges for the transportation of intra-state freight and intra-state passengers, for sleeping car accommodations, for goods and all matter of every kind carried by express companies within this state, for the transmission of messages by telegraph and telephone companies and for the use of telephone lines within the state. The commissioners shall also have the power to make just and reasonable regulations for the apportionment of all such charges between two or more companies jointly engaged in the transportation of freight, passengers, express matter, telegraph or telephone messages and it shall be the duty of said commissioners to prepare such schedules and classifications; and said schedules so made by said commissioners shall in all suits brought against any such railroad, railroad corporation or common carriers, wherein is in any way involved the charges of any such railroad, railroad corporation or common carriers, for the transportation of any passenger, freight property or cars or unjust discrimination in relation thereto, be deemed and taken in all courts of this state as prima facie evidence that the rates therein fixed are reasonable and just maximum rates or charges for the transportation of passengers, freight, property and cars upon railroads or the transmission of messages by telephone or telegraph for which said schedules may have been respectively prepared. Said commissioners shall from time to time, but not oftener than once in six months, unless upon appeal from the order fixing such rate the court should modify or reverse such order, and then only to the extent made necessary by such modification or reversal, change and revise said schedules. When any schedule shall have been made or revised as aforesaid, it shall be the duty of said commissioners to forthwith serve a copy of said schedule upon such railroad, railroad corporation or common carrier affected thereby and a notice stating when such schedule shall go into effect, and to cause notice thereof to be published for two successive weeks in one public newspaper published in each judicial district in this state which notice shall state the fact that a new schedule has been made and the date of the taking effect of said schedule; and said schedule shall take effect at the time so stated in such notice and a printed copy of said revised schedule shall be conspicuously posted by such railroad, railroad corporation or common carrier in each freight, express or receiving office and passenger depot upon its line or lines. All such schedules, so made, shall be received and held in all such suits as prima facie the schedule of said commissioners without further proof than the production of the schedule desired to be used as evidence, with a certificate of said commissioners of railroads, that the same is a true copy of the schedule prepared by them for the railroad, railroad corporation or common carrier therein named, and that notice

of the making of the same has been published as required by law, provided, that before finally fixing and deciding what the original maximum rates and classifications shall be, it shall be the duty of the commissioners of railroads to cause notice of such meeting to be given each common carrier affected thereby by mailing a notice thereof addressed to the managing officer thereof at the address given in the last report of such common carrier to the secretary of state, or to such address as may have been given to and filed with said commission, at least thirty days before the date of said hearing, and to publish ten days' notice in two daily papers published in the state setting forth in such notice that at a certain time and place they will proceed to fix and determine such maximum rates and classifications; and they shall at such time and place and as soon as practicable afford to any person, firm, corporation, railroad, railroad corporation or common carrier who may desire it, an opportunity to make an explanation or showing or to furnish information to said commissioners on the subject of determining and fixing such maximum rates, fares and classifications; and a schedule of rates, fares and classifications of freights or property on all lines of railroad, railroad corporations or common carriers, subject to this article in North Dakota shall be fixed within sixty days from the taking effect of this article. [1911, ch. 255, § 2; R. C. 1905, § 4343; 1897, ch. 115, § 29; R. C. 1899, § 3031.]

Reasonableness of rates determined by comparison of gross receipts with cost of doing business. *C. M. & St. P. Ry. Co. v. Tompkins*, 176 U. S. 167, 44 L.ed. 417, 20 Sup. Ct. Rep. 336.

Business of carriers affected with a public interest subjecting them to regulation and control in respect to rates or prices. 6 L.R.A.(N.S.) 834.

Legislative power to regulate rates. 33 L.R.A. 179.

Delegation by legislature of power to fix rates. 18 L.R.A.(N.S.) 713; 32 L.R.A.(N.S.) 649.

Elements entering into determination of reasonableness of railroad rates prescribed by the state for local traffic. 15 L.R.A.(N.S.) 108; 25 L.R.A.(N.S.) 1001.

§ 4729. Complaint of violation of schedule. Whenever any person upon his own behalf, or class of persons similarly situated, or any firm, corporation or association, or any mercantile, agricultural or manufacturing society, or any body politic or municipal organization, shall make complaint to said board of commissioners of railroads that the rate charged or published by any railroad, railroad corporation or common carrier, or the maximum rate fixed by said commissioners in the schedule of fares or rates made by them under the provisions of section 4728 or the maximum rate that may now or may hereafter be fixed is unreasonably high or discriminating, it shall be the duty of said commissioners to immediately investigate the matter of such complaint. If such complaint appears to be well founded and not trivial in character, the board shall fix a day for hearing the same and shall notify such railroad, railroad corporation or common carrier of the time and place of such hearing by serving a notice properly directed on any division superintendent, general or assistant superintendent, general manager, president, secretary or agent of such railroad, railroad corporation or common carrier, which notice shall contain the substance of the complaint so made, and the board shall also notify the person or persons complaining of such time and place. [R. C. 1905, § 4344; 1897, ch. 115, § 30; R. C. 1899, § 3032.]

§ 4730. Hearing evidence. Upon such hearing so provided for the said commissioners shall receive whatever evidence, statements or arguments either party may offer pertinent to the matter under investigation; and the burden of proof shall not be held to be upon the person or persons making the complaint, but the commissioners shall add to the showing made at such hearing whatever information they may then have, or can secure from any source whatsoever, and the person or persons complaining shall be entitled to introduce any published schedule of rates of any railroad, railroad corporation or common carrier or evidence of rates actually charged by any railroad, railroad corporation or common carrier for substantially the same kind of

service, whether in this or in any other state, and the lowest rate published or charged by any railroad, railroad corporation or common carrier for substantially the same kind of service, whether in this state or in any other state, shall, at the instance of the person or persons complaining, be accepted as prima facie evidence of a reasonable rate for the services under investigation, and if the railroad, railroad corporation or common carrier complained of is operating a line of railroad beyond the state of North Dakota, or if it appears that it has a traffic arrangement with any such railroad, railroad corporation or common carrier, then the commissioners in determining what is a reasonable rate shall take into consideration the charge made, or rate established by said railroad, railroad corporation or common carrier, or the company with which it has traffic arrangements for carrying freight, passengers or property from beyond the state to points within the state, and from within the state to points beyond the state; and if such company be operating a line of railway beyond the state they shall also take into consideration the rate charged or established for a substantially similar or greater service by such company in any other state in which said railroad, railroad corporation or common carrier operates a line of railway. [R. C. 1905, § 4345; 1897, ch. 115, § 31; R. C. 1899, § 3033.]

§ 4731. Decision. After such hearing and investigation the said commissioners shall fix and determine the maximum charge to be thereafter made by the railroad, railroad corporation or common carrier complained of, and the said commissioners shall render their decision in writing; and shall spread the same at length in the record to be kept for that purpose. Such decision shall specifically set out the sums or rates which the railroad, railroad corporation or common carrier, so complained of, may thereafter charge or receive for the service therein named and include a classification of such freight or property; and the said commissioners shall not be limited in their said decision and the schedule to be contained therein to the specific case or cases complained of, but it shall be extended to all such rates between points in this state and whatever part of the line of railway of such company, railroad, railroad corporation or common carrier within this state as may have been fairly within the scope of such investigation; and any such decisions so made and entered on record of said commissioners, including any such schedules and classifications shall when duly authenticated, be received and held in all suits brought against any such railroad, railroad corporation or common carrier wherein is in any way involved the charges of any such railroad, railroad corporation or carrier mentioned in said decisions, in any of the courts of this state, as prima facie evidence that the rates therein fixed are reasonable maximum rates, the same as the schedules made by said commissioners as provided in section 4728; and the rates, charges and classifications so established after such hearing and investigation shall from time to time thereafter upon complaint duly made be subject to revision by said commissioners the same as any other rates, charges and classifications. [R. C. 1905, § 4346; 1897, ch. 115, § 32; R. C. 1899, § 3034.]

§ 4732. Decrees of commissioners enforced. The district courts of this state shall have jurisdiction to enforce, by proper decrees, injunctions and orders, the reasonable rulings, orders and regulations affecting public right, made or to be made by the board of commissioners of railroads, such as are now, or may hereafter be authorized to be made by them for the future direction and observance of railroads, railroad corporations or common carriers in this state. The proceedings shall be by equitable action in the name of the state of North Dakota, and shall be instituted by the attorney-general, whenever advised by the board of commissioners of railroads that any railroad, railroad corporation or common carrier is violating and refusing to comply with any rule, order or regulation made by such commissioners of railroads, and applicable to such railroad, railroad corporation or common

carrier. It shall be the duty of the court in which any cause shall be pending to require the issues to be made up at the first term of the court to which the cause is brought which shall be the trial term, and to give the same precedence over other civil business. If the court shall find that such passenger fare, freight or express rate, rule, regulation or order is reasonable and just, and that in refusing compliance therewith said railroad company, railroad corporation or common carrier is failing and omitting the performance of any public duty or obligation, the court shall decree a mandatory and perpetual injunction compelling obedience to and compliance with such rule, fare, rate, order or regulation by said railroad, railroad corporation or common carrier or its officers, agents, servants and employes and may grant such other relief as may be deemed just and proper with costs. All violations of such decree shall render the company, person, officers, agents, servants and employes, who are in any manner instrumental in such violation, guilty of contempt of court, and the court may punish such contempt by fine not exceeding one thousand dollars for each offense, or may imprison the person guilty of contempt until he shall sufficiently purge himself therefrom. And such decree shall continue and remain in effect and be enforced until the rule, fare or rate, order or regulation shall be modified or vacated by the board of commissioners of railroads. [R. C. 1905, § 4347; 1897, ch. 115, § 11; R. C. 1899, § 3035.]

Power of state court to pass on interstate rates. 28 L.R.A.(N.S.) 108.

§ 4733. Compensation of attorney. Costs. The attorney-general is hereby authorized, in case he shall deem it necessary so to do in order to enforce the provisions of this article, to employ an attorney to assist him in any proceedings brought under this article, and such attorney shall be paid from the general fund of the state of North Dakota for his services an amount to be approved by the attorney-general and the board of railroad commissioners, and all necessary and usual costs of actions brought by the attorney-general under this article shall be itemized and paid from said fund upon his approval. Whenever a decree shall be entered against a railroad, railroad corporation, common carrier or person under section 4732, the court shall render judgment for costs, including a reasonable attorney's fee for counsel representing the state in said case, and said judgment shall be enforced by execution. [R. C. 1905, § 4348; 1897, ch. 115, §§ 12, 13; R. C. 1899, § 3036.]

§ 4734. Liability for neglect of duty. Treble damages. In case any railroad, railroad corporation or common carrier subject to the provisions of this article shall do, cause to be done, or permit to be done any act, matter or thing in this article prohibited, or declared to be unlawful, or shall omit to do any act, matter or thing in this article required to be done, it shall be liable to the person or persons injured thereby, for three times the amount of damages sustained in consequence of any violation of the provisions of this article, together with costs of suit and a reasonable counsel or attorney's fee to be fixed by the court in which the same is heard on appeal or otherwise, which shall be taxed and collected as part of the costs in the case; provided, that in all cases demand in writing on said railroad, railroad corporation or common carrier shall be made for the money damages sustained before suit is brought for recovery under this section and that no suit shall be brought until the expiration of fifteen days after such demand. [R. C. 1905, § 4349; 1897, ch. 115, § 21; R. C. 1899, § 3037.]

No demand need be made before bringing suit for loss of baggage of passenger while being transported between interstate points. *House v. Chicago & N. W. R. Co.*, 30 S. D. 321, 138 N. W. 809.

§ 4735. Remedy. Evidence. Any person or persons claiming to be damaged by any railroad, railroad corporation or common carrier, subject to the provisions of this article, may either make complaint to the board of commissioners of railroads of this state, who may bring suit in their own name when they deem it advisable, or such person or persons may bring suit in his

or their own behalf for the recovery of damages for which any such railroad, railroad corporation or common carrier may be liable, under the provisions of this article, in any court of this state of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies at the same time. In any such action brought for the recovery of damages, the court before whom the same shall be pending may compel any director, officer, receiver, trustee or agent of the defendant in such suit to attend, appear and testify in such case and may compel the production of the books and papers of such railroad, railroad corporation or common carrier party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person or witness from testifying or producing said books and papers; but such evidence or testimony shall not be used against such person in any way, on the trial of any criminal proceedings. [R. C. 1905, § 4350; 1897, ch. 115, § 22; R. C. 1899, § 3038.]

§ 4736. Appeals. Power of court to modify orders appealed from. Any railroad, railroad corporation or common carrier subject to the provisions of this article, or any other person interested in the order made by the commissioners of railroads may appeal to the district court of the proper county in the judicial district of this state from which the complaint arose, and which is the subject and basis of the order, from any order made by the commissioners of railroads regulating or fixing its tariffs of rates, fares, charges or classifications, or from any other order made by said commissioners under the provisions of this article by serving a notice in writing upon the secretary of said commissioners, or any one of said commissioners, within twenty days after such railroad, railroad corporation or common carrier shall receive notice from such commissioners of the making and entry of such order. If the order appealed from does not regulate or fix the tariff of rates, fares or charges, the district court to which the appeal is taken may in its discretion suspend the operation and effect of the order appealed from, pending such appeal. The district courts of this state shall be deemed to be always in session for the purpose of hearing and determining all appeals taken under the provisions of this article. The party taking such appeal may bring the same on for hearing and determination at any time after taking such appeal, upon serving a notice to that effect upon any one of the commissioners or their secretary at least ten days prior to the day set for such hearing. The district court shall, upon the hearing of such appeal, receive and consider such evidence as may be adduced by either party and shall rescind, modify or alter said order appealed from in such manner as may be equitable and just. Any railroad, railroad corporation, common carrier, the commissioners of railroads or any party interested in the decision of said court may appeal from the decision of the district court to the supreme court of this state by serving a notice of such appeal upon the opposite party within twenty days after the rendition of such decision and service of notice thereof. For the purpose of hearing such appeal the supreme court shall be deemed to be in session, and appeals to it may be heard summarily by either party serving upon the other a notice of hearing at least fifteen days before the day fixed for such hearing. When evidence has been taken before the district court such evidence shall be signed by the judge of said district court, the party presenting such evidence to said judge for signature, giving the other party five days' notice of the time and place for such presentation. The evidence signed as aforesaid shall become a part of the record in the case, and upon an appeal to the supreme court being taken as hereinbefore mentioned shall be transmitted by the clerk of the district court to the supreme court, together with all the records and files in the case. The supreme court may reverse, affirm or modify the decision of the district court as may seem equitable and just. [R. C. 1905, § 4351; 1897, ch. 115, § 22; R. C. 1899, § 3039.]

§ 4737. Penalty against individuals. Except as otherwise specially provided in this article, and unless relieved from the consequence of a violation of the law, as provided in section 4742, any railroad, railroad corporation or common carrier subject to the provisions of this article, or any director or officer thereof, or any receiver, trustee, lessee, agent or person acting for, or employed by it who alone or with any other corporation, company, person or party shall willfully do, or cause to be done, or shall willingly suffer or permit to be done any act, matter or thing in this article prohibited or declared to be unlawful or who shall aid and abet therein, or shall willfully omit or fail to do any act, matter or thing in this article required to be done or shall cause or willingly suffer, or permit any act, matter or thing so directed or required by this article to be done, not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this article, or shall aid or abet therein, shall be deemed guilty of a misdemeanor and shall upon conviction thereof in any district court of this state of competent jurisdiction be subject to a fine of not to exceed five thousand dollars and not less than five hundred dollars for each offense. [R. C. 1905, § 4352; 1897, ch. 115, § 23; R. C. 1899, § 3040.]

§ 4738. Inquiry by commissioners. It shall be the duty of, and the board of railroad commissioners of this state shall have the authority to, inquire into the management of the business of all railroads, railroad corporations and common carriers subject to the provisions of this article, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from them full and complete information necessary to enable the said commissioners to perform the duties and carry out the objects for which said board was created and which are contemplated by this article; and for the purpose of this article the said commissioners shall have power to require the attendance and testimony of witnesses and the production of books, papers, tariffs, schedules, contracts, agreements and documents relating to any matter under investigation, and to that end may invoke the aid of any court of competent jurisdiction in this state in requiring the attendance and testimony of witnesses and the production of books, papers and documents under the provisions of this section. [R. C. 1905, § 4353; 1897, ch. 115, § 24; R. C. 1899, § 3041.]

§ 4739. Proceedings when subpoenas disobeyed. Any court of this state within the jurisdiction of which such inquiry is carried on, shall in case of contumacy, or refusal to obey a subpoena, or other process issued to any railroad, railroad corporation or common carrier or person subject to the provisions of this article, or other persons, issue an order requiring such railroad, railroad corporation, common carrier or other person to appear before said commissioners (and produce books and papers if so ordered), and give evidence touching or in relation to the matter in question; and any failure to obey such order of the court shall be punished by such court as a contempt thereof; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person or witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding. [R. C. 1905, § 4354; 1897, ch. 115, § 24; R. C. 1899, § 3042.]

§ 4740. Complaint. Any person, firm, corporation or association, or any mercantile, agricultural or manufacturing society, or any body politic or municipal organization, complaining of anything done, or omitted to be done, by any railroad, railroad corporation or common carrier subject to the provisions of this article, in contravention of the provisions thereof, may apply to said commissioners by petition which shall briefly state the facts, whereupon a statement of the complaint thus made with the damages, if any are alleged, shall be forwarded by the said commissioners to such railroad, railroad corporation or common carrier, who shall be called upon to satisfy the com-

plaint, or to answer the same in writing within a reasonable time to be specified by the commissioners. If such railroad, railroad corporation or common carrier within the time specified shall make reparation for the injury alleged to have been done or shall correct the wrong complained of, it shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If it shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the said commissioners to investigate the matters complained of in such manner and by such means as said commissioners shall deem proper, and said commissioners whenever they may have sufficient reason to believe that any railroad, railroad corporation or common carrier is violating any of the provisions of this article shall at once institute an inquiry in the same manner, and to the same effect, as though complaint had been made. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant or petitioner. [R. C. 1905, § 4355; 1897, ch. 115, § 25; R. C. 1899, § 3043.]

Railroad commissioners must call upon railroads complained against to satisfy the complaint or answer same. *State ex rel. La Follette v. Chicago, M. & St. P. R. Co.*, 16 S. D. 517, 94 N. W. 406.

§ 4741. Findings of board in writing. Whenever an investigation shall be made by said commissioners, as provided by this article, it shall be their duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the commissioners are based, together with its or their recommendation or orders as to what reparation, if any, should be made by the railroad, railroad corporation or common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter in all judicial proceedings be deemed and taken as prima facie evidence as to each and every fact found. All reports of investigations made by such commissioners shall be entered of record, and a copy thereof shall be furnished to the party who may have complained and any other person or persons directly interested, and to any railroad, railroad corporation or common carrier that may have been complained of. [R. C. 1905, § 4356; 1897, ch. 115, § 26; R. C. 1899, § 3044.]

§ 4742. Report to common carrier, if findings against. If in any case in which an investigation shall be made by said commissioners it shall be made to appear to the satisfaction of the commissioners, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this article, or of any law cognizable by said commissioners, by any railroad, railroad corporation or common carrier, or that any injury or damages have been sustained by the party or parties complaining, or by other parties aggrieved, in consequence of any such violation it shall be the duty of said commissioners forthwith to cause a copy of their report in respect thereto to be delivered to such railroad, railroad corporation or common carrier, together with a notice to said railroad, railroad corporation or common carrier, to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time to be specified by the commissioners; and if within the time specified it shall be made to appear to the commissioners that such railroad, railroad corporation or common carrier has ceased from violation of such law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the commissioners, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the commissioners, and the said railroad, railroad corporation or common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law. [R. C. 1905, § 4357; 1897, ch. 115, § 27; R. C. 1899, § 3045.]

§ 4743. Enforcement of orders. Whenever any railroad, railroad corporation or common carrier, subject to the provisions of this article, shall violate

or refuse or neglect to obey any lawful order as to passenger, freight or property rates or fares, or as to any requirement of the said board of commissioners of railroads, it shall be the duty of said commissioners and lawful for any company or person interested in such order or requirement, to apply in a summary way by petition to the district court in any county of this state in which the railroad, railroad corporation or common carrier complained of has its principal office, or in any county through which its line or road passes or is operated, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience as the case may be. [R. C. 1905, § 4358; 1897, ch. 115, § 28; R. C. 1899, § 3046.]

Court has power to review orders of commissioners before enforcement. *Tompkins v. Ry. Co.*, 11 S. D. 282, 77 N. W. 104.

Orders of, not enforced by courts without inquiry. *State v. C. M. & St. P. Ry. Co.*, 11 S. D. 282, 77 N. W. 104.

Railroad commissioners are among those authorized to maintain proceeding to compel obedience by carrier to order of commission. *State ex rel. Railroad Comrs. v. Duluth, W. & P. R. Co.*, 25 S. D. 106, 125 N. W. 565.

§ 4744. Power of court. The said court shall have power to hear and determine the matter, on such notice to the party complained of as the court shall deem reasonable; and such notice may be served on such party, his or its officers, agents or servants, in such manner as the court shall direct; and said court shall proceed to hear and determine the matter speedily as a court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such court shall have power, if it think fit, to direct and prosecute, in such mode and by such persons as it may appoint, all such inquiries as the court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the report of said commissioners shall be prima facie evidence of the matter therein, or in any order made by them stated. [R. C. 1905, § 4359; 1897, ch. 115, § 28; R. C. 1899, § 3047.]

§ 4745. Further powers. Appeals to supreme court. If it be made to appear to such court on such hearing, or on the report of any such person or persons that the order or requirement of said commissioners drawn in the question, has been violated or disobeyed, it shall be the duty of such court to issue a writ of injunction, or other proper process, mandatory or otherwise, to restrain such railroad, railroad corporation or common carrier from further continuing such violation or disobedience of such order or requirement of said commissioners and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such courts to issue writs of attachment, or any other process of said court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such railroad, railroad corporation or common carrier or against one or more of the directors, officers or agents of the same, or against any owner, lessee, trustee, receiver or other person failing to obey such writ, writ of injunction or other proper process, mandatory or otherwise; and said court may, if it shall thing fit, make an order directing such railroad, railroad corporation or common carrier or other person so disobeying such writ of injunction or other process, mandatory or otherwise, to pay such sum of money not exceeding for each corporation, carrier or person in default, the sum of one thousand dollars for every day after a day to be named in the order that such corporation, carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall, upon the order of the court, be paid into the treasury of the county in which the action was commenced, and one-half thereof shall be transferred by the county treasurer to the state treasury and the payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order, in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree

in personam in such court, saving to the commissioners and any other party or person interested the right to appeal to the supreme court of the state under the same regulations now provided by law in relation to appeals to said court as to security for such appeal, except that in no case shall security for such appeal be required when the same is taken by said commissioners; but no appeal to said supreme court shall operate to stay or supersede the order of the court, or the execution of any writ or process thereon; and such court may in every such matter order the payment of such costs and attorney fees as shall be deemed reasonable. [R. C. 1905, § 4360; 1897, ch. 115, § 28; R. C. 1899, § 3048.]

§ 4746. Attorney-general to prosecute. Whenever any such petition shall be filed or presented, or be prosecuted by the said commissioners, or by their direction, it shall be the duty of the attorney-general of the state to prosecute the same, and in such prosecution he shall have the right to have the assistance of any state's attorney of the county in which any such proceedings are instituted, and it is hereby made the duty of any such state's attorney to render such assistance; and the costs and expenses on the part of said commissioners of any such prosecution, or proceeding in court, shall be paid out of the general fund of the state under the approval of the attorney-general, governor and state auditor. [R. C. 1905, § 4361; 1897, ch. 115, § 28; R. C. 1899, § 3049.]

§ 4747. Proceedings of commissioners. The said board of commissioners of railroads may in all cases conduct its proceedings when not otherwise particularly prescribed by law, in such manner as will best conduce to the proper dispatch of business, and to the ends of justice. A majority of the commissioners shall constitute a quorum for the transaction of business, but no commissioner shall participate in any hearing or proceeding in which he has any direct personal pecuniary interest. Said commissioners may from time to time make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before them, including forms of notice and the service thereof, which shall conform as nearly as may be to those in use in courts of this state. Any party may appear before said board of commissioners and be heard in person or by attorney. Every vote and official action of said board of commissioners shall be entered of record and its proceedings shall be public upon the request of either party of any person interested. Said board of commissioners of railroads shall have an official seal, which shall be judicially noticed, and every commissioner shall have the right to administer oaths and affirmations in any proceeding pending before said board. [R. C. 1905, § 4362; 1897, ch. 115, § 33; R. C. 1899, § 3050.]

§ 4748. Annual report. The said commissioners of railroads shall, on or before the first Monday in December in each year, make a report to the governor of their doings for the preceding year, containing such facts, statements and explanations as will disclose the workings of the system of railroad transportation in this state, and its relation to the general business and prosperity of the citizens of the state, and such suggestions and recommendations in respect thereto as may to them seem appropriate. Said report shall also contain, as to every railroad, railroad corporation or common carrier doing business in this state:

1. The total number of miles of main line and branches owned or operated.
2. The total number of miles of main line and branches owned or operated in each county within this state.
3. The total mileage of sidetracks within each county or taxing district in this state.
4. The amount of its capital stock issued.
5. The amount paid therefor.
6. The manner of the payment of the same.
7. The dividends paid.

8. The surplus fund, if any.
9. The number of stockholders.
10. The amount of its preferred stock, if any, and the condition of its preferment.
11. The amount of its funded debt and the rate of interest paid thereon.
12. The amount of its floating debt and the interest paid thereon.
13. The amount expended for improvements each year, and how and where expended, and the character of the improvement made.
14. The earnings and receipts from each branch of its business and from all sources.
15. The operating and other expenses.
16. The balances of profits and losses.
17. The cost and actual present cash value of its franchises, road and equipment, including permanent way, buildings and rolling stock, all real estate used exclusively in operating the road, and all fixtures and conveniences for transacting its business.
18. The estimated value of all other property owned by such corporation with a schedule of the same, not including lands granted in aid of its construction.
19. The number of acres originally granted in aid of construction of its road by the United States or by this state, the number of acres of such land remaining unsold.
20. A classified list of its officers and directors, with their respective places of residence and the salaries paid to each class.
21. The number of its employes, classified, and the salaries paid each class.
22. The average amount of tonnage that can be carried over each road in the state with an engine of given power.

Such additional statistics of the road and of its transportation business for the year as may in the judgment of the commissioners be necessary and proper for the information of the legislative assembly, or as may be required by the governor. Such reports shall exhibit and refer to the condition of such corporation and the details of its transportation business transacted during the year ending June thirtieth. To enable said commissioners to make such a report, the president or managing officer of each railroad, railroad corporation or common carrier doing business in this state shall annually make to the said commissioners, on the fifteenth day of the month of July, such returns in the form which they may prescribe as will afford the information required for their said official report; such returns shall be verified by oath of the officer making them, and any railroad, railroad corporation or common carrier whose return shall not be made as herein prescribed by the fifteenth day of July, shall be liable to a fine of five hundred dollars for each and every day after the sixteenth day of July that such returns shall be willfully delayed or refused. [R. C. 1905, § 4363; 1897, ch. 115, §§ 2, 3; R. C. 1899, § 3051.]

§ 4749. Examination of books of officers. The said commissioners shall have power, in the discharge of the duties of their office, to examine any of the books, papers or documents of any such person, company or corporation, or to examine under oath or otherwise any officer, director, agent or employe thereof, and any person who may willfully obstruct said commissioners in the performance of their duties, or who may refuse to give any information within his possession that may be required by said commissioners within the line of their duty, shall be deemed guilty of a misdemeanor, and shall be liable, on conviction thereof, to a fine not exceeding one thousand dollars, in the discretion of the court. [R. C. 1905, § 4364; 1897, ch. 115, § 4; R. C. 1899, § 3052.]

Right of corporation, corporate officer, or other person having custody of books and papers, to refuse to produce them on the ground that they may tend to incriminate. 47 L.R.A.(N.S.) 1175.

§ 4750. Special reports. The commissioners of railroads are hereby authorized to require of any and all railroads, railroad corporations and common carriers, subject to the provisions of this article, such special reports, besides the annual reports hereinbefore required, as in the judgment of such commissioners shall be deemed necessary and reasonable. Such special reports shall be in such form and concerning such subjects and be from such sources as the commissioners shall require, except as otherwise provided herein. The time when such special report shall be filed shall be fixed by the commissioners of railroads. Any railroad, railroad corporation or common carrier subject to the provisions of this article, which shall fail, neglect or refuse to make any of the special reports provided for herein by the date fixed by the commissioners of railroads shall be subject to, and pay a penalty in the sum of one hundred dollars for each and every day of delay in making such reports after the date fixed. [R. C. 1905, § 4365; 1897, ch. 115, § 34; R. C. 1899, § 3053.]

§ 4751. Special reports biennially. It shall also at such times as the governor shall direct examine any particular subject connected with the condition and management of such railroads and report to him in writing its opinion thereon with its reasons therefor. Such board shall also investigate and consider what, if any, amendment or revision of the railroad laws of this state the best interests of the state demand and it shall make a special biennial report on such subject to the governor. All such reports made to the governor shall be by him transmitted to the legislative assembly at the earliest practicable time. [R. C. 1905, § 4366; 1890, ch. 122, § 18b; R. C. 1899, § 3054.]

§ 4752. Semi-annual reports on condition of bridges and ferries. Every railroad, bridge corporation or ferry company doing business in this state shall make semi-annual reports in each year to the commissioners of railroads as to the safety of their bridges and ferries. Whenever, in the judgment of the commissioners of railroads, it shall appear that any railroad, railroad corporation or common carrier fails in any respect or particular to comply with the terms of its charter or the laws of the state, or whenever in their judgment any repairs are necessary upon its road, or any addition to its rolling stock, or any addition to or change of its stations or station houses, or any change in its rate or fares for transporting freight, property or passengers, or any change in the mode of operating its road and conducting its business, is reasonable and expedient in order to promote the security, convenience and accommodation of the public, said commissioners of railroads shall inform such railroad corporation of the improvements and changes which they adjudge to be proper, by a notice thereof in writing, to be served by leaving a copy thereof, certified by the commissioners' secretary, with any station agent, clerk, treasurer or any director of said corporation, and a report of the proceedings shall be included in the annual report of the commissioners to the governor. Nothing in this section shall be construed as relieving any railroad company or railroad corporation from its present responsibility or liability for damage to person or property. [R. C. 1905, § 4367; 1897, ch. 115, § 1; R. C. 1899, § 3055.]

§ 4753. Extortion. Penalty. If any railroad, railroad corporation or common carrier, subject to the provisions of this article, shall charge, collect, demand or receive more than a fair and reasonable rate of toll or compensation for the transportation of passengers, property or freight of any description or for the use and transportation of any railroad car upon its track, or any of the branches thereof, or upon any railroad within this state which it has the right, license or permission to use, operate or control, or shall make any unjust and unreasonable charge prohibited in section 4711, the same shall be deemed guilty of extortion, and shall be dealt with as hereinafter provided, and if any such railroad, railroad corporation or common carrier shall be found guilty of any unjust discrimination as defined in section 4719 upon conviction

thereof shall be dealt with as hereinafter provided. [R. C. 1905, § 4368; 1897, ch. 115, § 35; R. C. 1899, § 3056.]

§ 4754. Discrimination. Punishment. If any such railroad, railroad corporation or common carrier shall charge, collect or receive for transportation of any passenger, property or freight of any description upon its railroad for any distance within this state a greater amount of toll or compensation than is at the same time charged, collected or received for transportation in the same direction of any passenger or like quantity of property or freight of the same class over a greater distance of the same railroad; or if it shall charge, collect or receive at any point upon its railroad a higher rate of toll or compensation for receiving, handling or delivering property or freight of the same class and quantity, than it shall at the same time charge, collect or receive for the transportation of any passenger, freight or property of any description over its railroad a greater amount of toll or compensation than shall at the same time be charged, collected or received by it for the transportation of any passenger or like quantity of property or freight of the same class being transported in the same direction over any portion of the same railroad of equal distance; or if it shall charge, collect or receive from any person or persons a higher or greater amount of toll or compensation than it shall at the same time charge, collect or receive from any other person or persons for receiving, handling or delivering property or freight of the same class and like quantity, at the same point upon its railroad; or if it shall charge, collect or receive from any person or persons, for the transportation of any property or freight upon its railroad a higher or greater rate of toll or compensation than it shall at the same time charge, collect or receive from any other person or persons, for the transportation of the like quantity of property or freight of the same class, being transported from the same point in the same direction over equal distance of the same railroad; or if it shall charge, collect or receive from any person or persons, for the use and transportation of any railroad car or cars upon its railroad for any distance, a greater amount of toll or compensation than is at the same time charged, collected or received from any other person or persons for the use and transportation of any railroad car of the same class or number, for a like purpose, being transported in the same direction, over a greater distance of the same railroad; or if it shall charge, collect or receive from any person or persons, for the use and transportation of any railroad car or cars upon its railroad a higher or greater compensation in the aggregate than it shall at the same time charge, collect or receive from any other person or persons for the use and transportation of any railroad car or cars of the same class for a like purpose, being transported from the same original point in the same direction over an equal distance of the same railroad; all such discriminating rates, charges, collections or receipts, whether made directly or by means of any rebate, drawback or other shift or evasion, shall be deemed and taken against such railroad, railroad corporation or common carrier as *prima facie* evidence of the unjust discriminations prohibited by the provisions of this article; and it shall not be deemed a sufficient excuse or justification of such discrimination on the part of said railroad, railroad corporation or common carrier that the railway station or point at which it shall charge, collect or receive less compensation in the aggregate for the transportation of such passenger, property or freight, or for the use and transportation of such railroad car the greater distance than for the shorter distance is a railway station or point at which there exists competition with any other railroad or means of transportation. This section shall not be construed so as to exclude other evidence tending to show any unjust discrimination in freight and passenger rates. The provisions of this section shall extend and apply to any railroad, the branches thereof and any road or roads which any railroad, railroad corporation or common carrier has the right, license or permission to use, operate or

control wholly or in part within this state; provided, however, that nothing herein contained shall be so construed as to prevent railroad corporations from issuing commutation, excursion or thousand mile tickets, provided the same are issued alike to all applying therefor. [R. C. 1905, § 4369; 1897, ch. 115, § 36; R. C. 1899, § 3057.]

§ 4755. Discrimination as to quantity. It shall be unlawful for any such railroad, railroad corporation or common carrier to charge, collect, demand or receive more for transporting a car of freight than it at the same time charges, collects, demands or receives per car for several cars of a like class of freight over the same railroad, for the same distance in the same direction, or to charge, collect, demand or receive more for transporting a ton of freight than it charges, collects, demands or receives per ton for several tons of freight under a carload of a like class of freight over the same railroad for the same distance, in the same direction, or to charge, collect, demand or receive more for transporting a hundred pounds of freight or property than it charges, collects, demands or receives per hundred for several hundred pounds of freight under a ton of a like class of freight or property over the same railroad, for the same distance, in the same direction. All such discriminating rates, charges, collections or receipts, whether made directly or by means of any rebate, drawback or other shift or evasion, shall be deemed and taken against such railroad, railroad corporation or common carrier as prima facie evidence of the unjust discrimination prohibited by this article; provided, however, that for the protection and development of any new industry within the state, such railroad, railroad corporation or common carrier may grant concessions or special rates for any agreed number of carloads, but such special rates aforesaid shall first be approved by the board of commissioners of railroads, and a copy thereof filed in the office thereof. [R. C. 1905, § 4370; 1897, ch. 115, § 37; R. C. 1899, § 3058.]

§ 4756. Penalty for discrimination. Any such railroad, railroad corporation or common carrier guilty of extortion or making any unjust discrimination as to passenger or freight or other rates for the use and transportation of railroad cars or in receiving, handling or delivering freights or property, shall upon conviction thereof, be fined in any sum not less than one thousand dollars nor more than five thousand dollars for the first offense, and for every subsequent offense not less than five thousand dollars nor more than ten thousand dollars, such fine to be imposed in a criminal prosecution, as provided by law, or shall be subject to the liability prescribed in section 4757, to be recovered as therein provided. [R. C. 1905, § 4371; 1897, ch. 115, § 38; R. C. 1899, § 3059.]

§ 4757. Forfeiture. Any such railroad, railroad corporation or common carrier guilty of extortion or of making any unjust discrimination as to passenger, property or freight rate or rates for the use and transportation of railroad cars, or in receiving, handling or delivering freights or property shall forfeit and pay to the state of North Dakota not less than one thousand dollars nor more than five thousand dollars for the first offense and not less than five thousand dollars nor more than ten thousand dollars for every subsequent offense, to be recovered in a civil action by proceedings instituted in the name of the state of North Dakota. And the release from liability or penalty provided for in section 4742 shall not apply to either a criminal prosecution or a civil action brought under this article. [R. C. 1905, § 4372; 1897, ch. 115, § 39; R. C. 1899, § 3060.]

§ 4758. Suits by commissioners. Whenever said commissioners of railroads have good reason to believe that any railroad, railroad corporation or common carrier subject to the provisions of this article has been guilty of extortion or unjust discrimination and thereby become liable to the penalties prescribed in sections 4756 and 4757, it shall be their duty to immediately cause suits to be commenced and prosecuted against any such railroad, railroad corpora-

tion or common carrier. Such suits and prosecutions may be instituted in any county of this state through or into which the line of the railroad corporation sued for violation of this article may extend. And the court may in its discretion give preference to such suits over all other business except criminal cases. [R. C. 1905, § 4373; 1897, ch. 115, § 40; R. C. 1899, § 3061.]

§ 4759. Free transportation. Reduced rates. Nothing in this article shall apply to the carriage, storage or handling of property free or at reduced rates for the United States or this state, or municipal governments or for charitable purposes, or to and from fairs and expositions for exhibition thereat, or for the employes of such common carriers or their families, or private property or goods for the family use of employes of such common carriers, or the issuance of mileage, excursion or commutation passenger tickets. Nothing in this article shall be construed to prohibit any railroad, railroad corporation or common carrier from giving reduced passenger rates to ministers of religion, or to prevent railroads from giving free carriage to their own officers and employes and their families or others and to persons in charge of live stock being shipped from the point of shipment to destination and return; and nothing in this article contained shall in any way abridge or alter the remedies now existing at common law, or by statute, but the provisions of this article are in addition to such remedies; provided, that no pending litigation shall in any way be affected by this article. [R. C. 1905, § 4374; 1897, ch. 115, § 41; R. C. 1899, § 3062.]

§ 4760. Cannot limit its common law liability. Whenever any property is received by any common carrier subject to the provisions of this article to be transported from one place to another within this state it shall be unlawful for such common carrier to limit in any way, except as stated in its classification schedule herein provided for, its common law liability with reference to such property while in its custody as a common carrier as hereinbefore mentioned; such liability must include the absolute responsibility of the common carrier for the acts of its agents in relation to such property. [R. C. 1905, § 4375; 1890, ch. 122, § 3d; R. C. 1899, § 3063.]

§ 4761. Courts always open. For the purposes of this article, except its penal provisions, the district courts and the supreme court of the state shall be deemed to be always in open session. [R. C. 1905, § 4376; 1890, ch. 122, § 16b; R. C. 1899, § 3064.]

§ 4762. Annual reports from all carriers. The board of commissioners of railroads are hereby directed to require annual reports from all common carriers subject to the provisions of this article, to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the commissioners may need information. Such annual reports shall, in addition to the information required by section 4748, contain such information in relation to rates or regulations concerning fares or freights and agreements, arrangements or contracts with express companies, telegraph companies, sleeping and dining car companies, fast freight lines and other common carriers, as the commissioners may require, with copies of such contracts, agreements or arrangements. [R. C. 1905, § 4377; 1890, ch. 122, § 17a; R. C. 1899, § 3065.]

§ 4763. Costs and expenses. All costs and expenses actually incurred by or upon the order of the attorney-general incident to any litigation arising in reference to the enforcement of orders of the board of commissioners of railroads or other litigation commenced by or in charge of said attorney-general shall be paid out of the general fund of the state upon vouchers to be approved by the attorney-general, governor and state auditor. [R. C. 1905, § 4378; 1899, ch. 131, § 1; R. C. 1899, § 3066.]

§ 4764. Pending litigation not affected by this article. Nothing in this article contained shall in any way abridge or alter the remedies now existing at law or in equity, but the provisions of this article are in addition to such

remedies. No pending litigation shall in any way be affected by this article. Witnesses summoned before the commissioners of railroads shall be paid the same fees and mileage as are paid witnesses in the district court. All expenses of the commissioners of railroads in making an investigation or examination in any other place than the city of Bismarck shall be allowed and paid out of the state treasury on the presentation of itemized vouchers therefor approved by the chairman of the commission and the state auditor. [R. C. 1905, § 4379; 1890, ch. 122, § 18c; R. C. 1899, § 3067.]

§ 4765. Grain to be shipped without discrimination. Any railroad company doing business in this state, when requested by any person wishing to ship grain on its road, shall receive and transport such grain in bulk, and permit the same to be loaded either on its track adjacent to its depot, or at any warehouse or side track at any station or siding without discrimination or distinction as to the manner or condition in which such grain is offered for transportation, or as to person, corporation, warehouse, elevator or place where, or to which it may be consigned and shall receive the same in car load lots from wagons, sleighs or other vehicles on its side track, at any station the same as when offered from warehouses or elevators, allowing forty-eight hours' time for loading all cars, which time shall be held to embrace such time as car to be loaded is placed and kept by such railroad company in a convenient and proper place for loading; and it shall not be held a proper place for loading unless such car can be reached by teams or other suitable means of conveying property, after the same have been loaded, whether at side track, elevator, warehouse or depot, without unnecessary delay, proceed to ship the same to the place where the same is consigned. [R. C. 1905, § 4380; 1899, ch. 110, § 5; R. C. 1899, § 3068; 1903, ch. 145.]

§ 4766. Track from elevator to railroad. It shall be lawful for the owner of any elevator, warehouse or mill at any station on the line or at the termination of any railroad in the state to construct from such elevator, warehouse or mill a grade suitable for a side track, to the track of any railroad company and such railroad company shall furnish ties, rails and all necessary connections, and shall lay on such grade a track to connect with the main or side track by switch, when so ordered by the railroad commissioners, and shall charge to and collect from the owner of such elevator, warehouse or mill the actual cost of all material and labor used in the laying of such side track and the owner of such elevator, warehouse or mill shall, upon demand of such railroad company, deposit cash in advance the amount estimated to cover the cost of such labor and material. Such side track and switch shall be the property of the owner of such elevator, warehouse or mill, but shall at all times be under the control and management of and kept in repairs by such railroad company; provided, that the party for whose benefit such side track and switch shall be constructed shall pay to such railroad company the actual cost of maintaining such side track and switch, which payment shall be made monthly and in case such payment shall not be made as provided, then the obligation of this section upon such railroad company shall cease and be inoperative as against it until such cost and expense are fully paid. Provided, that the side track described in this section shall not exceed two thousand five hundred feet in length and the switch where connection is made with the side track shall come within the yard limits of the station. [1911, ch. 243; R. C. 1905, § 4381; 1889, ch. 110; § 6; R. C. 1899, § 3069.]

§ 4767. Side tracks adjacent to coal mines. Whenever any person, owning or operating any coal mine within this state, from which not less than fifty cars of coal have been shipped from any one station over any portion of any railroad within the limits of the state shall petition any such railroad company to build a side track or spur at least three hundred feet in length adjacent to such mine it shall then be the duty of such railroad company to build, equip and operate such side track or spur; provided, that such spur is not nearer

than two miles from any station already in operation; provided, further, that any person opening a coal mine within two miles of any station may petition for a side track or spur and by executing an indemnity bond in favor of such railroad company in the sum of two thousand dollars, conditioned on the agreement that such person will ship within one year after the completion of such spur or side track not less than one hundred car loads of coal and when such bond is duly executed with two sureties, approved by the county judge of the county wherein such side track is situated, such railroad company shall within sixty days build, equip and operate such side track or spur as provided for in this section. And the commissioners of railroads shall have power to locate such side track or spur and order it properly provided with platforms and other conveniences for loading coal and other commodities thereat. [R. C. 1905, § 4382; 1890, ch. 128, § 1; R. C. 1899, § 3070.]

Power to compel road to build or maintain side tracks for accommodation of shippers.
28 L.R.A.(N.S.) 1013.

§ 4768. Penalty. Any neglect or refusal to comply with any part of the provisions of the last two sections within fifteen days after being requested in writing by the person operating the elevator, warehouse, mill or coal mine or by the commissioner of railroads shall subject such railroad company to a forfeiture of fifty dollars per day for each and every day such railroad company shall neglect or refuse to comply with the provisions of the last two sections, to be recovered by the persons affected by such neglect or refusal; provided, that no railroad company shall be compelled to put in a side track between the fifteenth day of November and the fifteenth day of May of any year when it cannot be done without grading. [1911, ch. 243; R. C. 1905, § 4383; 1890, ch. 128, § 2; R. C. 1899, § 3071.]

§ 4769. Time to remove property from cars. Any consignee or person entitled to receive the delivery of any freight shipped to him in car load lots, by any railroad company, shall have twenty-four hours free of expense after notice of arrival by the company to the consignee or person entitled to receive the same in which to remove the same from the cars of such railroad company, which twenty-four hours shall be held to embrace such time as the car containing such property is placed and kept by such railroad company in a convenient and proper place for unloading and it shall not be held to be in a proper place for unloading unless it can be reached with teams or other suitable means for removing the property from the cars and reasonably convenient to the depot of the company at which it is accustomed to receive and unload merchandise consigned to that station or place. [R. C. 1905, § 4384; 1889, ch. 110, § 12; R. C. 1899, § 3071a.]

Delay in unloading caused by strike. 35 L.R.A. 630.

§ 4770. Stop over rates on cars. Whenever any railroad company doing business in this state as a common carrier shall ship any car or cars of freight over any of its railway lines or branches thereof, which car or cars contain freight to any intermediate point or points, it shall be the duty of such railroad company to stop such car or cars at such point or points and the consignee of such freight shall be permitted to unload the same upon payment to such railroad company of the full freight rates from the shipping point to the terminal point of such car or cars and in addition thereto the sum of five dollars per car for each and every day such car or cars is or are delayed during such stop over; provided, the car or cars contain no perishable goods and are billed to one consignee, and in no case over one stop or stop over shall be made, nor shall said car or cars be opened but once for distributing goods at intermediate stations. [R. C. 1905, § 4385; 1895, ch. 95, § 1; R. C. 1899, § 3071b.]

§ 4771. Penalty. Every railroad company neglecting or refusing to comply with the provisions of the last section shall be liable to damages in the sum of twenty dollars for each and every day such railroad company neglects

or refuses to comply with the provisions hereof, to be recovered by any person damaged by reason of such neglect or refusal in any court of competent jurisdiction. [R. C. 1905, § 4386; 1895, ch. 95, § 2; R. C. 1899, § 3071c.]

§ 4772. Railroads to build platforms. Every railroad company doing business in this state shall within sixty days after notice from the commissioners of railroads erect one or more platforms for the transfer of live stock, grain and other commodities from wagons or otherwise to cars at each and every station or siding designated in such notice; such platforms to be erected so as not to endanger life and property. If any railroad company after receiving notice as provided for in this section shall fail, refuse or neglect to erect platforms as required by this and the following section within the required sixty days the commissioners of railroads are authorized and empowered and it is made their duty to notify such railroad company to appear before them at a certain time and place and show cause, if any there is, why such commissioners should not issue an order requiring such railroad company to comply with the requirements of this section. The commissioners of railroads shall have power after such hearing to issue an order upon such railroad company commanding it to erect such platforms, if the commissioners shall upon such examination and hearing deem such platform necessary. Any notice required to be served upon any railroad company to carry out any of the provisions of this section or similar provisions relating to the enlarging of such platforms may be served upon any agent of said company within the state of North Dakota. [R. C. 1905, § 4387; 1899, ch. 128; R. C. 1899, § 3071d.]

§ 4773. Dimensions of platform. Each platform shall be not less than twelve feet wide and thirty-two feet long, extending four feet and six inches, or such height as shall be determined by the railroad commissioners above the rails of the track with suitable approaches to and from such platform to admit of the driving of loaded teams thereon. [R. C. 1905, § 4388; 1890, ch. 123, § 2; 1892, Spl. H. B. 2, § 2; R. C. 1899, § 3071e.]

§ 4774. When platforms to be enlarged. The commissioners of railroads shall have power to order an enlargement of such platforms whenever petitioned to that effect and whenever the capacity of such platform is in their judgment clearly insufficient for the accommodation of the public. [R. C. 1905, § 4389; 1890, ch. 123, § 5; R. C. 1899, § 3071f.]

§ 4775. Platform scales. Every railroad company shall allow suitable scales to be erected either upon the platform or upon the grounds adjacent thereto, if upon their right of way, for weighing and shipping purposes. [R. C. 1905, § 4390; 1890, ch. 123, § 6; R. C. 1899, § 3071g.]

§ 4776. Penalty. Every railroad company neglecting or refusing to comply with the requirements of the last four sections shall be deemed guilty of a misdemeanor and be subject to a fine of not less than five hundred dollars for every thirty days such failure shall continue after notice as aforesaid. [R. C. 1905, § 4391; 1890, ch. 123, § 3; R. C. 1899, § 3071h.]

§ 4777. Construct "Y's." In all cases where any line of railroad shall cross or intersect any other line of railroad at grade in this state, it shall be the duty of each of the railroad companies owning or operating such intersecting railroad lines to provide at such crossing or intersection, suitable and sufficient transfer facilities, such as waiting rooms, and "Y's," or other tracks and connections for transferring cars and traffic of all kinds and classes or cars from one such line of railroad to another, and to maintain the same and afford equal and reasonable facilities for the interchange of cars and traffic between the respective lines. The expense of constructing and maintaining such transfer facilities to be borne equally by each of such railroad companies, or in such proportions as they may agree upon, or as may be determined by the board of railroad commissioners on joint hearing. [1911, ch. 242, § 1; R. C. 1905, § 4392; 1899, ch. 130; R. C. 1899, § 3071i.]

§ 4778. Delivery to connecting line in absence of "Y." It shall be the duty of all railroad companies to bill all freight over the shortest and cheapest route to its destination, but in the absence of a "Y" or other facilities for transferring to a connecting line over the shortest route, such freight may, at the option of the receiving railroad company, be delivered to the connecting line at some other convenient point, but in such cases the same tariff shall be applied by each railroad as if shipped over the shortest route. [1911, ch. 242, § 2.]

§ 4779. Construction of transfer facilities ordered by railroad commissioners. Upon failure of any railroad company to comply with either of the [two] preceding sections, it shall be the duty of the board of railroad commissioners to serve a notice upon the said railroad companies setting a time and place for a joint hearing not less than twenty nor more than thirty days from the date of service of such notice, and if, on such hearing had, the board of railroad commissioners shall deem it necessary and expedient, they shall enter an order directing such railroad companies to at once construct such transfer facilities, including waiting rooms or "Y" tracks, and the board of railroad commissioners is hereby empowered to do any and all acts necessary to the carrying into effect of the provisions of the [two] preceding sections, including power to determine, on joint hearing, after notice to such intersecting railroad companies as above provided for, the question of the necessity for said transfer facilities, also to determine the probable expense and location thereof and all matters relating thereto. Said board may determine the total expense and the just and proper proportion to be borne by each of said intersecting railroads for the erection and maintenance of said transfer facilities, if said railroad companies cannot agree thereon. For such purpose the board of railroad commissioners shall have full authority to view the site, subpoena witnesses, compel attendance and take testimony, all costs and expenses of such proceeding to be paid by such railroad companies against which the proceeding is had.

Provided, that if one intersecting railroad company shall comply with the provisions of this act [sections 4777-4780] and construct one-half of such transfer facilities as determined by the said board of railroad commissioners, the said board shall proceed against the railroad company in default in the same manner as herein provided. Provided, further, that no railroad company shall be compelled to put in such transfer facilities between the first day of December and the first day of April, when it cannot be done without grading. [1911, ch. 242, § 3.]

§ 4780. Failure of railroad company to comply with order. In the event of the failure to comply within sixty days after the date of service of said order, the said railroad companies shall be subject to a fine of twenty-five dollars each for each day during which they shall fail to comply with the provisions therein, or in the event of a greater charge than the rate for the short haul, the shipper or consignee may recover the overcharge, together with all cost in a civil action against the railroad companies making such overcharge, and it shall be the duty of the state's attorney in the county where such shipper or consignee may reside, to commence and prosecute or the attorney-general may commence and prosecute all actions necessary for the enforcement of this act [sections 4777-4780] and the recovery of such overcharges, costs or penalties. [1911, ch. 242, § 4.]

Attorney-general and his assistants have right to appear before grand jury and examine witnesses in regard to matters relating to prohibition law. *State ex rel. Miller v. District Ct.*, 19 N. D. 819, 124 N. W. 417, Ann. Cas. 1912D, 935.

§ 4781. Maximum coal rate. All railroad companies doing business as common carriers within the state of North Dakota shall not charge for the transportation of coal within said state a greater rate per ton than the following:

For the first ten miles or fractional part thereof, thirty cents per ton.

For any distance over ten miles and not to exceed fifteen miles, thirty-five cents per ton.

For any distance over fifteen miles and not to exceed twenty miles, thirty-seven cents per ton.

For any distance over twenty miles and not to exceed twenty-five miles, thirty-eight cents per ton.

For any distance over twenty-five miles and not to exceed thirty miles, forty cents per ton.

For any distance over thirty miles and not to exceed thirty-five miles, forty-one cents per ton.

For any distance over thirty-five miles and not to exceed forty miles, forty-three cents per ton.

For any distance over forty miles and not to exceed forty-five miles, forty-four cents per ton.

For any distance over forty-five miles and not to exceed fifty miles, forty-six cents per ton.

For any distance over fifty miles and not to exceed fifty-five miles, forty-seven cents per ton.

For any distance over fifty-five miles and not to exceed sixty miles, forty-nine cents per ton.

For any distance over sixty miles and not to exceed sixty-five miles, fifty cents per ton.

For any distance over sixty-five miles and not to exceed seventy miles, fifty-two cents per ton.

For any distance over seventy miles and not to exceed seventy-five miles, fifty-three cents per ton.

For any distance over seventy-five miles and not to exceed eighty miles, fifty-five cents per ton.

For any distance over eighty miles and not to exceed eighty-five miles, fifty-six cents per ton.

For any distance over eighty-five miles and not to exceed ninety miles, fifty-eight cents per ton.

For any distance over ninety miles and not to exceed ninety-five miles, fifty-nine cents per ton.

For any distance over ninety-five miles and not to exceed one hundred miles, sixty-one cents per ton.

For any distance over one hundred miles and not to exceed one hundred and five miles, sixty-two cents per ton.

For any distance over one hundred and five miles and not to exceed one hundred and ten miles, sixty-four cents per ton.

For any distance over one hundred and ten miles and not to exceed one hundred and fifteen miles, sixty-five cents per ton.

For any distance over one hundred and fifteen miles and not to exceed one hundred and twenty miles, sixty-seven cents per ton.

For any distance over one hundred and twenty miles and not to exceed one hundred and twenty-five miles, sixty-eight cents per ton.

For any distance over one hundred and twenty-five miles and not to exceed one hundred and thirty miles, sixty-nine cents per ton.

For any distance over one hundred and thirty miles and not to exceed one hundred and thirty-five miles, seventy-one cents per ton.

For any distance over one hundred and thirty-five miles and not to exceed one hundred and forty miles, seventy-two cents per ton.

For any distance over one hundred and forty miles and not to exceed one hundred and forty-five miles, seventy-four cents per ton.

For any distance over one hundred and forty-five miles and not to exceed one hundred and fifty miles, seventy-six cents per ton.

For any distance over one hundred and fifty miles and not to exceed one hundred and fifty-five miles, seventy-eight cents per ton.

For any distance over one hundred and fifty-five miles and not to exceed one hundred and sixty miles, eighty cents per ton.

For any distance over one hundred and sixty miles and not to exceed one hundred and sixty-five miles, eighty-two cents per ton.

For any distance over one hundred and sixty-five miles and not to exceed one hundred and seventy miles, eighty-four cents per ton.

For any distance over one hundred and seventy miles and not to exceed one hundred and seventy-five miles, eighty-six cents per ton.

For any distance over one hundred and seventy-five miles and not to exceed one hundred and eighty miles, eighty-seven cents per ton.

For any distance over one hundred and eighty miles and not to exceed one hundred and eighty-five miles, eighty-nine cents per ton.

For any distance over one hundred and eighty-five miles and not to exceed one hundred and ninety miles, ninety-one cents per ton.

For any distance over one hundred and ninety miles and not to exceed one hundred and ninety-five miles, ninety-three cents per ton.

For any distance over one hundred and ninety-five miles and not to exceed two hundred miles, ninety-five cents per ton.

For any distance over two hundred miles and not to exceed two hundred and ten miles, ninety-seven cents per ton.

For any distance over two hundred and ten miles and not to exceed two hundred and twenty miles, ninety-nine cents per ton.

For any distance over two hundred and twenty miles and not to exceed two hundred and thirty miles, one dollar and one cent per ton.

For any distance over two hundred and thirty miles and not to exceed two hundred and forty miles, one dollar and four cents per ton.

For any distance over two hundred and forty miles and not to exceed two hundred and fifty miles, one dollar and six cents per ton.

For any distance over two hundred and fifty miles and not to exceed two hundred and sixty miles, one dollar and nine cents per ton.

For any distance over two hundred and sixty miles and not to exceed two hundred and seventy miles, one dollar and eleven cents per ton.

For any distance over two hundred and seventy miles and not to exceed two hundred and eighty miles, one dollar and fourteen cents per ton.

For any distance over two hundred and eighty miles and not to exceed two hundred and ninety miles, one dollar and seventeen cents per ton.

For any distance over two hundred and ninety miles and not to exceed three hundred miles, one dollar and nineteen cents per ton.

For any distance over three hundred miles and not to exceed three hundred and ten miles, one dollar and twenty cents per ton.

For any distance over three hundred and ten miles and not to exceed three hundred and twenty miles, one dollar and twenty-four cents per ton.

For any distance over three hundred and twenty miles and not to exceed three hundred and thirty miles, one dollar and twenty-six cents per ton.

For any distance over three hundred and thirty miles and not to exceed three hundred and forty miles, one dollar and twenty-nine cents per ton.

For any distance over three hundred and forty miles and not to exceed three hundred and fifty miles, one dollar and thirty-one cents per ton.

For any distance over three hundred and fifty miles and not to exceed three hundred and sixty miles, one dollar and thirty-four cents per ton.

For any distance over three hundred and sixty miles and not to exceed three hundred and seventy miles, one dollar and thirty-six cents per ton.

For any distance over three hundred and seventy miles and not to exceed three hundred and eighty miles, one dollar and thirty-nine cents per ton.

For any distance over three hundred and eighty miles and not to exceed three hundred and ninety miles, one dollar and forty-one cents per ton.

For any distance over three hundred and ninety miles and not to exceed four hundred miles, one dollar and forty-four cents per ton.

For any distance over four hundred miles and not to exceed four hundred and ten miles, one dollar and forty-seven cents per ton.

For any distance over four hundred and ten miles and not to exceed four hundred and twenty miles, one dollar and forty-nine cents per ton.

For any distance over four hundred and twenty miles and not to exceed four hundred and thirty miles, one dollar and fifty-one cents per ton.

For any distance over four hundred and thirty miles and not to exceed four hundred and forty miles, one dollar and fifty-four cents per ton.

For any distance over four hundred and forty miles and not to exceed four hundred and fifty miles, one dollar and fifty-six cents per ton.

For any distance over four hundred and fifty miles and not to exceed four hundred and sixty miles, one dollar and fifty-nine cents per ton.

For any distance over four hundred and sixty miles and not to exceed four hundred and seventy miles, one dollar and sixty-one cents per ton.

For any distance over four hundred and seventy miles and not to exceed four hundred and eighty miles, one dollar and sixty-four cents per ton.

For any distance over four hundred and eighty miles and not to exceed four hundred and ninety miles, one dollar and sixty-six cents per ton.

For any distance over four hundred and ninety miles and not to exceed five hundred miles, one dollar and sixty-nine cents per ton.

Provided, that the above mentioned rates shall be for carload lots only.

In case any shipment of coal under the provisions of this section must pass over two or more lines of railroad to reach its destination, then an additional charge of two dollars and fifty cents per car for each transfer may be allowed and collected to cover cost of switching, and the total amount of freight and switching charges shall be divided among the several railroads concerned upon such basis as to them may seem just; provided, that if such railroads cannot agree among themselves upon an equitable division thereof, then the board of railroad commissioners shall decide the matter, subject to appeal to the courts. [1907, ch. 51; R. C. 1905, § 4395; 1893, ch. 101, § 1; 1895, ch. 93, § 1; R. C. 1899, § 30711; 1903, ch. 146.]

An amendment of this section vetoed in Laws 1913, ch. 302, p. 464.

Statute not violative of commerce clause of federal constitution, nor of fourteenth amendment of federal constitution, and does not violate state constitution. State ex rel. McCue v. Northern P. R. Co., 19 N. D. 45, 25 L.R.A.(N.S.) 1001, 120 N. W. 869; affirmed in Northern P. R. Co. v. North Dakota ex rel. McCue, 216 U. S. 579, 54 L.ed. 624, 30 Sup. Ct. Rep. 423.

Right of state to regulate local rates of interstate carrier sustained. Minnesota Rate Cases (Simpson v. Shepard), 230 U. S. 352, 57 L.ed. 1511, 48 L.R.A.(N.S.) 1151, 33 Sup. Ct. Rep. 729.

Legislative power to regulate railroad rates. 33 L.R.A. 179; 6 L.R.A.(N.S.) 834.

§ 4782. Penalty for violation. Any railroad company violating any of the provisions of the last section shall be subject to a fine of not less than twenty-five dollars per day for each and every day during which such violation shall continue, to be recovered by any person prejudiced or suffering loss or damage by such violation. [R. C. 1905, § 4396; 1893, ch. 101, § 2; 1895, ch. 93, § 2; R. C. 1899, § 3071m.]

§ 4783. Duty of attorney-general. It shall be the duty of the attorney-general or of the state's attorney of any county in which an action arises against any railroad company for a violation of any of the provisions of section 4781, upon demand of the board of railroad commissioners to commence and prosecute all actions necessary for the enforcement of the provisions of such section. [R. C. 1905, § 4397; 1895, ch. 93, § 3; R. C. 1899, § 3071n.]

Right of attorney-general or other representative of state to maintain action to enforce or prevent violation of statutory regulations affecting rates, etc. 18 L.R.A.(N.S.) 664.

ARTICLE 22.—RAILROADS TO MAINTAIN TELEPHONE CONNECTIONS.

§ 4784. Railroads to maintain telephone connection. Every railroad corporation or common carrier shall provide, furnish and maintain in all of their freight and ticket offices in all towns, cities and villages in this state, where there is a local telephone exchange and where such service is available, reasonable and adequate telephone connections for the use and benefit of its patron. [1911, ch. 252, § 1.]

Duty of railroad company to install telegraph or telephone in its station. 47 L.R.A. (N.S.) 974.

§ 4785. Penalty. Any railroad corporation or common carrier violating the provisions of this act shall be fined not less than one hundred dollars nor more than two hundred dollars for each offense, and it shall be the duty of the state's attorney upon orders from the railroad commissioners or upon complaint of any citizen, to commence and prosecute all actions necessary for the enforcement of this article. [1911, ch. 252, § 2.]

ARTICLE 23.—REMOVING LOADED CARS FROM SIDETRACKS.

§ 4786. Loaded cars must be removed. Notice required. Whenever any car shall be loaded with any kind of grain for shipment on any spur or sidetrack of any railroad in this state of North Dakota, it shall be the duty of such railroad or common carrier within forty-eight hours from the time of receiving written notice that said car is ready to be billed for shipment, giving in such notice the name of the consignee, the consignor, the number of the car and the place where the same stands and the place to which car is to be shipped, which notice shall be given to the station agent of the station nearest the place where said car is located on the line of road over which said car is to be shipped, bill said car or cars as provided in said notice and mail to the shipper a shipping bill thereof directed to the post office address given in such notice, and to remove said car or cars from the said sidetrack or spur where the same has been loaded for shipment. [1909, ch. 192, § 1.]

§ 4787. Penalty. Every railroad or common carrier who neglects or fails to comply with the provisions of this article shall be liable to the owner of the grain mentioned in section 4786 in the sum of fifty dollars for each twenty-four hours that shall elapse after the time mentioned in this article for billing and removing from said spur or sidetrack, to be collected in a civil action in the name of the owner of such grain. [1909, ch. 192, § 2.]

§ 4788. Carrier liable for loss. Should any of the grain mentioned in section 4786 be stolen or destroyed at any time after the giving of the notice in this article provided for, the common carrier to whom such notice shall have been given, shall be liable to the owner of such grain for any loss so occasioned and for any loss caused by fire, to be recovered in a civil action in the name of the owner of such grains. [1909, ch. 192, § 3.]

ARTICLE 24.—DAILY TRAINS; RECIPROCAL DEMURRAGE.

§ 4789. Daily local passenger trains. Penalty for failure to run. It shall be the duty of every railroad corporation operating a line or lines of railroad within this state, except branch lines that may hereafter be constructed, whether such lines are wholly or partly within this state and partly within other states or foreign country, to move over its line or lines of road within this state, each way on every business day of the year, at least one local passenger train to consist of not less than one engine and tender and combination mail, express and baggage car and two passenger coaches, and at least one freight train; provided, however, that if any railroad corporation shall make it appear to the board of railroad commissioners of this state that the business on any line of its road will not justify its operating both the passenger and freight train herein provided for and said board shall so order, such com-

pany may operate one mixed train on such line each way on every business day in the year for such time as said board may direct; provided, further, that such mixed train shall be supplied with not less than one passenger coach and one combination baggage and passenger coach for the accommodation of passengers. For each and every violation of the provisions of this section the railroad company shall be subject to a fine of five hundred dollars. [1907, ch. 200, § 1.]

§ 4790. Reception of freight. Demurrage for delay in shipment. It shall be the duty of every railroad corporation operating its road within this state to receive any and all freight offered to it, at any of its stations within this state for transportation to another point within this state, and to deliver to the person offering such freight for transportation a proper receipt therefor showing the time such freight is received, and such railroad corporation shall deliver such freight at its destination by the next schedule train; provided, such freight is offered to such railroad corporation between the hours of eight o'clock a. m. and five o'clock p. m. on any business day, and at least two hours before the time the next local freight train is scheduled to leave such station to the station or point where such freight is to be delivered; provided, further, that any articles of freight weighing one thousand pounds or more each shall be delivered at such station not less than four hours prior to the time that such scheduled train is due to depart; provided, further, that any condition in any contract made a part of any shipping bill, or receipt, which in any way purports to release such railroad corporation from its duty under this act shall be null and void; and provided, further, that any railroad corporation refusing or failing to deliver to such person so offering such freight such receipt when demanded, shall be liable to such person in the sum of one hundred dollars, and any railroad corporation failing or refusing to deliver such freight at its destination as herein provided, shall forfeit ten per cent of the charges for transporting such freight for each twenty-four hours that such freight is delayed; provided, further, that if such freight does not reach its destination for sixty hours after the scheduled time for its arrival, as herein provided, barring accidents and the elements, the consignee may refuse to receive same and such railroad corporation shall be liable to the owner for the value of such freight, together with such damages as the parties may sustain by reason of such delays, same to be recovered in a civil action. Upon payment as above provided the railroad corporation shall become at once the absolute owner of said property. [1907, ch. 200, § 2.]

Effect of strike on carrier's liability for delay in transportation. 35 L.R.A. 624.

§ 4791. Demurrage in case of delay in carload shipments. Every railroad corporation operating a line or lines of road through or within this state shall furnish suitable cars for car load shipments of freight to any person, persons or corporation, applying therefor to any agent, within this state, of said railroad corporation, and such car or cars shall be placed in a suitable and convenient place for loading within seventy-two hours after application therefor has been made; provided, that no railroad company shall be required to furnish to any person or corporation more than two cars at any one time. Any railroad corporation failing or refusing to furnish such car or cars and failing or refusing to so place such car or cars in a suitable and convenient place for loading within seventy-two hours after such demand, and after the schedule time of its trains will enable it to deliver such car or cars, shall forfeit for each car so ordered to such person, persons or corporation the sum of two dollars for each and every twenty-four hours until such car or cars are so furnished; provided, however, that such person, persons or corporation applying for cars to be used wholly within this state shall, at the time of applying therefor, pay or tender to such railroad corporation not less than twenty per cent of the freight charges for such car according to said railroad corporation's published tariff. [1907, ch. 200, § 3.]

§ 4792. Demurrage in case of delay in carload shipments within the state. Whenever any person, persons or corporation shall have loaded any car or cars for transportation wholly within this state, they shall at once deliver same to the railroad corporation by notifying it that said car or cars are ready for shipment and it shall be the duty of such railroad corporation to deliver to such person, persons or corporation a shipping bill, or receipt, for such car or cars, showing the time same was so delivered, and it shall be the duty of said railroad corporation to forward said car by its next scheduled local freight train leaving such station to the station or place to which such car or cars are to be delivered and to deliver same to its destination at the time designated in its schedule of trains for the line or lines over which said train shall pass and said railroad corporation shall forfeit to such shipper ten per cent of the freight on such car or cars for each twenty-four hours such car shall be delayed, as shown by the time same was received and the schedule time of such train or trains; provided, such car or cars were delivered to the railroad company at least three hours before the departure according to the schedule of such train or trains, and if such car or cars are not delivered within sixty hours after the time of arrival of the next scheduled local train after such car or cars are so delivered, barring accidents and the elements, the consignee may refuse to accept same and such railroad corporation shall be liable to the owner for the value of the freight so shipped, together with such damages as the parties may sustain, same to be recovered in a civil action. [1907, ch. 200, § 4.]

§ 4793. Definition of phrases. In the construction of this article, the phrase "railroad" shall be construed to include all common carriers, railroads and railways operated by steam, whether used or operated by the corporation owning them or by other corporations or otherwise. The phrase "railroad corporation" shall be construed to mean the corporation which constructs, maintains, uses or operates a railroad operated by steam power, and used for the transportation of persons or property, or leases cars by whatever name known to such railroad for such purposes. [1907, ch. 200, § 5.]

§ 4794. Costs allowed in action for violation of law. In any action commenced under this article the plaintiff shall in connection with the usual costs allowed in civil actions, be entitled to the same mileage and witness fees as any witness in the case, and the court shall allow a reasonable amount as an attorney's fee, same to be taxed as costs in this action; provided, however, that nothing in this article shall be construed to stop or hinder any person, persons or corporation from bringing suits against any corporation for any violation of all of the laws of this state, or of the United States, for the government of railroads. [1907, ch. 200, § 6.]

§ 4795. Provisions of act cumulative. Nothing in this article contained shall in any manner be construed as repealing or in any manner altering any other act, or part of act, heretofore adopted by the legislature of this state, but the remedies herein provided shall be cumulative to all other remedies now existing. [1907, ch. 200, § 7.]

ARTICLE 25.—MAXIMUM TRANSPORTATION RATES.

[§ 4796. Two and one-half cents a mile and family mileage books. Every railroad, railroad corporation and common carrier doing business in this state, their officers, agents, representatives, employees, trustees, receivers and lessees shall be limited to a compensation of not to exceed two and one-half cents per mile for distances exceeding six miles, for the transportation of any person with ordinary baggage not exceeding one hundred and fifty pounds in weight; and for children five years of age and less than twelve years of age, one-half of the fare charged for adults; and for children under five years old who are traveling with an adult paying full fare no charge shall be made; provided, that every railroad, railroad corporation and common carrier doing business

in this state shall issue upon request of any person, mileage books in denomination of one thousand miles, limited to not less than one year from date of issue and redeemable within one year after the expiration of such limitation, with baggage and other facilities similar to those accompanying regular trip tickets, at a price of twenty dollars each; that such mileage books shall be good for travel by the purchaser and such adult members of his family as he may designate and whose names are then and there written thereon, but the fare shall always be made that multiple of five nearest reached by multiplying the rate by the distance; provided, further, that the provisions of this act shall not apply to the transportation of passengers within the boundaries of any city by street railway companies. Every officer, agent, conductor, representative or any employe of any railroad, railroad corporation or common carrier who shall aid or abet any such railroad, railroad corporation or common carrier in the violation of this act by selling, charging or collecting for any ticket or transportation over any railroad any greater sum, charge or rate than that above specified shall be deemed personally guilty of a violation of this article and, upon conviction, shall be punished as hereinafter provided. The sum of ten cents may be added to the legal fare when the same is paid on the cars, provided that a reasonable opportunity has been afforded to passengers to purchase tickets at the legal rate of fare before boarding the train.] [1907, ch. 199, § 1.]

Provision as to mileage book held unconstitutional as not giving railroad companies due process of law. *State ex rel. McCue v. Great Northern R. Co.*, 17 N. D. 370, 116 N. W. 89.

Validity of statute requiring issuance of mileage books at reduced rates. 7 L.R.A. (N.S.) 1086.

§ 4797. Compulsory testimony. No person and no officer, agent, representative or employe of any railroad, railroad corporation or common carrier shall be excused from testifying or producing books and documents in his possession in relation to any violation of this article on the ground that such testimony, books or documents would tend to convict the person so testifying of a crime; but no person so testifying shall be liable to prosecution or punishment for any offense concerning which he has been required to testify or to produce books or documents. [1907, ch. 199, § 2.]

§ 4798. Penalty. Every such railroad, railroad corporation or common carrier violating any of the provisions of this article shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars; and any agent or officer so offending shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than fifty dollars nor more than one hundred dollars or by imprisonment in the county jail for not less than thirty days or more than ninety days, or by both such fine and imprisonment in the discretion of the court. [1907, ch. 199, § 3.]

ARTICLE 26.—PROHIBITING OF FREE PASSES.

§ 4799. Free passes, franks and special privileges prohibited. Exceptions. No common carrier subject to the provisions of this article, shall, directly or indirectly, issue or give any free ticket, free pass or free transportation for passengers except to its employes and their families, its officers, bona fide agents, surgeons, physicians and attorneys at law on the pay roll of the common carrier; to ministers of religion, traveling secretaries of railroad, Young Men's Christian Association, inmates of hospitals and charitable, eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons, and to such persons when transported by charitable societies or hospitals and the necessary agents employed in such transportation; to inmates of national homes or state homes for disabled volunteer soldiers, and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge; to necessary

care-takers of live stock, poultry, milk, fruit and vegetables; to employes on sleeping cars, express cars, and to linemen of telegraph and telephone companies if operated in connection with said common carriers; to railway mail service employes, post office inspectors, custom inspectors and immigration inspectors; to news boys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested; to persons injured in wrecks and physicians and nurses attending such persons.

Provided, further, that the provisions of this article shall not be construed to prohibit or make unlawful the transportation of city policemen, firemen, mail carriers and postmen on the street railways in the cities of this state.

Provided, further, that the provisions of this article shall not be construed to make unlawful the granting of reduced homeseekers' rates or the granting of round trip excursion rates to any class of persons, provided that all persons of that class shall be allowed equal privileges in respect to such homeseekers' or excursion rates, but excursion rates shall not be allowed any persons or representatives of any political party to enable them to attend any political meeting either as delegates or otherwise.

Provided, further, that the provisions of this article shall not be construed to make unlawful the granting of free transportation to persons engaged in the state geological survey, farmers' institute lecturers, and persons rendering service on "good farming special trains."

Provided, further, that the provision shall not be construed to prohibit the interchange of passes for officers, agents and employes of common carriers and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence or other calamitous visitation; and

Provided, further, that this provision shall not be construed to prohibit the privilege of passes or franks or the exchange thereof with each other for the officers, agents, employes and their families, of express companies, and their officers, agents, employes and families of other common carriers subject to the provision of this article;

Provided, further, that the term "employes" as used in this paragraph, shall include furloughed, pensioned and superannuated employes, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier, and the ex-employes traveling for the purpose of entering the service of any such common carrier; and the term "families" as used in this paragraph, shall include the families of those persons named in this provision, also the families of persons killed and the widows during the widowhood and minor children during minority, of persons who died while in the service of any such common carrier. [1911, ch. 138, § 1.]

Is pass issued as part of consideration for contract within statute prohibiting free transportation of passengers or discrimination in passenger rates? 23 L.R.A.(N.S.) 217: 31 L.R.A.(N.S.) 657.

§ 4800. Penalty. Any common carrier violating any of the provisions of this article shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of this state of competent jurisdiction, be subject to a fine of not more than five hundred (\$500.00) dollars for each offense; and any person other than the persons excepted in this article who uses any such free ticket, free pass or free transportation, shall be subject to a like penalty. [1911, ch. 138, § 2.]

ARTICLE 27.—TRANSPORTATION OF LIVE STOCK.

[§ 4801. **Minimum speed to be maintained.** It shall be the duty of every railroad, railroad corporation, railway company, express company, car company and of every common carrier other than by water, by whatever name it may be called or by whomsoever operated and which is wholly or in

part engaged in the transportation of any kind of live stock by railroad within or to or from any point in this state, to transport any and all such live stock so by it being transported, with the utmost diligence, and to maintain within this state in all trains so transporting any such live stock an average minimum rate of speed of not less than twenty miles per hour from the time any such live stock is loaded upon or into its cars until such train reaches its destination, deducting only in the computation of such average minimum rate of speed such reasonable time as any such live stock may be necessarily delayed in unloading to feed, water and rest and in feeding, watering and resting and in reloading.] [R. C. 1905, § 4398; 1903, ch. 144, § 1.]

This and the following section were held unconstitutional as an unreasonable exercise of the police power. *Downey v. Northern P. R. Co.*, 19 N. D. 621, 26 L.R.A.(N.S.) 1017, 125 N. W. 475.

Constitutionality of statute fixing minimum rate of speed at which carrier may transport special kinds of freight. 26 L.R.A.(N.S.) 1018.

Liability for injuries to animals during transportation. 67 Am. Dec. 208; 12 Am. Rep. 500.

[§ 4802. Penalty for violation. Every railroad, railroad corporation, railway company, express company, car company or common carrier other than by water; and the person or persons operating such common carrier as receiver, lessee or trustee violating any of the provisions of section 4801, shall be liable to the owner or owners of any live stock so being transported, in the sum of five dollars per car for each and every hour any car, wholly or in part loaded with any live stock, is detained beyond the time provided in said section, and, in addition thereto, every such railroad, railroad corporation, railroad company, express company, car company or common carrier, or the person or persons operating any such common carrier as receiver, lessee or trustee, shall be liable to such owner or owners of said live stock for all damages sustained on account of any such delay, to be collected in an action by such owner or owners in any court of competent jurisdiction in this state.] [R. C. 1905, § 4399; 1903, ch. 144, § 2.]

ARTICLE 28.—PERSONAL INJURY.

§ 4803. Railroads liable for damages to employees. Every railroad company organized or doing business in this state shall be liable for all damages done to any employe of such company, in consequence of any negligence of its agents, or by any mismanagement of its engineers, or other employes, to any person sustaining such damage; and no contract which restricts such liability shall be legal or binding. [R. C. 1905, § 4400; 1903, ch. 131.]

Applicable only to employees engaged in operating railroads. *Beleal v. Northern P. R. Co.*, 15 N. D. 318, 108 N. W. 33, 11 A. & E. Ann. Cas. 321.

This action does not invalidate a contract made by a circus company to absolve the carrier from all liability for damages to its property or persons travelling with the circus by reason of the negligence of the carrier. *Sager v. Northern Pac. R. Co.*, 166 Fed. 526.

ARTICLE 29.—FELLOW SERVANT AND CONTRIBUTORY NEGLIGENCE ACT.

It is to be observed that this article is not limited to railroad or other corporations.

§ 4804. Liability of common carriers. Every common carrier shall be liable to any of its employes, or in case of the death of an employe, to his personal representative, for the benefit of his widow, children or next of kin, for all damages which may result from the negligence of any of its officers, agents or employes, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways or works. [1907, ch. 203, § 1.]

Liability of railroad to trainmen injured by overhead structure. 47 L.R.A.(N.S.) 483.

Liability of railroad to watchman or flagman for injuries caused by passing trains. 48 L.R.A.(N.S.) 150.

Injury to railroad employe by torpedoes on track. 16 L.R.A.(N.S.) 1684.

What constitutes a defect in the "ways" of a railroad company within meaning of employers' liability acts. 19 L.R.A.(N.S.) 733.

Duty and liability under federal and state railway safety appliance acts. 20 L.R.A. (N.S.) 473; 41 L.R.A. (N.S.) 49.

Assumption by train employe of risks due to defects in tracks or roadbed. 28 L.R.A. (N.S.) 1255.

—of risk of unblocked switches. 48 L.R.A. 72; 16 L.R.A. (N.S.) 717.

Who may raise question that employers' liability law involves unconstitutional discrimination. 32 L.R.A. (N.S.) 958.

Master's liability for vice-principal's negligence in manipulating switch, injuring servant. 54 L.R.A. 129.

Duty to keep switch closed as a delegable duty. 17 L.R.A. (N.S.) 542.

Master's liability for negligence of coservant in respect to defective switches. 54 L.R.A. 170.

Abrogation of defense of fellow-servant doctrine by federal employers' liability act. 47 L.R.A. (N.S.) 60.

Validity of statute abrogating fellow-servant rule. 12 L.R.A. (N.S.) 1040; 47 L.R.A. (N.S.) 84.

Is a street or interurban railway affected by abrogation of fellow-servant rule as to "railroads." 17 L.R.A. (N.S.) 117.

Applicability to private railroad, of enactment abrogating fellow-servant rule as to "railroads." 15 L.R.A. (N.S.) 479; 45 L.R.A. (N.S.) 841.

What constitutes operation of railroad under statutes abrogating fellow-servant rule for railroads. 1 L.R.A. (N.S.) 696.

What is a railroad hazard within statutes abolishing or restricting fellow-servant rule as to railroad employes. 18 L.R.A. (N.S.) 478; 22 L.R.A. (N.S.) 969.

State statute modifying fellow-servant rule as an interference with interstate commerce. 15 L.R.A. (N.S.) 134.

Employes and employments within the purview of statutes abrogating the fellow-servant rule. 47 L.R.A. (N.S.) 113.

Right of servant to rely on promise of master to discharge incompetent or careless fellow servant. 47 L.R.A. (N.S.) 1220.

§ 4805. Contributory negligence no bar to recovery, when. In all actions hereinafter brought against any common carrier to recover damages for personal injuries to an employe, or where such injuries have resulted in his death, the fact that the employe may have been guilty of contributory negligence shall not bar a recovery, where his contributory negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employe. All questions of negligence and contributory negligence shall be for the jury. [1907, ch. 203, § 2.]

Contributory negligence in entering or remaining in employment. 49 L.R.A. 33.

Negligence of employe in stepping between moving cars. 41 L.R.A. (N.S.) 32.

Walking in front of moving car to prepare coupling. 10 L.R.A. (N.S.) 881.

Venturing with hand car on track over which other train has the right of way. 1 L.R.A. (N.S.) 1014.

Contributory negligence of watchman or flagman injured by passing trains. 48 L.R.A. (N.S.) 152.

Contributory negligence of trainman injured by overhead structure. 47 L.R.A. (N.S.) 494.

Negligence in going, without previous notice, under or between cars liable to be moved at any time. 46 L.R.A. (N.S.) 877.

Duty of employe engaged in repairing or cleaning track to look out for his own safety. 6 L.R.A. (N.S.) 646.

Contributory negligence in failing to remember dangerous conditions. 41 L.R.A. (N.S.) 79.

Employe's right to rely on statute requiring signal to be given by train approaching crossing. 40 L.R.A. (N.S.) 1105.

Availability of defense of contributory negligence under safety appliance acts. 20 L.R.A. (N.S.) 483; 41 L.R.A. (N.S.) 57.

Abrogation of defense of contributory negligence by federal employers' liability act. 47 L.R.A. (N.S.) 61; 48 L.R.A. (N.S.) 987.

§ 4806. Contracts to avoid liability void. No contract of employment, insurance, relief benefit or indemnity for injury or death entered into by or on behalf of any employe, nor the acceptance of any such insurance, relief benefit or indemnity by the person entitled thereto shall constitute a bar or defense to any action brought to recover damages for personal injuries to or death of such employe; provided, however, that upon the trial of said action against any common carrier, the defendant may set off therein any sum it has con-

tributed toward any such insurance, relief benefit or indemnity that may have been made to the injured employe, or in case of his death, to his personal representative. [1907, ch. 203, § 3.]

Validity of contract exonerating master in advance from liability for negligent injuries to servant. 7 L.R.A.(N.S.) 537.

Contract requiring servant to elect between acceptance of benefits out of a relief fund and a prosecution of his claim in an action for damages. 11 L.R.A.(N.S.) 182; 48 L.R.A.(N.S.) 440.

Constitutionality of statute forbidding the avoidance of liability to employe, or reduction of his damages, by relief or indemnity contract. 33 L.R.A.(N.S.) 706; 38 L.R.A.(N.S.) 867.

Effect of federal employers' liability act on validity of contracts exempting master from liability. 47 L.R.A.(N.S.) 50.

§ 4807. Time of action limited. No action shall be maintained under this article unless commenced within one year from the time the cause of action accrued. [1907, ch. 203, § 4.]

ARTICLE 30.— MISCELLANEOUS.

§ 4808. Unlawful rides on cars. It shall be, and is hereby declared unlawful for any person to enter upon, ride upon or secure passage upon a railroad car or engine of any description other than a car commonly used exclusively for the carriage of passengers, with intent thereby to obtain a ride without payment therefor or fraudulently obtain carriage upon any such engine or car. It shall be, and is hereby declared unlawful for any person, excepting railway employes in the performance of their duty, to take passage or ride upon, or enter for the purpose of taking passage or riding upon the trucks, rods, brakebeams or any part of any car, locomotive engine or tender, not ordinarily and customarily used or intended for the resting place of a person riding upon and operating the same. [R. C. 1905, § 4401; 1899, ch. 127, §§ 1, 2; R. C. 1899, § 3072a.]

Liability for injury to person wrongfully on train by collusion with train employe. 5 L.R.A.(N.S.) 1025; 37 L.R.A.(N.S.) 419.

§ 4809. Penalty. Any person violating any of the provisions of section 4808 shall be punished by imprisonment in the county jail for not less than ten days nor more than thirty days at hard labor, or by a fine of not less than ten dollars nor more than seventy-five dollars. [R. C. 1905, § 4402; 1899, ch. 127, § 3; R. C. 1899, § 3072a.]

§ 4810. Employes made peace officers. All conductors, engineers, brakemen and other persons engaged or employed in the operation of cars and trains upon a railroad, are hereby constituted peace officers for the one purpose of enforcing the provisions of the preceding section; and all such persons are hereby given full authority, when so engaged or employed, to arrest any person violating any of the provisions of this article. Every person arrested by a conductor, brakeman or other person exercising authority herein conferred, must be thereafter proceeded with in all respects as is or may be required by the law in cases of arrests made by other peace officers of the state, except that any person hereby authorized to make arrests may cause the person so arrested by him to be delivered to any sheriff or other peace officer within the state to be dealt with as provided by law; and the person so arrested may be taken before any magistrate of the county where the offense is committed. Nothing herein contained shall be construed to restrict, in any way, any right, authority or privilege conferred by law, upon any other peace officer of the state within his lawful jurisdiction. [R. C. 1905, § 4403; 1899, ch. 127, §§ 4, 5, 6; R. C. 1899, § 3072b.]

§ 4811. No fees allowed. No person authorized by the provisions of the preceding section to make arrests, except regular peace officers of the state, shall receive or be allowed any fees or expenses for so doing. [R. C. 1905, § 4404; 1899, ch. 127, § 7; R. C. 1899, § 3072c.]

CHAPTER 15.

URBAN ELECTRIC RAILWAYS.

§ 4812. Granted right of condemnation. Urban electric railways are hereby specifically granted and given the same rights, privileges and powers granted and given to steam railways in this state, including the right of organization and of condemnation of real property for right of way; provided, that when they shall exercise the right of eminent domain they shall become subject to the laws, rules and regulations governing other public corporations having the right of eminent domain; provided, further, that no person, firm or corporation shall hereafter construct any electric railway on any street of any city that is now or hereafter may be incorporated under the general laws of this state, without first securing and filing in the office of the city auditor of such city the consent in writing of the owners of at least one-half of the property abutting on both sides of such street for the full length of such proposed construction. [1911, ch. 241; 1907, ch. 212.]

CHAPTER 16.

RAILROAD AND TELEPHONE COMPANIES TO FILE INFORMATION.

§ 4813. Railroad and telephone companies shall file maps and information. That each railroad company and each telephone company located and doing business in this state, file in the office of the county auditor of each county a map showing:

First. The exact location of such companies' lines, and showing on which side of section and other lines, its property is located in each assessment district and school district in each county.

Second. A description of any other property owned by said companies in each assessment district and school district in each county.

Third. Telephone companies to show separately the number of miles of poles and of each kind of wire and the number of telephone instruments in each assessment district and school district. [1911, ch. 249, § 1.]

§ 4814. County map, auditor to send. The county auditor of each county in the state shall, each year, on or before the first day of March, mail to each railroad or telephone company, doing business in his county, an accurate map of the county, showing the boundaries of each assessment district and school district. [1911, ch. 249, § 2.]

§ 4815. Information to be filed. Every railroad company and every telephone company shall on or before the fifteenth day of February, in each year, file in the office of the county auditor, of each county in the state, in which said companies' lines are located, the name of its company, the principal place of doing business, the names of its president, secretary and treasurer, together with their post office address. [1911, ch. 249, § 3.]

§ 4816. County auditor to report to state auditor. The county auditor of each county shall, on or before the first day of June, in each year, report to the state auditor, the names of all such companies so filing reports and their officers and such other information as may be required by the state auditor. [1911, ch. 249, § 4.]

§ 4817. Company shall report to state auditor. Each of said companies shall on or before July first and at any other time, in each year, report to the state auditor, such information in regard to its mileage and other property owned in the state, as such state auditor or the state board of equalization shall require. [1911, ch. 249, § 5.]

§ 4818. Maps when filed. Every such company located or doing business in the state at the date of the approval of this act [chapter], shall immediately on

receipt of the maps referred to in section 4814, furnish complete and full information required by this act [chapter]. In subsequent years said companies need only file maps showing any changes that have been made since the report of the previous year. [1911, ch. 249, § 6.]

§ 4819. Duties of companies organized. All railroad and telephone companies, locating in and commencing and doing business in this state, after the passage of this act [chapter], must file reports with the county auditor, state auditor and state board of equalization as required of companies now located and doing business in the state. [1911, ch. 249, § 7.]

§ 4820. Duty of county and state officers. In case the said companies or any of them fail to make the reports herein provided for, the county auditor, state auditor or state board of equalization are hereby authorized, and it is hereby made the duty of said officers and board to procure such information, and report the expense in detail of procuring said information, to the state's attorney of his county or the attorney-general of the state, whose duty it shall be to collect same by civil action as provided in section 4821. [1911, ch. 249, § 8.]

§ 4821. Penalty. Every railroad or telephone company which neglects or fails to comply with the provisions of this act [chapter] shall be liable to fine of not more than five hundred dollars, or less than fifty dollars and shall also be liable for the expense incurred by said officers or board in procuring the information in any other manner than provided herein, to be collected in a civil action in the name of the state. [1911, ch. 249, § 9.]

CHAPTER 17.

WAGON ROAD CORPORATIONS.

§ 4822. How wagon road laid out. When a corporation is formed for the construction and maintenance of a wagon road the road must be laid out as follows: Three commissioners must act in conjunction with the surveyor of the corporation, two to be appointed by the board of commissioners of the county through which the road is to run, and one by the corporation, who must lay out the proposed road and report their proceedings together with a map of the road to the board of commissioners of the county as provided in the succeeding section. [R. C. 1905, § 4405; Civ. C. 1877, § 486; R. C. 1899, § 3073.]

Construction and maintenance for over fifteen years of a toll road by private corporation is prima facie evidence of ownership. *Lawrence County v. Toll Road Co.*, 11 S. D. 74, 75 N. W. 817.

As to similar provision in Cal. Civ. Code, § 512, see *Blood v. Woods*, 95 Cal. 78, 30 Pac. 129.

§ 4823. Map filed. Record of approval. When the route is surveyed a map thereof must be submitted to and filed with the board of commissioners of each county through or into which the road runs, giving its general course, and the principal points to or by which it runs, and its width, which must in no case exceed one hundred feet, and the board of county commissioners must either approve or reject the survey. If approved, it must be entered of record on the journal of the board; but the board of county commissioners must require the corporation, at its own expense, and the corporation must so change and open the highways so taken and used as to make the same as good as they were before the appropriation thereof; and must so construct all crossings of public highways over and by its road and its toll gates as not to hinder or obstruct the use of the same. [R. C. 1905, § 4406; Civ. C. 1877, § 487; R. C. 1899, § 3074.]

§ 4824. Bridges and ferries. Tolls. All wagon road corporations may bridge or keep ferries on streams on the line of their road and must do all things necessary to keep the same in repair. They may take such tolls only on their roads, ferries or bridges as are fixed by the board of commissioners

of the proper county through which the road passes or in which the ferry or bridge is situated, subject, however, to the limitation of rates of ferriage prescribed in the general law upon ferries; but in no case must the tolls be more than sufficient to pay fifteen per cent per annum on the cost of construction after paying for repairs and other expenses for attending to the roads, bridges and ferries. If tolls, other than as herein provided are charged or demanded, the corporation forfeits its franchise and must pay to the party so charged one hundred dollars as liquidated damages. [R. C. 1905, § 4407; Civ. C. 1877, § 488; R. C. 1899, § 3075.]

Rights and duties of toll-bridge proprietors. 58 L.R.A. 155; 30 L.R.A.(N.S.) 360.

Right to take toll on road within a city. 15 L.R.A. 651.

As to similar provision in Cal. Civ. Code, § 514, see *Stony Hill Turnp. Road Co. v. Placer County*, 88 Cal. 632, 26 Pac. 513.

§ 4825. No tolls where public highway used. When any highway or public road is taken and used by any wagon road corporation as a part of its road, the corporation must not place a tollgate on or take tolls for the use of such highway or public road by teamsters, travelers, drovers or any one transporting property over the same. [R. C. 1905, § 4408; Civ. C. 1877, § 489; R. C. 1899, § 3076.]

§ 4826. Toll rates posted. The corporation must affix and keep up at or over each gate or in some conspicuous place so as to be conveniently read a printed list of the rates of toll levied and demanded. [R. C. 1905, § 4409; Civ. C. 1877, § 490; R. C. 1899, § 3077.]

§ 4827. Passage prevented until tolls paid. Each toll gatherer may prevent from passing through his gate persons leading or driving animals or vehicles subject to toll, until they shall have paid respectively, the tolls authorized to be collected. [R. C. 1905, § 4410; Civ. C. 1877, § 491; R. C. 1899, § 3078.]

§ 4828. Penalty for receiving illegal toll. Every toll gatherer who at any gate unreasonably hinders or delays any traveler or passenger liable to the payment of toll, or demands or receives from any person more than he is authorized to collect, for each offense forfeits the sum of twenty-five dollars to the person aggrieved. [R. C. 1905, § 4411; Civ. C. 1877, § 492; R. C. 1899, § 3079.]

As to similar provision in Cal. Civ. Code, § 518, see *Brown v. Rice*, 51 Cal. 489.

§ 4829. Passing around gate. Penalty. Every person who, to avoid the payment of the legal toll, with his team, vehicle or horse turns out of a wagon, turnpike or plank road, or passes any gate thereon on the ground adjacent thereto, and again enters upon such road, for each offense forfeits the sum of five dollars to the corporation injured. [R. C. 1905, § 4412; Civ. C. 1877, § 493; R. C. 1899, § 3080.]

§ 4830. Penalty for injuring road. Every person who:

1. Willfully breaks, cuts down, defaces or injures any milestone or post on any wagon, turnpike or plank road; or,
2. Willfully breaks or throws down any gate on such road; or,
3. Digs up or injures any part of such road or anything thereunto belonging; or,
4. Forcibly or fraudulently passes any gate thereon without having paid the legal toll;

For each offense forfeits to the corporation injured the sum of twenty-five dollars in addition to the damages resulting from his wrongful act. [R. C. 1905, § 4413; Civ. C. 1877, § 494; R. C. 1899, § 3081.]

§ 4831. How revenue applied. The entire revenue from the road shall be appropriated:

1. To repayment to the corporation of the costs of its construction together with the incidental expenses incurred in collecting tolls and keeping the road in repair; and,
2. To the payment of the dividend among its stockholders, as provided in section 4824. When the repayment of the costs of construction is com-

pleted, the tolls must be so reduced as to raise no more than an amount sufficient to pay a dividend of twelve per cent per annum and incidental expenses and to keep the road in good repair. [R. C. 1905, § 4414; Civ. C. 1877, § 495; R. C. 1899, § 3082.]

§ 4832. When mortgage valid. The corporation may mortgage or hypothecate its road and other property for funds with which to construct or repair its roads, but no mortgage or hypothecation is valid or binding unless at least twenty-five per cent of the capital stock subscribed has been paid in and invested in the construction of the road and appurtenances and then only after an affirmative vote of two-thirds of the capital stock subscribed. [R. C. 1905, § 4415; Civ. C. 1877, § 496; R. C. 1899, § 3083.]

As to similar provision in Cal. Civ. Code, § 522, see *Welsh v. Plumas County*, 80 Cal. 338, 22 Pac. 254.

§ 4833. Natural person like corporation. When a wagon, turnpike or plank road is constructed, owned or operated by any natural person, this chapter is applicable to such persons in like manner as it is applicable to corporations. [R. C. 1905, § 4416; Civ. C. 1877, § 497; R. C. 1899, § 3084.]

As to similar provision in Cal. Civ. Code, § 523, see *People ex rel. El Dorado County v. Davidson*, 79 Cal. 166, 21 Pac. 538.

CHAPTER 18.

INSURANCE CORPORATIONS.

- ARTICLE 1. GENERAL PROVISIONS, § 4834.**
2. PROVISIONS COMMON TO ALL DOMESTIC INSURANCE COMPANIES, §§ 4835-4845.
 3. DOMESTIC LIFE INSURANCE COMPANIES TO DEPOSIT SECURITIES WITH INSURANCE COMMISSIONER, §§ 4846-4852.
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 23. LICENSING INSURANCE AGENTS, §§ 4959, 4960.
 24. RESIDENT AGENTS FOR TRANSACTION OF FIRE INSURANCE BUSINESS, §§ 4961-4964.

ARTICLE 1.—GENERAL PROVISIONS.

§ 4834. Terms defined. When consistent with the context and not obviously used in a different sense the term “company” or “insurance company,” as used herein, includes all corporations, associations, partnerships or individuals engaged as principals in the business of insurance; the word “domestic” designates those companies incorporated or formed in this state and the word “foreign” when used without limitation includes all those formed by authority of any other state or government. [R. C. 1905, § 4417; R. C. 1899, § 3085.]

ARTICLE 2.—PROVISIONS COMMON TO ALL DOMESTIC INSURANCE COMPANIES.

§ 4835. Subject to what provisions of law. All insurance companies now or hereafter incorporated or formed by authority of any law of this state, except when otherwise expressly provided, may exercise the powers and shall be subject to the duties and liabilities provided by this chapter. The general provisions of law relating to the powers, duties and liabilities of corporations shall apply to all incorporated domestic insurance companies, so far as such provisions are pertinent and not in conflict with other provisions of law relating to such companies. [R. C. 1905, § 4418; R. C. 1895, § 3086.]

§ 4836. How and for what purpose formed. Any number of persons, not less than seven, may form a corporation to carry on the business of insurance, either upon the stock or mutual plan, against loss or damage by fire, lightning, cyclone, tornado or hail, or the risks of inland navigation and transportation, or to make insurance upon the lives of persons and every insurance pertaining thereto, and against accidental injuries including the granting, purchasing and paying of annuities and indemnities and to transact fidelity insurance and corporate suretyship. An insurance company incorporated under the provisions of this chapter shall have power to make insurance of any of the kinds hereinbefore mentioned which shall have been expressed in its articles of incorporation. [R. C. 1905, § 4419; 1895, ch. 69, § 1; 1891, ch. 73, § 1; R. C. 1895, § 3087.]

§ 4837. Articles. Contents. The articles of incorporation shall set forth in addition to what is required to be set forth in section 4505 the kind of insurance proposed to be made and whether on the stock or mutual plan, the period for the commencement and termination of its fiscal year and the period for which it is incorporated, not to exceed thirty years, and shall be filed in the office of the commissioner of insurance. Any name not previously in use by an existing corporation may be adopted, but the words “insurance company,” or, if the business is to be conducted upon the mutual principle, the words “mutual insurance company” shall constitute a part of such name. No certificate shall be granted by the insurance commissioner, as hereinafter provided, if, in his judgment, the name adopted too closely resembles the name of an existing corporation, or is liable to mislead the public. [R. C. 1905, § 4420; 1885, ch. 69, § 4; R. C. 1895, § 3038.]

§ 4838. Qualification of directors. Residence. One-third of the directors and all of the executive officers of a domestic insurance company must be residents of this state and each of the directors of such a company, if it has a capital stock, must be the owner in his own right of stock of such company worth at par at least five hundred dollars. [R. C. 1905, § 4421; 1885, ch. 69, § 4; R. C. 1895, § 3089.]

§ 4839. Examination of articles by attorney-general. Examination by commissioner of insurance. Certificate. The articles of incorporation shall be examined by the attorney-general and if found conformable to this article and not inconsistent with the constitution and laws of this state, shall be certified by him to the commissioner of insurance, who shall thereupon make an examination to ascertain whether the company has in all respects complied with the requirements of law, according to the nature of the business proposed

to be transacted by it and if satisfied by such examination that the corporation has complied with the law he shall deliver to such corporation a certified copy of the articles of incorporation and a certificate to the effect that such corporation has complied with all requirements of law, which, on being filed in the office of the register of deeds of the county where the principal office of the corporation is located, shall be its authority to commence business and issue policies; and such certified copy of the articles of incorporation and of such certificate may be used for or against such company with the same effect as the originals, and shall be conclusive evidence of the fact of the organization of such corporation. [R. C. 1905, § 4422; 1885, ch. 69, § 11; R. C. 1895, § 3090.]

Taking of applications in mutual insurance company is necessary step in formation, and is required to be done before issuance of a certificate to commence business. *Montgomery v. Harker*, 9 N. D. 527, 84 N. W. 369.

§ 4840. Reinsurance. Any domestic insurance company shall have power to effect reinsurance of any risks taken by it. [R. C. 1905, § 4423; 1885, ch. 69, § 2; 1889, ch. 69, § 1; R. C. 1895, § 3091.]

Liability of reinsurer. 44 L.R.A. (N.S.) 317.

§ 4841. Limitation on trade. No company organized under this chapter shall, directly or indirectly, deal or trade in buying or selling any goods, wares, merchandise or other commodities whatever, except such as may have been insured by such company and are claimed to be damaged by reason of the risk insured against. [R. C. 1905, § 4424; 1885, ch. 69, § 5; R. C. 1895, § 3092.]

§ 4842. Limitation on purchase and conveyance of real estate. No domestic insurance company shall purchase, hold or convey real estate except for the purpose and in the manner herein set forth, to wit:

1. Such as shall be requisite for its convenient accommodation in the transaction of its business; or

2. Such as shall have been mortgaged to it in good faith as security for loans previously contracted, or for money due; or,

3. Such as shall have been conveyed to it in satisfaction of debts previously contracted in legitimate business, or for money due; or,

4. Such as shall have been purchased at sales upon judgment or mortgage foreclosures obtained or made for such debts. [R. C. 1905, § 4425; 1885, ch. 69, § 10; 1889, ch. 69, § 3; R. C. 1895, § 3093.]

§ 4843. Capital and surplus invested. A domestic insurance company may invest its capital, and the funds accumulated in the course of its business, or any part thereof, in bonds or mortgages on improved unincumbered real estate within this state, or within any state in which such company is or becomes duly authorized and licensed to transact business, worth double the sum loaned thereon, exclusive of buildings, unless such buildings are insured and the policies made payable to the company as its interest may appear, and also in the bonds of the state, or bonds or treasury notes of the United States, and also in the bonds of any county or incorporated city or school district in this state, or within any state in which said company is or becomes duly authorized and licensed to transact business, authorized to be issued by legal authority, and loan such capital and funds, or any part thereof, on the security of such bonds, treasury notes, or upon bonds or mortgages as aforesaid, and change and reinvest the same in like securities as occasion may from time to time require; but the surplus money over and above the capital stock of such insurance company may be invested in or loaned upon the pledge of bonds of the United States or any of the states, or stocks, bonds, or other evidence of indebtedness of any solvent dividend paying institution incorporated under the laws of this state, or of any state in which such company is or becomes duly authorized and licensed to transact business, or of the United States, except its own stock; provided, always, that the market value of such stock, bonds or other evidence of indebtedness shall be at all

times during the continuance of such loan at least ten per cent more than the amount loaned thereon. No domestic insurance company shall invest or loan its capital, or the funds accumulated in the course of its business, or any part thereof, except as provided in this section. [R. C. 1905, § 4426; 1885, ch. 69, § 9; 1889, ch. 69, § 2; R. C. 1895, § 3094; 1905, ch. 122.]

§ 4844. **Dividends only from surplus profits. Profits, how estimated.** No domestic insurance company shall make any dividends except from the surplus profits arising from its business; and in estimating such profits there shall be reserved therefrom a sum equal to forty per cent of the amount of premiums on all unexpired risks and policies, which amount so reserved is hereby declared to be unearned premiums; and there shall also be reserved all sums due the company on bonds, mortgages, stocks and book accounts of which no part of the principal or interest thereon has been paid during the year preceding such estimate of the profits, and upon which suit for foreclosure or collection has been commenced, or which after judgment has been obtained thereon shall have remained more than one year unsatisfied and on which interest shall not have been paid. [R. C. 1905, § 4427; 1885, ch. 69, § 13; R. C. 1895, § 3095.]

§ 4845. **Penalty for violation of section 4426.** Any director or officer making or authorizing an investment or loan in violation of section 4843 shall be personally liable to the stockholders for any loss occasioned thereby. If a company is under liability for losses equal to its net assets and the president and directors, knowing it, make or assent to further insurance, they shall be personally liable for any loss under such insurance. If the directors allow to be insured on a single risk a larger sum than the law permits they shall be liable for any loss thereon above the amount they might lawfully insure, unless the excess is reinsured as required in section 4914. [R. C. 1905, § 4428; R. C. 1895, § 3096.]

ARTICLE 3.—DOMESTIC LIFE INSURANCE COMPANIES TO DEPOSIT SECURITIES
WITH INSURANCE COMMISSIONER.

§ 4846. **Annual statement.** The president or vice-president and secretary or actuary or a majority of the directors of each company organized under the laws of this state shall annually, by the first Monday in February, prepare under oath and file in the office of the commissioner of insurance a statement of its affairs for the year terminating on the thirty-first day of December, preceding, showing:

1. The name of the company and where located.
2. The names of its officers.
3. The amount of capital, if a stock company.
4. The amount of capital paid in, if a stock company.
5. The value of real estate owned by the company.
6. The amount of cash on hand.
7. The amount of cash deposited in banks, giving the name of the bank or banks.
8. The amount of cash in the hands of agents and in the course of transmission.
9. The amount of bonds of the United States, and all other bonds and securities, giving names and amounts with the par and market value of each kind.
10. The amount of loans secured by first mortgage on real estate and where such real estate is situated.
11. The amount of all other bonds, loans, how secured, and the rate of interest.
12. The amount of premium notes and their value on policies in force, if a mutual company.

13. The amount of notes given for unpaid stock, and their value in detail, if a stock company.
14. The amount of assessments unpaid on stock or premium notes.
15. The amount of interest due and unpaid.
16. The amount of all other securities.
17. The amount of losses due and unpaid.
18. The amount of losses adjusted but not due.
19. The amount of losses unadjusted.
20. The amount of claims for losses resisted.
21. The amount of money borrowed and evidences thereof.
22. The amount of dividends unpaid on stock.
23. The amount of dividends unpaid on policies.
24. The amount required to safely reinsure all outstanding risks.
25. The amount of other claims against the company.
26. The amount of net cash premiums received.
27. The amount of notes received for premiums.
28. The amount of interest received from all sources.
29. The amount of moneys received from all other sources.
30. The amount paid for losses.
31. The amount of dividends paid to policyholders, and the amount to stockholders, if a stock company.
32. The amount of commissions and salaries paid to agents.
33. The amount paid to officers for salaries and other compensation.
34. Amount paid for taxes.
35. The amount of all other payments and expenditures.
36. The greatest amount insured on any one life.
37. The amount deposited in other states or territories as security for policyholders therein, stating the amount in each state or territory.
38. The amount of premiums received in this state during the year.
39. The amount paid for losses in this state during the year.
40. The whole number of policies issued during the year, with the amount of insurance effected thereby, the total amount of risk.
41. All other items of information necessary to enable the commissioner of insurance to correctly estimate the cash value of policies or to judge of the correctness of the valuation thereof. [1909, ch. 150, § 1.]

§ 4847. Commissioner ascertains value of policies. Securities to be deposited. As soon as practicable after the filing of such statement the insurance commissioner shall ascertain the net cash value of every policy in force upon the basis of the American table of mortality and four and one-half per cent interest, or actuaries combined experience table of mortality and four per cent interest, in all companies organized under the laws of this state. The company may make such valuation and make and file the same with such annual statement, and it shall be received by the insurance commissioner upon satisfactory proof of its correctness. The net cash value of all policies in force in any such company being ascertained, the insurance commissioner shall notify it of the amount, and within thirty days thereafter, the officers thereof shall deposit with the insurance commissioner the amount of the ascertained value in the securities specified in chapter 156 of the session laws of 1907 [sections 4861, 4862 herein]; provided, however, that no stock company organized under the laws of this state shall be required to make a deposit of such securities in an amount exceeding one hundred thousand dollars; and when securities in that amount shall have been deposited then such insurance company may, and the insurance commissioner shall accept, in lieu of further deposit, a detailed, verified statement setting forth a list of the items of security held by such insurance company with sufficient particularity; and such securities so specified in such list, although retained by such insurance company, shall be kept separate and distinct from its other securities and

shall be held as a deposit for the policyholders of said company under the provisions of this section. The insurance commissioner may at any time make a personal examination of the books, papers, securities and business of any such life insurance company or authorize any other suitable person to make the same, and he or the person so authorized may examine under oath any officer or agent of the company, or others, relative to its business and management. If upon such examination the insurance commissioner is of the opinion that the company is insolvent, or that its condition is such as to render a further continuance of its business hazardous, then the insurance commissioner may require such insurance company to forthwith deposit in its office all of such securities so listed and specified in said list, and not deposited; provided, however, that nothing therein contained shall be construed as preventing or prohibiting any domestic life insurance company from depositing such securities in an amount to exceed the cash value of its policies. [1909, ch. 150, § 2.]

§ 4848. Certificate of authority. On receipt of such deposit and statement and such detailed list of securities provided for in the preceding section, all of which shall be renewed annually, by the first Monday in February, the insurance commissioner shall issue a certificate to the effect that such insurance company does business under the compulsory reserve deposit law of the state of North Dakota, and maintains in accordance with section two of said law, in the office of the insurance commissioner of the state of North Dakota, a deposit of an amount in excess of the net cash value of all outstanding policies in stipulated and highclass securities, deposited for the protection of the policyholders of said company, which certificate shall expire on the thirty-first day of March of the ensuing year. Such certificate shall be renewed annually upon a renewal of the deposit or statement provided for under the preceding sections, and upon compliance with the conditions above required. The insurance commissioner shall receive the sum of five dollars for issuing such certificate; provided, that a copy of such certificate may be attached to any policy of insurance hereafter or heretofore issued by any life insurance company organized under the laws of this state, upon its compliance with the provisions of this article. [1909, ch. 150, § 3.]

§ 4849. On default securities vest in policyholders. The securities of a defaulting or insolvent company or a company against which proceedings are pending for dissolution, on deposit shall vest in the state for the benefit of the policies on which such deposit is made or were made, and the proceeds of the same shall, by order of the court upon final hearing be divided among the holders thereof in the proportion of the last annual valuation of the same, or at any time be applied to the purchase of reinsurance for their benefit. [1909, ch. 150, § 4.]

§ 4850. Securities may be exchanged. Companies shall have the right at any time to change the securities on deposit by substituting a like amount of the character required in the first instance. If the annual valuation of the policies in force shows them to be less than the amount of the security deposited, then the company may withdraw such excess, but twenty-five thousand dollars must always remain on deposit. [1909, ch. 150, § 5.]

§ 4851. Dividends on securities property of company. Companies having on deposit with the insurance commissioner bonds or other securities may collect the dividends or interest thereon, delivering to their authorized agents the coupons or other evidence of interest as the same become due, but if any company fails to deposit additional securities when and as called for by the insurance commissioner, or pending any proceedings to close up or enjoin it, the insurance commissioner shall collect such dividends or interest and add the same to such securities. [1909, ch. 150, § 6.]

§ 4852. Exception to article. None of the provisions of this article shall apply to fraternal beneficiary associations. [1909, ch. 150, § 7.]

ARTICLE 4.— MISREPRESENTATIONS BY INSURANCE COMPANIES.

§ 4853. **Prohibited.** No life insurance company doing business in this state and no officer, director or agent thereof, shall issue or circulate, or cause or permit to be issued or circulated, any estimate, illustration, circular or statement of any sort misrepresenting the terms of any policy issued by it or the benefits or advantages promised thereby, or the dividends or shares of surplus to be received thereon, or shall use any name or title of any policy or class of policies misrepresenting the true nature thereof. [1907, ch. 147, § 1.]

§ 4854. **Penalty.** Any officer, agent, solicitor or any representative of any life insurance company violating the provisions of this article, shall be deemed guilty of a misdemeanor. Any life insurance company found guilty of a violation of the provisions of this article by the commissioner of insurance upon a hearing, after fifteen days' notice, shall be subject to a penalty to be by such commissioner of insurance imposed, of not to exceed five hundred dollars, in default of the payment of which he is authorized to revoke the license of such company; and provided, that upon a second conviction upon a similar hearing the commissioner of insurance shall revoke the license of such company to transact business in the state. [1907, ch. 147, § 2.]

ARTICLE 5.— DISCRIMINATION BY LIFE INSURANCE COMPANIES.

§ 4855. **Prohibited.** No life insurance company doing business in this state shall make or permit any distinction or discrimination in favor of individuals between insureds (the insured) of the same class and equal expectation of life in the amount or payment of premiums or rates charged for policies of life or endowment insurance, or in the dividends or other benefits payable thereon, or in any other of the terms or conditions of the contracts it makes, nor shall any such company or agent thereof make any contract of insurance or agreement as to such contract other than as plainly expressed in the policy issued thereon, nor shall any such company or any officer, agent, solicitor or representative thereof, pay, allow or give, or offer to pay, allow or give, directly or indirectly as inducement to insurance, any rebate of premium payable on their policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any paid employment or contract for services of any kind or any valuable consideration or inducement whatever not specified in the policy contract of insurance, or give, sell or purchase, or offer to give, sell or purchase as inducement to insurance or connection therewith any stocks, bonds or other securities of any insurance company or other corporation, association or partnership, or any dividends or profits to accrue thereon or anything of value whatsoever not specified in the policy. [1907, ch. 148, § 1.]

Power of legislature to regulate life insurance rates. 37 L.R.A.(N.S.) 778.

§ 4856. **Penalty.** Any officer, agent, solicitor or any representative of any life insurance company violating the provisions of this article shall be deemed guilty of a misdemeanor. Any life insurance company found guilty of a violation of the provisions of this article by the commissioner of insurance upon a hearing, after fifteen days' notice, shall be subject to a penalty to be by such commissioner of insurance imposed, of not to exceed five hundred dollars, in default of the payment of which he is authorized to revoke the license of such company; and provided, that upon a second conviction upon a similar hearing the commissioner of insurance shall revoke the license of such company to transact business in the state. [1907, ch. 148, § 2.]

ARTICLE 6.— DISBURSEMENTS BY LIFE INSURANCE COMPANIES.

§ 4857. **Voucher required.** No domestic life insurance company shall make any disbursements of one hundred dollars or more unless the same be evidenced by a voucher signed by or in behalf of the person, firm or corpora-

tion receiving the money and correctly describing the consideration for the payment. If the expenditure be for both services and disbursements the voucher shall set forth the services rendered and an itemized statement of the disbursements made. If the expenditure be in connection with any matter pending before any legislative or public body, or before any department or officer of any state or government, the voucher shall correctly describe, in addition, the nature of the matter and of the interest of such company therein. When such voucher cannot be obtained the expenditure shall be evidenced by an affidavit describing the character and object of the expenditure and stating the reason for not obtaining such voucher. [1907, ch. 149.]

ARTICLE 7.— DIVERSION OF FUNDS FOR POLITICAL PURPOSES BY LIFE INSURANCE COMPANIES.

§ 4858. **Unlawful to aid political parties. Penalty.** No insurance company or association, including fraternal beneficiary associations, doing business in this state, shall, directly or indirectly, pay or use or offer, consent or agree to pay or use any money or property for or in aid of any political party, committee or organization, or for or in aid of any corporation, joint stock or other associations, organized or maintained for political purposes, or for or in aid of any candidate for political office, or for nomination for such office, or for any political purpose whatsoever, or for the reimbursement or indemnification of any person for money or property so used. Any officer, director, stockholder, attorney or agent of any corporation or association which violates any of the provisions of this article, who participates in, aids, abets or advises or consents to any such violation, and any person who solicits or knowingly receives any money or property in violation of this article, shall be guilty of a misdemeanor and be punished by imprisonment for not more than one year and a fine of not more than one thousand dollars, and any officer aiding or abetting in any contribution made in violation of this article, shall be liable to the company or association for the amount so contributed. No person shall be excused from attending and testifying or producing any books, papers or other documents before any court or magistrate, upon any investigation, proceeding or trial for a violation of any of the provisions of this article, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate or degrade him; but no person shall be prosecuted or subject to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be used against him upon any criminal investigation or proceeding. [1907, ch. 152.]

The title of the act constituting the foregoing section reads as follows: "An act regulating life insurance companies and prohibiting the diversion of funds for political purposes."

ARTICLE 8.— SALARIES OF OFFICERS AND AGENTS OF LIFE INSURANCE COMPANIES.

§ 4859. **Expenses of officers, how regulated.** No domestic life insurance company shall pay any salary, compensation or emolument to any officer, trustee or director thereof, nor any salary, compensation or emolument amounting in any one year to more than five thousand dollars to any one person, firm or corporation unless such payment be first authorized by a vote of the board of directors of such life insurance company. No such life insurance company shall make any agreement with any of its officers, trustees or salaried employes whereby it agrees that for services rendered or to be rendered he shall receive any salary, compensation or emolument that will extend beyond a period of twelve months from the date of such agreement; and no officer, director or trustee, who is paid a salary for his services of more than one hundred dollars per month, shall receive any other compensa-

tion or emolument; provided, that the limitation as to time contained herein shall not be construed as preventing a life insurance company from entering into contracts with its agents for the payment of renewal commissions. No such company shall grant any pension to any officer, director or trustee thereof or to any member of his family after his death. [1907, ch. 154, § 1.]

§ 4860. Salary restricted. No life insurance company which pays as a salary or as compensation for services more than fifty thousand dollars per annum to any one person shall be licensed to transact business in this state. [1907, ch. 154, § 2.]

ARTICLE 9.—INVESTMENT OF FUNDS OF LIFE INSURANCE COMPANIES.

§ 4861. Investment of funds restricted. No domestic life insurance company, whether incorporated by special act or under a general law, shall, after the first day of January, 1908, invest in or loan upon any shares of stock of any corporation, other than a municipal corporation; nor, excepting government, state or municipal securities, shall it invest in, or loan upon, any bonds or obligations not secured by adequate collateral security, and when more than one-third of the total value of the collateral security shall consist of shares of stock it shall be deemed inadequate. Every such company possessed of stocks or securities prohibited by this act shall dispose of the same within five years, unless such time is extended by the commissioner of insurance. No investment or loan, except policy loans, shall be made by any such life insurance company unless the same shall first have been authorized by the board of directors or by a committee thereof charged with the duty of supervising such investment or loan. No such company shall subscribe to or participate in any underwriting of the purchase or sale of securities or property, or enter into any transaction for such purchase or sale on account of said company jointly with any other person, firm or corporation; nor shall any such company enter into any agreement to withhold from sale any of its property, but the disposition of its property shall be at all times within the control of its board of directors. Any such company, in addition to other investments allowed by law, may invest any of its funds and accumulations in the bonds of the United States or of this state or of any county, city, town or village or duly organized school district therein, or of any municipality or civil division of any state, and may loan upon improved unincumbered real property in any state fifty per centum of the value of such property, or invest in the mortgage bonds of any dividend paying railway or street railway company duly incorporated and organized under the authority of this state or any other state, and it may also make loans on the security of promissory notes amply secured by pledge of any bonds in which such insurance companies are hereby authorized to invest their funds, and may also make loans upon the security of its own policies, but no loan on any policy shall exceed the reserve value thereof. [1907, ch. 156, § 1.]

§ 4862. Holding of real property limited. Every such life insurance company may acquire, hold and convey real property only for the following purposes and in the following manner:

First. Such as shall be requisite for the convenient accommodation in the transaction of its business.

Second. Such as shall have been mortgaged to it in good faith by way of security for loans previously contracted or for moneys due.

Third. Such as shall have been conveyed to it in satisfaction of debts previously contracted in the course of its dealings.

Fourth. Such as shall have been purchased at sales on judgments, decrees or mortgages obtained or made for such debts.

All such property specified in subdivisions two, three and four of this section which shall not be necessary for its accommodation in the convenient transaction of its business, shall be sold and disposed of within two years after

the company shall have acquired title to the same, or within two years after same shall have ceased to be necessary for the accommodation of its business; and it shall not hold such property for a longer period unless it shall procure a certificate from the commissioner of insurance that its interests will suffer materially by the forced sale thereof, in which event the time for the sale may be extended to such time as the commissioner shall direct in such certificate. [1907, ch. 156, § 2.]

ARTICLE 10.—PROVISIONS PECULIAR TO DOMESTIC STOCK INSURANCE COMPANIES.

§ 4863. Capital stock required. No stock company shall be incorporated under this chapter unless it has a capital stock of at least one hundred thousand dollars, twenty-five per cent of which must be paid in previous to the issuance of any policy and the residue within twelve months from the time of filing the articles of incorporation; provided, that the commissioner of insurance may for good cause shown extend the time of payment of such residue for the further period of not to exceed one year. No fire, cyclone, tornado, hail, marine, life, or accident insurance company of any other state, territory or nation shall do business in this state unless it has a paid-up capital stock of at least one hundred thousand dollars in available cash assets, over and above all liabilities for losses reported, expenses, taxes and reinsurance of all outstanding risks. [1911, ch. 160; 1909, ch. 147; R. C. 1905, § 4429; 1885, ch. 69, § 6; R. C. 1895, § 3097.]

§ 4864. Opening book for subscriptions. The individuals associated for the purpose of organizing an insurance company under this article, after having filed the articles of incorporation as required by section 4837, may open books for subscriptions to the capital stock of such corporation and keep the same open until the full amount specified in the articles of incorporation is subscribed. [R. C. 1905, § 4430; 1885, ch. 69, § 8; R. C. 1895, § 3098.]

§ 4865. Notice to company when capital stock is impaired. Whenever it appears to the commissioner of insurance that the capital of a domestic insurance company is impaired to the extent of one-fourth or more on the basis fixed in section 4844, he shall notify the company that its capital is legally subject to be made good in the mode provided by section 4866. and if such company shall not within three months after such notice satisfy him that it has fully repaired its capital or reduced its capital as provided in section 4433, he shall institute proceedings against it in accordance with section 4925. [R. C. 1905, § 4431; R. C. 1895, § 3099.]

§ 4866. How capital made good. Forfeiture of shares. Whenever the net assets of the company do not amount to more than three-fourths of its original capital, it may make good its original capital to the original amount by assessment of its stock. Shares on which such an assessment is not paid within sixty days after demand shall be forfeitable and may be cancelled by a vote of the directors and new shares issued to make up the deficiency. If such company shall not within three months after notice from the commissioner of insurance to that effect make good its capital as aforesaid, or reduce the same as allowed by the next section, its authority to transact new business of insurance shall cease. [R. C. 1905, § 4432; R. C. 1895, § 3100.]

§ 4867. Capital stock reduced. Examination and certificate of commissioner. When the capital stock of a company is impaired, such company may upon a vote of a majority of the stock represented at a meeting legally called for that purpose, reduce its capital stock and the number of shares thereof to an amount not less than the minimum sum required by law. But no part of its assets and property shall be distributed to its stockholders. Within ten days after such meeting the company shall submit to the insurance commissioner a certificate setting forth the proceedings thereof and the amount of such reduction and the assets and liabilities of the company, signed and sworn to by its president, secretary and a majority of its directors. The com-

missioner shall examine the facts in the case, and if the same conform to law, and in his judgment the proposed reduction may be made without prejudice to the public he shall indorse his approval upon the certificate. Upon filing the certificate so indorsed the company may transact business upon the basis of such reduced capital, as though the same was its original capital, and its articles of incorporation shall be deemed to be amended to conform thereto; and the commissioner of insurance shall issue his certificate to that effect. Such company may by a majority vote of its directors after such reduction require the return of the original certificates of stock held by each stockholder in exchange for new certificates in lieu thereof for such number of shares as each stockholder is entitled to in the proportion that the reduced capital bears to the original capital. [R. C. 1905, § 4433; 1885, ch. 69, § 36; R. C. 1895, § 3101.]

§ 4868. Capital less than liabilities. Notice not to issue policies. When the actual funds of a domestic life insurance company exclusive of its capital, are not of a net cash value equal to its liabilities the commissioner of insurance shall notify such company and its agents to issue no new policies until its funds become equal to its liabilities. [R. C. 1905, § 4434; R. C. 1895, § 3102.]

§ 4869. Transfer of stock pending examination does not release liabilities. No transfer of the stock of any domestic insurance company made during the pendency of any examination will release the party making the transfer from his liability for loss which may have occurred previous to the transfer. [R. C. 1905, § 4435; 1885, ch. 69, § 32; 1889, ch. 69, § 7; R. C. 1895, § 3103.]

ARTICLE 11.—PROVISIONS PECULIAR TO DOMESTIC MUTUAL INSURANCE COMPANIES.

§ 4870. Amount of subscribed insurance required. No policy shall be issued by a purely mutual insurance company until not less than two hundred thousand dollars of insurance in not less than one hundred separate risks have been subscribed for and entered on its books; but the provisions of this section shall not apply to county mutual insurance companies. [R. C. 1905, § 4436; 1885, ch. 69, § 41; R. C. 1899, § 3104.]

As to taking applications for \$200,000 of insurance before issuance of policy in mutual societies. *Montgomery v. Whitbeck*, 12 N. D. 385, 96 N. W. 327.

§ 4871. Insured a member. Notice of meetings. Every person insured by a domestic mutual insurance company, other than life, shall be a member while his policy is in force, entitled to one vote for each policy he holds, and shall be notified of the time and place of holding its meetings by a written notice or by an imprint upon the back of each policy, receipt or certificate of renewal as follows, to wit:

The assured is hereby notified that by virtue of this policy he is a member of the mutual insurance company, and that the annual meetings of such company are held at its home office on the day of in each year at o'clock.

The blanks shall be duly filled and the same shall be deemed a sufficient notice. [R. C. 1905, § 4437; R. C. 1895, § 3105.]

§ 4872. Same. Every person insured by a domestic mutual life insurance company shall be a member entitled to one vote and one vote additional for each five thousand dollars of insurance in excess of the first five thousand dollars, and shall be notified of its annual meetings in the manner provided in the last section. [R. C. 1905, § 4438; R. C. 1895, § 3106.]

§ 4873. Manner of voting by proxy. Members may vote by proxy dated and executed within three months and returned and recorded on the books of the company three days or more before the meeting at which they are to be used; but no person shall be allowed as proxy or otherwise to cast more than fifty votes, and no officer shall himself, or by another, ask for, receive, procure to be obtained or use a proxy vote; provided, that this section shall

not apply to state mutual hail insurance companies. [R. C. 1905, § 4439; R. C. 1895, § 3107.]

§ 4874. Premium. Contingent liability stated on policy. Mutual insurance companies shall charge and collect upon their policies the full mutual premium in cash or notes, and may by their by-laws fix the contingent mutual liability of its members for the payment of losses and expenses not provided for by their cash funds; provided, that such contingent liability of a member shall not be less than a sum equal to, and in addition to the cash premium written in his policy; provided, further, that in case said premium be not so paid in cash or unconditional notes within sixty days from the date of issue, the policy shall become and be absolutely void and to remain void during the nonpayment of such premium, and upon payment of the premium as above provided, such policy shall reattach; provided, there has been no loss while the policy was void. The total amount of the liability of a policy holder shall be clearly and legibly stated upon the back of each policy. [1907, ch. 143; R. C. 1905, § 4440; R. C. 1895, § 3108.]

As to validity of insurance contract made with company which violated the statute. *Walker v. Rein*, 14 N. D. 608, 106 N. W. 405.

As to requirement that amount of accepted cash premium should be written in policy of insurance. *Montgomery v. Whitbeck*, 12 N. D. 385, 96 N. W. 327.

§ 4875. Reserve fund, how used. Any mutual insurance company may at a meeting called for that purpose provide for the accumulation of a permanent fund by reserving a portion of the net profits to be invested and be a reserve for the security of the insured. Such reservation shall not exceed twenty per cent of said net profits and when the fund so accumulated amounts to two per cent of the sum insured by all policies in force the whole of the net profits shall be divided among the insured at the expiration of their policies. The permanent fund so accumulated shall be used for the payment of losses and expenses, whenever the cash funds of the company in excess of an amount equal to its liabilities are exhausted; and whenever the said fund is drawn upon, reservation of profits as aforesaid shall be renewed or continued until the limit of accumulation as herein provided is reached. [R. C. 1905, § 4441; R. C. 1895, § 3109.]

§ 4876. Temporary capital may be retired. A mutual life insurance company may be organized with, and an existing mutual life insurance company may establish a temporary capital of not less than one hundred thousand dollars, which shall be invested in the same manner as is provided for the investment of its other funds. Out of the net surplus of the company the holders of the temporary capital stock may receive a dividend of not more than eight per cent per annum, which may be cumulative. Such capital stock shall not be a liability of the company except that it shall be retired as soon as, but not before the surplus of the company remaining after its retirement shall not be less than the temporary capital so established. At the time for the retirement of such capital stock the holders shall be entitled to receive from the company the par value thereof and any dividends thereon due and unpaid, and thereupon the stock shall be surrendered and cancelled, and the right to vote thereon shall cease. [1907, ch. 144.]

§ 4877. Members entitled to share of net profits. Every member of a mutual insurance company, except a mutual life insurance company, when his policy expires shall be entitled to be paid in cash his share of the net profits or surplus accrued while his policy was in force; and shall in like manner be liable to pay his proportionate part of any assessments, which may be laid by the company in accordance with law and his contract on account of losses and expenses incurred while he was a member. [R. C. 1905, § 4442; R. C. 1895, § 3110.]

Liability of members of mutual insurance company. 32 L.R.A. 481.

Jurisdiction of equity to enforce liability of member of mutual insurance company. 40 L.R.A.(N.S.) 781.

§ 4878. Distribution of surplus on life policies. Every domestic mutual life insurance company shall annually, or once in every two, three, four or five years, as it shall determine, and as may be conditioned in its policies make distribution of all surplus it may have accumulated since its last dividend of surplus. By such surplus is here intended all accumulations since its last distribution of surplus above its debts and reserve computed as provided in section 4844. The distribution shall be upon what is known as the contribution plan and each member upon whose policy no premium is overdue and unpaid shall be entitled to the amount contributed by his policy to such surplus. Policies which have become payable before the time when such distribution is made and after the date of the last previous distribution shall share in the same equitably and proportionally. [R. C. 1905, § 4443; R. C. 1895, § 311.]

§ 4879. Assessments, when and how made. Whenever a mutual insurance company other than life, is not possessed of cash funds above its reinsurance reserve sufficient for the payment of incurred losses and expenses it shall make an assessment for the amount needed to pay such losses and expenses upon its members liable to assessment therefor in proportion to their several liability. The company shall cause to be recorded in a book kept for that purpose the order for such assessment together with a statement which shall set forth the condition of the company at the date of the order, the amount of its cash assets and of the notes of its policy holders, or other contingent funds liable to the assessment, the amount the assessment calls for and the particular losses or other liabilities it is made to provide for. Such record shall be made and signed by the directors who voted for the order before any part of the assessment is collected and any person liable to the assessment may inspect and take a copy of the same. [R. C. 1905, § 4444; R. C. 1895, § 3112.]

§ 4880. Making premium reserve good. Single assessment. Cancellation of policies. Double assessments. Reinsurance. When by reason of depreciation or loss of its funds, or otherwise, the cash assets of such a company after providing for its other debts are less than the required premium reserve upon its policies it shall make good the deficiency by assessment in the mode provided in the last section; or if the directors are of the opinion that the company is likely to become insolvent they may, instead of such assessment, make two assessments, the first determining what each policy holder must equitably pay or receive in case of withdrawal from the company and having his policy cancelled, the second what further sum each must pay in order to reinsure the unexpired term of his policy at the same rate as the whole was insured at first. Each policy holder shall pay or receive according to the first assessment and his policy shall then be cancelled, unless he pays the further sum determined by the second assessment, in which case his policy shall continue in force; but in neither case shall a policy holder receive or have credited to him more than he would have received on having his policy cancelled by a vote of the directors under the by-laws. If within two months after such alternative assessments have become collectible the amount of the policies whose holders have settled for both assessments is less than two hundred thousand dollars, the company shall cease to issue policies; and all policies whose holders have not settled for both assessments shall be void and the company shall continue only for the purpose of adjusting the deficiency or excess of premiums among the members and settling outstanding claims. No assessment shall be valid against a person who has not been duly notified thereof, within two years after the expiration or cancellation of his policy. [R. C. 1905, § 4445; R. C. 1895, § 3113.]

§ 4881. Directors personally liable for not making and collecting assessments. If the directors of any mutual insurance company shall neglect or omit for the space of six months to lay and use reasonable diligence to collect

any assessment they are required to make, they shall be personally liable for all debts and claims then outstanding against the company, or that may accrue until such assessment is laid and put in process of collection. If the treasurer of such company unreasonably neglects to collect an assessment made by order of the directors and to apply the same to the payment of the claims for which it was made, he shall be personally liable to the party having such claims for the amount of the assessment; and he may repay himself out of any money afterwards received for the company on account of said assessment. [R. C. 1905, § 4446; R. C. 1895, § 3114.]

ARTICLE 12.—SURPLUS OF LIFE INSURANCE COMPANY.

§ 4882. Surplus apportioned annually. Every life insurance company doing business in this state conducted on the mutual plan or in which policy holders are entitled to share in the profits or in which policy holders of life insurance heretofore issued, under the conditions of which the distribution of surplus is deferred to a fixed or specified time and contingent upon the policy being in force and the insured living at that time annually ascertain the amount of surplus to which all such policies as a separate class are entitled, and shall apportion to such policies as a class the amount of surplus so ascertained and carry the amount of such apportioned surplus, plus the actual interest earnings and accretions of such fund, as a distinct and separate liability to such class of policies on and for which the same was accumulated, and no company or any of its officers shall be permitted to use any part of such apportioned surplus fund for any purpose whatsoever other than for the express purpose for which the same was accumulated. [1909, ch. 145, § 1.]

Laws 1907, ch. 142, § 1, reads as follows: "Section 1. Surplus apportioned annually. Every life insurance company doing business in this state conducted on the mutual plan or in which the policy holders are entitled to share in the profits or surplus, shall make an annual apportionment and accounting of divisible surplus to each policy holder beginning not later than the end of the third policy year on all participating policies hereafter issued; and each such policy holder shall be entitled to and be credited with or paid, in the manner hereinafter provided, such a portion of the entire divisible surplus as has been contributed thereto by his policy."

§ 4883. Exception. The preceding section shall not apply to industrial policies. [1909, ch. 145, § 2.]

§ 4884. Contingency reserve. Any life insurance company doing business in this state may accumulate and maintain in addition to the capital and surplus contributed by its stockholders, and in addition to an amount equal to the net values of its policies, computed according to the laws of the jurisdiction under which it is organized, a contingency reserve not exceeding the following respective percentages of said net values, to wit: When said net values are less than one hundred thousand dollars, twenty per centum thereof or the sum of ten thousand dollars, whichever is the greater; when said net values are greater than one hundred thousand dollars, the percentage thereof measuring the contingency reserve shall decrease one-half of one per centum for each one hundred thousand dollars of said net values up to one million dollars; one-half of one per centum for each additional one million dollars up to ten million dollars; one-half of one per centum for each additional two million five hundred thousand dollars up to twenty million dollars; one-half of one per centum for each additional five million dollars up to fifty million dollars; one-half of one per centum for each additional twenty-five million dollars up to seventy-five million dollars; and if said net values equal or exceed the last mentioned amount the contingency reserve shall not exceed five per centum thereof; provided, that as the net values of said policies increase and the maximum percentage measuring the contingency reserve decreases such corporation may maintain the contingency reserve already accumulated hereunder, although for the time being it may exceed the maximum percentage herein prescribed, but may not add to the contingency reserve when the addition will bring it beyond the maximum percentage; provided, further, that

for cause shown the commissioner of insurance may at any time from time to time permit any corporation to accumulate and maintain a contingency reserve in excess of the limit above mentioned for a prescribed period, not exceeding one year under any one permission, by filing in his office a decision stating his reasons therefor and causing the same to be published in his next annual report. This section shall not apply to any company doing exclusively a nonparticipating business. [1907, ch. 142, § 2.]

§ 4885. Rights of policy holder. Every policy holder shall on all participating policies hereafter issued be permitted annually to select the manner and method of the application of the surplus to be annually apportioned to his policy from among those set forth in the policy. All apportioned surplus not actually paid over to the insured, or applied in the reduction of current or future premiums or in the purchase of paid-up insurance or pure endowment additions, shall be credited to the assured and carried as an actual liability and be paid at the maturity of the policy. [1907, ch. 142, § 3.]

§ 4886. Automatic insurance. In event of default in payment of any premium due on any policy, provided not less than three full years' premiums shall have been paid, there shall be secured to the insured without action on his part, either paid-up or extended insurance as specified in the policy, the net value of which shall be at least equal to the entire net reserve held by the company on such policy less two and one-half per centum of the amount insured by the policy and dividend additions, if any, and less any outstanding indebtedness to the company on the policy at time of default. There shall be secured to the insured the right to surrender the policy to the company at its home office within one month after date of default for the cash value otherwise available for the purchase of the paid-up or extended insurance as aforesaid. [1907, ch. 142, § 4.]

§ 4887. Contra agreement forbidden. No agreement between the company and the policy holder or applicant for insurance shall be held to waive any of the provisions of this article. [1907, ch. 142, § 5.]

ARTICLE 13.—CONSOLIDATION AND REINSURANCE OF DOMESTIC INSURANCE COMPANIES.

§ 4888. Consolidation forbidden. No company organized under the laws of this state to do business of life, accident or health insurance, either on the stock, mutual, stipulated premium, assessment or fraternal plan, shall consolidate with any other company, or reinsure its risks, or any part thereof with any other company, or assume or reinsure the whole of or any portion of the risks of any other company, except as hereinafter provided, but nothing herein contained shall prevent any such company, organized on the stock or mutual plan, from reinsuring a fractional part of any risk. [1907, ch. 150, § 1.]

Right of corporations to consolidate. 52 L.R.A. 369.

§ 4889. Petition for consolidation. When any such company shall propose to consolidate with any other company, or to enter into any contract of reinsurance, it shall present its petition to the insurance commissioner of this state, setting forth the terms and conditions of such proposed consolidation or reinsurance, and asking for the approval or of any modification thereof, which the commission hereinafter provided for may approve. [1907, ch. 150, § 2.]

§ 4890. Duty of insurance commissioner. The insurance commissioner thereupon shall issue an order of notice requiring notice to be given by mail to each policyholder of such company, of the pending of such petition, and the time and place at which hearing thereon will be held, and shall publish the said order of notice and said petition in five newspapers for at least two weeks before the time appointed for the hearing upon said petition, and in one daily newspaper published at the capital of the state. [1907, ch. 150, § 3.]

§ 4891. Commission. The governor or, in the event of his inability to act, some competent person resident of the state to be appointed by him, the attorney-general and the insurance commissioner of this state, shall constitute a commission to hear and determine upon said petition. At the time and place fixed in said notice or at such time and place as shall be fixed by adjournment, the said commission shall proceed with the hearing and may make or order such examination into the affairs and condition of such company as it may deem proper. The insurance commissioner shall have the power to summon and compel the attendance and testimony of witnesses and production of books and papers before said commission. Any policyholder or stockholder of the company or companies so petitioning may appear before said commission and be heard in reference to said consolidation or reinsurance. Said commission if satisfied that the interests of the policyholders of such company or companies are properly protected, and that no reasonable objection exists thereto, may approve and authorize the proposed consolidation or reinsurance or may modify or change the terms and conditions thereof as may seem best for the interests of the policyholders, and said commission may make such order with reference to the distribution and disposition of the surplus assets of any such company thereafter remaining as shall be just and equitable to the policyholders. Such consolidation or reinsurance shall only be approved by the consent of all the members of such commission, and it shall be the duty of said commission to guard the interests of the policyholders of any such company or companies proposing to consolidate or reinsurance. [1907, ch. 150, § 4.]

§ 4892. Expenses paid. All actual expenses and costs incident to proceedings under the provisions of this article shall be paid by the company or companies bringing said petition, and an itemized statement of the expenses and costs shall be filed with the insurance commissioner with a certified copy of the decision of the commission. No officer of any such company or companies, nor members of said commission, or employe of the state, shall receive any compensation, gratuity or otherwise, directly or indirectly, for in any manner aiding, promoting or assisting in such consolidation or reinsurance. [1907, ch. 150, § 5.]

§ 4893. Penalty for violation. Any officer, director or stockholder of any such company or companies, or any member of such commission or employe of the state, violating or consenting to the violation of the provisions of this article shall be punished by a fine not less than five thousand dollars or imprisonment in the county jail for not less than one year, or both such fine and imprisonment in the discretion of the court. [1907, ch. 150, § 6.]

ARTICLE 14.—PROVISIONS PECULIAR TO MUTUAL HAIL INSURANCE COMPANIES.

§ 4894. Foreign mutuals prohibited. Contracts void. Penalty. No foreign insurance company incorporated upon the mutual plan shall directly, or indirectly, take any hail risk, or transact the business of hail insurance in this state. All contracts, notes, mortgages and other evidence of indebtedness made or taken in violation of this section are hereby declared void. [R. C. 1905, § 4447; 1903, ch. 109, §§ 1, 2.]

§ 4895. Penalty. Any person who violates any of the provisions of section 4894 or who procures or induces another to do so is guilty of a misdemeanor. [R. C. 1905, § 4448; 1903, ch. 109, § 3.]

§ 4896. Mutual insurance companies engage in hail insurance, when. No mutual insurance company hereafter organized under the laws of this state or now or hereafter organized under the laws of any state or country, shall engage in the business of hail insurance in this state without first depositing and thereafter keeping on deposit with the treasurer of this state the sum

of twenty-five thousand dollars in money, or in lieu thereof bonds of this state or of the United States of the par value of twenty-five thousand dollars; provided, that domestic mutual hail insurance companies in lieu of said deposit shall be required to file a bond in the office of the commissioner of insurance in the sum of twenty-five thousand dollars, conditional for the carrying out of its contracts and obligations incurred by its policies; said bond to be satisfactory as to form and surety to the insurance commissioner. [1907, ch. 153; R. C. 1905, § 4449; 1903, ch. 114, § 1.]

Foreign mutual insurance companies are authorized to engage in hail insurance business. *State ex rel. State Farmers Mut. Hail Ins. Co. v. Cooper*, 18 N. D. 583, 120 N. W. 878.

§ 4897. Duties of state treasurer. Said money or securities so deposited shall be and remain in the hands of the treasurer of this state as a fund to secure the payment of all losses occurring under all policies or contracts for hail insurance, made by such company in this state, or covering property situated within the state. And the treasurer of this state shall not permit said deposit or any part thereof to be withdrawn by said company from his custody except as hereinafter provided. [R. C. 1905, § 4450; 1903, ch. 114, § 2.]

§ 4898. Penalty. If any such company hereafter organized under the laws of this state shall violate any of the provisions of this article, the charter of said company or association shall thereupon be forfeited and it shall be the duty of the attorney-general, on complaint of the commissioner of insurance, to take all legal proceedings necessary to have such forfeiture enforced and such company dissolved and its affairs wound up. [R. C. 1905, § 4451; 1903, ch. 114, § 3.]

§ 4899. Relinquish business, how. When any such company or corporation, having made the deposit as herein provided, desires to relinquish the transaction of the business of hail insurance in this state and withdraw such deposit, and shall file with the commissioner of insurance an application, under the oath of its officers, stating that all its liabilities arising under the contracts or policies above mentioned are paid, the commissioner of insurance shall thereupon publish notice of such application in a newspaper published at the capital of the state, twice a week for a period of three months, and after such publication, on his being satisfied by the exhibition of the books and papers of such company, and on examination by himself or a person appointed by him, that all liabilities under the policies or contracts herein mentioned have been fully paid and extinguished, the commissioner of insurance shall thereupon file a certificate to that effect with the treasurer of this state, who shall thereupon deliver such deposit to said company, or its assigns. If it shall appear from such application and examination that all the liabilities of such company have not been paid and extinguished, and that the amount of such deposit is more than equal to twice the amount of such remaining liabilities, the treasurer shall thereupon pay to such company, or its assigns, a part of such deposit, retaining an amount equal to twice the amount of the liabilities so remaining. [R. C. 1905, § 4452; 1903, ch. 114, § 4.]

§ 4900. Companies collect interest. So long as any deposit required by this article is kept good, and the depositing company is solvent, the state treasurer may permit the company to collect the interest on the securities so deposited, and from time to time to withdraw any such securities on depositing with him others of the value and character required by this article. [R. C. 1905, § 4453; 1903, ch. 114, § 5.]

§ 4901. Proceedings, who institute. Any insurance company which has made such deposit, or the commissioner of insurance in the name of the state, or any person entitled to the benefit of such deposit, may at any time institute in the district court of Burleigh county legal proceedings against this state and other parties properly joined therein to enforce, administer or terminate

the trust created by such deposit. The process in such suits shall be served upon the insurance commissioner of this state, who shall appear and answer in its behalf, and he and the treasurer of this state shall perform such orders and decrees as the court may make therein. [R. C. 1905, § 4454; 1903, ch. 114, § 6.]

ARTICLE 15.—TIME WHEN HAIL INSURANCE POLICIES TAKE EFFECT.

§ 4902. **Twenty-four hours after application taken.** Every insurance company engaged in the business of insuring against loss by hail in this state, shall be bound, and the insurance shall take effect from and after twenty-four hours from the day and hour the application for such insurance has been taken by the authorized local agent of said company, and if the company shall decline to write the insurance upon receipt of the application, it shall forthwith notify the applicant and agent who took the application, by telegram, and in that event, the insurance shall not become effective. Provided, that nothing in this article shall prevent the company from issuing a policy on such application and putting the insurance in force prior to the expiration of said twenty-four hours. [1913, ch. 177, § 1.]

§ 4903. **Hail insurance department excepted.** No provision herein, however, shall apply to the state hail insurance department.

ARTICLE 16.—PROVISIONS PECULIAR TO FIDELITY INSURANCE COMPANIES.

§ 4904. **Fidelity insurance and corporate suretyship. Sole surety.** Any corporation organized under the laws of the state of North Dakota, or of any state of the United States, or of any foreign country, to transact the business of fidelity insurance and corporate suretyship, and authorized to do business in this state, as hereinafter provided, may make contracts of insurance to guarantee the fidelity of persons holding positions of trust in private or public employment or responsibility, and may, if accepted and approved by the court, magistrate, obligee or person competent to approve such bond act as surety upon the official bond or undertaking of any person or corporation, to the United States, to the state of North Dakota, or to any county, city, town, school district, court, judge, magistrate or public officer; or to any corporation or association, public or private; and may also act as surety upon any bond or undertaking to any person or corporation conditioned upon the performance of any duty or trust, or for the doing or not doing of anything in such bond specified, and to indemnify against loss any person who is responsible as surety upon a written instrument or otherwise, for the performance of the officers of any office, employment, contract or trust. When by law two or more sureties are required upon any obligation, any corporation qualified as herein provided is authorized to insure, and it may act as sole surety thereon, and may be accepted as such by the court, magistrate or other officer or person authorized to approve of the sufficiency of such bond or undertaking. [R. C. 1905, § 4455; R. C. 1895, § 3115; 1903, ch. 113, § 1.]

Certificate of corporation's authority to execute surety bond need not be annexed to undertaking. *Germantown Trust Co. v. Whitney*, 19 S. D. 108, 102 N. W. 304.

§ 4905. **Acceptance of such bond.** Whenever any bond, undertaking, recognizance or other obligation is, by law, or the charter, ordinance, rules or regulations of any municipality, board, body, organization, court, judge or public officer, required or permitted to be made, given, tendered or filed with any surety or sureties, and whenever the performance of any act, duty or obligation or the refraining from any act, is required or permitted to be guaranteed, such bond, undertaking, obligation, recognizance or guaranty may be executed by a surety company, qualified under this chapter; provided, that such execution by such company of such bond, undertaking, obligation,

recognizance or guaranty, shall be in all respects a full and complete compliance with every requirement of every law, charter, ordinance, rule or regulation; and such bond shall be valid and shall be accepted notwithstanding any requirement of law that such bond, undertaking, obligation, recognizance or guaranty shall be executed by one or more sureties, or that such sureties shall be residents or householders or freeholders, or either or both, or possess any other qualifications, and all courts, judges, heads of departments, boards, bodies, municipalities and public officers of every character, shall accept and treat such bond, undertaking, obligation, recognizance or guaranty when so executed by such company, as conforming to and fully and completely complying with every such requirement, and every such law, charter, ordinance, rule or regulation. [R. C. 1905, § 4456; 1897, ch. 135, § 1; R. C. 1899, § 3115b; 1903, ch. 113, § 2.]

Board of railroad commissioners may examine into sufficiency of bonds given by grain elevator operator and may for such purpose summon any witness before them that they please. *State ex rel. Dakota Trust Co. v. Stutsman*, 24 N. D. 68, 139 N. W. 83.

§ 4906. Expense of bond, how paid. Any receiver, assignee, guardian, trustee, committee, executor, administrator or other fiduciary required by law or ordered by any court or judge to give a bond or other obligation as such, may include as a part of the lawful expense of executing his trust, such reasonable sum paid to a corporation authorized under the laws of this state so to do, for acting as surety on such bond, as may be allowed by the court in which the judge before whom he is required to account, not exceeding one per cent per annum, or fraction thereof, on the amount of such bond, and in all actions and proceedings a party entitled to recover disbursements therein shall be allowed, and may tax and recover such sum paid such corporation for executing any bond, recognizance or undertaking therein, not less than five dollars, nor more than one per cent per year, or fraction thereof, on the amount of the penalty or liability in such bond, recognizance or undertaking specified, while the same has been in force. [R. C. 1905, § 4457; 1897, ch. 36; R. C. 1899, § 3115a; 1903, ch. 113, § 3.]

§ 4907. Must comply with laws of state. Every corporation not organized under the laws of the state of North Dakota, to be qualified to act as surety or guarantor, must comply with the requirements of every law of this state applicable to such company, and to foreign insurance companies doing business thereunder; must be authorized under the laws of the state wherein incorporated, and under its charter to be surety upon such bond, undertaking, recognizance or obligation, must have fully paid up and safely invested an unimpaired capital of at least two hundred thousand dollars; must have good and available assets exceeding its liabilities, which liabilities, for the purpose of this article, shall be taken to be its capital stock, debts outstanding and a premium reserve at the rate of fifty per centum of the current annual premiums on each outstanding bond or obligation of like character in force; must file with the commissioner of insurance a certified copy of its certificate of incorporation, a written application to be authorized to do business in this state, also with such application, and in each year thereafter, a statement, verified under oath, made up to December thirty-first preceding, stating the amount of its paid up cash capital, particularizing each item of investment, the amount of premiums upon existing bonds, undertakings and obligations of like character in force upon which it is surety, the amount of liability for unearned portion thereof, estimated at the rate of fifty per centum of the current annual premiums on such bond, undertaking, recognizance and obligation in force, stating also the amount of debts outstanding, obligations of all kinds, and such further facts as may be by the laws of this state required of such company in transacting business therein; and if such company be organized under the laws of any other state than this state, it must have on deposit with a state officer of one of the states of the United States not less

than one hundred thousand dollars in securities prescribed by law, deposited with and held by such officer for the benefit of the holders of its obligations. It must also, by a duly executed instrument, filed in his office, constitute and appoint the commissioner of insurance of this state and his successors, its true and lawful attorney, upon whom all process in any action or proceeding against it may be served, and therein must agree that any process which may be served upon its attorney shall be of the same force and validity as if served upon the corporation, and that the authority thereof shall continue in force irrevocable, so long as any liability of the company remains outstanding in this state. Service upon such attorney shall be deemed sufficient service upon the corporation. [R. C. 1905, § 4458; 1897, ch. 135, § 2; R. C. 1899, § 3115c; 1903, ch. 113, § 4.]

§ 4908. Domestic surety companies. Every corporation organized under the laws of this state, and for the purpose in whole or in part of transacting the business of fidelity or corporate suretyship, must comply with the provisions of chapter 31 of the civil code and section 4929, and upon such corporation filing in the office of the commissioner of insurance a certificate issued by the state treasurer, to the effect that such corporation has complied with the provisions of section 5207, together with a certified copy of its articles of incorporation, and the payment of the proper fees therefor, the commissioner of insurance shall issue to such corporation a certificate, and shall issue to its agents certificates as provided in section 4920, which certificate shall be issued yearly on the filing by such corporation of a statement of its condition as of December thirty-first of the year last ending. [R. C. 1905, § 4459; 1897, ch. 135, § 3; R. C. 1899, § 3115d; 1903, ch. 113, § 5.]

Board of railroad commissioners may examine into sufficiency of bonds given by grain elevator operator and may for such purpose summon any witness before them that they please. *State ex rel. Dakota Trust Co. v. Stutsman*, 24 N. D. 68, 139 N. W. 83.

§ 4909. Concurrent undertakings. Whenever any bond, undertaking or other obligation is by law, or the charter, ordinances, rules and regulations of any municipality, board, body, organization, court or public officer, required or permitted to be made, given or filed as hereinbefore provided, and whenever the amount thereof is fixed by law or by the charter, ordinances, rules or regulations of any municipality, board, body, organization, court, judge or public officer, then two or more such bonds executed by corporations qualified under the laws of this state, and aggregating the amount so fixed or determined, may be accepted and shall be in all things treated as one bond or obligation, and in case of loss or liability thereunder, the amount of such loss or liability, chargeable against each such bond or undertaking, shall be the same proportion of the entire loss or liability, as such bond or obligation bears to the aggregate amount of the penalty or liability specified in all of such bonds, whether such proportion be stated therein or not. [R. C. 1905, § 4460; 1903, ch. 113, § 6.]

§ 4910. Relief from liability. The surety, or the representative of any surety upon a bond of any officer or fiduciary, may apply by petition to the court wherein said bond is directed to be filed or which may have jurisdiction of the beneficiary thereunder, praying to be relieved from further liability thereon, and to require said officer or fiduciary to show cause why he should not account and said surety be relieved from such further liability as aforesaid, and the said principal be required to give a new bond, and thereupon and upon the filing of said petition, said court shall issue an order returnable at such time and place, and to be served in such manner as said court shall direct, and may restrain such officer or fiduciary from acting except in such manner as it may direct therein, to preserve the trust estate, and upon the return of such order to show cause, if the principal in the bond account in due form of law and file a new bond, duly approved; then said court must make an order releasing said surety filing the petition afore-

said from further liability upon the bond for any subsequent act or default of the principal, and in default of said principal this accounting and filing said new bond, the said court shall make an order directing such officer and fiduciary to account in due form of law within thirty days, and that if the trust fund or estate shall be found or made good, or properly secured in the manner directed by the court, such company shall be discharged from any and all further liabilities as such for the subsequent acts or omissions of the said officer or fiduciary after the date of the said surety being so relieved or discharged, and discharging said trustee, officer or other fiduciary. [R. C. 1905, § 4461; 1897, ch. 135, § 4; R. C. 1899, § 3115e; 1903, ch. 113, § 7.]

§ 4911. Report of taxes. Every foreign corporation doing business in this state, under the provisions of this article, shall, at the time of making the annual statement of business done as required by law, pay to the commissioner of insurance two and one-half per cent of the gross premiums, fees or charges received in this state during the preceding year upon all bonds or undertakings written by it, for or in behalf of any person in this state, and only upon and after the payment of such sum, the commissioner of insurance shall issue the annual certificate provided by law. [R. C. 1905, § 4462; 1903, ch. 113, § 8.]

§ 4912. Responsibility of fidelity insurance companies. Any corporation organized under the laws of this state, or of any state or country, to transact the business of fidelity insurance and corporate suretyship, and authorized to do business in this state, which makes contracts of insurance guaranteeing the fidelity of persons holding positions of trust in public office, shall be held responsible to any person for any loss or damage which he may suffer by reason of any fraud or misrepresentation practiced upon him by such public official under the guise of or by virtue of his office. [1913, ch. 193.]

ARTICLE 17.—PROVISIONS PECULIAR TO FOREIGN INSURANCE COMPANIES.

§ 4913. Conditions of admission. Articles and statement filed. Must be legally organized. Appoint commissioner its attorney for service. Resident agents. No foreign insurance company shall directly or indirectly take any risk or transact the business of insurance in this state until:

1. It shall deposit with the insurance commissioner a certified copy of its articles of incorporation and a statement of its financial condition and business in such form and detail as he may require, signed and sworn to by its president and secretary or other proper officers.

2. It shall satisfy the insurance commissioner that it is fully and legally organized under the laws of its state or government to do the business it proposes to transact; that it has a fully paid up and unimpaired capital, exclusive of stockholders' obligations of any description, of an amount not less than is required by section 4863 and, if a mutual company, that its assets are not less than is required by section 4870, that such capital or net assets are well invested and immediately available for the payment of losses in this state; and that it insures on any single hazard a sum no larger than one-tenth of its net assets.

3. It shall by a duly executed instrument, filed in his office, constitute and appoint the commissioner of insurance and his successors its true and lawful attorney upon whom all process in any action or proceeding against it may be served and therein shall agree that any process which may be served upon its said attorney shall be of the same force and validity as if served on the company and that the authority thereof shall continue in force irrevocable so long as any liability of the company remains outstanding in this state. Service upon such attorney shall be deemed sufficient service upon the company. Whenever process against any foreign insurance company, doing business in this state, shall be served upon the commissioner of insur-

ance, he shall forthwith mail a copy of such process, postage prepaid, and directed to such company at its principal place of business, or if it is a foreign company, to its resident manager in the United States, or to such other person as may have been previously designated by it by written notice filed in the office of the commissioner of insurance. As a condition of valid and effectual service the plaintiff shall pay to the commissioner of insurance at the time of service the sum of two dollars, which the plaintiff shall recover as taxable costs if he shall prevail in his action. The commissioner shall keep a record of all such process which shall show the time and hour of service.

4. It shall appoint as its agents in this state only residents thereof. [R. C. 1905, § 4463; R. C. 1895, § 3116.]

Failure of foreign corporation to comply with law as to doing business in state justifies direction of verdict against it in suit for breach of contract. *Chealey v. Soo Lignite Coal Co.*, 19 N. D. 18, 121 N. W. 73.

Restrictions on business of foreign insurance company. 24 L.R.A. 298.

Effect on insurance of noncompliance with statutory requirements as to recovery on the policy. 20 L.R.A. 405.

ARTICLE 18.—PROVISIONS COMMON TO ALL INSURANCE COMPANIES.

§ 4914. **Limit of risk.** No company organized under this chapter, or transacting business in this state shall expose itself to loss on any one risk or hazard to an amount exceeding ten per cent of its paid up capital, exclusive of any guarantee, surplus, or special reserve fund, unless the excess shall be reinsured in some other good reliable company. [R. C. 1905, § 4464; 1885, ch. 69, § 7; R. C. 1895, § 3117.]

Board of railroad commissioners may inquire into general business conduct and reliability of sureties on bonds given by grain elevator operator. *State ex rel. Dakota Trust Co. v. Stutsman*, 24 N. D. 68, 139 N. W. 83.

§ 4915. **Annual statement, publication thereof.** Every insurance company doing business in this state must transmit to the commissioner of insurance a statement of its condition and business for the year ending on the preceding thirty-first day of December, which shall be rendered not later than the first day of March in each year. Foreign insurance companies shall have until the following first day of December to transmit their statements of business, other than that taken in the United States. It shall be the duty of the insurance commissioner upon the date of the receipt of any such statement to stamp thereon the date of the receipt of such statement in his office, and the insurance commissioner is hereby prohibited from receiving such statement from any company after the day which is herein designated for the filing of such statement, unless the same be accompanied by the penalty by law provided for each day's delinquency in filing such statement. Such statements must be published at least three times in a newspaper of general circulation printed and published in each judicial district of the state in which such insurance company shall have an agency, provided, however, that the statements of state, county and town mutual insurance companies need only be published once in a newspaper selected at their annual meeting in the county wherein such company does business. Statements for publication shall be made out on blanks furnished by the commissioner of insurance and the certificate of authority of the commissioner of insurance for the company to do business in this state shall be published in connection with such statement. Proof of publication shall be filed with the commissioner of insurance in all cases within four months from the time of such filing of the annual statement. Such publication shall be made at the authorized rate for publishing legal notices. The commissioner of insurance shall select three newspapers of general circulation published in each of the judicial districts from which such companies shall select one in which such statements shall be published. [1911, ch. 159; 1899, ch. 102; R. C. 1899, § 3119.]

§ 4916. Contents of annual statement. The annual statement required by the last section must be in form and state particulars as follows:

1. The name of the company and where located.
2. The amount of capital stock actually paid in cash.
3. The property or assets of the company, specifying:
 - (a) The value, as nearly as may be, of the real estate owned by the company.
 - (b) The amount of cash on hand in the office.
 - (c) The amount of cash on deposit in banks.
 - (d) The amount of cash in the hands of agents and in course of transmission.
 - (e) The amount of loans secured by bonds and mortgages, being first lien on real estate worth double the amount of the sum loaned thereon.
 - (f) The amount of stocks and bonds owned by the company, specifying the amount, number of shares, and the market value of each kind of stock on the day of making the statement.
 - (g) The amount of stock held by it as collateral security for loans with the amount loaned on each kind of stock, the par value and market value thereof on the day the statement is made.
 - (h) The amount of all other sums due the company.
4. The liabilities of such company, specifying:
 - (a) The amount of losses unpaid.
 - (b) The amount of claims for losses resisted by the company.
 - (c) The whole amount of unearned premiums on outstanding risks.
 - (d) The amount of dividends declared and due and remaining unpaid.
 - (e) The amount of dividends, if any, declared and not yet due.
 - (f) The amount of money borrowed and remaining unpaid, and the security, if any, given for the payment thereof.
 - (g) The amount of all other existing claims.
5. The income of the company during the preceding year, specifying:
 - (a) The whole amount of interest received, stating separately the amount of interest received on loans in the state of North Dakota.
 - (b) The whole amount of cash premiums received, stating separately the amount of premiums received on policies written in the state.
 - (c) The whole amount of income received from all sources.
6. Expenditures during the preceding year, specifying:
 - (a) The whole amount of losses paid during the preceding year stating how much of the same accrued prior and how much subsequent to the date of the preceding statement; also stating separately the amount of losses paid upon risks taken in this state and how much accrued prior and how much subsequent to the preceding statement.
 - (b) The amount of dividends paid during the preceding year.
 - (c) The whole amount of fees and commissions paid to officers and agents during the preceding year.
 - (d) The amount of taxes paid during the preceding year, stating separately the amount paid in this state.
 - (e) The amount of fees paid the commissioner of insurance of this state.
 - (f) The whole amount paid for salaries for officers and agents during the preceding year.
 - (g) The whole amount of all other expenditures.
7. Such statement shall further specify:
 - (a) The gross amount of risks taken during the preceding year, stating the amount in this state separately.
 - (b) The whole amount of risks outstanding.
 - (c) The whole amount of losses incurred during the year, including those claims not yet due, stating separately those incurred in this state.

(d) The number of agents in this state. [R. C. 1905, § 4467; 1885, ch. 69, § 17; R. C. 1895, § 3120.]

See also section 4931.

§ 4917. Statements verified. Duty of commissioner. Such statements must be verified by the signature and oath of the president or vice-president and of the secretary of a domestic insurance company, and by the manager or general agent of a foreign company doing business in this state; and it shall be the duty of the commissioner of insurance to cause the information contained in such statements to be arranged in a tabular form and printed annually for distribution to the companies doing business in this state and for transmission to the legislative assembly with his biennial report. [R. C. 1905, § 4468; 1885, ch. 69, § 19; R. C. 1895, § 3121.]

§ 4918. Statements of receivers. It shall be the duty of all receivers of insurance companies on or before the thirtieth day of June of each year and at any other time, when required by the commissioner of insurance, to make and file annually statements of their assets and liabilities and of their income and expenditures in the same manner and form as the officers of such companies are required by law to make, and for refusal or neglect to make and file the same they shall be subject to the same penalty. [R. C. 1905, § 4469; 1885, ch. 69, § 27; R. C. 1895, § 3122.]

§ 4919. Inquiry into condition of companies. The commissioner of insurance is authorized and empowered to address any inquiries to any insurance company doing or applying for permission to do business in this state in relation to its doings or condition or any other matter connected with its transactions and it shall be the duty of any such company so addressed to reply promptly in writing to any such inquiries. [R. C. 1905, § 4470; 1891, ch. 73, § 15; R. C. 1895, § 3123.]

§ 4920. Agents must not act without certificate. No agent shall act for any insurance company directly or indirectly in taking risks or transacting the business of insurance without procuring from the commissioner of insurance a certificate of authority, stating that such corporation or company has complied with all the requisites of this chapter. The statements and evidences of investment required by this chapter shall be renewed from year to year in such manner and form as are required by this chapter and the commissioner of insurance on being satisfied that the capital, securities and investments remain secure as hereinbefore provided, shall furnish a renewal of the certificate as aforesaid. [R. C. 1905, § 4471; 1885, ch. 69, § 25; R. C. 1895, § 3124.]

Granting or revoking of certificate to transact business within commissioner's discretion. *State v. Carey*, 2 N. D. 36, 49 N. W. 164.

Soliciting applications necessary in formation of mutual insurance company not a violation. *Montgomery v. Harker*, 9 N. D. 527, 84 N. W. 369.

Crime for agent to act without procuring certificate of authority. *State v. Hogan*, 8 N. D. 301, 78 N. W. 1051, 73 Am. St. Rep. 759, 45 L.R.A. 166.

§ 4921. Examination before granting certificates. When domestic companies examined. Examination of foreign companies. Expenses. Before granting certificates of authority to an insurance company to issue policies or make contracts of insurance the commissioner of insurance shall be satisfied by such examination and evidence as he sees fit to make and require that such company is duly qualified under the laws of the state to transact business therein. As often as once in two years he shall personally, or by his deputy or chief clerk, visit each domestic insurance company and thoroughly inspect and examine its affairs, especially as to its financial condition and ability to fulfill its obligations and whether it has complied with the law. He shall also make an examination of any such company whenever he deems it prudent to do so or upon the request of five or more of the stockholders, creditors, policy holders or persons pecuniarily interested therein who shall make affidavit of their belief, with specifications of their reasons therefor, that such company is in an unsound condition. Whenever he deems it prudent for the

protection of policy holders in this state he shall in like manner visit and examine, or cause to be visited and examined by some competent person appointed by him for that purpose any foreign insurance company applying for admission, or already admitted, to do business by agencies in this state and such company shall pay the proper charges incurred in such examination, including the expenses of the commissioner or his deputy. For the purposes aforesaid the commissioner or person making the examination shall have free access to all books and papers of an insurance company that relate to its business and to the books and papers kept by any of its agents and may summon as witnesses and examine under oath the directors, officers, agents and trustees of any such company and any other persons in relation to its affairs, transactions and condition. [R. C. 1905, § 4472; R. C. 1895, § 3125.]

§ 4922. Authority revoked for false statement. When revocation set aside. If the commissioner of insurance has, or shall have at any time after examination, reason to believe that any annual statement or other report, required or authorized by this article made or to be made out by an officer or agent of any insurance company is false, it shall be the duty of said commissioner of insurance immediately to revoke the certificate of authority of such company and mail a copy of such revocation to such company, and to the agents thereof in this state and such company and its agents after such notice shall discontinue the issuance of any new policies or the renewal of any policy previously issued; and such revocation shall not be set aside nor any new certificate of authority be given until satisfactory evidence shall have been furnished to said commissioner of insurance that such company is in substance and in fact in the condition set forth in such statement or report and that all requirements of this article have been fully complied with. [R. C. 1905, § 4473; 1885, ch. 69, § 28; R. C. 1895, § 3126.]

§ 4923. Commissioner must ascertain net cash value of life policies. The commissioner of insurance shall, at the expense of the company, as soon as practicable after statements are filed, proceed to ascertain the net cash value of all life insurance policies in force. The commissioner of insurance may, however, accept such valuation from the proper officer of the company or the insurance officer of the state in which such company is located, should he deem it expedient so to do. When the actual funds of any life or accident insurance company doing business in this state are not of a net value equal to the net value of its policies according to the combined experience or actuaries' rate of mortality, with interest at four per cent per annum, it shall be the duty of the commissioner of insurance to give notice to such company and its agents to discontinue the issuance of new policies in this state until its funds have become equal to its liabilities, valuing its policies as aforesaid. Any officer or agent, who after such notice has been given issues or delivers a new policy from and in behalf of such company before its funds have become equal to its liabilities as aforesaid shall forfeit for each offense a sum not exceeding one thousand dollars. [R. C. 1905, § 4474; 1891, ch. 73, § 12; R. C. 1895, § 3127.]

§ 4924. Tax, how levied. Every insurance company doing business in this state, except joint stock and mutual companies, organized under the laws of this state, shall at the time of making the annual statement of business done, as required by law, pay to the commissioner of insurance two and one-half per cent of the gross amount of premiums received in this state during the preceding year. Upon payment of such sum the commissioner of insurance shall issue the annual certificates provided by law. [R. C. 1905, § 4475; 1897, ch. 94; R. C. 1899, § 3127a.]

Association incorporated principally to secure for each member payment of certain sum to his beneficiary at death is taxable as a life insurance company. *Masonic Association v. Taylor*, 2 S. D. 324, 50 N. W. 93.

Ancient Order of United Workmen is exempt from state tax. *Ancient Order, U. W. v. Shober*, 16 S. D. 513, 94 N. W. 405.

Imposes "occupation tax" and not an "ordinary tax" within constitution relating to taxation. *Queen City F. Ins. Co. v. Basford*, 27 S. D. 164, 130 N. W. 44.

State tax on insurance premiums. 57 L.R.A. 69.

§ 4925. Authority of foreign or domestic company revoked, how. If the commissioner of insurance is of opinion upon examination or other evidence that a foreign insurance company is in an unsound condition, or if it has failed to comply with the law, or if it, its officers or agents refuse to submit to examination, or to perform any legal obligation in relation thereto, or if a life insurance company, that its actual funds, exclusive of its capital, are less than its liabilities, he shall revoke or suspend all certificates of authority granted to it or to its agents, and shall cause notifications thereof to be published three times, once in each week for three successive weeks, in some newspaper published at the seat of government and no new business shall thereafter be done by it or its agents in this state while such default or disability continues, nor until its authority to do business is restored by the commissioner; provided, further, that if any insurance corporation organized under the laws of any other state or country and having been authorized to transact business in this state, shall remove or make application to remove into any court of the United States any action or proceeding begun in any court of this state upon a claim or cause of action arising out of any business or transaction done in this state, or upon any contract made, executed or to be performed herein, the commissioner of insurance shall revoke all certificates of authority granted to such insurance corporation, or to its agents, and shall cause notifications thereof to be published three times, once in each week for three successive weeks, in some newspaper published at the seat of government, and no new business shall thereafter be done by it or its agents in this state until after the expiration of three years from the date of such last publication. If upon examination he is of the opinion that any domestic insurance company is insolvent, or has exceeded its powers or has failed to comply with any provisions of law, or that its condition is such as to render its further proceedings hazardous to the public or its policy holders, he shall apply to the district court of the county in which the principal office of the company is located to issue an injunction restraining it in whole or in part from further proceeding with its business. The court or judge may, in its discretion, issue an injunction forthwith or upon notice and hearing thereon, and after a full hearing of the matter may dissolve or modify such injunction or make it perpetual, and may make all orders and decrees needful in the premises and may appoint agents or receivers to take possession of the property and effects of the company and to settle its affairs according to the course of proceedings in equity. [R. C. 1905, § 4476; R. C. 1895, § 3128; 1905, ch. 124.]

§ 4926. Insurance by resident agents only. No insurance company shall do business in this state, except through its authorized agents who must be residents of and have their office or place of business in this state. All policies not written in accordance with the foregoing provisions shall be deemed a violation of this article. [R. C. 1905, § 4477; 1890, ch. 76, §§ 1, 2; R. C. 1895, § 3129.]

§ 4927. Penalty for not making statement. For false statement. Any insurance company doing business in this state that neglects to make the statements in the manner and within the time in this article required shall forfeit one hundred dollars for each day's neglect, and upon notice by the insurance commissioner to that effect, its authority to do new business shall cease while such default continues and every such company that willfully makes false statements shall be liable to a fine of not less than five hundred dollars nor more than one thousand dollars. Any new business done by the insurance company after neglect to make the required statements shall be deemed to be done in violation of law. [R. C. 1905, § 4478; R. C. 1895, § 3130.]

§ 4928. Penalty when there is no specific provision. For violation of any provision of this chapter when no penalty is specifically provided for herein the offender shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars. [R. C. 1905, § 4479; R. C. 1895, § 3131.]

§ 4929. Fees. There shall be paid by every company doing business in this state, except county mutual insurance companies, the following fees:

Upon filing articles of incorporation, or copies thereof, twenty-five dollars.

Upon filing the annual statement, ten dollars.

For each certificate of authority and certified copy thereof, two dollars.

For every copy of any paper filed in the insurance department, the sum of twenty cents per folio; and for affixing the official seal on such copy and certifying the same, the sum of one dollar.

For official examination of companies under this article the actual expense incurred, not to exceed ten dollars per day. [R. C. 1905, § 4480; 1885, ch. 69, § 39; R. C. 1895, § 3132.]

§ 4930. Same conditions imposed on companies of other states as they impose on domestic companies. Whenever the laws of any other state of the United States or foreign country shall require of insurance companies incorporated under the laws of this state, or of the agent thereof, any deposits of securities in such state for the protection of policy holders or otherwise, or any payment for taxes, fines, penalties, certificate of authority, license or fees greater than the amount required for such purposes from similar companies of other states by the then existing laws of this state, then and in every such case, all insurance companies of such states establishing or having heretofore established an agency in this state, shall be and are hereby required to make the same deposit for a like purpose with the state treasurer of this state, and to pay to the commissioner of insurance an amount equal to the amount of such charges and payment imposed by the laws of such other states upon the companies of this state and the agents thereof. [R. C. 1905, § 4481; 1891, ch. 73, § 20; R. C. 1895, § 3133.]

Restrictions on business of foreign insurance companies. 24 L.R.A. 298.

Effect on insurance by foreign company of noncompliance with statutory requirements. 20 L.R.A. 405.

Right of burglary and theft insurance companies to do business in foreign states. 46 L.R.A.(N.S.) 563.

ARTICLE 19.—REPORTS OF LIFE INSURANCE COMPANIES.

§ 4931. Annual report, contains what. In addition to any other matter which may be required by law or pursuant to law by the commissioner of insurance to be stated therein, every annual report of every life insurance company doing business in this state, shall contain an accurate, concise and complete statement of the following matters, to wit:

1. All the real property held by the company, the dates of acquisition, the names of the vendors, the actual cost, the value at which it is carried on the company's books, the market value, the amounts expended during the year for repairs and improvements, the gross and net income from each parcel, and if any portion thereof be occupied by the company the rental value thereof, a statement of any certificate issued by the commissioner extending the time for the disposition thereof, and all purchases and sales made since the last annual statement, with particulars as to dates, names of vendors and vendees and the consideration.

2. The amount of existing loans upon the security of real property, stating the amount loaned upon property in each state and foreign country.

3. The moneys loaned by the company to any person other than loans upon the security of real property above mentioned and other than loans upon policies the actual borrowers thereof, the maturity and rate of interest of such loans, the securities held therefor, and all substitutions of securities in con-

nection therewith, and the same particulars with reference to any loans made or discharged since the last annual statement.

4. All other property owned by the company or in which it has any interest (including all securities, whether or not recognized by the law as proper investments), the dates of acquisition, from whom acquired, the actual cost, the value at which the property is carried upon the books, the market value, the interest or dividends received thereon during the year; also all purchases and sales of property other than real estate made since the last annual statement with particulars as to dates, names of purchasers and sellers, and the consideration; and also the income received and outlays made in connection with all such property.

5. All commissions paid to any persons in connection with loans or purchases or sales of any property, and a statement of all payments for legal expenses, giving particulars as to dates, amounts and names and addresses of payees.

6. All money expended in connection with any matter pending before any legislative body or any officer or department of government, giving particulars as to dates, amounts, names and addresses of payees, the measure or proceeding in connection with which the payment was made, and the interest of the company therein.

7. The names of officers and directors of the company, the proceedings at the last annual election, giving the names of candidates and the number of votes cast for each, and whether in person, by proxy or by mail.

8. The salary, compensation and emoluments received by officers or directors and where the same amount to more than five thousand dollars, that received by any person, firm or corporation, with particulars as to dates, amounts, payees and the authority by which the payment was made; also all salaries paid to any representative either at the home office, or at any branch office, or agency, for agency supervision.

9. The largest balances carried in each bank or trust company during each month of the year.

10. All death claims resisted or compromised during the year with particulars as to sums insured, sums paid and reasons assigned for resisting or compromising the same in each case.

11. A complete statement of the profits and losses upon the business transacted during the year and the sources of such gains and losses, and a statement showing separately the margins upon premiums for the first year of insurance and the actual expenses chargeable to the procurement of new business incurred since the last annual statement. A foreign company, issuing both participating and nonparticipating policies shall make a separate statement of profits and losses, margins and expenses, as aforesaid, with reference to each of said kinds of business, and also showing the manner in which any general outlays of the company have been apportioned to each of such kinds of business.

12. A statement separately showing the amount of the gains of the company for the year attributable to policies written after December thirty-first, nineteen hundred and ... and the precise method by which the calculation has been made.

13. The rates of annual dividends declared during the year for all plans of insurance and all durations for ages at entry, twenty-five, thirty-five, forty-five and fifty-five, and the precise method by which such dividends have been calculated.

14. A statement showing the rates of dividends declared upon deferred dividend policies completing their dividend periods for all plans of insurance and the precise methods by which said dividends have been calculated.

15. A statement showing any and all amounts set apart or provisionally ascertained or calculated or held awaiting apportionment upon policies with deferred dividend periods longer than one year for all plans of insurance and

all durations and for ages of entry as aforesaid, together with the precise statements of the methods of calculation by which the same have been provisionally or otherwise determined.

16. A statement of any and all reserve or surplus funds held by the company and for what purpose they are claimed respectively to be held. [1907, ch. 141.]

See also section 4916.

ARTICLE 20.—COUNTY MUTUAL COMPANIES.

§ 4932. **Organization of.** Any number of persons not less than fifty, residing in not more than ten counties in this state, who collectively own property of not less than one hundred thousand dollars in value which they desire to insure, or any number of persons not less than twenty-five, residing in any one county, owning property of not less than twenty-five thousand dollars in value which they desire to insure, may form a corporation for mutual insurance against loss or damage by fire, lightning, hail and cyclone, which shall possess the powers and be subject to the duties and liabilities of other insurance companies, except as herein otherwise provided. The principal office of the company must be located within the limits of the county or counties in which the incorporators reside. The name of the county together with the word "county" shall be embraced in the corporate name of the company when organized by the residents of a single county. [R. C. 1905, § 4482; 1887, ch. 67, § 1; 1890, ch. 77, § 1; R. C. 1895, § 3134; 1905, ch. 121.]

§ 4933. **Management in board of directors. Term of office.** The general management of the business of such company shall be vested in a board of not less than five nor more than thirteen directors, each of whom shall during his term of office be a policy holder in the company. Such directors shall be elected annually and shall hold their office for three years and until their successors are elected and qualified. At the first election after this section takes effect the directors shall divide themselves as nearly as possible into three equal groups, the members of the first group to hold office for one year, of the second for two years and of the third for three years, and thereafter each director shall hold office for three years as provided herein. [1911, ch. 163; R. C. 1905, § 4483; 1887, ch. 67, § 2; R. C. 1895, § 3125.]

§ 4934. **Separate funds for hail and other insurance.** In all cases of insurance against loss or damage by hail, it shall be the duty of such company to keep a separate and distinct record of all interest, premiums and policies of insurance relating to such hail insurance and no note, premium, undertaking, or policy of insurance which shall be received, issued or delivered for any insurance against loss by hail shall be used in any connection with insurance against loss or damage by reason of any other cause, and no moneys, premiums or funds arising out of or received for insurance against loss or damage by hail shall be used in the payment of any loss or damage by reason of fire, lightning or cyclone, and no moneys, premiums or funds arising out of or received for insurance against loss or damage by fire, lightning and cyclone shall be used in the payment of any loss or damage by hail. [R. C. 1905, § 4484; 1887, ch. 67, § 5; R. C. 1895, § 3136.]

§ 4935. **Cash premium or note given in hail insurance. Conditions of policy.** Every person insuring grain against loss or damage by hail shall, except when a cash premium is paid, execute and deliver to such company his promissory note, bearing even date with the policy issued to him therefor, which note shall be secured by real or chattel mortgage security on property located in the county where the insured resides, of double the value of such note, which note or cash shall not be a limit to the liability of the person so insured. In case of insurance against loss or damage by hail, the directors of such company may issue policies, signed by the president and secretary, agreeing in the name of the company to pay all losses or damages by hail, or such pro rata share of such loss or damage as can be paid out of the highest

limit of the liabilities of the members, which liabilities shall be established by the by-laws of such company before the issuing of any policy of insurance against loss or damage by hail, which limit shall not be less than that prescribed by law. [R. C. 1905, § 4485; 1887, ch. 67, § 6; R. C. 1899, § 3137; 1901, ch. 109.]

§ 4936. Adjusters of hail losses. Notice of loss. Disagreement of adjuster and insured. It shall be the duty of the board of directors to appoint one or more adjusters, prescribe their duties and fix their compensation, requiring them to report to the president or secretary upon all losses or damage by hail adjusted by them. Upon any loss or damage by hail, the party sustaining the same shall immediately notify the secretary or a duly appointed adjuster of such loss or damage. In case the adjuster and party sustaining the loss cannot agree the claimant may then appeal as provided for in section 4939 and notice of loss or damage by hail shall be the same as is prescribed in said section. [R. C. 1905, § 4486; 1887, ch. 67, § 7; R. C. 1899, § 3138.]

§ 4937. By-laws provide a sinking fund for the different departments. Any company organized under this article may provide in its by-laws for creating a fund of not to exceed fifteen thousand dollars in the hail department, and of not to exceed three thousand dollars in the fire, lightning and cyclone department; provided, that when the total amount of insurance in the fire, lightning and cyclone department aggregates or exceeds three hundred thousand dollars the fund herein provided for may be increased to one per cent of the total amount of insurance actually in force in the fire, lightning and cyclone department; and provided, further, that in no case shall the loss fund in the fire, lightning and cyclone department exceed ten thousand dollars, the by-laws to set forth the manner in which such funds shall be created and the purpose to which they shall be applied. [R. C. 1905, § 4487; 1887, ch. 67, § 8; R. C. 1899, § 3139; 1901, ch. 55.]

§ 4938. Undertaking given, if other than hail insurance. Cash payment. Every person insured against loss or damage by fire, lightning and cyclone shall give his undertaking, bearing even date with the policy so issued to him, binding himself, his heirs and assigns, to pay his pro rata share to the company of all losses or damages by fires, lightning and cyclone, which may be sustained by any member thereof and every such undertaking shall within five days after the execution thereof be filed with the secretary in the office of the company and shall remain on file in the office, except when required to be produced in court as evidence. He shall also at the time of receiving such insurance pay such percentage in cash, or such reasonable sum named in the policy as may be required by the rules and by-laws of the company, [R. C. 1905, § 4488; 1887, ch. 67, § 9; R. C. 1895, § 3140.]

§ 4939. Notice of loss. Contents. Adjustment. Arbitration. Every member of such company who may sustain loss or damage by fire, lightning or cyclone shall immediately notify the secretary of such company, or in case of his absence, the president thereof, specifying the property destroyed, the damage and cause thereof, which officer shall forthwith ascertain and adjust the amount of such loss or damage or forthwith convene the directors of such company whose duty it shall be to appoint a committee of not more than three members of such company to ascertain the amount of such loss and in case of the inability of the parties to agree upon the amount of such damage the claimant shall choose a disinterested party and the company shall choose a disinterested party who shall constitute a board of arbitration to settle such loss and in case these parties cannot agree they shall choose a third party to act with them and such board of arbitration shall have power to examine witnesses and to determine all matters in dispute and the decision of such board shall be final. [R. C. 1905, § 4489; 1887, ch. 67, § 10; R. C. 1895, § 3141.]

Failure of insurance company to appoint arbitrator to adjust loss, etc., as waiver of provisions of statute. *Norris v. Equitable Fire Assn.*, 19 S. D. 114, 102 N. W. 306.

Waiver of condition requiring determination of amount of loss by arbitration. *Schouweiler v. Mut. Ins. Co.*, 11 S. D. 401, 78 N. W. 356.

§ 4940. Assessments, basis of. When made. Whenever the amount of any loss shall have been ascertained, if it exceed the amount of the cash funds of the company applicable to the payment of such loss, the president shall convene the directors of the company, who shall make an assessment sufficient at least to pay such loss, from all members of the company, in proportion to the amount of insurance carried. In case any assessment so made shall not be collected at the time same is due and the amount collected is insufficient to pay the losses or expenses of the company, then a second assessment shall be made in the manner above provided, upon the policy holders who have paid their assessment for an amount that shall be sufficient to pay all losses and expense in full. Such assessments shall be made from time to time in the manner herein provided until a sufficient amount is collected to pay all losses and expenses in full. In case any such delinquent assessment is collected after other assessments have been made and collected, then such assessment so collected shall be applied towards repaying the policy holders who have paid more than their just share in proportion to the amount of insurance carried by each. No assessment for loss or damage shall be made prior to the first day of September of the year the loss occurred. [R. C. 1905, § 4490; 1887, ch. 67, § 11; R. C. 1895, § 3142; 1901, ch. 109.]

§ 4941. Secretary to give notice of and collect assessments. It shall be the duty of the secretary, whenever such assessments shall have been completed, to notify every person composing such company by letter sent to his post office address of the amount of such loss and the sum due from him as his share thereof and the time when and to whom such payment is to be made and such time shall not be less than thirty days nor more than sixty days from the time of such notice. And no company organized under the provisions of this article shall be liable in any action at law or otherwise for the recovery of any loss or damage by hail before the fifteenth day of November of the year in which such loss occurred. [R. C. 1905, § 4491; 1887, ch. 67, § 12; R. C. 1899, § 3143.]

§ 4942. Suits for assessments. Individual liability of directors. Suits at law may be brought against any member of such company who shall refuse or neglect to pay any assessment made upon him under the provisions of this article, and the directors of such company who shall willfully neglect to perform the duties imposed upon them under the provisions of this article shall be liable in their individual capacity to the person sustaining such loss. [R. C. 1905, § 4492; 1887, ch. 67, § 13; R. C. 1895, § 3144.]

§ 4943. Authority to borrow money. That the board of directors of any county mutual fire insurance company is hereby authorized and empowered to borrow money if necessary on behalf of the company to pay losses occurring prior to the month of October in any year. [1911, ch. 161.]

§ 4944. What may be insured. No company formed under the provisions of this article shall insure any property beyond the limits of the district comprised in the formation of the company, nor shall it insure any property other than detached dwellings and their contents, farm buildings and contents, school houses and school furniture therein, church buildings and furniture therein, live stock only on the premises or running at large, and hay or grain in stack or bin, or growing grain against damage by hail, nor shall they insure any property within the limits of any incorporated city or village in this state unless such property is detached and situated on land not surveyed or platted into lots. [1913, ch. 188; R. C. 1905, § 4493; 1887, ch. 67, § 14; R. C. 1895, § 3145.]

§ 4945. Election of directors. The directors of each company so formed shall be chosen by a vote at the annual election thereof, which shall be held on the last Friday in June of each year, and every member shall have one vote.

but no person shall vote by proxy at such election. Provided, that to constitute a quorum for the transaction of business there must be at least twenty members present, including officers and directors; provided, that in any company organized under this article, whose policies of insurance shall not run for a longer period than one year, all persons holding policies of insurance therein during the year immediately preceding the annual election, shall be considered as members of said company and shall be entitled to vote at such election. [1913, ch. 190; 1911, ch. 162; 1909, ch. 146; R. C. 1905, § 4494; 1887, ch. 67, § 15; R. C. 1895, § 3146; 1903, ch. 110.]

§ 4946. How member may withdraw. Any member of the company may withdraw therefrom at any time by giving ten days' notice in writing to the president or secretary thereof and by paying his share of all claims existing against the company at the expiration of the ten days. [R. C. 1905, § 4495; 1887, ch. 67, § 17; R. C. 1895, § 3147.]

§ 4947. When nonresidents may become members. Cannot be directors. Nonresidents of any county in this state, owning property therein, may become members of any company incorporated under this article and shall be entitled to all rights and privileges pertaining thereto, except that they cannot become directors of such company. [R. C. 1905, § 4496; 1887, ch. 67, § 18; R. C. 1895, § 3148.]

§ 4948. Term of existence. No company formed under this article shall continue for a longer term than thirty years. [R. C. 1905, § 4497; 1887, ch. 67, § 20; R. C. 1899, § 3149.]

§ 4949. Annual statement submitted to members. The secretary of the company shall prepare and submit to the members thereof at each annual meeting a copy of the annual statement required to be filed with the commissioner of insurance as provided in section 4915. [R. C. 1905, § 4498; R. C. 1895, § 3150.]

§ 4950. Subject to preceding articles. In all other respects companies organized under this article shall be subject to the provisions of the preceding articles of this chapter. [R. C. 1905, § 4499; R. C. 1895, § 3151.]

ARTICLE 21.—LIVE STOCK.

§ 4951. General laws govern. Companies organized under this article shall be subject to the general statutes of this state relating to domestic mutual insurance companies, in so far as the same are applicable and not in conflict with the express provisions of this article. [R. C. 1905, § 4500; 1905, ch. 123, § 1.]

§ 4952. Live stock insurance companies, how organized. Any number of persons not less than ten, of whom at least five shall be residents of this state, may form a corporation for mutual insurance against loss or damage to pure bred live stock occasioned by the death of the property insured by fire, lightning, accident or disease, which shall possess the powers and be subject to the duties and liabilities of other insurance companies, except as herein otherwise provided. The term "pure bred live stock," as used in this article includes horses, cattle, sheep and swine of either sex and any breed; provided, that the animals insured must be duly registered in the recognized stud or herd book of such breed; and provided, further, that corporations may be organized under this article for the purpose of insuring either or all of said live stock, against loss or damage to the property insured by reason of fire, lightning, accident or disease, or any or all of them. [R. C. 1905, § 4501; 1905, ch. 123, § 2.]

§ 4953. Management. The general management of the business of such company shall be vested in a board of directors of not less than five nor more than nine directors, each of whom shall during his term of office be a policy holder in the company. Such directors shall be elected annually and shall hold their offices for one year and until their successors are elected and qualified. [R. C. 1905, § 4502; 1905, ch. 123, § 3.]

§ 4954. **Board of directors to elect officers and fix bonds.** It shall be the duty of the board of directors to annually elect such officers of the corporation as may be provided in the articles of incorporation and by-laws of the company. It shall also be the duty of the said board of directors to fix the amount of the bonds required of the treasurer and other officers having or likely to have control of any funds belonging to the company, which bonds, in the case of the treasurer, shall not be less than ten thousand dollars, and in the case of the secretary, not less than two thousand five hundred dollars, and as near as may be shall equal twice the amount of money likely at any one time to be in the hands of the respective officers. [R. C. 1905, § 4503; 1905, ch. 123, § 4.]

§ 4955. **Members may vote by proxy.** Members may vote by proxy dated and executed within three months and returned and recorded on the books of the company three days or more before the meeting at which they are to be used. [R. C. 1905, § 4504; 1905, ch. 123, § 5.]

§ 4956. **Amount of subscribed insurance required.** No policy shall be issued by an insurance company organized under this article until not less than thirty thousand dollars of insurance in not less than fifteen separate risks have been subscribed for and entered on its books. [R. C. 1905, § 4505; 1905, ch. 123, § 6.]

ARTICLE 22.—CHattel MORTGAGES IN APPLICATIONS.

§ 4957. **Chattel mortgage void unless on separate paper.** It shall be unlawful for any insurance company, or any agent or solicitor therefor within this state, to take or procure to be taken upon the property to be insured, or any other property, a chattel mortgage, securing the payment of the premium due or to become due, including policy fees, or any part thereof, unless such chattel mortgage shall be printed or written upon a separate and distinct paper from the application, and no mortgage given in violation of the provisions of this section shall be valid or binding upon the party executing the same, but shall in all things be null and void. [R. C. 1905, § 4506; 1887, ch. 19, § 1; R. C. 1899, § 3132.]

§ 4958. **Penalty for violating last section.** Any insurance company, or any agent or solicitor thereof, violating the provisions of the last section shall be deemed guilty of a misdemeanor; and such company shall forfeit all its rights and privileges under its articles of incorporation. [R. C. 1905, § 4507; 1887, ch. 19, § 2; R. C. 1895, § 3153.]

ARTICLE 23.—LICENSING INSURANCE AGENTS.

§ 4959. **Agents defined.** Whoever solicits insurance on behalf of any insurance corporation or person desiring insurance of any kind, or transmits an application for a policy of insurance, other than for himself, to or from any such corporation, or who makes any contract for insurance, or collects any premium for insurance, or in any manner aids or assists in doing either, or in transacting any business of like nature for any insurance corporation, or advertising to do any such thing, shall be held to be an agent of such corporation to all intents and purposes, unless it can be shown that he receives no compensation for such services. This section shall not apply to fraternal, assessment or beneficiary associations. [R. C. 1905, § 4508; 1903, ch. 112, § 1.]

§ 4960. **Must have license. Penalty for noncompliance.** No officer or broker, agent or subagent of any insurance corporation of any kind, except county mutual insurance corporations of this state, shall act or aid in any manner in transacting the business of or with such corporation, in placing risks or affecting insurance therein, without first procuring from the commissioner of insurance a certificate of authority as provided by law, nor after the period named in such certificate shall have expired. Every person violat-

ing the provisions of this and the previous section shall be guilty of a misdemeanor and be punished by a fine of not less than fifty dollars nor more than five hundred dollars for each offense. [R. C. 1905, § 4509; 1903, ch. 112, § 2.]

Effect of insurance agent's failure to procure license. 1 L.R.A. (N.S.) 1159.

ARTICLE 24.—RESIDENT AGENTS FOR TRANSACTION OF FIRE INSURANCE BUSINESS.

§ 4961. Foreign agents. No insurance company or association, not incorporated under the laws of this state, authorized to transact business herein, shall make, write, place or cause to be made, written or placed, any policy, duplicate policy or contract of insurance of any kind or character, or any general or floating policy, upon property situated or located in this state except after the said risk has been approved in writing, by an agent who is a resident of this state, regularly commissioned and licensed to transact insurance business therein, who shall countersign all policies so issued and make a record of the same on books provided for that purpose and receive the commission thereon when the premium is paid, to the end that the state may receive the taxes required by law to be paid on the premiums collected for insurance on all property located in the state, and the agents be paid the commission thereon. Nothing herein shall be construed to prevent any such insurance company or association, authorized to transact business in this state, from issuing policies at its principal or department offices, covering property in this state, provided that such policies are issued upon applications procured and submitted to such company by agents who are residents of this state, and licensed to transact the business of insurance herein, and who shall countersign all policies so issued and receive the commission thereon when paid; provided, no provision of this section is intended to or shall apply to direct insurance covering the rolling stock of railroad corporations or property in transit, while in the possession and custody of railroad corporations or other common carriers nor to movable property of such common carrier used or employed by them in their business as common carriers of freight, merchandise or passengers. [R. C. 1905, § 4510; 1901, ch. 100, § 1.]

§ 4962. Cannot reinsure. No fire insurance company or association shall reinsure, or assume as a reinsuring company or otherwise in any manner or form whatever, the whole or any part of any risk or liability, covering property located in this state, of any insurance company or association not authorized to transact business in this state. [R. C. 1905, § 4511; 1901, ch. 100, § 2.]

§ 4963. Insurance commissioner. Examine records, books, etc. Whenever the commissioner of insurance shall have or receive information that any fire insurance company or association, not incorporated under the laws of this state, has violated any of the provisions of section 4961, he is authorized, at the expense of such company or association, to examine, by himself or his accredited representative at the principal office, or offices of such company or association, located in the United States of America, and also at such other offices or agencies of such company or association as he may deem proper, all books, records and papers of such company or association and may examine under oath, the officers and managers and agents of such company or association as to such violation or violations. The refusal of any such company or association to submit to such examination or to exhibit its books and records for inspection shall be presumptive evidence that it is violating the provisions of section 4961, and shall subject it to the penalties prescribed and imposed in section 4964. [R. C. 1905, § 4512; 1901, ch. 100, § 3.]

§ 4964. Penalty for violation. Any insurance company or association violating or failing to observe and comply with any of the provisions of sections applicable thereto, shall be subject to and liable to pay a penalty of five

hundred dollars for each violation thereof and for each failure to observe and comply with any provisions of the three previous sections mentioned. Such penalty may be collected and recovered in an action brought in the name of the state in any court having jurisdiction thereof. Any insurance company or association which shall neglect and refuse for thirty days after judgment in any such action to pay and discharge the amount of such judgment shall have its authority to transact business in this state revoked by the commissioner of insurance and such revocation shall continue for at least one year from the date thereof, nor shall any insurance company or association whose authority to transact business in this state shall have been so revoked be again authorized or permitted to transact business herein until it shall have paid the amount of any such judgment, and shall have filed in the office of the commissioner of insurance a certificate signed by its president or other chief officer to the effect that the terms and obligations of the provisions herein are accepted by it as a part of the conditions of its right and authority to transact business in this state. [R. C. 1905, § 4513; 1901, ch. 100, § 4.]

CHAPTER 19.

ACCIDENT AND SICKNESS INSURANCE CORPORATIONS, ASSOCIATIONS AND SOCIETIES.

§ 4965. Number requisite to organization. Any number of persons, not less than five, a majority of whom are citizens of this state, may associate themselves together as a corporation, association or society for the purpose of transacting the business of accident or sickness, or accident and sickness insurance upon the assessment plan. [1907, ch. 157, § 1.]

§ 4966. Compliance required. Every corporation, association or society organized under this article shall, before commencing business, comply with the provisions of this article. [1907, ch. 157, § 2.]

§ 4967. Articles, state what. The articles of incorporation of such organizations shall state the name or title by which the corporation, association or society shall be known in law, the location of its principal office (which office must be located in this state) with its plan of doing business clearly and fully defined, the number of its directors, trustees or managers, and shall be submitted to the insurance commissioner and attorney-general, and if said articles of incorporation are found to comply with the provisions of this article they shall approve the same. When said articles of incorporation are thus approved they shall be recorded in the office of the recorder of deeds in the county where such organization is located, and of the secretary of state, and a notice published as provided for under the general incorporation laws of the state of North Dakota; provided, that corporations, associations and societies heretofore incorporated and doing business in this state shall not be required to reincorporate. But any corporation, association or society may become a corporation under this act and avail itself of the provisions herein by filing with the insurance commissioner a certificate signed by the president and secretary of such corporation, association or society, setting forth the facts as to its incorporation, and that it desires to avail itself of the provisions of this article and will be controlled thereby and transact its business thereunder; provided, this article shall not relieve any corporation, association or society now doing business in this state from the fulfillment of any contract heretofore entered into with its members under its policies or certificates of membership, nor shall any member be relieved thereby from his or her part of the contract. [1907, ch. 157, § 3.]

§ 4968. Name forbidden. No corporation, association or society organized under this article shall take any name or title in use by any other corporation, association or society, or so closely resembling such name as to deceive the public as to its identity. [1907, ch. 157, § 4.]

§ 4969. Application contains what. Each corporation, association or society organized under this article shall, before issuing any policy or certificate of membership, if said corporation, association or society has not membership sufficient to pay the full amount of the certificate or policy on an assessment, cause the application for insurance to have printed in red ink in a conspicuous manner along the margin of said application the words "It is understood and agreed that the amount to be paid, when the certificate or policy issued upon this application becomes a claim, shall be dependent upon the amount collected for an assessment made to meet such claim," and they must have actual applications upon at least two hundred and fifty persons for accident indemnity, or accident and sick benefits in such corporation, association or society as the case may be, and shall file with the insurance commissioner satisfactory proof that the president, secretary and treasurer of said association or society will faithfully discharge their duties as such officers and fully comply with this article in the organization and carrying on the business of such corporation, association or society. A list of said applications giving the name, age and residence of the applicant, together with the annual dues and the proposed assessments thereon shall be filed with the insurance commissioner, with a sworn statement of such officers and that such parties have deposited with them one advance assessment on the insurance applied for, and a certificate of a solvent bank that such funds are deposited therein to be turned over to the treasurer of the corporation, association or society after certificate of authority is issued by the insurance commissioner as provided herein. [1907, ch. 157, § 5.]

§ 4970. Agent must have certificate of authority. No person shall act within this state as agent in receiving or procuring applications for accident insurance or accident and sick benefit insurance for any corporation, association or society organized under this act (except for the purpose of taking applications for organization), unless this corporation, association or society for which he is acting has received a certificate from the insurance commissioner as provided in this act, authorizing said corporation, association or society to transact business in this state, nor as general or traveling agent or solicitor, until he shall have received from the insurance commissioner a certificate in substance the same as that provided for in section 4976. [1907, ch. 157, § 6.]

§ 4971. By-laws. The by-laws of such corporation, association or society shall state the object or objects for which the money to be collected is intended. [1907, ch. 157, § 7.]

§ 4972. Age of members. No corporation, association or society organized or operating under this article shall issue any certificate of membership or policy of insurance to any person under the age of fifteen years, nor over the age of sixty-five years. Any member of any corporation, association or society holding a policy or certificate of membership, naming a beneficiary, operating under this article shall have the right at any time with the consent of such corporation, association or society to designate a new and different beneficiary without requiring the consent of such beneficiary. [1907, ch. 157, § 8.]

§ 4973. Annual report. The business year of such corporation, association or society organized or operating under this act shall close on the thirty-first day of December of each year, and such corporation, association or society shall, within sixty days thereafter, prepare under oath of its president and secretary, and file in the office of the insurance commissioner a detailed statement of its assets, liabilities, receipts from assessments and all other sources, expenditures, salaries of officers, number of contributing members, losses paid for indemnity and benefits, the amount paid on each death loss and answer such other interrogatories as the insurance commissioner (who shall furnish blanks for the purpose) may require, in order to ascertain its true financial condition, and shall pay upon filing each annual statement the sum of ten

dollars. The insurance commissioner shall publish said annual statement in detail in his annual report and for the purpose of verifying such statement the insurance commissioner may make, or cause to be made, an examination of the affairs of any corporation, association or society doing business under this article at the expense of the corporation, association or society, which expense shall not exceed the necessary hotel and traveling expenses of the auditor or clerk. If the insurance commissioner appoints some person not employed in his office to make the examination he shall in addition to actual expenses, be allowed not to exceed five dollars per day for the time actually employed. If the said insurance commissioner shall deem it necessary for the security of the funds of the association, he may require the official bonds of the officers to be increased to an amount not to exceed double the sum for which they are accountable, and he may require supplemental reports from any such corporation, association or society at such time and in such form as he may direct. [1907, ch. 157, § 9.]

§ 4974. Reserve fund. Any North Dakota corporation, association or society organized and doing business under this article may create and maintain and disburse a reserve or surplus fund, and may invest such funds in interest bearing securities. [1907, ch. 157, § 10.]

§ 4975. Duty of insurance commissioner. When any North Dakota corporation, association or society operating under this article shall fail to make its annual statement to the insurance commissioner on or before the first day of March, or is conducting its business fraudulently and not in compliance with this article, then it shall be the duty of the insurance commissioner to promptly communicate the facts to the attorney-general who shall at once commence action in the district court of the county in which said organization is located, or before any judge thereof, citing the officers to appear before said court or judge, and if upon a hearing of said cause it is found to be for the best interests of the holders of certificates of membership or policies in said corporation, association or society, said court or judge shall have the power to remove any officer or officers of said corporation, association or society and appoint others in their place until the next annual election. If it is found to be for the best interest of said certificate or policy holder that the affairs of said corporation, association or society be wound up, said court or judge shall so direct, and for that purpose may appoint a receiver, who shall regard all proper claims for benefits under said certificates as preferred claims. No action or proceeding shall be instituted with a view of the appointment of a receiver or closing up of the business of any such corporation, association or society by any other person, or in any other manner except as herein provided. [1907, ch. 157, § 11.]

§ 4976. Company's certificate of authority. On compliance with this article by any corporation, association or society the insurance commissioner shall issue a certificate that it has fully complied with the provisions of this article, and is authorized to transact business for a period of one year from April first of the year of its issue. [1907, ch. 157, § 12.]

§ 4977. Voting proxy. At any regularly constituted meeting of the policy holders or certificate holders of any corporation, association or society doing business under this article, each policy holder or certificate holder shall be entitled to at least one vote, and any such person may in writing authorize any other person entitled to vote at such meeting to vote for him. [1907, ch. 157, § 13.]

§ 4978. Limit time of suit. Any corporation, association or society organized or operating under this article may limit the time within which suit may be brought against it on any claim based upon its policies or certificates of membership, and after the expiration of the time thus limited shall not be liable thereon; provided, such limitation shall be incorporated in and form a part of the contract between the company, association or society, and the

assured or its members; and provided, further, that such limitation shall not be limited to a period of less than one year from the time such right of action accrues. [1907, ch. 157, § 14.]

§ 4979. Reciprocal penalties. Whenever the existing or future laws of any other state of the United States, territory or province of any other country, or the rules and regulations of the insurance department of any such state, territory or province shall require of corporations, associations or societies organized and doing business under this act, any payment of taxes, fines, penalties, certificates of authority, licenses, fees or require any other duties, examinations or acts other than are by the laws of this state required of such mutual corporation, association or society organized under the laws of such other state, territory or province, then the insurance commissioner shall immediately require from every such insurance corporation, association or society of such other state, territory or province transacting or seeking to transact business in this state, the like payment of all licenses, fees, taxes, fines or penalties, and the like doing of all acts which by the laws or the rules of the insurance department of such other state, territory or province, require in excess of the licenses, fees, taxes, statements, fines, penalties, acts, examinations or duties required by the laws of this state of the mutual companies of such other states, transacting business in this state. [1907, ch. 157, § 15.]

§ 4980. Foreign corporations, licensed when. When any corporation, association or society not organized in this state and doing business of accident or sickness, or accident and sickness insurance shall comply with the requirements of this article applicable to it and shall satisfy the insurance commissioner that it is in a solvent condition and able to meet its obligations at maturity, he shall issue to such foreign corporation, association or society a certificate stating that such corporation, association or society has complied with the laws of this state and authorizing said corporation, association or society to do and transact such business in this state subject to the provisions of this article. [1907, ch. 157, § 16.]

CHAPTER 20.

MINING AND MANUFACTURING CORPORATIONS, ETC.

§ 4981. How formed. Term of existence. Corporations for mining, manufacturing and other industrial pursuits may be formed as provided in chapter 12; and such corporations have all the rights and are subject to all the duties, restrictions and liabilities therein mentioned, so far as the same apply or relate to such corporations, but the term of existence of any such corporation shall not exceed twenty years. [R. C. 1905, § 4514; Civ. C. 1877, § 511; R. C. 1899, § 3154.]

§ 4982. Purpose must be stated. Cannot loan to stockholder. Penalty. The purposes for which any such corporation shall be formed must be distinctly and definitely specified in the articles of incorporation, and it must not appropriate its funds to any other purpose nor must it loan any of its money to any stockholder therein; and if any such loan or misappropriation is made, the officers who shall make it, or who shall assent thereto, shall be jointly and severally liable to the extent of such loan or misappropriation and interest and for all the debts of the corporation contracted before the repayment of the sum so loaned or misappropriated. [R. C. 1905, § 4515; Civ. C. 1877, § 512; R. C. 1895, § 3155.]

§ 4983. Accounts. Publicity. Statement. Regular books of accounts of all the business of such corporation must be kept, which with the vouchers shall at all reasonable times be open for the inspection of any of the stockholders, and any stockholder in making such inspection shall be privileged to take with him an expert accountant to aid him in making the inspection, and as often as once in each year a statement of such accounts shall be made by

order of the directors and laid before the stockholders. [1907, ch. 55; R. C. 1905, § 4516; Civ. C. 1877, § 513; R. C. 1899, § 3156.]

§ 4984. Stockholders liable for labor. The stockholders of any corporation formed for the purposes mentioned in this chapter shall be jointly and severally liable in their individual capacities for all debts due to mechanics, workmen and laborers employed by such corporation, which said liability may be enforced against any stockholders by an action at any time after an execution against such corporation shall be returned not satisfied; provided, such action is commenced within four months; and provided always, that if any stockholder shall be compelled by any such action to pay the debts of any creditor, or any part thereof, he shall have the right to call upon all the stockholders to contribute their part of the sum so paid by him as aforesaid, and may sue them jointly or severally or any number of them and recover in such action the ratable amount due from the person or persons so sued. [R. C. 1905, § 4517; Civ. C. 1877, § 514; R. C. 1899, § 3157.]

Recovery against stockholders. Busby v. Riley, 6 S. D. 401, 61 N. W. 164.

Who are laborers, servants or employees under statute making stockholders individually liable. 18 L.R.A. 308.

§ 4985. Annual report. Contents. How verified. Every such corporation shall annually within twenty days from the first day of January make a report which must be published in some newspaper published at or nearest to the place where the business of said corporation is carried on, which report must state the capital stock and the amount thereof actually paid in, the amount and nature of its indebtedness and the amounts due the corporation, the number and amount of dividends and when paid and the net amount of profits. The said report must be signed by the president and a majority of the directors and be verified by the oath of the president or secretary of the corporation and filed in the office of the register of deeds of the county where the business of the corporation is carried on; any person who willfully neglects, fails or refuses to make, sign or publish the report as provided in this section shall be guilty of a misdemeanor. [R. C. 1905, § 4518; Civ. C. 1877, § 515; R. C. 1899, § 3158.]

§ 4986. Demand for statement. Penalty for refusal. Whenever any person or persons owning twenty per cent of the capital stock of any corporation formed for the purposes mentioned in this chapter shall present a written request to the treasurer thereof that they desire a written statement of the affairs of the corporation, he must make such statement under oath, embracing a particular account of all its assets and liabilities in detail and deliver the same to the persons presenting the written request within twenty days after such presentation; and such treasurer shall also at the same time place and keep on file in his office for six months thereafter a copy of such statement, which shall at all times during business hours be exhibited to any stockholder of such corporation demanding an examination thereof; the treasurer, however, shall not be required to make or deliver such statement in the manner aforesaid oftener than once in every six months. If such treasurer neglects or refuses to comply with the provisions of this section he shall forfeit and pay to the person presenting such written request the sum of fifty dollars and the further sum of ten dollars for every twenty-four hours thereafter until such statement shall be furnished, to be sued for and recovered in an action. [R. C. 1905, § 4519; Civ. C. 1877, § 516; R. C. 1895, § 3159.]

§ 4987. Office out of state. Main office in state. Any corporation formed for the purposes mentioned in this chapter may provide in the articles of incorporation for having a business office without this state at any place within the United States and to hold any meeting of the stockholders or directors of the corporation at such office so provided for; but every such corporation having a business office out of this state must have its main office for the transaction of business within this state to be also designated in such articles. [R. C. 1905, § 4520; Civ. C. 1877, § 517; R. C. 1899, § 3160.]

§ 4988. Directors liable for violating law resulting in insolvency. If any such corporation shall willfully violate any of the provisions of this chapter relating to or applying to such corporation and shall thereby become insolvent, the directors ordering or assenting to such violation shall jointly and severally be liable in an action founded upon this statute for all debts contracted after such violation. [R. C. 1905, § 4521; Civ. C. 1877, § 518; R. C. 1899, § 3161.]

CHAPTER 21.

STATEMENTS BY MINING CORPORATIONS.

§ 4989. Mining corporations to file statement before offering stock for sale. No shares or certificates of stock in any mining corporation established under the laws of this state, or any state, territory, province, country or government, shall be sold or offered for sale within this state by such corporation, or by any person, firm, association or corporation acting as agent, representative, attorney or broker for such corporation, until such corporation shall have filed in the office of the secretary of state a statement under oath, showing the financial condition of such corporation, the location of the mine or mines, owned by such corporation, with plans of the same; the amount of work done thereon; the amount of cash expended for improvements thereon and the condition of the plant and machinery connected therewith. Such statements shall be signed by the president, secretary and treasurer of such corporation and shall be verified by the oath of each of such officers to the effect that the same is in all respects true. [1909, ch. 169, § 1.]

§ 4990. Form of statement. Fee for filing. The statement provided for in section 4989 shall be in substantially the following form:

STATEMENT of the

....., a corporation organized under the laws of
the state, territory or province of and operating
..... mines located in or near the town of or mining district of
....., county of, state of

I.

1. Amount of authorized capital stock
2. Amount of capital stock issued.....
3. Amount of capital stock held by corporation.....
4. Amount of capital stock issued in payment of property.....
5. Amount of capital stock sold for cash.....
6. Amount of cash received in payment for stock.....
7. Value and description of property received in payment for stock.....
8. Amount of debts or liabilities in
 - (a) Bonds (stating rate of interest, and time at which bonds fall due
 - (b) Other indebtedness
9. Amount of cash on hand.....
10. Amount of credits and estimated value thereof:
 - (a) Notes
 - (b) Bills receivable
 - (c) Accounts receivable
11. Present value of property of corporation.....
12. Number and amount of dividends declared.....
13. Rate of last dividend, and date when same was declared and paid.....

II.

1. Location of property owned (to be accompanied by plans of the same)
.....

2. Amount of work done on the property, showing extent of development

 3. Amount of cash expended for improvements on said properties.....

 4. Description of plant and machinery, and their present condition.....

 Dated at this day of 190..
President.
Secretary.
Treasurer.

State of }
 County of } ss.:

On this day of, 190., personally appeared
 president, secretary and
 treasurer of the and who being by me duly sworn
 did each for himself depose and say that the foregoing statement by them
 signed is in all respects correct, true and accurate.

.....
 Notary Public.

A fee of twenty-five dollars for filing such statement shall be paid to the
 secretary of state by such corporation, at the time such statement is pre-
 sented for filing. [1909, ch. 169, § 2.]

§ 4991. Secretary of state to keep docket open to public inspection. It
 shall be the duty of the secretary of state to provide and keep in his office
 and open to public inspection a docket with appropriate blanks and indices,
 and to forthwith and as soon as the statement provided for in section 4989 is
 filed in his office, enter therein the name of the corporation filing the same,
 together with a copy of the statement. [1909, ch. 109, § 3.]

§ 4992. Punishment for violation of preceding sections. Any person who
 sells or offers for sale within this state any shares or certificates of stock in any
 mining corporation which has not filed a statement in accordance with the
 provisions of sections 4989 and 4990 of this act, is guilty of a misdemeanor.
 [1909, ch. 169, § 4.]

§ 4993. Punishment for violation of preceding sections by corporations.
 Any corporation or officer or agent thereof, or any broker, selling or offering
 for sale shares or certificates of stock in any mining corporation which has not
 filed the statement in accordance with the provisions of sections 4989 and 4990
 of this act is guilty of a misdemeanor, and in addition thereto shall forfeit to
 the people of the state the sum of one thousand dollars for each and every
 offense, to be recovered in an action to be brought by the attorney-general.
 The secretary of state shall report to the attorney-general at least once in
 three months the names of all agents, corporations or brokers who to his
 knowledge are engaged in the sale of shares or certificates of stock in mining
 corporations which have failed to comply with the provisions of this chapter.
 The moneys forfeited by this section, when recovered, shall be paid into the
 state treasury, except, that where the fact of the violation of this chapter is
 brought to the knowledge of the attorney-general by a person other than a
 person holding a public office within this state, one-half of the moneys re-
 covered for a violation of this chapter shall be paid to such person so fur-
 nishing the information and knowledge of such violation to the attorney-
 general as aforesaid. [1909, ch. 169, § 5.]

§ 4994. Making false statement. Any officer of a mining corporation who,
 in making the statement prescribed by section 4990, willfully makes any state-
 ment which he knows to be false, is guilty of a misdemeanor. [1909, ch. 169,
 § 6.]

CHAPTER 22.

BRIDGE CORPORATIONS.

§ 4995. **Articles. Contents. Filing.** The term of existence of a bridge corporation shall not exceed twenty years; and in addition to the matters required in section 4505 every corporation formed for the purpose of constructing a bridge over any stream of water must in the articles of incorporation specify as follows: The place where such bridge is to be built and over what stream; that the banks on both sides of the stream where such bridge is to be built are owned by such corporation, or that it has obtained in writing the consent of the owners of the banks, where the bridge is to be built, to build the bridge or that the banks at such place are included within and part of a public highway, and in such case that the consent in writing of the board of county commissioners of the county or counties for the erection of such bridge by such corporation has been obtained and it must file a certified copy of its articles of incorporation in the office of the register of deeds of the county or counties in which its bridge or any part thereof is situated or to be located. [R. C. 1905, § 4522; Civ. C. 1877, § 528; R. C. 1899, § 3162.]

§ 4996. **No tolls without authority from county commissioners.** No such corporation shall construct, or take tolls on, a bridge until authority is granted therefor by the board of county commissioners of the county or counties in which it is to be located. [R. C. 1905, § 4523; Civ. C. 1877, § 529; R. C. 1899, § 3163.]

§ 4997. **When franchise forfeited.** Every such corporation also ceases to be a body corporate:

1. If within six months from the issue of its certificate by the secretary of state it has not obtained such authority from the board or boards of county commissioners as mentioned in the last section; and if within one year thereafter it has not commenced the construction of its bridge and actually expended thereon at least ten per cent of its capital stock.

2. If within three years from the issuing of its certificate of incorporation the bridge is not completed. [R. C. 1905, § 4524; Civ. C. 1877, § 530; R. C. 1899, § 3164.]

§ 4998. **Bridge must be in good condition.** Every bridge corporation must at all times keep the bridge in good and safe condition for travel both night and day, unless it is rendered impassable by reason of floods or high water; and if it is destroyed by fire or other causes the corporation must rebuild within a period of one year from such destruction, or its corporate rights shall be forfeited and cease to exist. [R. C. 1905, § 4525; Civ. C. 1877, § 531; R. C. 1899, § 3165.]

Rights and duties of toll-bridge proprietors. 58 L.R.A. 155; 30 L.R.A.(N.S.) 360.

§ 4999. **Toll rates posted. Penalty for excessive toll.** Such corporation previous to receiving and as a condition precedent to the right to receive any toll upon the use of its bridge must set up and keep in a conspicuous place on the bridge a board on which must be written, painted or printed in a plain and legible manner the rates of toll which shall have been prescribed by the board of county commissioners; and if such corporation shall demand or receive any greater rate of toll than the rates so prescribed it shall be subject to a fine of ten dollars for each offense, to be recovered in an action by the party aggrieved or by any public officer making the complaint. [R. C. 1905, § 4526; Civ. C. 1877, § 532; R. C. 1899, § 3166.]

Conditions to right to take tolls. 58 L.R.A. 163; 30 L.R.A.(N.S.) 363.

Vehicles subject to tolls. 30 L.R.A.(N.S.) 363.

§ 5000. **No tolls when bridge in bad condition. Penalty.** No such corporation shall demand or receive toll whenever said bridge is not in good and safe

condition for use and any person having paid toll on such bridge and finding the same in a bad or unsafe condition for loaded wagons or teams shall have the right to make complaint before any justice of the peace in the county or counties in which the bridge is located, who shall thereupon summon the said corporation through its toll gatherer, officers or directors to appear before him to answer the complaint within not over five days from the date thereof, and if upon the hearing it is found that the bridge is not in a good and safe condition for use, or is in a bad condition and unsafe for loaded wagons or teams, the justice of the peace must impose a fine not less than ten dollars nor more than fifty dollars upon such corporation and he must thereupon enter judgment and issue his order that no toll be collected upon said bridge until it is put in good repair and safe condition. [R. C. 1905, § 4527; Civ. C. 1877, § 533; R. C. 1899, § 3167.]

§ 5001. **Passage prevented until toll paid. Unlawful interference.** Each toll gatherer may prevent from passing through his gate all persons, animals or vehicles subject to toll until he shall have received, respectively, the tolls authorized to be collected, and if he willfully or unreasonably hinders or delays any such persons, animals or vehicles from passing, when the lawful toll has been paid or tendered, he shall forfeit and pay for each offense a sum not less than five dollars nor more than twenty-five dollars, to be recovered in an action by the party aggrieved. [R. C. 1905, § 4528; Civ. C. 1877, § 534; R. C. 1899, § 3168.]

§ 5002. **Penalty for unlawful passing.** Every person who forcibly, willfully or fraudulently passes over such bridge without having paid or tendered the legal toll for himself and the property in his charge shall for each offense forfeit and pay to the corporation injured a sum not exceeding twenty-five dollars, to be recovered in an action in the name of such corporation. [R. C. 1905, § 4529; Civ. C. 1877, § 535; R. C. 1899, § 3169.]

§ 5003. **Annual report to county board.** The president and secretary of every bridge corporation must annually within twenty days from the first day of January report under oath to the board of county commissioners of the county in which the articles of incorporation are filed, specifying as follows: The costs of constructing and providing all necessary appendages and appurtenances of their bridge; the amount of all moneys expended thereon since its construction for repairs and incidental expenses; the capital stock, how much paid in and how much actually expended thereof; the amount received during the year for tolls and from all other sources, stating each separately; the amount of dividends made; the indebtedness of the corporation, specifying for what it was incurred; the net amount of profits; and such other facts and particulars respecting the business of the corporation as the board of county commissioners may require. [R. C. 1905, § 4530; Civ. C. 1877, § 536; R. C. 1899, § 3170.]

§ 5004. **Publication of report. Penalty for failure.** Such corporation must cause the report required in the preceding section to be published for four weeks in a newspaper published in the town or city nearest such bridge. A failure to make such report and to publish it as aforesaid subjects the corporation to a penalty of two hundred dollars; and for every week permitted to elapse after such failure an additional penalty of fifty dollars, payable in each case to the county or counties from which the authority to construct and take tolls is derived at the suit of such county or counties. All such cases must be reported by the boards of county commissioners to the state's attorney, who must commence an action therefor. [R. C. 1905, § 4531; Civ. C. 1877, § 537; R. C. 1899, § 3171.]

CHAPTER 23.

RELIGIOUS, EDUCATIONAL AND BENEVOLENT CORPORATIONS.

- ARTICLE** 1. GENERAL PROVISIONS, §§ 5005-5012.
 2. PROVISIONS RELATING TO EDUCATIONAL CORPORATIONS, §§ 5013-5016.
 3. FRATERNAL CORPORATIONS, §§ 5017-5024.
 4. STATUS AND ORGANIZATION OF FRATERNAL CORPORATIONS, §§ 5025-5042.
 5. FRATERNAL BENEFICIARY ASSOCIATIONS, §§ 5043-5058.
 6. FRATERNAL BENEFIT SOCIETIES, §§ 5059-5090.
 7. CEMETERY CORPORATIONS, §§ 5091-5099.
 8. HOMES FOR ORPHANS, §§ 5100-5108.
 9. DEPENDENT CHILDREN, §§ 5109, 5110.

ARTICLE 1.—GENERAL PROVISIONS.

§ 5005. How formed. A corporation for religious, educational, benevolent, charitable or scientific purposes may be formed in the manner provided in chapter 12. [R. C. 1905, § 4532; Civ. C. 1877, § 538; 1891, ch. 48, § 2; R. C. 1895, § 3172.]

§ 5006. Annual report. The trustees or directors of all such corporations must annually make a full report of all their property, real and personal, including property held in trust by them, and of the condition thereof and of all their affairs to the members of the corporation for which they are acting. [R. C. 1905, § 4533; Civ. C. 1877, § 541; R. C. 1899, § 3173.]

§ 5007. May acquire and sell property. All such corporations shall have power to acquire property, both real and personal, by purchase, devise or bequest and to hold the same and may sell, exchange or mortgage any or all property held or owned by them in the manner determined by their by-laws or by majority vote of their members at a meeting called for that purpose. [R. C. 1905, § 4534; Civ. C. 1877, § 542; 1881, ch. 28, § 1; R. C. 1895, § 3174.]

§ 5008. Transferring cemetery lots. All religious corporations organized and existing under and by virtue of the laws of the state of North Dakota, and now owning, holding, controlling or operating, or who may own, hold, control or operate any land for cemetery purposes shall be subject to and governed by the provisions of article 7 of this chapter. [R. C. 1905, § 4535; 1901, ch. 50.]

§ 5009. By-laws. Such corporations may in their by-laws in addition to the provisions of section 4535 provide for:

1. The qualification of members, mode of election and terms of admission to membership.
2. The fees of admission and dues to be paid to their treasury by members.
3. The expulsion and suspension of members for misconduct or nonpayment of dues; also for restoration to membership.
4. Contracting, securing, paying and limiting the amount of their indebtedness.
5. Other regulations not repugnant to the law of the state and consonant with the objects of the corporation. [R. C. 1905, § 4536; Civ. C. 1877, § 543; R. C. 1895, § 3175.]

§ 5010. Subsequent members have equal rights. Members admitted after incorporation have all the rights and privileges and are subject to the same responsibilities as members of the association prior thereto. [R. C. 1905, § 4537; Civ. C. 1877, § 544; R. C. 1899, § 3176.]

§ 5011. Membership rights personal. No member, or his legal representative, must dispose of or transfer any right or privilege conferred on him

by reason of his membership of such corporation, or be deprived thereof, except as herein provided. [R. C. 1905, § 4538; Civ. C. 1877, § 545; R. C. 1899, § 3177.]

§ 5012. Title vests in successors in trust. All grants or deeds from private individuals, or acts of legislative bodies, transferring, conveying or granting real estate in this state to any bishop, dean, rector, vestryman, deacon, director, minister or any other officer or officers of any church or organized religious society in trust for the use and benefit of such society of which they are such officer or officers, which have been or may be made, done or executed shall vest in their successor or successors in office, or other officer which such society may at any time designate, all the legal or other title, to the same extent and in all respects the same, as trustee of such trust for the use and benefit of such society, which such bishop, dean, rector, vestryman, deacon, director, minister or other officer or officers had under such grant, deed or act; and all transfers or sales made by such officer or officers so acquiring title by virtue of this section by succession in office shall have all the validity, force and effect that it would have had, had it been made by such bishop, dean, rector, vestryman, deacon, director, minister or other officer or officers, while holding under and by virtue of such grant, deed or act of such legislative body. [R. C. 1905, § 4539; R. C. 1899, § 3178.]

ARTICLE 2.—PROVISIONS RELATING TO EDUCATIONAL CORPORATIONS.

§ 5013. Donations for particular purposes. All donations, devises or bequests made to an educational corporation for particular purposes, when accepted, shall be applied in conformity with the express condition of the donor or devisor. [R. C. 1905, § 4540; Civ. C. 1877, § 549; R. C. 1899, § 3179.]

§ 5014. Powers of corporation. Educational corporations have power to appoint a president or principal for the institution and such professors, tutors and other agents and officers as may be necessary and to displace any of them as the interests of the institutions may require; to fill vacancies, to prescribe and direct the course of studies and the discipline to be pursued and observed in the institution and the rates of tuition in the same; and the president and professors shall constitute the faculty of such institution; and they have power to enforce the rules and regulations enacted for the government and discipline of the students and to suspend and expel offenders as may be deemed expedient. [R. C. 1905, § 4541; Civ. C. 1877, § 550; R. C. 1895, § 3180.]

§ 5015. Degrees conferred. Every such corporation having the rank of a college or university has power to confer, on the recommendation of the faculty, all such degrees or honors as are usually conferred by colleges and universities in the United States and such others, having reference to the course of studies and the worth and accomplishment of the student, as may be deemed proper. [R. C. 1905, § 4542; Civ. C. 1877, § 551; R. C. 1899, § 3181.]

§ 5016. Mechanics and agriculture. Such corporation may connect with its institution, to be used as a part of its course of education, any mechanical shops or machinery or lands for agricultural purposes, not exceeding three hundred and twenty acres, to which may be attached all necessary buildings for carrying on the mechanical and agricultural purposes of such institution. [R. C. 1905, § 4543; Civ. C. 1877, § 552; R. C. 1899, § 3182.]

ARTICLE 3.—FRATERNAL CORPORATIONS.

§ 5017. Who may form. Lodges, chapters, posts, encampments, councils, commanderies, clubs or associations controlled by, or mainly composed of members of such fraternities or associations and other similar organizations, grand or subordinate, of the fraternities or associations commonly known as the Free and Accepted Masons, Independent Order of Odd Fellows, Grand

Army of the Republic, Knights of Pythias, and other similar benevolent, social or charitable fraternities or associations not organized for fraternal insurance, may become corporations upon compliance with the provisions of this article. [R. C. 1905, § 4544; 1890, ch. 72, § 1; R. C. 1899, § 3183; 1901, ch. 91.]

As to fraternal benefit societies, see sections 5059-5090.

§ 5018. Contents of articles. Any such lodge, chapter, post, encampment, council, commandery, club or association or other similar organization, desiring to avail itself of the provisions of this article, shall cause to be prepared articles of incorporation, which must set forth:

1. The corporate name by which said corporation shall be known.
2. The place where it shall be located.
3. The time during which it shall exist.
4. The number of its directors or trustees, and the names and residences of the members who shall serve as directors or trustees until the election and qualification of their successors in office.
5. Whether it shall be subject to any grand, supreme or sovereign lodge or other superior body or bodies.
6. The amount of property, not exceeding one hundred thousand dollars, which it may hold, and the disposition to be made of the same in case of its dissolution.

7. Whether the private property of its members shall be liable for its corporate debts. [R. C. 1905, § 4545; 1890, ch. 72, § 2; 1901, ch. 91.]

§ 5019. Articles to be acknowledged. The articles of incorporation must be subscribed and acknowledged by the trustees or directors therein named, who shall append thereto an affidavit duly subscribed and sworn to by each of them, setting forth that at a regularly called meeting of the lodge or body which it is proposed to incorporate, the date of which meeting shall be stated in such affidavit, it was voted by a majority of the members present at such meeting to incorporate such lodge or other body and that the affiants are the duly elected directors or trustees of such lodge or other body. [R. C. 1905, § 4546; 1890, ch. 72, § 3; R. C. 1899, § 3185.]

§ 5020. Member's liability. The private property of the members of corporations formed under this article shall not be liable for its corporate debts, unless it is so provided in the articles of incorporation. [R. C. 1905, § 4547; 1890, ch. 72, § 4; R. C. 1899, § 3186.]

§ 5021. Term of existence. The duration of corporations organized under this article may be perpetual if it is so stated in the articles of incorporation. [R. C. 1905, § 4548; 1890, ch. 72, § 5; R. C. 1899, § 3187.]

§ 5022. By-laws. All corporations formed under this article shall have the power to enact by-laws not inconsistent with the laws of the United States or the state of North Dakota and to amend and repeal the same in such manner as the members thereof shall determine. Every corporation formed under this article shall within three months after the filing of its articles of incorporation in the office of the secretary of state adopt by-laws and file a copy thereof within one month after the adoption thereof in the office of the secretary of state. The copy so filed shall be certified to by the directors or trustees of the corporation as being a true copy of the by-laws of such corporation. A copy of any by-law thereafter adopted, similarly certified to, shall be filed in the office of the secretary of state within one month after its adoption and in case of the repeal or amendment of any by-law the directors or trustees shall within one month after such amendment or repeal file with the secretary of state a certificate setting forth the fact of such amendment or repeal. [R. C. 1905, § 4549; 1890, ch. 72, § 6; R. C. 1899, § 3188.]

§ 5023. Corporations governed by by-laws. All corporations formed under this article shall elect their directors or trustees and their officers and call and hold their meetings at the time and in the manner prescribed by their by-

laws. The officers, other than directors or trustees, shall be such as the by-laws shall prescribe and shall perform such duties as may be designated by the by-laws. [R. C. 1905, § 4550; 1890, ch. 72, § 7; R. C. 1899, § 3189.]

§ 5024. Articles, what may contain. Dissolution. It may be provided in the articles of incorporation of any corporation formed under this article that such corporation and the members thereof shall be subject to the jurisdiction of some grand, supreme or sovereign lodge or other body or bodies of the association or fraternity to which the lodge or other organization forming such corporation may belong and that in case such supreme, grand or sovereign lodge, or other superior body or bodies shall at any time revoke or suspend the charter granted by it to such subordinate lodge or other organization, or whenever by the laws and usages of the organization of which such subordinate body forms a part, the said subordinate body shall become defunct, then the corporate powers of such lodge or other subordinate organization shall cease and determine, except that such corporation as such shall have power to sell, convey and dispose of its property and collect debts due it; and all such property and debts shall be delivered up to the grand, supreme or sovereign lodge or other body or bodies of the association or fraternity to which such subordinate body forming such corporation may belong or owe allegiance in accordance with the law and usages of said fraternity or association. [R. C. 1905, § 4551; 1890, ch. 72, § 8; 1891, ch. 49, § 1; R. C. 1899, § 3190.]

ARTICLE 4.—STATUS AND ORGANIZATION OF FRATERNAL CORPORATIONS.

§ 5025. Fraternities and associations. Associations known as lodges, chapters, posts, encampments, councils, commanderies, consistories and other similar organizations, having a seal and working under a charter issued by some grand or sovereign body of a like character to themselves, of the fraternities or associations commonly known as the various organizations of Free Masons, Independent Order of Odd Fellows, Grand Army of the Republic, Knights of Pythias and other similar benevolent or charitable fraternities or associations, not organized for profit or for fraternal insurance, located in this state, shall, from and after the taking effect of this article, be deemed to be corporations, notwithstanding no articles of incorporation have been filed, and no charter granted by this state. [R. C. 1905, § 4552; 1901, ch. 89, § 1.]

Conclusiveness of decision of tribunals of fraternal societies. 49 L.R.A. 353.

§ 5026. Charter. Copy of to be filed with the secretary of state and register of deeds. Fees of. Every such association now in existence shall, within thirty days of the taking effect of this article, and every association hereinafter organized shall, within thirty days after perfecting such organization and electing its officers, file with the secretary of state a copy of its charter under which it works, certified by the secretary of such organization, under the seal thereof, and shall likewise deposit a copy of such charter so certified in the office of the register of deeds of the county in which such body is located, and the secretary of state shall be paid a fee of five dollars therefor, and the register of deeds the same fee as for filing a chattel mortgage. At the same time, such association or organization shall cause to be deposited with the secretary of state a statement signed by the chief officer of such association and attested by its secretary, showing:

1. The name by which such association or organization shall be known, which shall correspond with the name given to it in its charter if there be one.
2. The place where it is, or shall be located.
3. The time during which it shall exist.
4. The names and designations of its elective officers, the names and number of its board of directors or trustees, the names and number of its finance committee, if any, then serving as such officers, trustees or finance committee, until the election or qualification of their successors in office.

5. The name of the grand, supreme or sovereign lodge, or other superior body or bodies to which it owes allegiance.

6. If the private property of its members is liable for its association debts, to what extent.

7. The maximum limit of its indebtedness, which in no case shall exceed one hundred thousand dollars. [R. C. 1905, § 4553; 1901, ch. 89, § 2.]

Incorporated club whose articles provide that members shall not be liable for corporate debts, is owner of liquor sold by club. *State v. Mudie*, 22 S. D. 41, 115 N. W. 107.

§ 5027. By-laws. Copy of to be filed with secretary of state. Every such association shall within three months after the taking effect of this article, or within three months after the filing of certificate above mentioned, file in the office of the secretary of state a copy of such by-laws as pertain to the election of the directors or trustees, officers and the appointment of its finance committee, if any, and the management of its business affairs. Such copy so filed shall be certified by its directors, or trustees, as being a true copy of all such by-laws as relate to the subject above specified, and within one month after the adoption of any new by-law, or the repeal or amendment of any by-law, relating to such subject, a copy thereof, duly certified by the directors or trustees, shall be filed with the secretary of state. [R. C. 1905, § 4554; 1891, ch. 89, § 3.]

§ 5028. Failure to comply. Penalty. Any such association failing to comply with either section 5026 or 5027 shall forfeit to the state the sum of five dollars to be collected by suit. [R. C. 1905, § 4555; 1901, ch. 89, § 4.]

§ 5029. Duration. The duration of such association shall be perpetual, or for such a length of time as is shown by the certificate filed as hereinbefore provided for. [R. C. 1905, § 4556; 1901, ch. 89, § 5.]

§ 5030. Powers. Any such association has power:

1. To have succession by its associate name.
2. To sue and be sued in any court.
3. To make and use a common seal and alter the same at pleasure.
4. In its associate name to purchase, hold and transfer and convey real and personal property.
5. To appoint such subordinate officers and agents as the business of the association may require and allow them suitable compensation.
6. To make by-laws, not inconsistent with the law of the land, for the management of its affairs and property.
7. To admit members and to suspend, reinstate or expel its members under the rules, by-laws and customs of such association.
8. To enter into any obligation or contract essential to the transaction of its affairs, or authorized by a vote of its members.
9. To apply its funds and property to charitable and benevolent objects pursuant to the purpose for which such association is organized. [R. C. 1905, § 4557; 1901, ch. 89, § 6.]

§ 5031. Property, power to acquire. Any such association shall have power to acquire property, both real and personal, by purchase, devise or bequest, to an amount not exceeding one hundred thousand dollars in value, and to hold the same, and may sell, exchange or mortgage any or all property held or owned by it, in the manner determined by its by-laws or by a majority vote of its members present at a meeting called for such purpose. [R. C. 1905, § 4558; 1901, ch. 89, § 7.]

§ 5032. Contracts and investments. Any such association may make contracts and invest its funds in the name of such association, contract debts, issue bonds or other evidence of its indebtedness for money, labor done, or money or property actually received, and to a total indebtedness not to exceed in amount the value of its corporate property, both real and personal, actually owned by such association. [R. C. 1905, § 4559; 1901, ch. 89, § 8.]

§ 5033. Membership. The membership of any such association shall be

fixed and determined, each one according to its laws, rules, customs and usages. [R. C. 1905, § 4560; 1901, ch. 89, § 9.]

§ 5034. Directors, trustees and officers. Any such association under this article shall elect its directors or trustees and its officers and call and hold its meetings at the time, and in the manner, prescribed by its by-laws, or by the laws, rules, customs and usages of its supreme, grand or superior body. The elective officers, including directors or trustees, shall be such as its superior body may require or the by-laws shall prescribe, and shall perform such duties as may be designated by the by-laws. [R. C. 1905, § 4561; 1901, ch. 89, § 10.]

§ 5035. Directors or trustees. Organization. Such associations may have a board of directors or trustees consisting of one, and not more than eleven members, who shall perform the duties usually performed by the board of directors of business corporations, or as may be prescribed by the by-laws, and such board may organize and elect a president, vice-president, secretary and treasurer thereof, and the secretary thereof shall preserve a record of all meetings and transactions of such board, which shall be at all times open to the inspection of any member of such association. [R. C. 1905, § 4562; 1901, ch. 89, § 11.]

§ 5036. Property liable for debts. The property of any such association, both real and personal, shall be liable for the debts thereof; provided, that this shall not be construed as applying to the properties or paraphernalia used in the initiatory or degree work of such lodge, chapter, post, encampment, council, commandery, consistory or other similar organization, or to the rituals and other books pertaining to the written or unwritten work. [R. C. 1905, § 4563; 1901, ch. 89, § 12.]

§ 5037. Private property not liable for corporation debts. The private property of the members of such association shall not be liable for its corporate debts except by vote of its members, and then only the private property of such members as are present at a meeting and voting in the affirmative upon such a proposition, which vote shall be by yeas and nays, and the minutes of such meeting shall show the names of those voting in the affirmative and of those voting in the negative, which record shall be prima facie evidence of the facts therein contained; provided, however, that the property of each director, trustee or other officer incurring or authorizing an indebtedness in excess of the value of all the corporate property of such association, both real and personal, shall be liable for such excess expenditures, except of such officers as may file with the secretary of such association, at the time such excess indebtedness is authorized or incurred, a written objection thereto, or is absent from the meeting authorizing or incurring such excess indebtedness. [R. C. 1905, § 4564; 1901, ch. 89, § 13.]

§ 5038. Association shall not issue stock. Any such association shall not issue any stock, nor any member thereof have or acquire any divisional share in the property belonging to such association, nor the right to sell, transfer or convey, any right, property or membership therein; nor shall any estate in any property of such association vest in the heirs of any member at his death, but all of his right, title and interest in such association shall cease and determine at his death or upon ceasing to be a member thereof. [R. C. 1905, § 4565; 1901, ch. 89, § 14.]

§ 5039. Association shall not declare dividends or divide property. No such association shall declare any dividends or divide its property among its members during the existence of such association, and upon its dissolution, its property shall be disposed of after all its just debts are paid, in a manner provided for by a majority vote of all the members of such association present at a meeting duly called for such purpose; provided, however, that before any such distribution is made, or division had, its elective officers shall file a certificate in the office of the register of deeds in the county in which such

association is located, stating that all its debts are paid, and any officer signing such a certificate shall be personally liable in his private estate for any debt of such an association outstanding and unpaid; and provided, however, that all such property and debts due to such association shall be delivered up to the grand, supreme or sovereign lodge or other body or bodies of the association or fraternity to which such subordinate body forming such association may belong or owe allegiance, if required by the law and usages of such fraternity or association. [R. C. 1905, § 4566; 1901, ch. 89, § 15.]

§ 5040. Charter, when revoked or suspended. Whenever the supreme, grand or sovereign lodge or other superior body or bodies, shall at any time revoke or suspend the charter granted by it to such subordinate lodge or other organization, or whenever by the laws and usages of the organization of which such subordinate body forms a part, or by operation of any law of this state, or by a vote of the majority of its members called for such purpose, when not in conflict with the laws of its superior body, the said subordinate body shall become defunct, then the corporate powers of such lodge, or other subordinate organization shall cease and determine, except that the directors or trustees last elected shall act as trustees to close up its affairs, and may collect the debts due such association, settle the debts contracted by such association, and to pay such debts, shall have power to sell, convey and dispose of its property, or sufficient thereof to do so, and the remainder of its property, both real and person, shall then be disposed of as in this article; provided, that all rituals, books, properties and paraphernalia relating to, or used in, the secret work of such lodge, chapter, post, encampment, council, commandery, consistory or other similar organization, shall be delivered by said directors or trustees to the supreme, grand or sovereign lodge, or other superior body to which such lodge, chapter, post, encampment, council, commandery, consistory or other similar organization is subordinate. [R. C. 1905, § 4567; 1901, ch. 89, § 16.]

§ 5041. Service of process, how made. Service of process against such associations shall be made as provided for service of process upon other corporations, and conveyances of its real estate shall be signed by its chief officer, or person acting as such, and attested by its secretary, or other like officer under its association seal. [R. C. 1905, § 4568; 1901, ch. 89, § 17.]

§ 5042. This article shall not apply to such societies of this character as have already incorporated under provisions of law prior to the taking effect of this article, or which may elect to so incorporate. [R. C. 1905, § 4569; 1901, ch. 89, § 18.]

ARTICLE 5.—FRATERNAL BENEFICIARY ASSOCIATIONS.

This article is perhaps superseded in part by the provisions in article 6, sections 5059-5090. See section 5061a and the last paragraph in section 5088.

§ 5043. Fraternal beneficiary societies. A fraternal beneficiary association is hereby declared to be a corporation, society or voluntary association, formed or organized and carried on, for the sole benefit of its members and their beneficiaries and not for profit. Each association shall have a lodge system, with ritualistic form of work and representative form of government, and shall make provision for the payment of benefits in case of death, and may make provision for the payment of benefits in case of sickness, temporary or permanent physical disability, either as the result of disease, accident or old age, provided the period in life at which payment of physical disability benefits on account of old age commences, shall not be under seventy years, subject to their compliance with its constitution and laws. The fund from which the payment of such benefits shall be made, and the fund from which the expenses of such association shall be defrayed, shall be derived from assessments or dues collected from its members. Payment of death benefits shall be to the families, heirs, blood relatives, affianced husband or affianced

wife of, or to persons dependent upon the member. Such association shall be governed by this article and shall be exempt from the provisions of insurance laws of this state, and no law hereafter passed shall apply to them unless they be expressly designated therein. Any such fraternal beneficial association may create, maintain, disburse and apply a reserve or emergency fund in accordance with its constitution or by-laws. [R. C. 1905, § 4570; 1901, ch. 90, § 1.]

Who is a "dependent" within statute or rules defining beneficiaries of mutual benefit societies. 2 L.R.A.(N.S.) 653; 36 L.R.A.(N.S.) 208; 37 L.R.A.(N.S.) 1191.

§ 5044. How to proceed. All such associations coming within the description, as set forth in section 5043, organized under the laws of this or any other state, province or territory, and now doing business in this state, may continue such business; provided, that they hereafter comply with the provisions of this article regulating annual reports and the designation of the commissioner of insurance as the person upon whom process may be served as hereinafter provided. [R. C. 1905, § 4571; 1901, ch. 90, § 2.]

§ 5045. How to do business in this state. Any such association coming within the description, as set forth in section 5043, organized under the laws of any other state, province or territory, and not now doing business in this state, shall be admitted to do business within this state when it shall have filed with the commissioner of insurance, a duly certified copy of its charter and articles of association, and a copy of its constitution or laws, certified to by its secretary or corresponding officer, together with the appointment of the commissioner of insurance of this state as a person upon whom process may be served as hereinafter provided; and, provided, that such association shall be shown to be authorized to do business in the state, province or territory in which it is incorporated or organized, in case the laws of such state, province or territory shall provide for such authorization; and in case the laws of such state, province or territory do not provide for any formal authorization to do business on the part of such association, then such association shall be shown to be conducting its business in accordance with the provisions of this article, for which purpose the commissioner of insurance of this state may personally, or by some person to be designated by him, examine into the condition, affairs, character and business methods, accounts, books and investments of such association at its home office, which examination shall be at the expense of such association, and shall be made within thirty days after the demand thereof, and the expense of such examination shall be limited to one hundred dollars. [R. C. 1905, § 4572; 1901, ch. 90, § 3.]

§ 5046. Must file certificate of authorization. Any association doing business under this article shall be permitted to do business upon filing annually with the commissioner of insurance of this state, the certificate of authorization of the insurance department of the state, province or territory in which it is incorporated or organized; provided, however, in case of failure to file said certificate by any such association, or in case the commissioner of insurance shall deem it necessary, he shall have power to examine, either personally or by some person designated by him, into the condition, affairs, character, business methods, accounts, books and investments of such association, at its home office, which examination shall be at the expense of the association; the amount thereof shall not exceed one hundred dollars in associations with no reserve or emergency fund, and two hundred dollars for associations with a reserve or emergency fund. [R. C. 1905, § 4573; 1901, ch. 90, § 4.]

§ 5047. Must make annual report. Every such association doing business in this state shall, on or before the first day of March of each year, make and file with the commissioner of insurance of this state, a report of its affairs and operations during the year ending on the thirty-first day of December, immediately preceding, which annual report shall be in lieu of all other reports

required by any other law. Such reports shall be upon blank forms, to be provided by the commissioner of insurance, or may be printed in pamphlet form, and shall be verified under oath by the duly authorized officers of such association, and shall contain answers to the following questions:

1. Number of certificates issued during the year, or members admitted.
2. Amount of indemnity effected thereby.
3. Number of losses or benefit liabilities incurred.
4. Number of losses or benefit liabilities paid.
5. The amount received from each assessment for the year.
6. Total amount paid members, beneficiaries, legal representatives or heirs.
7. Number and kind of claims for which assessments have been made.
8. Number and kind of claims compromised or resisted, and statement of reasons.
9. Does association charge annual or other periodical dues or admission fees?
10. How much on each one thousand dollars, annually or per capita, as the case may be.
11. Total amount received, from what source and the disposition thereof.
12. Total amount of salaries paid to officers.
13. Does the association guarantee, in its certificate, fixed amounts to be paid, regardless of amount realized from assessments, dues, admission fees and donations?
14. If so, state amount guaranteed, and the security of such guaranty.
15. Has the association a reserve fund?
16. If so, how is it created, and for what purpose, the amount thereof, and how invested?
17. Has the association more than one class?
18. If so, how many, and the amount of indemnity in each?
19. Number of members in each class.
20. If voluntary, so state, and give date of organization.
21. If organized under the laws of this state, under what law, and at what time; giving chapter and year and date of the passage of the act.
22. If organized under the laws of any other state, province or territory, state such fact, and the date of organization, giving chapter and year and date of passage of the act.
23. Number of certificates of beneficiary membership lapsed during the year.
24. Number in force at beginning and end of year; if more than one class, number in each class.
25. Names and addresses of its president, secretary and treasurer or corresponding officers.

The commissioner of insurance is authorized and empowered to address any additional inquiries to any such association, in relation to its doings or condition or any other matter connected with its transaction, relative to the business contemplated by this article; and such officers of such association, as the commissioner of insurance may require, shall promptly reply in writing, under oath, to all such inquiries. [R. C. 1905, § 4574; 1901, ch. 90, § 5.]

§ 5048. When principal office is not in the state. Each such association now doing, or hereafter admitted to do, business within this state, and not having its principal office within this state, and not being organized under the laws of this state, shall appoint, in writing, the commissioner of insurance, and his successors in office, to be its true and lawful attorney, upon whom all lawful process in any action or proceeding against it must be served, and in such writing shall agree that any lawful process against it, which is served on said attorney, shall be of the same legal force and validity as if served upon the association, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of such certificate, certified by said commissioner of insurance, shall be deemed sufficient evidence thereof,

and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service upon such attorney shall be deemed sufficient service upon such association. When legal process against any such association is served upon said commissioner of insurance, he shall immediately notify the association of such service by letter, prepaid and directed to its secretary or corresponding officer, and shall within two days after such service forward in the same manner a copy of the process served on him to such officer. The plaintiff in such process so served shall pay to the commissioner of insurance, at the time of such service, a fee of three dollars, which shall be recovered by him as a part of the taxable costs, if he prevails in the suit. The commissioner of insurance shall keep a record of all processes served upon him, which record shall show the day and hour when such service was made. [R. C. 1905, § 4575; 1901, ch. 90, § 6.]

§ 5049. Insurance commissioner issues permit. The commissioner of insurance of this state shall, upon application of any association having the right to do business within this state, as provided by this article, issue to such association annually a permit in writing authorizing such association to do business within this state, for which permit and all proceedings in connection therewith, such association shall pay to said commissioner the fee of fifteen dollars. [R. C. 1905, § 4576; 1901, ch. 90, § 7.]

§ 5050. File articles of incorporation. Every fraternal or beneficiary society or association which undertakes to furnish indemnity to its members or their families, which is not incorporated under the laws of another state, shall before doing business in this state, incorporate under the provisions of article 3 of this chapter, and in addition shall file with the commissioner of insurance a duly certified copy of its articles of incorporation, and a copy of its constitution and laws, duly certified by its secretary or corresponding officer, and shall in all respects comply with, and be subject to, the provisions of this article so far as the same are applicable. Such commissioner of insurance shall, before issuing a permit to such corporation to do business, examine into its character and ascertain that it in all things has complied with the requirements of this article. [R. C. 1905, § 4577; 1901, ch. 90, § 8.]

§ 5051. Paid agents, when employed. Such association shall not employ paid agents in soliciting or procuring members, except in the organization or building up of subordinate bodies, or granting members inducements to procure new members. [R. C. 1905, § 4578; 1901, ch. 90, § 9.]

§ 5052. Contract not valid. No contract with any such association shall be valid when there is a contract, agreement or understanding between the member and the beneficiary that the beneficiary, or any person for him, shall pay such member's assessments or dues, or either of them. [R. C. 1905, § 4579; 1891, ch. 90, § 10.]

§ 5053. Benefit not liable to attachment. The money or other benefit, charity, relief or aid to be paid, provided or rendered by any association authorized to do business under this article, shall not be liable to attachment by trustee, garnishee or other process, and shall not be seized, taken, appropriated or applied by any legal or equitable process, or by operation of law, to pay any debt or liability of a certificate holder, or of any beneficiary named in a certificate, or any person who may have any right thereunder. [R. C. 1905, § 4580; 1901, ch. 90, § 11.]

§ 5054. Must show mortuary assessment rate. No association, not admitted to transact business within this state prior to the taking effect of this article, shall be incorporated, or given a permit, or certificate of authority to transact business within this state, as provided for by this article, unless it shall first be shown that the mortuary assessment rates, provided for in whatever plan or business it has adopted, are not lower than is indicated as necessary by the following mortality table:

FRATERNAL CONGRESS MORTALITY TABLE.

Age.	No. Living.	No. Dying.	Probability of Dying.
20	100,000	500	.005000
21	99,500	501	.005035
22	98,999	502	.005071
23	98,497	503	.005107
24	97,994	505	.005153
25	97,489	507	.005201
26	96,982	510	.005259
27	96,472	513	.005318
28	95,959	517	.005388
29	95,442	522	.005469
30	94,920	527	.005552
31	94,393	533	.005647
32	93,860	540	.005753
33	93,320	548	.005872
34	92,772	557	.006004
35	92,215	567	.006149
36	91,648	578	.006307
37	91,070	591	.006490
38	90,479	606	.006698
39	89,873	622	.006921
40	89,251	640	.007171
41	88,611	660	.007448
42	87,951	683	.007766
43	87,268	708	.008113
44	86,560	734	.008480
45	85,826	761	.008867
46	85,065	790	.009287
47	84,275	822	.009754
48	83,453	857	.0102693
49	82,596	894	.0108238
50	81,702	935	.0114440
51	80,767	980	.0121337
52	79,786	1,029	.0128970
53	78,757	1,083	.0137511
54	77,674	1,140	.0146767
55	76,534	1,202	.0157054
56	75,332	1,270	.0168587
57	74,062	1,342	.0181200
58	72,720	1,418	.0194994
59	71,302	1,501	.0210513
60	69,801	1,588	.0227504
61	68,213	1,681	.0246434
62	66,532	1,778	.0267240
63	64,754	1,880	.0290330
64	62,874	1,985	.0315711
65	60,889	2,094	.0343904
66	58,795	2,206	.0375206
67	56,589	2,318	.0409620
68	54,271	2,430	.0447753
69	51,841	2,539	.0489767
70	49,302	2,645	.0536489
71	46,657	2,744	.0588122
72	43,913	2,832	.0644912

FRATERNAL CONGRESS MORTALITY TABLE — Continued.

Age.	No. Living.	No. Dying.	Probability of Dying.
73	41,081	2,909	.0708113
74	38,172	2,969	.0777795
75	35,203	3,009	.0854757
76	32,194	3,026	.0939927
77	29,168	3,016	.1034010
78	26,152	2,977	.1138345
79	23,175	2,905	.1253506
80	20,270	2,799	.1385163
81	17,471	2,659	.1521951
82	14,812	2,485	.1677694
83	12,327	2,280	.1849599
84	10,047	2,050	.1855707
85	7,997	1,800	.2250844
86	6,197	1,539	.2483460
87	4,658	1,277	.2741520
88	3,381	1,023	.3025732
89	2,358	788	.3341815
90	1,570	579	.3687898
91	991	404	.4076690
92	587	264	.4497445
93	323	161	.4984520
94	162	89	.5493827
95	73	44	.6027397
96	29	19	.6551724
97	10	7	.7000000
98	3	3	1.0000000

[R. C. 1905, § 4581; 1901, ch. 90, § 12.]

§ 5055. How governed. Any such association, organized under the laws of this state, may provide for the meetings of its legislative or governing body in any other state, province or territory, wherein such association shall have subordinate bodies, and all business transacted at such meetings shall be valid in all respects, as if such meetings were held within this state, and where the laws of any such association provide for the election of its officers by votes to be cast in its subordinate bodies, the votes so cast in its subordinate bodies in any other state, province or territory, shall be valid as if cast within this state. [R. C. 1905, § 4582; 1901, ch. 90, § 13.]

§ 5056. Fraudulent statements. Penalty. Any person, officer, member or examining physician, who shall knowingly or willfully make any false or fraudulent statement or representation, in or with reference to any application for membership, or for the purpose of obtaining any money or benefit in any association transacting business under this article, shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or imprisonment in the county jail for not less than thirty days, nor more than one year, or both, in the discretion of the court; and any person who shall willfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such association, for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall willfully make any false statement in any verified report or declaration, under oath, required or authorized by this article, shall be guilty of perjury, and shall be proceeded against and punished as provided by the statutes of this state in relation to the crime of perjury. [R. C. 1905, § 4583; 1901, ch. 90, § 14.]

§ 5057. Refusing to make statement. Penalty. Any such association refusing or neglecting to make the report, as provided in this article, shall be

excluded from doing business within this state. The commissioner of insurance must, within sixty days after failure to make such report, or in case any such association shall exceed its powers, or shall conduct its business fraudulently, or shall fail to comply with any of the provisions of this article, give notice in writing to the attorney-general, who shall immediately commence an action against any such association to enjoin the same from carrying on any business. No injunction against any such association shall be granted by any court, except on application by the attorney-general, at the request of the commissioner of insurance, whether the state, or a member, or other party, seeks relief. No association so enjoined shall have authority to continue business until such report shall be made, or overt act or violations complained of shall have been corrected, nor until the costs of such action be paid by it, provided the court shall find that such association was in default as charged, whereupon the commissioner of insurance shall reinstate such association, and not until then shall such association be allowed to again do business in this state. Any officer, agent or person acting for any association or subordinate body thereof within this state, while such association shall be so enjoined or prohibited from doing business pursuant to this article, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine not less than twenty-five dollars nor more than two hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than one year, or by both such fine and imprisonment, in the discretion of the court. [R. C. 1905, § 4584; 1901, ch. 90, § 15.]

§ 5058. **Penalty for failure to comply.** Any person who shall act within this state, as an officer, agent or otherwise, for any association, which shall have failed, neglected or refused to comply with, or shall have violated any of the provisions of this article, or shall have failed or neglected to procure from the commissioner of insurance a proper certificate of authority to transact business, as provided for by this article, shall be subject to the penalty provided in the last preceding section for the misdemeanor therein specified. [R. C. 1905, § 4585; 1901, ch. 90, § 16.]

ARTICLE 6.—FRATERNAL BENEFIT SOCIETIES.

§ 5059. **Fraternal benefit societies defined.** Any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of work and representative form of government, and which shall make provisions for the payment of death benefits in accordance with section 5062, is hereby declared to be a fraternal benefit society. [1913, ch. 191, § 1.]

See the note under the title of article 5 immediately preceding section 5043.

§ 5060. **Lodge system defined.** Any society having a supreme governing or legislative body, and subordinate lodges or branches by whatever name known, into which members shall be elected, initiated and admitted in accordance with its constitution, laws, rules, regulations and prescribed ritualistic ceremonies, which subordinate lodges or branches shall be required by the laws of such society to hold regular or stated meetings at least once in each month, shall be deemed to be operating on the lodge system. [1913, ch. 191, § 2.]

§ 5061. **Representative form of government defined.** Any such society shall be deemed to have a representative form of government when it shall provide in its constitution and laws for a supreme legislative or governing body, composed of representatives elected either by the members or by delegates elected directly or indirectly by the members, together with such other members as may be prescribed by its constitution and laws; provided, that the elective members shall constitute a majority in number and have not less than two-thirds of the votes, nor less than the votes required to amend its constitution and laws, and provided further, that the meetings of the supreme or governing

body, and the election of officers, representatives or delegates shall be held as often as once in four years. The members, officers, representatives or delegates of a fraternal benefit society shall not vote by proxy. [1913, ch. 191, § 3.]

§ 5061a. Exemptions. Except as herein provided, such societies shall be governed by this article, and shall be exempt from all provisions of the insurance laws of this state, not only in governmental relations with the state, but for every other purpose, and no law hereafter shall apply to them unless they be expressly designated therein. [1913, ch. 191, § 4.]

§ 5062. Benefits. Subsection 1. Every society transacting business under this article shall provide for the payment of death benefits, and may provide for the payment of benefits in case of temporary or permanent physical disability, either as the result of disease, accident, or old age; provided, the period of life at which the payment of benefits or disability on account of old age shall commence, shall not be under seventy years; and may provide for monuments or tombstones to the memory of its deceased members, and for the payment of funeral benefits. Such society shall have the power to give a member, when permanently disabled or on attaining the age of seventy, all, or such portion of the face value of his certificate as the laws of the society may provide; provided, that nothing in this act contained shall be so construed as to prevent the issuing of benefit for a term of years less than the whole of life, which are payable upon the death or disability of the member occurring within the term for which the benefit certificate may be issued. Such society shall, upon written application of the member, have the power to accept a part of the periodical contributions in cash, and charge the remainder, not exceeding one-half of the periodical contribution, against the certificate with interest payable or compounded annually at a rate not lower than four per cent per annum; provided, that this privilege shall not be granted except to societies which have readjusted or may hereafter readjust their rates of contributions, and to contracts affected by such readjustment.

Subsection 2. Any society which shall show by the annual valuation hereinafter provided for that it is accumulating and maintaining the reserve not lower than the usual reserve computed by the American experience table and four per cent interest, may grant to its members extended and paid up protection, or such withdrawal equities as its constitution and laws may provide; provided, that such grants shall in no case exceed in value the portion of the reserve to the credit of such members to whom they are made. [1913, ch. 191, § 5.]

§ 5063. Beneficiaries. The payment of death benefits shall be confirmed (confin'd) to wife, husband, relative by blood to the fourth degree, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepchildren, children by legal adoption, or to a person or persons dependent upon the member; provided, that if after the issuance of the original certificate the member shall become dependent upon an incorporated charitable institution, he shall have the privilege with the consent of the society to make such institution his beneficiary. Within the above restrictions, each member shall have the right to designate his beneficiary, and from time to time have the same changed in accordance with the laws, rules and regulations of the society, and no beneficiary shall have or obtain any vested interest in the said benefit until the same has become due and payable upon the death of the said member; provided, that any society may, by its laws, limit the scope or beneficiaries within the above classes. [1913, ch. 191, § 6.]

Who is a "dependent" within statute or rules defining beneficiaries of mutual benefit societies. 2 L.R.A.(N.S.) 653; 36 L.R.A.(N.S.) 208; 37 L.R.A.(N.S.) 1191.

§ 5064. Qualifications of membership. Any society may admit to beneficial membership any person not less than sixteen and not more than sixty years of age, who has been examined by a legally qualified physician, and whose examination has been supervised and approved in accordance with the laws of

the society; provided, that any beneficiary member of such society who shall apply for a certificate providing for disability benefits, need not be required to pass an additional medical examination therefor. Nothing herein contained shall prevent such society from accepting general or social members. [1913, ch. 191, § 7.]

§ 5065. Certificate. Every certificate issued by any such society shall specify the amount of benefit provided thereby, and shall provide that the certificate, the charter or articles of incorporation, or, if a voluntary association, the articles of association, the constitution and laws of the society and the applications for membership and medical examination, signed by the applicant, and all amendments to each thereof, shall constitute the agreement between the society and the member, and copies of the same certified by the secretary of the society, or corresponding officer, shall be received in evidence of the terms and conditions thereof, and any changes, additions or amendments to said charter or articles of incorporation, or articles of association, if a voluntary association, constitution or laws duly made or enacted subsequent to the issuance of the benefit certificate shall bind the member and his beneficiaries and shall govern and control the agreement in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership. [1913, ch. 191, § 8.]

§ 5066. Funds. Subsection 1. Any society may create, maintain, invest, disburse and apply an emergency, surplus or other similar fund in accordance with its laws. Unless otherwise provided in the contract, such funds shall be held, invested and disbursed for the use and benefit of the society, and no member or beneficiary shall have or acquire individual rights therein or become entitled to any apportionment or the surrender of any part thereof, except as provided in subsection 2 of section 5062. The funds from which benefits shall be paid and the funds from which the expenses of the society shall be defrayed, shall be derived from periodical or other payments by the members of the society and accretions of said funds; provided, that no society domestic or foreign, shall hereafter be incorporated or admitted to transact business in this state which does not provide for stated periodical contributions sufficient to provide for meeting the mortuary obligations contracted, when valued upon the basis of the national fraternal congress table of mortality as adopted by the national fraternity congress, August 23, 1899, or any higher standard with interest assumption not more than four per cent per annum, nor write or accept members for temporary or permanent disability benefits except upon tables based upon reliable experience, with an interest assumption not higher than four per cent per annum. [1913, ch. 191, § 9.]

Subsection 2. Deferred payments or installments of claims shall be considered as fixed liabilities on the happening of the contingency upon which such payments or installments are thereafter to be paid. Such liability shall be the present value of such future payments of installments upon the rate of interest and mortality assumed by the society for valuation, and every society shall maintain a fund sufficient to meet such liabilities regardless of proposed future collections to meet any such liabilities.

§ 5067. Investments. Every society shall invest its funds only in securities permitted by the laws of this state for the investment of the assets of life insurance companies; provided, that any foreign society permitted or seeking to do business in this state, which invests its funds in accordance with the laws of the state in which it is incorporated, shall be held to meet the requirements of this article for the investment of funds. [1913, ch. 191, § 10.]

§ 5068. Distribution of funds. Every provision of the laws of the society for the payment by members of such society, in whatever form made, shall distinctly state the purpose of the same and the proportion thereof which

may be used for expenses, and no part of the money collected for mortuary or disability purposes, or the net accretions of either or any of said funds shall be used for expenses. [1913, ch. 191, § 11.]

Distribution of assets of insolvent insurance company. 38 L.R.A. 97.

§ 5069. Organization. Seven or more persons, citizens of the United States, and a majority of whom are citizens of this state, who desire to form a fraternal benefit society, as defined by this article, may make and sign (giving their addresses) and acknowledge before some officer competent to take acknowledgment of deeds, articles of incorporation, in which shall be stated:

1st. The proposed corporate name of the society, which shall not so closely resemble the name of any society or insurance company already transacting business in this state as to mislead the public or to lead to confusion;

2nd. The purpose for which it is formed—which shall not include more liberal powers than are granted by this article, provided that any lawful, social, intellectual, educational, charitable, benevolent, moral or religious advantages may be set forth among the purposes of the society—and the mode in which its corporate powers are to be exercised;

3rd. The names, residences and official titles of all the officers, trustees, directors or other persons who are to have and exercise the general control and management of the affairs and funds of the society for the first year, or until the ensuing election, at which all such officers shall be elected by the supreme legislative or governing body, which election shall be held not later than one year from the date of the issuance of the permanent certificate.

Such articles of incorporation and duly certified copies of the constitution and laws, rules and regulations, and copies of all proposed form of benefit certificates, applications therefor and circulars to be issued by such society, and a bond in the sum of five thousand dollars, with sureties approved by the commissioner of insurance, conditioned upon the return of the advance payments, as provided in this section, to applicants, if the organization is not completed within one year, shall be filed with the commissioner of insurance, who may require such further information as he deems necessary, and if the purposes of the society conform to the requirements of this article, and all provisions of law have been complied with the commissioner of insurance shall so certify and retain and record (or file) the articles of incorporation, and furnish the incorporators a preliminary certificate authorizing said society to solicit members as hereinafter provided.

Upon receipt of said certificate from the commissioner of insurance said society may solicit members for the purpose of completing its organization and shall collect from each applicant the amount of not less than one regular monthly payment, in accordance with its table of rates as provided by its constitution and laws, and shall issue to each such applicant a receipt for the amount so collected. But no such society shall incur any liability other than for such advanced payments, nor issue any benefit certificate nor pay or allow, or offer or promise to pay or allow to any person any death or disability benefit until actual bona fide applications for death benefit certificates have been secured upon at least five hundred lives for at least one thousand dollars each, and all such applicants for death benefits shall have been regularly examined by legally qualified practicing physicians, and certificates of such examinations have been duly filed and approved by the chief medical examiner of such society; nor until there shall be established ten subordinate lodges or branches, into which said five hundred applicants have been initiated; nor until there has been submitted to the commissioner of insurance, under oath of the president and secretary, or corresponding officers of such society, a list of such applicants, giving their names, addresses, date examined, date approved, date initiated, name and number of the subordinate branch of which each applicant is a member, amount of benefits to be granted, rate of stated periodical contributions, which shall be

sufficient to provide for meeting the mortuary obligation, contracted, when valued for death benefits upon the basis of the national fraternal congress table of mortality, as adopted by the national fraternal congress August 23, 1899, or any higher standard at the option of the society, and for disability benefits by tables based upon reliable experience and for combined death and permanent total disability benefits by tables based upon reliable experience, with an interest assumption not higher than four per cent per annum; nor until it shall be shown to the commissioner of insurance by the sworn statement of the treasurer, or corresponding officer of such society that at least five hundred applicants have each paid in cash at least one regular monthly payment, as herein provided per one thousand dollars of indemnity to be affected, which payments in the aggregate shall amount to at least twenty-five hundred dollars; all of which shall be credited to the mortuary or disability fund on account of such applicants, and no part of which may be used for expenses.

Said advanced payments shall, during the period of organization, be held in trust, and, if the organization is not completed within one year, as hereinafter provided, returned to said applicants.

The commissioner of insurance may make such examination and require such further information as he deems advisable, and, upon presentation of satisfactory evidence that the society has complied with all the provisions of law, he shall issue to such society a certificate to that effect. Such certificate shall be prima facie evidence of the existence of such society at the date of such certificate. The commissioner of insurance shall cause a record of such certificate to be made and certified copy of such record may be given in evidence with like effect as the original certificate.

No preliminary certificate granted under the provisions of this section shall be valid after one year from its date, or after such further period, not exceeding one year, as may be authorized by the commissioner of insurance upon cause shown; unless the five hundred applicants herein required have been secured, and the organization has been completed, as herein provided, and the articles of incorporation and all proceedings thereunder shall become null and void in one year from the date of said preliminary certificate, or at the expiration of said extended period, unless such society shall have completed its organization and commenced business as herein provided. When any domestic society shall have discontinued business for the period of one year, or has less than four hundred members, its charter shall become null and void.

Every such society shall have the power to make a constitution and by-laws for the government of the society, the admission of its members, the management of its affairs, and the fixing and readjusting of the rates of contribution of its members from time to time; and it shall have the power to change, alter, add to, or amend such constitution and by-laws, and shall have such other powers as are necessary and incidental to carrying into effect the objects and purposes of the society. [1913, ch. 191, § 12.]

§ 5070. Powers retained. Reincorporation. Amendments. Any society now engaged in transacting business in this state may exercise, after the passage of this article, all of the rights conferred thereby, and all of the rights, powers and privileges not exercised or possessed by it under its charter or articles of incorporation not inconsistent with this article, if incorporated; or if it be a voluntary association it may incorporate hereunder. But no society already organized shall be required to reincorporate hereunder, and any such society may amend its articles of incorporation from time to time in the manner provided therein, or in its constitution and laws, and all such amendments shall be filed with the commissioner of insurance and shall become operative upon such filing unless a later time be provided in such amendments, or in its articles of incorporation, constitution or laws. [1913, ch. 191, § 13.]

§ 5071. Mergers and transfers. No domestic societies shall merge with or accept the transfer of the membership or funds of any other society unless such merger or transfer is evidenced by a contract in writing, setting out in full the terms and conditions of such merger or transfer, and filed with the commissioner of insurance of this state together with a sworn statement of the financial condition of each of said societies by its president and secretary, or corresponding officers, and a certificate of such officers, duly verified under oath of said officers of each of the contracting societies that such merger or transfer has been approved by a vote of two-thirds of the members of the supreme legislative or governing body of each of said societies. Upon the submission of said contract, financial statements and certificates, the commissioner of insurance shall examine the same, and if he shall find such financial statements to be correct and the said contract to be in conformity with the provisions of this section, and that such merger or transfer is just and equitable to the members of each of said societies he shall approve said merger or transfer, issue his certificate to that effect, and thereupon the said contract of merger or transfer shall be of full force and effect.

In case such contract is not approved the facts of its submission and its contents shall not be disclosed by the commissioner of insurance. [1913, ch. 191, § 14.]

§ 5072. Annual license. Societies which are now authorized to transact business in this state may continue such business until the first day of April next succeeding the passage of this article, and the authority of such societies may thereafter be renewed annually, but in all cases to terminate on the first day of the succeeding April; provided, however, the license shall continue in full force and effect until the new license be issued or specifically refused. For each such license or renewal the society shall pay the commissioner of insurance dollars. A duly certified copy or duplicate of such license shall be prima facie evidence that the licensee is a fraternal benefit society within the meaning of this article. [1913, ch. 191, § 15.]

§ 5073. Admission of foreign society. No foreign society now transacting business, organized prior to the passage of this article, which is not now authorized to transact business in this state, shall transact any business herein without a license from the commissioner of insurance. Any such society shall be entitled to a license to transact business within this state upon filing with the commissioner a duly certified copy of its charter or articles of association, a copy of its constitution and laws, certified by its secretary or corresponding officer; a power of attorney to the commissioner of insurance as hereinafter provided; a statement of its business under oath of its president and secretary, or corresponding officers, in the form required by the commissioner, duly verified by an examination made by the supervising insurance official of its home state or other state satisfactory to the commissioner of insurance of this state; a certificate from the proper official in its home state, province, or country, that the society is legally organized; a copy of its contract, which must show that benefits are provided for by periodical, or other payments by persons holding similar contracts; and upon furnishing the commissioner such other information as he may deem necessary to a proper exhibit of its business and plan of working, and upon showing that its assets are invested in accordance with the laws of the state, territory, district, province or country where it is organized, he shall issue a license to such society to do business in this state until the first day of the succeeding April, and such license shall, upon compliance with the provisions of this article, be renewed annually but in all cases to terminate on the first day of the succeeding April; provided, however, that license shall continue in full force and effect until the new license be issued or specifically refused. Any foreign society desiring admission to this state shall have

the qualifications required of domestic societies organized under this article and have its assets invested as required by the laws of the state, territory, district, country or province where it is organized. For each such license or renewal the society shall pay the commissioner dollars. When the commissioner refuses to license any society, or revokes its authority to do business in this state he shall reduce his ruling, order or decision to writing and file the same in his office, and shall furnish a copy thereof, together with a statement of his reasons, to the officers of the society, upon request, and the action of the commissioner shall be reviewable by proper proceedings in any court of competent jurisdiction within the state; provided, however, that nothing contained in this or the preceding section shall be taken or construed as preventing any such society from continuing in good faith all contracts made in this state during the time such society was legally authorized to transact business herein. [1913, ch. 191, § 16.]

§ 5074. Power of attorney and service of process. Every society, whether domestic or foreign, now transacting business in this state, shall, within thirty days after the passage of this article, and every said society hereafter applying for admission shall, before being licensed, appoint in writing the commissioner of insurance and his successors in office to be its true and lawful attorney, upon whom all legal process in any action or proceeding against it shall be served, and in such writing shall agree that any lawful process against it which is served upon such attorney shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this state.

Copies of such appointment, certified by said commissioner of insurance, shall be deemed sufficient evidence thereof and shall be admitted in evidence with the same force and effect as the original thereof might be admitted. Service shall only be made upon such attorney, must be made in duplicate upon the commissioner of insurance, or, in his absence, upon the person in charge of his office, and shall be deemed sufficient service upon such society; provided, however, that no such service shall be valid or binding against any such society when it is required thereunder to file its answer, pleading or defense, in less than thirty days from the date of mailing the copy of such service to such society. When legal process against any such society is served upon said commissioner of insurance he shall forthwith forward by registered mail one of the duplicate copies prepaid and directed to its secretary or corresponding officer. Legal process shall not be served upon any such society except in the manner provided herein. [1913, ch. 191, § 17.]

§ 5075. Place of meeting, location of office. Any domestic society may provide that the meetings of its legislative or governing body may be held in any state, district, province or territory wherein such society has subordinate branches, and all business transacted at such meetings shall be as valid in all respects as if such meetings were held in this state; but its principal office shall be located in this state. [1913, ch. 191, § 18.]

§ 5076. No personal liability. Officers and members of the supreme, grand, or any subordinate body of any such incorporated society shall not be individually liable for the payment of any disability or death benefit provided for in the laws and agreements of such society, but the same shall be payable only out of the funds of such society and in the manner provided by its laws. [1913, ch. 191, § 19.]

Liability of members of mutual insurance company. 32 L.R.A. 481.

Jurisdiction of equity to enforce liability of member of mutual insurance company. 40 L.R.A. (N.S.) 781.

§ 5077. Waiver of the provisions of the laws. The constitution and laws of the society may provide that no subordinate body, nor any of its subordinate officers or members shall have the power or authority to waive any of the provisions of the laws and constitution of the society, and the same

shall be binding on the society and each and every member thereof and on all beneficiaries of members. [1913, ch. 191, § 20.]

§ 5078. Benefit not attachable. No money or other benefit, charity or relief or aid to be paid, provided or rendered by any such society shall be liable to attachment, garnishment or other process, or be seized, taken, appropriated or applied by any legal or equitable process or operation of law to pay any debt or liability of a member or beneficiary, or any other person who may have a right thereunder, either before or after payment. [1913, ch. 191, § 21.]

§ 5079. Constitution and laws. Amendment. Every society transacting business under this article shall file with the commissioner of insurance a duly certified copy of all amendments of or additions to its constitution and laws within ninety days after the enactment of the same. Printed copies of the constitution and laws as amended, changed or added to, certified by the secretary or corresponding officer of the society shall be prima facie evidence of the legal adoption thereof. [1913, ch. 191, § 22.]

§ 5080. Annual reports. Every society transacting business in this state shall annually, on or before the first day of March, file with the commissioner of insurance, in such form as he may require, a statement under oath of its president and secretary, or corresponding officers, of its condition and standing on the thirty-first day of December next preceding, and of its transactions for the year ending on that date, and also shall furnish such other information as the commissioner of insurance may deem necessary to a proper exhibit of its business and plan of working. The commissioner may at other times require any further statement he may deem necessary to be made relating to such society.

In addition to the annual report herein required each society shall annually report to the commissioner a valuation of its certificates in force on December thirty-first, last preceding; including those issued within the year for which the report is filed, in cases where the contributions for the first year in whole or in part are used for current mortality and expenses; provided, the first report of valuation shall be made as of December thirty-first, 1912. Such report of valuation shall show, as contingent liabilities, the present midyear value of the promised benefits provided in the constitution and laws of such society under certificates then subject to valuation; and, as contingent assets, the present midyear values of the future net contributions provided in the constitution and laws as the same are in practice actually collected. At the option of any society, in lieu of the above, the valuation may show the net value of the certificates subject to valuation hereinbefore provided, and said net value, when computed in case of monthly contributions, may be the means of the terminal values for the end of the preceding and of the current insurance years.

Such valuation shall be certified by a competent accountant or actuary, or, at the request and expense of the society, verified by the actuary of the department of insurance of the home state of the society, and shall be filed with the commissioner of insurance within ninety days after the submission of the last preceding annual report. The legal minimum standard of valuation for all certificates, except for disability benefits, shall be the national fraternal congress table of mortality as adopted by the national fraternal congress August twenty-third, 1899, or, at the option of the society, any higher table; or at its option it may use a table based upon the society's own experience of at least twenty years and covering not less than one hundred thousand lives with interest assumption not more than four per cent per annum. Each such valuation report shall set forth clearly and fully the mortality and interest bases and the method of valuation. Any society providing for disability benefits shall keep the net contributions for such benefits in a fund separate and apart from all other benefit and expense funds

and the valuation of all other business of the society; provided, that where a combined contribution table is used by a society for both death and permanent total disability benefits the valuation shall be according to tables of reliable experience, and in such case a separation of the funds shall not be required.

The valuation herein provided for shall not be considered or regarded as a test of the financial solvency of the society, but each society shall be held to be legally solvent so long as the funds in its possession are equal to or in excess of its matured liabilities.

Beginning with the year 1914 a report of such valuation and an explanation of the facts concerning the condition of the society thereby disclosed shall be printed and mailed to each beneficiary member of the society not later than June first of each year; or, in lieu thereof, such report of valuation and showing of the society's condition as thereby disclosed may be published in the society's official paper and the issue containing the same mailed to each beneficiary member of the society. The laws of such society shall provide that if the stated periodical contributions of the members are insufficient to pay all matured death and disability claims in full, and to provide for the creation and maintenance of the funds required by its laws, additional, increased or extra rates of contribution shall be collected from the members to meet such deficiency; and such laws may provide that, upon the written application or consent of the member, his certificate may be charged with its proportion of any deficiency disclosed by valuation, with interest not exceeding five per centum per annum. [1913, ch. 191, § 23.]

§ 5081. Provisions to insure future security. If the valuation of the certificates, as hereinbefore provided, on December thirty-first, 1917, shall show that the present value of future net contributions, together with the admitted assets, is less than the present value of the promised benefits and accrued liabilities such society shall thereafter maintain said financial condition at each succeeding triennial valuation in respect of the degree of deficiency, as shown in the valuation as of December thirty-first, 1917. If at any succeeding triennial valuation such society does not show at least the same condition the commissioner shall direct that it thereafter comply with the requirements herein specified. If the next succeeding triennial valuation after the receipt of such notice shall show that the society has failed to maintain the condition required herein the commissioner may, in the absence of good cause shown for such failure, institute proceedings for the dissolution of such society, in accordance with the provisions of section 5083 or in the case of a foreign society, its license may be cancelled in the manner provided in this article.

Any such society, shown by any triennial valuation, subsequent to December thirty-first, 1917, not to have maintained the condition herein required, shall within two years thereafter make such improvement as to show a percentage of deficiency not greater than as of December thirty-first, 1917, or thereafter, as to all new members admitted, be subject, so far as stated rates of contributions are concerned, to the provisions of section 5069, applicable in the organization of new societies; provided, that the net mortuary or beneficial contributions and funds of such new members shall be kept separate and apart from the other funds of the society. If such required improvement is not shown by the succeeding triennial valuation then the said new members may be placed in a separate class, and their certificates valued as an independent society in respect of contributions and funds. [1913, ch. 191, § 23a.]

§ 5082. Alternative provisions. In lieu of the requirements of sections 5080 and 5081 any society accepting in its laws the provisions of this section may value its certificates on a basis herein designated "accumulation basis" by crediting each member with the net amount contributed for each year with

interest at approximately the net rate earned and by charging him with his share of the losses for each year, herein designated "cost of insurance," and carrying the balance, if any, to his credit. The charge for the cost of insurance may be according to the actual experience of the society applied to a table of mortality recognized by the law of this state, and shall take into consideration the amount at risk during each year, which shall be the amount payable at death less the credit to the member. Except as specifically provided in its articles or laws or contracts no charge shall be carried forward from the first valuation hereunder against any member for any past share of losses exceeding the contributions and credit. If, after the first valuation, any member's share of losses for any year exceeds his credit including the contribution for the year the contribution shall be increased to cover his share of the losses. Any such excess share of losses chargeable to any member may be paid out of a fund or contributions especially created or required for such purpose.

Any member may transfer to any place adopted by the society with net rates on which tabular reserves are maintained and on such transfer shall be entitled to make such application of his credit as provided in the laws of the society.

Certificate issued, rerated or readjusted on a basis providing for adequate rate with adequate reserves to mature such certificates upon assumption for mortality and interest recognized by the law of this state shall be valued on such basis, herein designated the "tabular basis;" provided, that if on the first valuation under this section a deficiency in reserve shall be shown for any such certificate the same shall be valued on the accumulation basis.

Whenever in any society having members upon the tabular basis and upon the accumulation basis the total of all costs of insurance provided for any year shall be insufficient to meet the actual death and disability losses for the year the deficiency shall be met for the year from the available funds after setting aside all credits in the reserve; or from increased contributions, or by an increase in the number of assessments applied to the society as a whole, or to classes of members as may be specified in its laws. Savings from a lower amount of death losses may be returned in like manner as may be specified in its laws.

If the laws of the society so provide the assets representing the reserves of any separate class of members may be carried separately for such class as if an independent society, and the required reserve accumulation of such class so set apart shall not thereafter be mingled with the assets of other classes of the society.

A table showing the credits to individual members for each age and year of entry and showing opposite each credit the tabular reserve required on the whole life or other plan of insurance specified in the contract, according to assumptions for mortality and interest recognized by the law of this state and adopted by the society, shall be filed by the society with each annual report, and also be furnished to each member before July first of each year.

In lieu of the aforesaid statement there may be furnished to each member within the same time a statement giving the credit for such member, and giving the tabular reserve and level rate required for a transfer carrying out the plan of insurance specified in the contract. No table or statement need be made or furnished where the reserves are maintained on the tabular basis.

For this purpose individual bookkeeping accounts for each member shall not be required, and all calculations may be made by actuarial methods.

Nothing herein contained shall prevent the maintenance of such surplus over and above the credits on the accumulation basis and the reserves on the tabular basis pursuant to its law; nor be construed as giving to the individual member any right or claim to any such reserve or credit other than in manner as expressed in the contract and its law; nor as making any such reserve

or credits a liability in determining the legal solvency of the society. [1913, ch. 191, § 23b.]

§ 5083. Examination of domestic societies. The commissioner of insurance, or any person he may appoint, shall have the power of visitation and examination into the affairs of any domestic society. He may employ assistants for the purpose of such examination, and, he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the society, and may summon and qualify as witness under oath and examine its officers, agents and employes, or other persons in relation to the affairs, transactions and condition of the society. The expense of such examination shall be paid by the society examined upon statement furnished by the commissioner of insurance, and the examination shall be made at least once in three years.

Whenever, after examination, the commissioner of insurance is satisfied that any domestic society has failed to comply with any provisions of this article, or is exceeding its powers, or is not carrying out its contracts in good faith, or is transacting business fraudulently; or whenever any domestic society, after the existence of one year or more, shall have a membership of less than 400 (or shall determine to discontinue business) the commissioner of insurance may present the facts relating thereto to the attorney-general, who shall, if he deem the circumstances warrant, commence an action in quo warranto in a court of competent jurisdiction, and such court shall thereupon notify the officers of such society of a hearing, and if it shall then appear that such society should be closed, said society shall be enjoined from carrying on any further business and some person shall be appointed receiver of such society, and shall proceed at once to take possession of the books, papers, moneys and other assets of the society, and shall forthwith, under the direction of the court, proceed to close the affairs of the society and to distribute its funds to those entitled thereto.

No such proceedings shall be commenced by the attorney-general against any such society until after notice has been duly served on the chief executive officers of the society and a reasonable opportunity given to it on a date to be named in said notice to show cause why such proceedings should not be commenced. [1913, ch. 191, § 24.]

§ 5084. Application for receiver, etc. No application for injunction against or proceedings for the dissolution of or the appointment of a receiver for any such domestic society or branch thereof shall be entertained by any court in this state unless the same is made by the attorney-general. [1913, ch. 191, § 25.]

§ 5085. Examination of foreign societies. The commissioner of insurance, or any person whom he may appoint, may examine any foreign society transacting or applying for admission to transact business in this state. The said commissioner may employ assistants, and he, or any person he may appoint, shall have free access to all the books, papers and documents that relate to the business of the society and may summon and qualify as witness under oath and examine its officers, agents and employes and other persons in relation to the affairs, transactions and conditions of the society. He may, in his discretion, accept in lieu of such examination the examination of the insurance department of the state, territory, district, province or country where such society is organized. The actual expenses of examiners making any such examination shall be paid by the society upon statement furnished by the commissioner of insurance.

If any such society, or its officers, refuse to submit to such examination, or to comply with the provisions of the section relative thereto, the authority of such society to write new business in this state shall be suspended or license refused until satisfactory evidence is furnished the commissioner relating to the condition and affairs of the society, and during such sus-

pension the society shall not write new business in this state. [1913, ch. 191, § 26.]

§ 5086. No adverse publications. Pending, during or after an examination or investigation of any such society, either domestic or foreign, the commissioner of insurance shall make public no financial statement, report or finding, nor shall he permit to become public any financial statement, report or finding affecting the status, standing or rights of any such society until a copy thereof shall have been served upon such society at its home office, nor until such society shall have been afforded a reasonable opportunity to answer any such financial statement, report or finding, and to make such showing in connection therewith as it may desire. [1913, ch. 191, § 27.]

§ 5087. Revocation of license. When the commissioner of insurance, on investigation, is satisfied that any foreign society transacting business under this article has exceeded its powers, or has failed to comply with any provisions of this article, or is conducting business fraudulently, or is not carrying out its contracts in good faith, he shall notify the society of his findings, and state in writing the grounds of his dissatisfaction, and after reasonable notice require said society, on a date named, to show cause why its license should not be revoked. If on the date named in said notice such objections have not been removed to the satisfaction of the said commissioner of insurance, or the society does not present good and sufficient reasons why its authority to transact business in this state should not at that time be revoked, he may revoke the authority of the society to continue business in this state. All decisions and findings of the commissioner made under the provisions of this section may be reviewed by the proper proceedings in any court of competent jurisdiction, as provided in section 5073. [1913, ch. 191, § 28.]

§ 5088. Exemption of certain societies. Nothing contained in this article shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows or Knights of Pythias (exclusive of the Insurance Department of the Supreme Lodge Knights of Pythias), and the Junior Order of the United American Mechanics (exclusive of the Beneficiary Degree of Insurance branch of the National Council Junior Order United American Mechanics), or societies which limit their membership to any one hazardous occupation, nor to similar societies which do not issue insurance certificates, nor to an association of local lodges of a society now doing business in this state, which provides death benefits not exceeding five hundred dollars to any one person or disability benefits not exceeding three hundred dollars in any one year to any one person, or both, nor to any contracts of reinsurance business on such plan in this state, nor to domestic societies which limit their membership to the employes of a particular city or town, designated firm, business house or corporation, nor to domestic lodges, orders or associations of a purely religious, charitable and benevolent description, which do not provide for a death benefit of more than one hundred dollars, or for disability benefits of more than one hundred and fifty dollars to any one person in any one year. The commissioner of insurance may require from any such society such information as will enable him to determine whether such society is exempt from the provisions of this article.

Any fraternal benefit society, heretofore organized and incorporated and operating within the definition set forth in sections 5059, 5060 and 5061 of this article, providing for benefits in case of death or disability resulting solely from accidents, but which does not obligate itself to pay death or sick benefits, may be licensed under the provisions of this article, and shall have all the privileges and shall be subject to all the provisions and regulations of this act, except that the provisions of this article requiring medical examinations, valuations of benefit certificates, and that the certificate shall

specify the amount of benefits, shall not apply to such society. [1913, ch. 191, § 29.]

§ 5089. Taxation. Every fraternal benefit society organized or licensed under this article is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal and school tax, other than taxes on real estate and office equipment. [1913, ch. 191, § 30.]

Fraternal benefit society as a benevolent or charitable association within exemption statutes. 7 L.R.A. (N.S.) 380.

§ 5090. Penalties. Any person, officer, member or examining physician of any society authorized to do business under this article shall knowingly or willfully make any false or fraudulent statement or representation in or with reference to any application for membership, or for the purpose of obtaining money from or benefit in any society transacting business under this article, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars or imprisonment in the county jail for not less than thirty days nor more than one year, or both, in the discretion of the court; and any person who shall willfully make a false statement of any material fact or thing in a sworn statement as to the death or disability of a certificate holder in any such society for the purpose of procuring payment of a benefit named in the certificate of such holder, and any person who shall willfully make any false statement in any verified report or declaration under oath required or authorized by this state, shall be guilty of perjury, and shall be proceeded against and punished as provided by the statutes of this state in relation to the crime of perjury.

Any person who shall solicit membership for, or in any manner assist in procuring membership in any fraternal benefit society not licensed to do business in this state, or who shall solicit membership for, or in any manner assist in procuring membership in any such society not authorized, as herein provided, to do business, as herein defined in this state, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty or more than two hundred dollars.

Any society, or any officer, agent or employe thereof neglecting or refusing to comply with, or violating any of the provisions of this article, the penalty for which neglect, refusal or violation is not specified in this section, shall be fined not exceeding two hundred dollars upon conviction thereof. [1913, ch. 191, § 31.]

ARTICLE 7.—CEMETERY CORPORATIONS.

§ 5091. Real property limited. Uses. Every cemetery corporation has power to purchase or take by gift, grant or devise, and to hold real property, not exceeding eighty acres for the sole use and purpose of a burial ground, and to lay out the same into blocks and lots with convenient avenues and walks and to sell the lots for the sole use and purpose of burying the dead; and it may hold all such personal property as the legitimate and necessary purposes of the corporation may require. [R. C. 1905, § 4586; Civ. C. 1877, § 553; R. C. 1899, § 3191.]

§ 5092. Survey and plat. Record. Such corporation shall cause its land, or such portion thereof as may from time to time become necessary for that purpose, to be surveyed into lots, avenues and walks and platted and the plat of ground as surveyed shall be acknowledged and recorded in the office of the register of deeds of the county. Each lot shall be regularly numbered by the surveyor and such number shall be marked on the plat and recorded. Any plat may be vacated by such corporation at any time before the sale of any lots therein by a majority vote of the directors of such corporation, and when so vacated a written instrument declaring the same to be vacated, exe-

cuted and acknowledged, as such plats are executed and acknowledged, shall be recorded in the office of the register of deeds where such plat is recorded; and in case any lot or lots have been sold in such plat and reconveyed by the owners thereof to such corporation, such plat may be vacated as hereinbefore provided; and such corporation may by a majority vote of its directors vacate any avenue or avenues, walk or walks, in its cemetery upon the written petition of all owners of lots abutting upon such avenue, avenues, walk or walks, and when any avenue, avenues, walk or walks are so vacated such avenue, avenues, walk or walks shall revert to and become the property of the owners of lots abutting thereon from either side to the center thereof; and such corporation shall file, in the office where the plat of such cemetery is filed, a plat of such portion of said cemetery showing such change, and acknowledged as such plats are required to be acknowledged. The register of deeds in whose office the plats aforesaid are recorded shall write in plain, legible letters across the plat or that part of a plat so vacated the word "vacated," and shall make a reference on the same to the volume and page in which such instrument of vacation is recorded. [1907, ch. 44; R. C. 1905, § 4587; Civ. C. 1877, § 554; R. C. 1899, § 3192.]

§ 5093. Powers. Such corporation has power to inclose, improve and embellish its grounds, avenues and walks, and to erect buildings or vaults for its use, and to prescribe in its by-laws rules for the sale, inclosure and ornamentation of lots and for erecting monuments or gravestones thereon; and to prohibit any use, division, improvement or ornamentation of any lot, which the corporation may deem improper; and to make other by-laws and acts to the end that all the appliances, conveniences and benefits of a public and private cemetery may be obtained and secured; and such corporation may receive by gift, devise, bequest or otherwise, moneys or real or personal property or the income or avails of such moneys or property in trust, in perpetuity, for the perpetual and permanent improvement, maintenance, ornamentation, repair, care and preservation of any burial lot or grave, vault or tomb in any cemetery owned or controlled by such corporation, upon such terms and in such manner as may be provided by the terms of such gift, devise, bequest or other conveyance of such moneys or property in trust, and assented to by such corporation, and subject to the rules and regulations of such corporation; and every such cemetery corporation owning or controlling any such cemetery may make contracts with the owner, legal representatives of such owner of any lot, grave, vault or tomb in such cemetery for the perpetual and permanent improvement, maintenance, ornamentation, care, preservation and repair of any such lot, grave, vault or tomb in such cemetery owned or controlled by such corporation. [1913, ch. 108; R. C. 1905, § 4588; Civ. C. 1877, § 555; R. C. 1899, § 3193.]

§ 5094. How proceeds from sale applied. The proceeds arising from the sale of lots, after deducting all expenses of purchasing, inclosing, laying out and improving the ground and of erecting buildings shall be exclusively applied, appropriated and used in protecting, preserving, improving and embellishing the cemetery and its appurtenances and to paying the necessary expenses of the corporation and must not be appropriated to any purposes of profit to the corporation or its members. [R. C. 1905, § 4589; Civ. C. 1877, § 556; R. C. 1899, § 3194.]

§ 5095. Debts paid from proceeds. At least fifty per cent of the gross proceeds of sales of blocks, lots or graves must be applied as often as every six months to the payment of the debts and obligations of the corporation. [R. C. 1905, § 4590; Civ. C. 1877, § 557; R. C. 1899, § 3195.]

§ 5096. Previous lot owners members. When grounds purchased or otherwise acquired for cemetery purposes have been previously used as a burial ground, those who are lot owners at the time of the purchase, continue to own the same and are members of the corporation, as hereinafter provided, with

all the privileges the purchase of a corporation lot confers. [R. C. 1905, § 4591; Civ. C. 1877, § 558; R. C. 1899, § 3196.]

§ 5097. **Only lot owners entitled to vote.** At each subsequent election of officers of any such corporation held after the first annual election the owner or owners of a lot in the cemetery, and none other, shall be entitled to one vote at such election or for any other purpose and no more than one vote; and shall by virtue of such proprietorship be a member of the corporation and eligible to any of its offices; but if there is more than one proprietor of any such lot then such one of the proprietors as the majority of them shall designate may cast the one vote as aforesaid; and each trustee or director shall be the sole proprietor of a lot in such cemetery. [R. C. 1905, § 4592; Civ. C. 1877, § 559; R. C. 1899, § 3197.]

§ 5098. **Interment makes lot inalienable.** Whenever an interment is made in any lot transferred to individual owners by the corporation the same thereby, while any person is buried therein, becomes forever inalienable and descends in regular line of succession to the heirs at law of the owner; but any one or more of such heirs may release to any other of said heirs his or their interest in the same and any other joint owners may release to each other in like manner. [R. C. 1905, § 4593; Civ. C. 1877, § 560; R. C. 1899, § 3198.]

Rights of persons who have buried relatives in cemeteries. 75 Am. St. Rep. 427.
Character of estate or property of owner in burial lot. 67 L.R.A. 118.

§ 5099. **Wholly exempt.** All the property of every such benevolent corporation and the lots sold by it to individual proprietors shall be exempt from taxation, assessment, lien, attachment and from levy and sale upon execution; and all such real property shall be exempt from appropriation for streets, roads or any other public uses or purposes. [R. C. 1905, § 4594; Civ. C. 1877, § 561; R. C. 1899, § 3199.]

ARTICLE 8.—HOMES FOR ORPHANS.

§ 5100. **Rules and regulations.** Whenever not less than twenty reputable citizens of the state of North Dakota have or shall associate themselves into a corporation under the laws of this state, for the purpose of securing homes for orphans or for homeless, abandoned and neglected or grossly ill-treated children, by adoption or otherwise, into private families, have or shall file with the secretary of state their articles of incorporation, together with a certificate signed by the governor and three or more members of the supreme court of the state of North Dakota, of their confidence in the trustworthiness of said corporation for said purposes, said corporation shall have power to receive such children for the purposes above expressed, in the manner herein specified; provided, that at the end of ten years said power shall cease, unless a new certificate as provided above, signed by at least three members of the supreme court of North Dakota, shall be filed as above, and such certificates shall be filed every ten years during the continuance of such society. Such society shall have a main office and adopt rules for the transaction of business, which shall be published, and its financial records shall be open to the inspection of the public. [R. C. 1905, § 4595; 1897, ch. 87, § 1; R. C. 1899, § 3199a.]

§ 5101. **Powers of society.** Such society shall have the power to receive into its hands and under its control, and may become the legal guardian of any child under fourteen years of age without his consent, and over fourteen years and under eighteen years with his consent, of the state, who is grossly ill-treated by any person or persons exercising control over it, or who shall have been abandoned or is without a home, or is surrounded by bad or immoral influences, or whose living parent or parents, by written authority, shall assign the custody of the same to such society; and such society is hereby authorized and empowered to consent through its duly authorized agent in the courts of this state, in place of, instead of, and whenever it is

by law permitted to the parent or guardian of a minor child, to consent to the adoption of such child in the court, under the laws and in the manner provided for the adoption of children, and such agent of said society shall have power to administer oaths of and acknowledge affidavits in all matters pertaining to the business of such society. Such society shall have the power and authority to enter into contracts with the persons taking the children, but not legally adopting them, as soon as possible after the period of ninety days' trial upon which the child may have been taken has elapsed; and this contract shall provide for the proper care of the child until the age of eighteen years in the case of a girl and twenty-one years in the case of a boy, and shall specify the amount to be paid to the ward at the expiration of the period of the contract; provided, that in no case shall such contract contain any provision of a sectarian or political nature regarding the care, custody or education of such children. [R. C. 1905, § 4596; 1897, ch. 87, § 2; 1899, ch. 98, § 2; R. C. 1899, § 3199b.]

§ 5102. Compensation. The said society shall not in any case charge or receive from the person or persons adopting any child through said society, any compensation for the same, except the expense of taking the child to the home where the child is placed, and persons so taking a child shall not be authorized to require of the society compensation for the care, clothing or medical attendance of such child, if it is returned to the keeping of said society. [R. C. 1905, § 4597; 1897, ch. 87, § 3; R. C. 1899, § 3199c.]

§ 5103. Society shall report condition. It shall be the duty of such society to keep a careful supervision of all children so placed by them and require of all families who have taken, except those who have legally adopted them, a full report of the condition and welfare of the child, not less frequently than once a year. The authorized agents of the society shall have the right to visit such families and personally investigate the condition and welfare of the children as occasion may require; and if such agents shall become satisfied upon due investigation that the influence of the home is vicious or harmful to the child, or that the treatment is unduly severe or seriously lacking in wise and considerate care, then the superintendent of the society shall have authority to require the return of the child to the care of the society at its main office at the expense of the family having it. [R. C. 1905, § 4598; 1897, ch. 87, § 4; R. C. 1899, § 3199d.]

§ 5104. In cases of complaints. Whenever a complaint or a petition in writing of two of the commissioners of a county, or two of the town supervisors of any town, or two aldermen of any city, or two officers of any incorporated village or town, shall be made to the county judge, stating that any minor child or children under fourteen years of age, residing in such county, are in their opinion dependent upon the public for support or have been abandoned or neglected, or are in a state of vagrancy or mendicancy, or are in a state of want or suffering, or are in peril of life, health or morality, by cruel or bad treatment, or by the habitual intemperance or grave misconduct of parents or guardians, it shall thereupon be the duty of such county judge to investigate the facts in such case and ascertain whether such child or children are dependent, neglected, abandoned or ill-treated, the residence and so far as possible the whereabouts of the parents, whether the condition and treatment of said children and general surroundings are such as to imperil the life, health or morality in consequence of their surroundings, or of the grave misconduct or habitual intemperance of their parents or guardian, and if said county judge shall so find he shall enter such finding in his office, certifying and directing that such child or children shall be and are turned over to the care and custody of said society for the purpose of adoption into private families or otherwise as to said society seems best, and shall order that it be taken in charge of at once or as soon as it can be conveniently done by said society, and shall deliver to said society a certified copy of such order,

which order shall contain besides such finding a statement of the facts as far as ascertained as to the age of the child, name, nationality, residence and occupation of the parents or either of them. Upon entering such order the parents of said child shall be released from all parental duties towards, and responsibility for such child, and shall thereafter have no rights over or to the custody, services or earnings of such child. In case any parent or other person having the custody of such child, shall refuse to surrender said child to said society or its agent, said county judge is hereby authorized and empowered to direct the sheriff of the county to take possession of said child; and if so directed, it shall be the duty of the said sheriff to deliver said child to said society or its agent. The said county judge is hereby authorized to compel the attendance of witnesses on such examination, and it shall be the duty of the county attorney, when requested by the county judge, to attend any examination on behalf of the petitioners. Any friend of said child may appear in its behalf in said county court, and the said county judge may in his discretion request any county commissioner, town supervisor, alderman or other officer of the town or city, where such examination is held or where said child resides, to appear in behalf of the child, and the records of such proceedings shall show who, if any one, appeared in behalf of the petitioner or of the child on such examination. [R. C. 1905, § 4599; 1897, ch. 87, § 5; 1899, ch. 98, § 5; R. C. 1899, § 3199e.]

Law establishing children's home society may be constitutional. *State v. Children's Home Society*, 10 N. D. 493, 88 N. W. 273.

Though time for appeal from order granting an association the custody of plaintiff's children had expired, court had jurisdiction to consider his petition to have them restored to him. *McFall v. Simmons*, 12 S. D. 562, 81 N. W. 898.

Court in proceedings hereunder has no authority to call jury, and continuance to allow jury trial is without legal authority. *State ex rel. Kronchnabel v. Taylor*, 30 S. D. 304, 138 N. W. 372.

§ 5105. Citations issued in certain cases. Whenever a petition such as is provided for in section 5104, shall be presented, signed by the parties as above provided, if it shall appear that one or both parents of the child reside in said county, the county judge shall issue a citation or notice, fixing the time and place for the hearing of said petition, which shall be served on one or both of said parents, if either can be found in the county, not less than two days before the time fixed for the hearing of said petition, requiring them to appear, if they so desire, on said day and hour, and show cause, if any, why such child should not be taken from them and delivered to the care and custody of said society for the purposes of adoption into a private family or otherwise as said society shall determine; provided, such citation or notice shall not be necessary if such parent or parents shall join in such petition. It shall be the duty of the county judge, in case such citation or notice has not been served upon said parents, before proceeding to hear and determine the petition, to require a certificate of the sheriff of the county that he has made diligent search to find and serve the same on one or both of the parents, but has been unable to find either of them; but, in case of such inability to give such notice, the proceedings shall be heard the same as though such notice had been given and such citation duly served. It is also herein expressly enacted that no provision of this article shall be construed as giving any claim to any society organized under it to an appropriation from the treasury of the state. [R. C. 1905, § 4600; 1899, ch. 87, §§ 6, 7; R. C. 1899, § 3199f.]

§ 5106. Unlawful to solicit for orphan's homes without a license. License, how obtained. Exceptions. It shall be unlawful for any person to solicit contributions for an orphan asylum, children's home, rescue home, hospital or such like charitable organization, organized or established in any other state, without having first obtained a license from the state examiner, until such time as a state board of charities shall have been established, when said license shall be issued by the secretary of such board of charities, as in this

section provided. When any person desires to solicit aid for any charitable organization, as described in this section, they shall first file a statement with the state examiner, until there shall be a state board of charities established, duly verified under oath, giving a detailed history of the work and needs of the organization they represent. It shall then be the duty of the state examiner, or of the board of public charities when established, to investigate the case, and if satisfied that the cause is trustworthy, a permit shall be issued to such applicant, giving him or her the right to solicit within the state of North Dakota. Such permit shall be good for one year only and may be renewed from year to year, but shall be subject to revocation at any time for just cause. Any person receiving such a permit must at all times, when soliciting, produce the same if called upon to do so, and a refusal shall be deemed *prima facie* evidence that the solicitor is violating the provisions of this section. This section shall not apply to sisters of charity, salvation army, deaconesses, who wear a distinct garb, nor to taking up collections in churches for organizations distinctly denominational in character and management. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and shall be subject to punishment as provided in section 9205. [R. C. 1905, § 4601; 1903, ch. 39.]

§ 5107. Foreign societies must give bond. Before any association or society, incorporated in any other state, for the purpose of caring for orphans or dependent children, shall bring or send any child or children into the state of North Dakota for the purpose of being placed in a family home, by adoption or otherwise, they shall first file a bond in favor of the state of North Dakota, in the penal sum of five hundred dollars, with the treasurer of the county, where such child or children may be placed, conditioned that such child has no contagious or incurable disease, or has no deformity, or is not of feeble mind, or of vicious character, and that association or society will promptly receive and remove from the state of North Dakota such child if it shall become a public charge within the period of five years after being brought into the state; provided that this article shall not be construed so as to prohibit any person residing in the state of North Dakota from receiving and adopting into his family any child or children of relatives from another state; and provided, further, that this act [section] shall not be so construed as to prevent the free interchange of dependent children without bond, between such associations or societies organized under the laws of other states and associations or societies organized under the laws of North Dakota for the purpose of caring for dependent children by placing them in family homes by adoption or otherwise; and such associations or societies organized for such purposes within the state of North Dakota may become the legal guardians of such dependent children assigned or released to them by similar legally authorized associations or societies in other states. [1911, ch. 80; R. C. 1905, § 4602; 1903, ch. 79, § 1.]

§ 5108. Bonds approved by county commissioners. Penalty. Such bonds shall cover all children placed in any given county of North Dakota by said associations or societies, and must be signed by at least one freeholder of the state of North Dakota and be approved by the board of county commissioners. Any agent of any association or society violating the provisions of this article, or any person receiving a child or children in violation of this article, shall be deemed guilty of a misdemeanor. [1911, ch. 80; R. C. 1905, § 4603; 1903, ch. 79, §§ 2, 3.]

ARTICLE 9.—DEPENDENT CHILDREN.

§ 5109. Cared for at public expense. Duty of county commissioners. Any minor child under the age of sixteen years who shall by reason of the failure of either or both of its parents or its custodians to support such child becomes dependent upon public charity, or who may be deserted by its parent or

parents or custodians without arrangements for its proper care, shall be deemed abandoned, and may be cared for at public expense by the overseers of the poor, or assigned by the county commissioners as overseers of the poor, and with the written consent of the county judge under the seal of his office, to any reputable organization incorporated under the laws of North Dakota for the purpose of placing such children in family homes for adoption or otherwise; provided, that in such cases the consent of either parent or custodian shall not be necessary. The commissioners may in their discretion allow and pay to such incorporated organization a reasonable amount to cover the expense of such assignment. [1907, ch. 91, § 1.]

§ 5110. Child deemed abandoned, when. Any minor child under the age of sixteen years who shall have been left for board with any reputable organization incorporated under the laws of North Dakota for the care and placing of children, and whose board shall not have been paid for a period of three months without a reasonable excuse, and the residence of whose legal custodians shall not be known to such organization or its officers, shall be deemed abandoned, and may upon assignment by the county commissioners as overseers of the poor, with the written consent of the county judge under the seal of his office, be placed by such organization in a family home for adoption or upon contract as may seem to be for the best welfare of the child, without the consent of either parent, and as provided for in sections 5100-5105. [1907, ch. 91, § 2.]

CHAPTER 24.

AGRICULTURAL FAIR CORPORATIONS.

§ 5111. Powers. Agricultural fair corporations are authorized and empowered to make any and all regulations, rules and provisions, not inconsistent with law, which shall in their judgment be necessary or proper for the government, management and control of the premises used by them for the holding of fairs, and all expositions to be held thereon, and all such needful rules and regulations concerning the government and department of the public thereon, which may be requisite or proper. [R. C. 1905, § 4604; 1903, ch. 7, § 1.]

Liability of persons giving exhibitions for acts of independent contractor. 66 L.R.A. 152.

Liability of one conducting fair or exposition for injury to patron through negligence of concessionary. 14 L.R.A.(N.S.) 284; 32 L.R.A.(N.S.) 717.

Liability of one maintaining place of amusement for the safety of patrons. 1 L.R.A.(N.S.) 427; 3 L.R.A.(N.S.) 1132; 19 L.R.A.(N.S.) 772; 32 L.R.A.(N.S.) 713; 42 L.R.A.(N.S.) 1071.

§ 5112. Board of directors. The board of directors shall consist of not less than three, nor more than fifteen persons. The by-laws may provide that one or more persons not stockholders, may be elected directors. [R. C. 1905, § 4605; 1903, ch. 7, § 2.]

§ 5113. Liability of stockholders. The liability of stockholders shall not be other or greater than that provided in section 4554 of this code. [R. C. 1905, § 4606; 1903, ch. 7, § 3.]

§ 5114. May hold real property. Limitation. Agricultural fair corporations may purchase, hold or lease any quantity of land, not exceeding in the aggregate one hundred and sixty acres, with such buildings and improvements as may be erected thereon and may sell, lease or otherwise dispose of the same at pleasure. This real estate must be held for the purpose of erecting buildings and making other improvements thereon, to promote and encourage agriculture, horticulture, mechanics, manufactures, stock raising and general domestic industry. [R. C. 1905, § 4607; Civ. C. 1877, § 562; R. C. 1899, § 3200.]

§ 5115. Debts limited. Such corporation must not contract any debt or liabilities in excess of the amount of money in the treasury at the time of contract or not exceeding two thousand five hundred dollars, reasonably ex-

pected to be paid into the treasury from the receipts from a fair or exposition immediately to be held thereafter, except for the purchase of real property or the making of permanent improvements on the real property owned by such corporation, for which it may create a debt not exceeding ten thousand dollars, secured by mortgage on the real property of the corporation. The directors who vote therefor are personally liable for any debt contracted or incurred in violation of this section. [1907, ch. 126, § 1; R. C. 1905, § 4608; Civ. C. 1877, § 564; R. C. 1899, § 3201.]

§ 5116. Income and expenses. Agricultural fair corporations are not conducted for profit and have no capital stock or income other than that derived from charges to exhibitors and fees for concessions, which charges together with the term of membership and the mode of acquiring the same must be provided in their by-laws. Such charges and fees must never be greater than to raise sufficient money to discharge the debt for the real estate and the improvements thereon and to defray the current expenses of fairs and the creation of a sinking fund not exceeding five thousand dollars and for carrying on the business of such corporation; provided, that agricultural fair corporations may also be organized by three or more persons as in the case of other corporations, with all the rights, privileges and liabilities appertaining to such corporations under the corporation laws of this state, including such rights and privileges as are specified in this and the two preceding sections. [1907, ch. 126, § 2; R. C. 1905, § 4609; Civ. C. 1877, § 505; 1879, ch. 8, § 1; R. C. 1899, § 3202.]

CHAPTER 25.

STATE POULTRY ASSOCIATION.

§ 5117. Appropriation. There is hereby appropriated out of the funds of the state treasury not otherwise appropriated, the sum of three hundred dollars annually, to be expended by the North Dakota poultry association in payment of premiums and special awards in connection with its annual exhibits. [1907, ch. 184, § 1.]

§ 5118. Annual exhibition. For the purpose of promoting, improving and increasing the poultry industry, an annual exhibition shall be held subject to the conditions hereinafter named. [1907, ch. 184, § 2.]

§ 5119. Conditions to be complied with. The present North Dakota poultry association, organized under the general laws of this state in relation to corporations, is hereby created as the North Dakota state poultry association; provided, however, that the state shall never become liable for any of the debts or liabilities of said association. The association shall adopt and file with the secretary of state an irrevocable by-law consenting, and providing that its board of directors shall consist of ten persons; that the commissioner of agriculture and labor shall ex-officio constitute one member of said board of directors. [1907, ch. 184, § 3.]

§ 5120. Appointment and duties of executive committee. The board of directors of such institution shall appoint an executive committee which shall keep an accurate account of the expenditures of all moneys appropriated to it by the state and all other receipts and expenditures and shall collect all information in their power in relation to the poultry industry in the state, and report the same, together with a statement of their doings, to the governor on or prior to the first day of January each year following the holding of the annual exhibition, and by the governor laid before the legislative assembly. All moneys hereby appropriated shall be paid over to the treasurer of the association on the order of the president, attested by the secretary. [1907, ch. 184, § 4.]

CHAPTER 26.

BUILDING AND LOAN ASSOCIATIONS.

§ 5121. How formed. Any ten or more persons may form a corporation for the purpose of doing business as a building and loan association in the manner provided in this chapter, and, except as otherwise provided, the provisions of articles one to twelve, inclusive, of chapter twelve of this code shall be applicable to such corporation; provided that the term of corporate existence of any such association may be renewed for a term of years, not exceeding the period limited by law, at any regular directors' meeting of such corporation by a two-thirds vote of the directors of said corporation, and the certificate of the chairman and secretary of such directors' meeting, evidencing such vote and renewal and filed with the secretary of state shall be effectual to accomplish such renewal, and shall be recorded by the secretary of state in the book of corporations, and thereupon the terms of the existence of such corporation shall be renewed for the term provided by said vote and certificate. Such corporation may do business outside of the state if it shall have expressed its intention so to do in its articles of incorporation, and no foreign building and loan association or corporation organized to do business as a building and loan association in any foreign state shall be authorized to transact any business as such corporation in the state of North Dakota until they shall have first deposited with the state treasurer lawful money of the United States, or bonds, securities or other evidences of indebtedness owned and held by such foreign corporation in the amount of twenty-five thousand dollars, the sufficiency of said bonds or mortgages so deposited to be approved by the state treasurer, and such moneys, bonds or securities so deposited shall be subject to assessment and the levy and collection of taxes against the same in the same manner as if said property was owned and controlled by a resident of the state of North Dakota, and no business shall be transacted in the state of North Dakota by any such foreign corporation until they have deposited with the state treasurer the moneys or securities hereinbefore mentioned and secured the treasurer's receipt for such deposit. The said moneys or securities so deposited shall be surrendered to the corporation depositing the same whenever they shall present the certificate of the public examiner that all liabilities on the part of such corporation to any citizen of the state have been fully discharged, and not otherwise; provided, however, that for the purpose of this act any foreign corporation which issues certificates or contracts to citizens of this state whereby it agrees that in consideration of certain stipulated monthly payments to said corporation it will either buy or build a home, or loan money upon real estate, shall be considered and held to be foreign building and loan associations. [1913, ch. 107; 1907, ch. 56; R. C. 1905, § 4610; 1899, ch. 31; R. C. 1899, § 3203.]

History, objects and powers of building and loan associations and membership and its rights and obligations. 69 Am. Dec. 158.

Validity and effect of statute requiring deposit of securities by building and loan association as a prerequisite to the right to transact business. 9 L.R.A.(N.S.) 461.

§ 5122. When capital stock paid in. Lien on shares. Series. Withdrawals. The capital stock of any corporation formed pursuant to this chapter shall be paid in at such times, in such amounts and at such places as the by-laws shall appoint; every share of stock shall be subject to a lien for the payment of unpaid installments and other charges incurred thereon under the provisions of the by-laws and the by-laws may prescribe the form and manner of enforcing such lien; new shares of stock may be issued in lieu of shares withdrawn or forfeited. The stock may be issued in one or more successive series in such amounts as the board of directors or stockholders may determine and any stockholder wishing to withdraw from the corporation

shall have power to do so by giving thirty days' notice of his intention to withdraw, when he shall be entitled to receive the amount paid in by him and such proportion of the profit as the by-laws may determine, less all fines and other charges; provided, that at no time shall more than one-half of the funds in the treasury of the corporation be applicable to the demands of withdrawing stockholders without the consent of the board of directors; and that no stockholder shall be entitled to withdraw whose stock is held in pledge for security. Upon the death of the stockholder his legal representatives shall be entitled to receive the full amount paid in by him and legal interest thereon after deducting all charges that may be due on stock. No fine shall be charged to a deceased member's account after his decease, unless the legal representatives of such decedent assume the future payments on the stock. [R. C. 1905, § 4611; 1885, ch. 34, § 2; 1887, ch. 34, § 1; 1889, ch. 40, § 11; R. C. 1895, § 3204.]

Withdrawing member must pay fines and penalties prescribed by by-laws. *Beach v. Loan Asso.*, 10 S. D. 549, 74 N. W. 889.

Cannot adopt by-law for forfeiture of shares for nonpayment of dues and fines, without sale of the shares. *Mueller v. Madison Loan Co.*, 11 S. D. 43, 75 N. W. 277.

Nature and validity of fines in building and loan associations. 35 L.R.A. 215.

Withdrawals from building and loan associations. 35 L.R.A. 289.

Power of associations to borrow money to pay withdrawing member. 20 L.R.A. (N.S.) 393.

§ 5123. Loaning funds. The officers may hold stated meetings at which the money in the treasury if equal to the amount of one share in stock in such corporation shall be offered for loan in open meeting and the stockholder who shall bid the highest premium for the preference or priority of loan shall be entitled to receive a loan of the amount of the par value of one share of stock for each share of stock held by him. It is also further provided that any such corporation may loan any of the funds in its treasury, at such rates of premium and interest, and to any stockholder, at such times and in such manner, as shall be fixed or provided for by the terms of the articles of incorporation, charter or by-laws of such corporation, anything to the contrary herein contained, notwithstanding. Any loans that shall have heretofore been made by any building and loan association, organized under the laws of the state of North Dakota and pursuant to the terms of its articles of incorporation or by-laws, are hereby declared to be lawful and are not ultra vires or usurious; provided, that the provisions of this article shall not apply to foreign building and loan associations doing business within the state. [R. C. 1905, § 4612; 1885, ch. 34, § 4; 1887, ch. 34, § 3; 1899, ch. 32, § 1; R. C. 1899, § 3205.]

Minimum premium at which money can be loaned may be fixed. *Co-operative Loan Asso. v. Fawick*, 11 S. D. 589, 79 N. W. 847.

Fixed premiums or fixed minimum of premiums in building and loan associations. 35 L.R.A. 244.

§ 5124. Loans evidenced by note, secured by mortgage and pledge of shares. Conditions of mortgage. For every loan made a note secured by first mortgage of real estate shall be given, accompanied by a transfer and pledge of the shares of the borrower. The shares so pledged shall be held by the corporation as collateral security for the performance of the conditions of such note and mortgage. The note and mortgage shall recite the number of shares pledged and the amount of money advanced thereon and shall be conditioned for the payment of the dues on such shares and the interest and premium upon the loan, together with all fines and payments in arrears, until such shares reach the ultimate par value of the shares of stock of the corporation, or the loan is otherwise canceled and discharged; provided, that the shares without other security may in the discretion of the directors be pledged as security for loans to an amount not exceeding their value as adjusted at the last adjustment and valuation of shares before the time of the loan. If the borrower neglects to offer security satisfactory to the directors within the

time prescribed by the by-laws his right to the loan shall be forfeited and he shall be charged with one month's interest and one month's premium at the rate bid by him, together with all expenses, if any, incurred; and the money appropriated for such loan may be reloaned at the next or any subsequent meeting. [R. C. 1905, § 4613; R. C. 1895, § 3206.]

Right to apply payments made on stock in a building and loan association upon a mortgage given for a loan by the same member. 29 L.R.A. 120.

Provision in mortgage for payment of fines to building and loan associations. 35 L.R.A. 220.

§ 5125. Loans may be repaid at any time. Option of borrower. A borrower may repay a loan at any time upon application to the corporation, whereupon, on settlement of his account, he shall be charged with the full amount of the original loan together with all installments of interest, premiums and fines in arrears, and shall be given credit for the withdrawing value of his shares pledged and transferred as security; and the balance shall be received by the corporation in full satisfaction and discharge of such loan; provided, that a borrower desiring to retain his shares and membership may, at his option, repay his loan without claiming credit for such shares, whereupon the shares shall be retransferred to him, and shall be free from any claim by reason of such canceled loan. If, however, the by-laws of the corporation prescribe a different manner and different terms upon which a loan may be repaid the repayment can only be made in accordance with such by-laws. [R. C. 1905, § 4614; 1885, ch. 34, § 5; 1887, ch. 34, § 4; R. C. 1895, § 3207.]

Failure to pay monthly as agreed may render entire principal, with interest, due. *Yankton B. & L. Asso. v. Dowling*, 10 S. D. 540, 74 N. W. 438.

Loan to member; application of payments. *U. S. Loan Co. v. Shain*, 8 N. D. 136, 77 N. W. 1006; *Hale v. Cairns*, 8 N. D. 145, 77 N. W. 1010, 44 L.R.A. 261; 73 Am. St. Rep. 746; *Clark v. Olson*, 9 N. D. 364, 83 N. W. 519; *Hale v. Gullick*, 13 S. D. 637, 84 N. W. 196.

§ 5126. No premium deemed usurious. No premiums, fines or interest on premiums that may accrue to the corporation according to the provisions of this chapter shall be deemed usurious. [R. C. 1905, § 4615; 1885, ch. 34, § 6; R. C. 1895, § 3208.]

Payment of bonus agreed upon not usury. *Yankton B. & L. Asso. v. Dowling*, 10 S. D. 540, 74 N. W. 438; *Vermont L. & T. Co. v. Whithed*, 2 N. D. 82, 49 N. W. 318.

§ 5127. May purchase real estate. Every corporation may purchase at any sale, public or private, any real estate upon which it may have a mortgage, judgment lien or other incumbrance or ground rent, or in which it may have any interest, and may sell, convey, lease, or mortgage at pleasure real estate so purchased, and may purchase and hold such real estate and buildings as may be necessary for its immediate accommodation in the transaction of its business. [R. C. 1905, § 4616; 1899, ch. 32, § 2; R. C. 1899, § 3209.]

§ 5128. Minimum premium. Such corporation may in its by-laws fix a per cent premium at less than which it will not be obliged to accept loans. [R. C. 1905, § 4617; 1889, ch. 40, § 4; R. C. 1899, § 3210.]

§ 5129. Loan fund. Uses prohibited. Not less than eighty-three per cent of all monthly dues collected from the share holders of such corporation shall be put into a fund to be known as the loan fund, no part of which shall be used by the corporation for the purpose of paying its expenses, or the expense of carrying on its business, excepting interest, taxes and insurance. [R. C. 1905, § 4618; 1889, ch. 40, § 5; R. C. 1895, § 3211.]

§ 5130. Investment of unloaned funds. Any funds of such corporation, which shall remain unloaned for a period of more than thirty days and for which there is no sufficient demand, may be loaned or invested by the corporation under the provisions of its by-laws at any rate of interest allowed by law upon any security approved and accepted by the board of directors. [R. C. 1905, § 4619; 1889, ch. 40, § 7; R. C. 1895, § 3212.]

§ 5131. Power to borrow. Such corporation shall have power to borrow money under such restrictions and regulations as its by-laws may provide. [R. C. 1905, § 4620; 1889, ch. 40, § 8; R. C. 1895, § 3213.]

Power of building and loan association to borrow money to pay withdrawing members. 20 L.R.A. (N.S.) 393.

§ 5132. Retirement of unpledged shares. The board of directors of such corporation shall have power in its discretion to retire the unpledged shares of stock of such corporation at any time after the third year from the date of the issue of such stock and to enforce the withdrawal of the same in such manner and under such regulations as it may deem best for the interest of the corporation. It shall determine by lot or in any other impartial manner which shares shall be thus retired, but no unmatured stock shall be retired while any matured stock remains in force. [R. C. 1905, § 4621; 1889, ch. 40, § 9; R. C. 1895, § 3214.]

§ 5133. Voluntary withdrawals. The by-laws of such corporation may provide for the voluntary withdrawal and cancellation at or before maturity of shares of stock not borrowed on; provided, that such withdrawal and cancellation shall be pro rata among the shares of the same series of stock. [R. C. 1905, § 4622; 1885, ch. 34, § 18; R. C. 1895, § 3215.]

Withdrawals from building and loan association while a solvent going concern. 49 L.R.A. (N.S.) 1129.

Withdrawals as affected by insolvency or winding up of business. 49 L.R.A. (N.S.) 1142.

§ 5134. Annual report. Contents. Any building and loan association doing business in this state shall annually make a true and correct statement, verified by the oath of its president or secretary, setting forth its actual financial condition on the thirtieth day of June of the current year, which shall be forwarded to the state examiner not later than the first day of August of the same year and shall contain the following information:

1. The amount of authorized capital and the par value of each share of stock.
2. The number of shares sold during the year.
3. The number of shares canceled and withdrawn during the year.
4. The number of shares in force at the end of the year.
5. A detailed statement of the receipts and disbursements during the year.
6. A detailed statement of the assets and liabilities at the end of the year.

Such report shall also show the total amount received as dues on stock under each separate class or kind of stock and all deductions therefrom for expenses, withdrawals, cancellations, forfeitures, refunded or otherwise, and the amounts, if any, of profits credited to stock or subject to such credit, the number of shares in force of each issue or series and the amount expended during the year in payment of salaries of officers, clerks, agents and all other employees, the amount expended for traveling expenses, rent, postage, including telegraph and express charges, printing, books and stationery, office supplies, office furniture, advertising, commissions paid agents or other persons and all other items of expense. In addition such annual reports shall contain a statement of the business of the corporation for the preceding year, showing the amount of resources included in mortgage loans, the amount of loans on stock of the association, the amount of loans on other securities specifying the kind of such securities, the amount of unpaid dues, fines, premiums and interest, the amount due from agents, the amount due from banks, the amount invested in real estate and obtained on foreclosure, the amount invested in furniture and fixtures, the amount of cash on hand and the amount of all other resources of the association not enumerated heretofore; and shall state as its liabilities the amount received from stock subscriptions, the amount due from stock delinquent in each class or kind of stock and the unpaid fines on such stock, the amount set aside as an expense fund from each kind or class of stock, the amount of undivided profits at the beginning of the year, the amount received as interest, premiums, fees, fines or other sources as

profits during the year, the amount of such interest and interest delinquent at the end of the year, the amount of all bills payable and the amount of all other liabilities at the close of the year. Within thirty days from the filing of the report a statement of the assets and liabilities shall be published at least once in some newspaper in the city or town in which the association has its principal place of business. All statements herein required to be made shall be uniform and in accordance with a form to be prescribed by the state examiner, and shall correctly show the proportion which the entire expenses of the association for the term reported bear to its gross earnings for that term. All reports required of building and loan associations organized under the laws of this state are also required of all foreign building and loan associations doing business in this state, and all the provisions of this chapter relating to such reports, the filing thereof and the fees therefor shall apply to such foreign building and loan associations. [R. C. 1905, § 4623; R. C. 1895, § 3216.]

§ 5135. Penalty for not making report. Certificate of authority. If any such association shall fail to furnish to the state examiner the report required by this chapter at the time required, it shall forfeit the sum of twenty-five dollars for every day such report shall be delayed or withheld and the attorney-general on the application of the state examiner shall bring an action to recover such penalty. After receiving such annual report the state examiner, if satisfied that such corporation has complied with all the provisions of this chapter and is entitled to do business in this state, shall issue his certificate, stating the compliance with such provisions, and that such corporation is entitled to do business in this state, which certificate shall be in force for the period of one year, unless sooner rescinded as provided in this chapter. The state examiner shall also issue such certificate to a domestic corporation, which commenced business at some intervening period in any year which has complied with the law in regard to its articles of incorporation and in all other respects except the filing of such report. [R. C. 1905, § 4624; R. C. 1895, § 3217.]

§ 5136. Examination by state examiner. Fee. It shall be the duty of the state examiner, as often as he may deem necessary and at least once in each year, to examine every building and loan association incorporated under the laws of this state, and for that purpose he shall have and exercise over such corporation, its business, officers, directors and employees, all the power and authority conferred upon him by the laws of this state over banks and other moneyed corporations; provided, that he shall not have the power to suspend the operation of any such corporation, except in the manner provided in this chapter. The state examiner shall have the same supervision and control over the business within this state of foreign corporations of like kind, doing business in this state. Upon the completion of any examination of any association made by the state examiner or under his direction, the association so examined shall pay to the examiner a fee to be determined as follows, viz.: For the first one hundred thousand dollars of assets, a fee of twenty dollars, and for each additional one hundred thousand dollars of assets, or major portion thereof, an additional fee of ten dollars. [R. C. 1905, § 4625; R. C. 1895, § 3218; 1901, ch. 46; 1905, ch. 59.]

§ 5137. Action against insolvent corporations. If it shall appear to the state examiner from any examination made by him or from the annual report aforesaid, that any domestic or foreign building and loan association is violating the law, or that it is conducting business in an unsafe, unauthorized or dishonest manner, he shall by an order under his hand and seal of office addressed to such corporation direct compliance with the requirements of the law; and whenever such corporation shall refuse or neglect to make such report or account as may be lawfully required, or to comply with such order as aforesaid, the state examiner shall file a statement in writing with the

attorney-general, setting forth the facts or particulars in which such alleged violation or refusal consists, which statement shall be prima facie evidence of such violation or refusal, whereupon the attorney-general shall institute such proceedings against such corporation as are provided by law in case of insolvent corporations, or such other proceedings as the occasion may require. It is further provided that in the event of the payment or foreclosure or redemption under foreclosure of any and all mortgages held by such insolvent foreign or domestic corporations, or their assignees, the amount paid for dues and premiums on stock pledged as security for such loan shall be credited on such mortgage and the obligation thereby secured. [R. C. 1905, § 4626; 1899, ch. 33; R. C. 1899, § 3219.]

Effect of insolvency of building and loan association upon the rights and liabilities of members. 61 Am. St. Rep. 24.

When may receivers for building and loan association be appointed. 72 Am. St. Rep. 47.

§ 5138. Conditions on which foreign corporations can do business in this state. No foreign building and loan association or corporation shall do business in this state, until:

1. It shall have first complied with the provisions of sections 5238 and 5240.
2. It shall have obtained from the state examiner a certificate authorizing it to do business in this state.

Upon application by any foreign building and loan corporation or association to do business in this state, and thereafter whenever the state examiner shall deem it prudent for the public interest he shall examine into its financial condition and method of doing business and for that purpose, if he deems it necessary he may visit such corporation, or cause the same to be visited by a competent person appointed by him, and he may demand from such corporation or association, in advance, his fees and necessary expenses for making such examination and may refuse to make the same or to issue any certificate unless such fees and expenses are paid, and if a certificate has already been issued may rescind the same. For the purpose of making such examination the persons making the same shall have free access to all the books and papers of the corporation that relate to its business and to the books and papers kept by any of its agents and may summon as witnesses and examine under oath the directors, officers, agents and trustees of any such corporation and any other person in relation to its affairs, transactions and condition. [R. C. 1905, § 4627; R. C. 1895, § 3220.]

§ 5139. Certificate to foreign corporation. If he is satisfied from such examination that such corporation is solvent and its method of doing business is such as is likely to be beneficial to all of its members alike, he shall issue a certificate, authorizing it to do business in this state, if one is not already in force, which certificate shall be in force for one year, or until the time required for the filing of the annual report unless sooner rescinded. [R. C. 1905, § 4628; R. C. 1895, § 3221.]

§ 5140. Revocation of authority. If the state examiner is of opinion upon examination or other evidence that a foreign building and loan association doing business in this state is in an unsound condition, or if it has failed to comply with the law, or if it, its officers or agents, refuse to submit to examination, or to perform any legal obligation in relation thereto, he shall revoke or suspend its certificate of authority and shall cause notification thereof to be published three times, once in each week, for three successive weeks, in some newspaper published at the seat of government and shall mail a copy to such association or corporation at its home office and no new business shall thereafter be done by it or its agents in this state while such default or disability continues, nor until its authority to do business is restored by the examiner. [R. C. 1905, § 4629; R. C. 1895, § 3222.]

§ 5141. Selling stock of foreign corporation without authority, a misdemeanor. Any officer, director or agent of any foreign building and loan

association, or any person whatever, who shall in this state solicit subscriptions to the stock of such association, or who shall sell or issue, or knowingly cause to be sold or issued to a resident of this state any stock of such association, while such association shall not hold the certificate of the state examiner, authorizing it to do business in this state as herein prescribed, or before such association has complied with all the provisions of this chapter or when such association shall have been notified that its authority to do business in this state has been revoked, as hereinbefore provided, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or by imprisonment of not less than ten days nor more than six months or by both such fine and imprisonment, in the discretion of the court. [R. C. 1905, § 4630; R. C. 1895, § 3223.]

§ 5142. **Same. Domestic corporation.** Any officer, director or agent of any building and loan association incorporated under the laws of this state, or any other person whatever, who shall sell or issue, or knowingly cause to be sold or issued to any person any stock of such association, while such association shall not have a certificate of the state examiner authorizing it to do business as herein prescribed shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars and not more than five hundred dollars, or by imprisonment of not less than ten days nor more than six months, or by both such fine and imprisonment in the discretion of the court. [R. C. 1905, § 4631; R. C. 1895, § 3224.]

§ 5143. **Reincorporation not necessary.** All corporations heretofore organized in this state and doing business as building and loan associations shall comply with and be subject to all the provisions of this chapter and shall be entitled to all the privileges and benefits thereof without reincorporating. [R. C. 1905, § 4632; R. C. 1895, § 3225.]

CHAPTER 27.

RIGHT OF WAY FOR TELEPHONE AND ELECTRIC LINES.

§ 5144. **Right of way for telephone lines.** The board of county commissioners of any county, board of supervisors of any township, board of aldermen of any incorporated city, or board of trustees of any town or village in this state, may, when deemed for the best interest of their respective municipal corporations, grant to any person, who is a resident of this state, or to any company or corporation, organized under the laws of this state, or to any company or corporation duly licensed to do business within this state, the right of way for the erection of a telephone line over or upon any public grounds, streets, alleys or highways under the care or supervision of such board granting such right of way. Such right of way shall be granted subject to such conditions, restrictions and regulations as may be prescribed by the board granting the same, as to what grounds, streets, alleys or highways said lines shall run upon, over or across, and as to the places where the poles to support the wires shall be located, and all grants of right of way for the construction of telephone lines heretofore made, in accordance herewith, by any board above mentioned, are hereby made valid. [R. C. 1905, § 4633; 1899, ch. 156; R. C. 1899, § 3225a; 1903, ch. 196.]

City authorized to grant telephone company right to erect, maintain and operate telephone system in streets. Kirby v. Citizens' Teleph. Co., 17 S. D. 362, 97 N. W. 3, 2 A. & E. Ann. Cas. 152.

Necessity of consent of local authorities to construction of telephone line in city. Missouri R. Teleph. Co. v. Mitchell, 22 S. D. 191, 116 N. W. 67.

City was authorized to require as condition to grant of telephone franchise that company pay annually to city 10 per cent of its gross receipts above sum specified. Mitchell v. Dakota Central Teleph. Co., 25 S. D. 409, 127 N. W. 582.

Telephone companies are not empowered to create public nuisances, or interfere with use of highways by improper erection of poles and wires. *Snee v. Clear Lake Teleph. Co.*, 24 S. D. 361, 123 N. W. 729.

Telegraph and telephone poles and wires as additional servitude on the public streets and highways. 49 Am. Rep. 14; 54 Am. Rep. 290; 106 Am. St. Rep. 260.

Privilege of using street for telegraph line as a contract within provision against impairing obligation. 50 L.R.A. 146.

Right to require telegraph or telephone wires to be placed underground. 31 L.R.A. 806; 14 L.R.A.(N.S.) 654.

§ 5145. Right of way for electric railways. The board of county commissioners of any county, board of supervisors of any township, or board of trustees of any town or village in this state may, when deemed for the best interest of their respective municipal corporations, grant to any person, persons, company or corporation the right of way for the construction and operation of an electric or other railway in, over or upon any public grounds, streets, alleys or highways under the care or supervision of such board granting such right of way. [R. C. 1905, § 4634; 1905, ch. 153.]

Street railroads as additional servitude in streets. 28 Am. St. Rep. 235; 47 Am. St. Rep. 272.

Privilege of using street for street railway as a contract within provision against impairing obligation. 50 L.R.A. 143.

Liability of municipality in damages for repeal, or interference with enjoyment, of street franchise. 36 L.R.A.(N.S.) 861.

Municipal power to impose conditions when giving consent to street railway. 36 L.R.A. 33.

Power of municipality to prevent laying an additional street car track under a franchise originally granting the right to lay double tracks. 36 L.R.A.(N.S.) 850.

Estoppel of town or municipality to object to street railway in street by acquiescence or consent to its construction or use. 7 L.R.A.(N.S.) 1187.

CHAPTER 28.

BANKING CORPORATIONS.

§ 5146. Creation of banking department. State banking board. (1) There is hereby created a department of banking which shall have charge of the execution of all laws relating to state banks, savings banks, trust companies, building and loan associations, mutual investment corporations, mutual savings corporations and other financial corporations heretofore or hereafter organized or doing business under the laws of the state of North Dakota, and engaged wholly or in part in the receiving of deposits or the selling of their certificates of indebtedness or other obligations to the public. Such department shall be designated as the "department of banking," and it shall be under the management and control of the state banking board and a chief officer to be known as the state examiner.

(2) The state banking board shall consist of the governor, the secretary of state and the attorney-general; and ex-officio the president and secretary of the corporation known as the North Dakota bankers' association, so long as said corporation shall maintain its corporate capacity. None of the members of said board shall receive any compensation for their services other than that now provided by law and the two members last named shall be entitled to attend all meetings of said board and to participate in its deliberations but shall not vote in the deciding of questions coming before it. The governor shall be the chairman of said board and the attorney-general shall be ex-officio the attorney for the board, and the state examiner shall be its secretary. A majority of the first three members shall constitute a quorum. Said board shall hold regular meetings on the first Wednesdays of January, April, July and October of each year, at the office of the department in the state capitol at Bismarck, and special meetings at the call of the governor.

(3) The said board shall have, and there is hereby vested in it, the power

to make such rules and regulations for the government of such corporations, as in its judgment may seem wise and expedient, which rules shall not conflict with any laws of the state of North Dakota or of the United States. It shall be the duty of said board at each regular meeting and at any special meeting called for that purpose, to examine all reports made by said corporations relating to their condition, and all reports of regular and special examinations made by the state examiner and deputy examiners from his department and filed with said board during the preceding quarter or such period as shall have elapsed since the last meeting of said board, and to approve or disapprove the same, and to make and enforce such orders as, in its judgment, may be necessary or proper to protect the public and particularly the depositors or creditors of said institutions. Said board and the state examiner and deputy examiners shall have the power to subpoena witnesses, administer oaths, and generally to do and perform any and all acts and things necessary to the complete performance of the duties herein imposed, and to enforce all of the provisions of this article, and for the purpose of enabling them to perform all the duties imposed upon them, the provisions of section 8200 shall be held as applicable to their proceedings. Any and all orders made by said board shall be immediately operative and remain in full force until modified, amended or annulled by such board, or by a court of competent jurisdiction, in an action to be commenced by the party against whom such order may have been issued. Said board shall keep a full and complete record of all its proceedings and of all orders made by it, and the records of the state banking board, and of the state examiner, and of any and all reports made by or filed with the board or the state examiner shall, under proper restrictions, during regular business hours, be open to inspection and examination by stockholders, depositors, creditors and sureties on any bonds of any of the said corporations or on the bonds of any officer or employe thereof. The said board is hereby vested with the power and authority to appoint by its own order, receivers for insolvent corporations as defined in this article, and such receivers shall have the same power and authority, and their acts the same validity as if appointed under and by the direction of a district court, but nothing herein contained shall be construed so as to take away from the courts the power to appoint receivers of such institutions at any stage of the proceedings and thus terminate the receivership ordered by the board.

(4) The state examiner shall, under the direction and subject to the orders of the state banking board, exercise a constant supervision, either personal or through the deputy examiners hereinafter provided for, over the business and affairs of all the financial corporations placed by this act within the jurisdiction of the state banking board and shall, personally or through the deputy examiners herein provided for, visit at least twice each year, all of said corporations, inspecting and verifying the assets and liabilities of each, and so far investigate the character and value of the assets of each such corporation as to ascertain with reasonable certainty that the values are correctly carried on its books. He shall further investigate the methods of operation and conduct of said corporations and their systems of accounting, to ascertain whether such methods are in accordance with the law and sound banking usage and principles, and report the findings, conclusions and recommendations upon such examinations to the banking board and put into force and effect such orders and directions as it may make in reference thereto.

(5) The state examiner shall be ex-officio secretary of the state banking board, and he shall keep all proper records and files pertaining to the duties and work of his office and the proceedings of the board and shall report to the board annually, touching on all his official acts and those of his deputy examiners, giving abstracts of statistics and of the conditions of the various

institutions to which his duties relate, and making such recommendations and suggestions as he may deem proper, which report shall be printed and bound in a satisfactory and substantial manner and distributed among all of the state banks and other corporations within his jurisdiction. The state banking board shall make biennial reports the same as other state officers and boards, in which there shall be included with a full report of its proceedings, a summary or abstract of the reports of the state examiner.

(6) The state examiner may, subject to the approval of the state banking board, appoint and at pleasure remove, not more than ten (10) deputy examiners and one stenographer and such other employes as may in the judgment of the state banking board, be necessary for the proper discharge of the business of his department. Each deputy examiner shall give bond to the state in the sum of ten thousand dollars to be approved and filed in the same manner as the bond of the state examiner. The state examiner shall select and designate one of said deputy examiners to be the office deputy and to act during the absence or disability of the state examiner, and in such cases the deputy examiner so authorized shall have charge of the office and administer its affairs. Six of the said deputy examiners so appointed shall have had at least three years' active experience in bank work within this state and shall furnish such evidence of qualification as expert accountants and general fitness for the duties as may be demanded by the banking board.

(7) For the purpose of the better administration of his department the state examiner shall, immediately after the taking effect of this act, proceed to divide the state into six districts which shall have as nearly as may be, banks and other financial institutions of an equal number, and arranged with reference to convenience and economy in travel and shall at once designate the district in which each of his six deputy examiners shall make examinations, and such deputy examiners shall confine their work, as near as may be, to the examination of corporations located within their respective districts, except that any such deputy examiners may be temporarily transferred to other districts, or more than one deputy examiner may be assigned temporarily to any district when the proper performance of the work therein would indicate the necessity for so doing. No deputy examiner shall have any interest directly or indirectly in any corporation within the jurisdiction of the banking department, nor in any corporation engaged wholly or in part in the writing or issuing of bonds of or for any such corporation or of the officers or employes of any such corporations.

(8) Each deputy examiner herein provided for shall be under the direct orders and instructions of the state examiner and shall make report to him in such form as he or the banking board may prescribe during or immediately after the completion of the examination of each financial institution examined by him, with such recommendations and suggestions as he may deem advisable.

(9) The salary of each deputy examiner shall be two thousand dollars per annum and in addition thereto he shall be paid his actual and necessary travelling expenses when engaged in the discharge of his duties; the salary of the stenographer shall be twelve hundred dollars per annum and the salaries of other clerks or assistants herein provided for, shall be fixed by the state banking board. [1911, ch. 55, § 1; R. C. 1905, § 4635; 1905, ch. 165, § 1.]

See section 5204.

As to biennial reports by the state banking board. See sections 95, 97, 98, 633.

State banking law is a proper exercise of the internal police power of the state. *State ex rel. Goodsill v. Woodmansee*, 1 N. D. 246, 46 N. W. 970.

§ 5146a. Appropriation. There is hereby annually appropriated from any moneys in the state treasury not otherwise appropriated, the sum of twenty-nine thousand dollars or so much thereof as may be necessary for the pay-

ment of the salaries and expenses of the persons to be appointed under the provisions of this act. [1911, ch. 55, § 5.]

The words "this act" as here used mean sections 5146, 5149, 5155, 5179.

§ 5146b. Repeal. All acts and parts of acts inconsistent with or repugnant to this act are hereby repealed; provided, however, that this act shall not affect any offense committed, any right acquired, or any obligation imposed by or under any law in force up to the date of the taking effect of this act. But all such offenses, rights and liabilities shall remain and be prosecuted, maintained or defended under the law existing at the time such offense was committed or such right or liability accrued. [1911, ch. 55, § 6.]

As to the words "this act," see note to section 5146a.

§ 5147. Who may form. Associations for carrying on the business of banking under this chapter may be formed by any number of natural persons, not less than three, two-thirds of whom shall be residents of this state. They shall enter into articles of association which shall specify in general terms the object for which the association is formed, and may contain any other provisions, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. These articles shall be signed and acknowledged by the persons uniting to form the association and shall be filed in the office of the secretary of state. [R. C. 1905, § 4636; 1890, ch. 23, § 1; 1893, ch. 27, § 1; R. C. 1899, § 3226; 1905, ch. 165, § 2.]

Banking corporation organized before legislative authority so to do, is corporation de facto on receiving deposits after such authority is given, although not filing required certificate. *Mason v. Stevens*, 16 S. D. 320, 92 N. W. 424.

Power to prohibit or regulate banking business by individuals. 15 L.R.A. 477; 5 L.R.A. (N.S.) 874; 25 L.R.A. (N.S.) 1217.

§ 5148. Organization certificate. Contents. The persons uniting to form such an organization shall, under their hands, make an organization certificate which shall specifically state:

1. The name assumed by such association, which name shall not be the name of any other bank in the state, nor of any bank heretofore incorporated in the state of North Dakota or in the territory of Dakota.

2. The place where the business of discount and deposit is to be carried on.

3. The amount of the capital stock and the number of shares into which the same shall be divided.

4. The names and places of residence of the shareholders and the number of shares held by each of them.

5. The period at which such bank shall commence and terminate business. [R. C. 1905, § 4637; 1890, ch. 23, § 2; 1893, ch. 27, § 2; R. C. 1895, § 3227; 1905, ch. 165, § 3.]

§ 5149. Acknowledgment and record. The organization certificate shall be acknowledged before a clerk of some court of record, or a notary public, and shall be, together with the acknowledgment thereof, authenticated by the seal of such court or notary, recorded in the office of the register of deeds in the county where such banks may be established, and such certificate thus authenticated shall be transmitted to the secretary of state who shall record and carefully preserve the same in his office, certify the facts to the state banking board and issue a certificate of authority to the corporation, which certificate of authority shall be transmitted to and held by the state examiner until an examination is made and the certificate of the state examiner or a deputy examiner procured, to the effect that the capital stock has been paid in full, and that all conditions of the law have been strictly complied with. [1911, ch. 55, § 2; R. C. 1905, § 4638; 1890, ch. 23, § 3; 1893, ch. 27, § 3; R. C. 1899, § 3228; 1905, ch. 165, § 4.]

§ 5150. Powers. Upon making and filing articles of association and an organization certificate, the association shall become, as from the date of the execution of the same, a body corporate, and as such and in the name designated in the certificate, it shall have the power:

1. To adopt and use a corporate seal.
 2. To have succession for a period of twenty-five years from its organization, unless it is sooner dissolved, according to the provisions of this chapter, or unless its franchise becomes forfeited by some violation of law.
 3. To make contracts.
 4. To sue and be sued.
 5. To elect or appoint directors, two-thirds of whom must be residents of this state, and by its board of directors to appoint a president and vice-president, who shall be members of said board, a cashier and assistant cashier and such other employes as may be required; define their duties, require bonds of them and fix the penalty thereof; dismiss such officers or any of them, and appoint others to fill their places.
 6. To provide by its board of directors, by-laws, not inconsistent with the laws of this state, to regulate the manner in which its stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its business conducted and the privileges granted it by law exercised and enjoyed.
 7. To exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking, by discounting and negotiating promissory notes, bills of exchange, drafts and other evidences of debt, by receiving deposits, by buying and selling exchange, coin and bullion, by loaning money upon real or personal security, or both; but no association shall transact any business, except such as incidental and necessarily preliminary to its organization, until it has been authorized by the secretary of state to commence the business of banking, and the secretary of state may withhold from any association his certificate authorizing the commencement of business, whenever he has reason to suppose that the shareholders have formed the same for any other than legitimate objects as contemplated by this chapter.
 8. No such association shall have or carry among its assets at any one time loans dependent wholly upon real estate security in any amount exceeding twenty-five per cent of total loans and discounts, and then only upon first mortgages which shall not exceed forty per cent of the actual cash value of the property mortgaged, and in selling or disposing of said loans so made upon real estate security no such association shall have power to guarantee the payment or collection thereof, and any such guaranty made in violation of this provision shall not be binding upon such association but shall be upon the person or officer making the same. [1913, ch. 51; R. C. 1905, § 4639; 1899, ch. 28, § 1; R. C. 1899, § 3229; 1905, ch. 165, § 5.]
 5. President of state bank must be stockholder thereof. *McCarty v. Kepreta*, 24 N. D. 395, 48 L.R.A.(N.S.) 65, 139 N. W. 1012.
 - Liability of bank on negotiable paper executed by officer or agent. 21 L.R.A.(N.S.) 1079.
 - Implied power of cashier of bank to sell or lease property. 31 L.R.A.(N.S.) 737.
 - Power of bank officer to bind bank by agreement that liability of party to commercial paper shall not be enforced. 28 L.R.A.(N.S.) 501.
 7. Right of bank to engage in business to save debt. 27 L.R.A.(N.S.) 243.
 - Liability of directors to bank for acts in excess of their powers. 55 L.R.A. 758.
 - for default or negligence of cashier. 4 L.R.A.(N.S.) 597.
 - in case of bad loans or investments. 55 L.R.A. 762; 39 L.R.A.(N.S.) 173.
- § 5151. Limiting the powers of its investment in banking house furniture, fixtures, including the lot or parcels of land on which banking house is located. It shall be unlawful for any corporation having banking powers and a capital stock of twenty thousand dollars or more, to invest over thirty per cent of such stock and unimpaired surplus in banking house furniture and fixtures, including the lot, piece or parcel of land on which such banking house is located; provided, that similar corporations with a capital stock of ten thousand dollars and less than fifty thousand dollars may invest forty

per cent of its stock and unimpaired surplus, and those with fifteen thousand dollars and less than twenty thousand dollars stock may invest thirty-five per cent of its capital stock and unimpaired surplus in such banking house furniture, fixtures and lot, piece or parcel of land on which such banking house is located. [1913, ch. 52, § 1; 1911, ch. 54, § 1; R. C. 1905, § 4640; 1899, ch. 28, § 2; R. C. 1899, § 3230; 1905, ch. 165, § 6.]

§ 5152. Powers as to other real estate. It shall have the power to purchase, hold and convey such other real estate as shall be mortgaged to it in good faith by way of security for loans, or for debts previously contracted.

Such as may or shall be mortgaged to it in good faith in satisfaction of debts previously contracted in the course of its dealings.

Such as it shall purchase at sales under judgments, decrees or mortgages held by the corporation, or shall purchase to secure debts due it; but no banking corporation shall hold the possession of any real estate under mortgage, or title and possession of any real estate purchased to secure indebtedness, for a longer period than five years from the date of acquiring title thereto. And all real estate heretofore and hereafter conveyed by any such banking corporation, shall be deemed to have been acquired, held and disposed of in conformity with the provisions of this chapter. [1913, ch. 52, § 2; 1911, ch. 54, § 2; R. C. 1905, § 4640; 1899, ch. 28, § 2; R. C. 1899, § 3230; 1905, ch. 165, § 6.]

Authorizes bank to receive real property deeds as security for past indebtedness. *Merchants State Bank v. Tufts*, 14 N. D. 238, 116 Am. St. Rep. 682, 103 N. W. 760.

§ 5153. Penalty. Any banking corporation violating the provisions of this act [sections 5151-5154] shall be subject to a fine of not more than five hundred dollars and cancellation of its organization certificate. [1913, ch. 52, § 3; 1911, ch. 54, § 3.]

§ 5154. Duty of state examiner. It shall be the duty of the state examiner to enforce the provisions of this act. [1913, ch. 52, § 4; 1911, ch. 54, § 4.]

§ 5155. Capital stock. Hereafter no association shall be organized under this chapter in cities, towns or villages containing less than one thousand inhabitants with a capital stock of less than ten thousand dollars; in cities, towns or villages containing over one thousand inhabitants and less than two thousand inhabitants, with a capital stock of less than twenty thousand dollars; in cities, towns or villages of over two thousand, and not exceeding three thousand inhabitants, with a capital of less than thirty thousand dollars; in cities, towns or villages of over three thousand and not exceeding four thousand inhabitants, with a capital of less than thirty-five thousand dollars; in cities, towns or villages of over four thousand, and not exceeding five thousand inhabitants, with a capital of less than forty thousand dollars; and in cities, towns or villages of over five thousand inhabitants, with a capital of less than fifty thousand dollars. All of the capital stock of every association shall be paid in before it shall be authorized to commence business, and evidence of such payment of capital stock either in actual money or a deposit in a previously approved correspondent bank must be furnished to the state examiner or deputy examiner before the certificate of authority may be delivered. For the purpose of this section, the population of the city, town or village shall be determined by multiplying by four the total vote cast for member of congress, at the last general election held in such city, town or village; no such association having been organized to transact business in any city, town or village, and which may have sold or converted its business to a national bank, or other banking business which is continued at the same place, shall be allowed to remove its charter or its articles of incorporation to and recommence business at another place; but where it can be clearly shown that a banking association which has not changed, sold or converted its business as hereinbefore recited, is located at a place where there is not sufficient business for the profitable conduct

of a bank, such association may apply to the banking board for authority to remove its business to some other place within the state and to change its name if desired; and upon the approval of such application by the state banking board and the proper amendment of the article of incorporation, the board may issue authority for such removal and change; provided, that no such association shall be allowed to remove its business to any city, town or village without having the full amount of capital stock required by this chapter for a new organization in such city, town or village. The corporate existence of any bank or corporation heretofore organized with a capital of less than ten thousand dollars shall not be renewed unless such corporation seeking to renew its existence shall increase its capital to the amount required by this act for the organization of a new banking corporation in the city, town or village where such bank is located at the time of such renewal. When any association whose capital is less than ten thousand dollars, applies for a renewal of its corporate existence, it shall, before being permitted to continue its corporate existence, furnish satisfactory evidence through the state banking board that its articles of association have been properly amended and the full amount of the increased capital has been actually paid in cash; provided, that such association in renewing its existence, may, with the consent and approval of the state banking board, convert its then accumulated surplus and undivided profits into capital, to be apportioned amongst the shareholders entitled thereto, or their assigns. [1911, ch. 55, § 3; R. C. 1905, § 4641; 1897, ch. 31; R. C. 1899, § 3231; 1901, ch. 29; 1905, ch. 165, § 7.]

§ 5156. Certificate and authorization published. The association shall cause the organization certificate and the certificate of authority of the secretary of state, issued under this chapter, to be published in some newspaper in the city or county where the association is located, for at least four consecutive weeks next after the issuing thereof, and proof of such publication to be filed with the state banking board. [R. C. 1905, § 4642; 1890, ch. 23, § 7; 1893, ch. 27, § 7; R. C. 1899, § 3232; 1905, ch. 165, § 8.]

See section 5204.

§ 5157. Banks have official number. It is hereby provided that all banks existing and hereafter organized under the laws of this state shall be numbered and shall receive from the secretary of state an official number, and it shall be the duty of the secretary of state to notify each bank of its official number and also file a list of same with the state bank examiner. [1909, ch. 43.]

§ 5158. Articles as evidence. A certified copy of the articles of incorporation of any banking association, organized under the provisions of this chapter, may be used as evidence in all courts for or against any person or such banking association for or against whom such evidence is necessary, whether on civil or criminal trials. [R. C. 1905, § 4643; 1890, ch. 23, § 8; 1893, ch. 27, § 8; R. C. 1899, § 3233; 1905, ch. 165, § 9.]

See section 5204. •

§ 5159. Delinquent stock, how sold. Whenever any shareholder or his assignee fails to pay any installment on the stock when the same is required to be paid, the directors of such association may sell the stock of the delinquent shareholder, or as much thereof as is necessary to satisfy the debt, at public auction after having given three weeks' previous notice thereof in a newspaper published and in general circulation in the city or county where the association is located to any person who will pay the highest price therefor, to be not less than the amount due thereon, with the expenses of the advertisement and sale, and the excess, if any, shall be paid to the delinquent shareholder. If no bidder can be found who will pay for such stock the amount due thereon to the association, and the costs of advertisement and sale, the amount previously paid shall be forfeited to the association, and

such stock shall be sold as the directors may order within three months from the time of such forfeiture, and if not so sold it shall be cancelled and deducted from the capital stock of the association. [R. C. 1905, § 4644; 1890, ch. 23, § 9; 1893, ch. 27, § 9; R. C. 1899, § 3234; 1905, ch. 165, § 10.]

See section 5204.

§ 5160. Shares. Value. Liability of shareholders. The capital stock of each association shall be divided into shares of one hundred dollars each, and be deemed personal property and transferable on the books of the association in such manner as may be prescribed by the by-laws or articles of such associations; but no transfer of such stock shall be valid against a bank or any creditor thereof, so long as the registered holder of such stock shall be liable as principal debtor, surety or otherwise to the bank for any debt which shall be due and unpaid; nor in any case shall any dividend, interest or profit be paid on such stock so long as such liability continues, but such dividend, interest or profit shall be retained by such bank and applied to the discharge of such liabilities. Every person becoming a shareholder by such transfer shall, in proportion to his shares, succeed to all rights and liabilities of prior holders of such shares, and no change shall be made in the articles of association by which the rights, remedies or security of the existing creditors of the association shall be impaired. [R. C. 1905, § 4645; 1890, ch. 23, § 10; 1893, ch. 27, § 10; R. C. 1899, § 3235; 1905, ch. 165, § 11.]

See section 5204.

§ 5161. Capital stock, how increased or reduced. Any association formed under this chapter, may by its articles of association, or by subsequent resolution or written agreement of holders of a majority of its stock, provide for an increase of its capital stock from time to time as may be deemed expedient, subject to the rules and limitations of this chapter, and upon approval of the state banking board. But no increase of capital stock shall be valid until the whole amount shall be paid in cash, and such payment certified under oath by the president or cashier of such association to the secretary of state, who shall give his certificate that the provisions of this section have been complied with and specifying therein the amount of such increase in capital stock, and that it has been duly paid in as part of the capital thereof and file a copy of such certificate with the state banking board. Any association formed under this chapter may, by vote of its shareholders owning two-thirds of its stock, reduce its capital to any sum, not below the amount required by this chapter to authorize the formation of the association, but no such reduction shall be made until the amount of the proposed reduction is reported to the state banking board and their approval thereof obtained in writing, and no such reduction shall be construed as affecting the liability of shareholders for any debts of the association incurred prior to such reduction, and every such reduction before the same shall become valid must be certified to in the same manner as an increase of capital stock. [R. C. 1905, § 4646; 1890, ch. 23, § 11; 1893, ch. 27, § 11; R. C. 1899, § 3236; 1905, ch. 165, § 12.]

See section 5204.

§ 5162. How dissolved. Duties of state examiner. Any association organized under the provisions of this chapter, may be dissolved by the district court of the county where its office or principal place of business is situated upon its voluntary application for that purpose. The application must be in writing, and must set forth that at a meeting of the stockholders or members called for that purpose, the dissolution was resolved upon by a two-thirds vote of all the stockholders or members, and that all claims and demands against the association have been satisfied and discharged. The application must be signed by a majority of the board of directors, or other officers having the management of the affairs of the association, and must be verified in the same manner as a complaint in a civil action. A certified copy of the application shall be filed with the state examiner, or such state officer as is

by law authorized to examine such association, within ten days after the filing of such application with the district court. If the court is satisfied that the application is in conformity with this chapter, it must order the application to be filed, and that the clerk give not less than thirty nor more than sixty days' notice of the application by publication in some newspaper published in the county, and if there are none such, then by advertisement posted in five of the principal public places in the county. At any time before the expiration of the time of publication, any person may file his objections to the application. Before the final hearing and determination of the application, the state examiner shall make a thorough examination of the affairs of such association, and file a certified statement of such examination with the clerk of court of the county where such application is made, which statement shall be a part of the papers in the case. After the time of publication has expired the court may, upon five days' notice to the persons who have filed objections or without further notice if no objections have been filed, proceed to hear and determine the application, and if all the statements therein made are shown to be true, the court must declare the association dissolved. No stockholder or officer of such association shall be allowed to withdraw from such association, or surrender or dispose of his shares of stock after the filing or making of such application for dissolution and prior to the final determination of the case. Upon the dissolution of such association by the district court, the clerk of said court shall forthwith notify the secretary of state of such dissolution, by sending a copy of the order of the court, and said order and notice shall be filed by the secretary of state with the original certificate of organization. The application, notices and proof of publication, objections, if any, and declaration of dissolution, constitute the judgment roll, and from the judgment an appeal may be taken in the same manner as in other actions. The secretary of state shall immediately certify such dissolution to the state examiner. [R. C. 1905, § 4647; 1890, ch. 23, § 12; 1893, ch. 27, § 12; R. C. 1899, § 3237; 1905, ch. 165, § 13.]

See section 5204.

§ 5163. Dividends. Surplus fund. The directors of any association organized under this chapter may, semi-annually or annually, declare a dividend of so much of the net profits of the association as they shall deem expedient, but each association shall, before the declaration of a dividend, carry one-tenth of its net profits to its surplus fund until the same shall amount to twenty per cent of its capital stock. [R. C. 1905, § 4648; 1890, ch. 23, § 13; 1893, ch. 27, § 13; R. C. 1899, § 3238; 1905, ch. 165, § 14.]

§ 5164. Qualification of directors. Every director must own in his own right and retain in his possession and control free from hypothecation or pledge for any debt, at least ten shares of the capital stock of the association for which he is a director; any director who ceases to be the owner and in possession of ten shares of the stock free and non-hypothecated, or who becomes in any manner disqualified, shall thereby vacate his place. Every such director when elected or appointed shall take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of such association, and will not knowingly violate or willingly permit to be violated, any of the provisions of this chapter, and that he is a bona fide owner of the number of shares of stock required by this chapter to become a director, standing in his own name on the books of the association, and that said stock is in his possession and control and not hypothecated or in any way pledged as security for any debt. Such oath, subscribed by the director making it, and certified by the officer before whom it was taken, shall at once be transmitted to the state examiner to be filed in his office. [R. C. 1905, § 4649; 1890, ch. 23, § 14; 1893, ch. 27, § 14; R. C. 1899, § 3239; 1905, ch. 165, § 15.]

§ 5165. No dividends, when. Bad debts. No association shall nor shall any member thereof, during the time it shall continue its banking operations,

withdraw or permit to be withdrawn, either in form of dividends or otherwise, any portion of its capital. If losses have at any time been sustained by such association, equal to or exceeding its undivided profits then on hand, no dividend shall be made; and no dividends shall be made by any association while it continues its banking business to an amount greater than its net profits on hand, deducting therefrom its losses and bad debts. All debts due to an association made or continued in violation of any of the provisions of this article, shall be considered bad debts within the meaning of this section, and the state banking board is empowered, and it is made the duty of such board, to ascertain and designate such bad debts, to make and enforce such orders and to institute such proceedings as may be deemed necessary to dispose of the same or to convert them into good assets. [R. C. 1905, § 4650; 1890, ch. 23, § 15; 1893, ch. 27, § 15; R. C. 1899, § 3240; 1905, ch. 165, § 16.]

§ 5166. Rate of interest. Such association may demand and receive for loans on personal security, or for notes, bills or other evidences of debt, discounted, such rate of interest as may be agreed upon, not exceeding the amount authorized by law to be contracted for, and it shall be lawful to receive such interest according to the ordinary usage of banking associations and for not more than one year in advance. [R. C. 1905, § 4651; 1890, ch. 23, § 16; 1893, ch. 27, § 16; R. C. 1899, § 3241; 1905, ch. 165, § 17.]

See section 5204.

§ 5167. Regular and special reports. Penalties for failure to make. Every banking association, savings bank and trust company organized under this chapter, shall make at least five reports each year to the state examiner, in such form as the state banking board shall prescribe; such forms to be as nearly as possible like those prescribed by the comptroller of the currency for similar reports for national banks. Such report shall exhibit in detail, under appropriate heads, the resources and liabilities of the association at the close of the business on a past day by him specified, which shall, if practicable, be the same day for which similar reports are required from national banking associations within the state by the comptroller of the currency of the United States. Each report must be verified by the oath of the president or the cashier and attested as correct by at least two of the directors, and must be transmitted to the examiner within seven days after receipt of the request for the same, and an abstract of the same in a form prescribed by the board shall be published, at the expense of the association, in some newspaper in the city, town or village where such bank is located, and in case there is no such newspaper, then in any other newspaper in the county in which such association is located. The state banking board shall also call for a special report from any association whenever in their judgment the same is necessary, in order to obtain full and complete knowledge of its condition. Every association which fails to make and transmit any report required in pursuance of this section, shall forfeit and pay to the state a penalty of two hundred dollars for each delinquency. [R. C. 1905, § 4652; 1897, ch. 31; R. C. 1899, § 3242; 1905, ch. 165, § 18.]

See section 5204.

§ 5168. Responsibility of shareholders. The shareholders of every association organized under this chapter shall be individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such association made or entered into to the extent of the amount of his stock therein at the par value thereof, in addition to the amount invested in and due on such shares. Such individual liability shall continue for one year after any transfer or sale of stock by any stockholder or stockholders. [R. C. 1905, § 4653; 1890, ch. 23, § 18; 1893, ch. 27, § 18; R. C. 1899, § 3243; 1905, ch. 165, § 19.]

See section 5204.

Individual liability of stockholder of insolvent bank. *Union Nat. Bank v. Halley*, 19 S. D. 474, 104 N. W. 213.

§ 5169. Loans on shares prohibited. No association shall make any loan or discount on the security of the shares of its own stock, nor be the purchaser or holder of any such shares, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith, and stock so purchased or acquired shall within six months be sold or disposed of at public or private sale. If such stock is not sold within the period last herein provided, the same shall be cancelled and deducted from the capital stock of said association. [R. C. 1905, § 4654; 1890, ch. 23, § 19; 1893, ch. 27, § 19; R. C. 1899, § 3244; 1905, ch. 165, § 20.]

See section 5204.

§ 5170. Reserve fund. Each association shall at all times have on hand in available funds an amount which, after deducting therefrom the amount due to other banks, shall equal twenty per cent of its total deposits; three-fifths of this amount may consist of balances due to the association from good solvent state or national banks or trust companies, which carry sufficient reserve to entitle them to act as such depositary banks, and are located in such commercial centers as will facilitate the purposes of banking exchanges, and which depositary banks shall have been first approved by the state banking board, and the remaining two-fifths of such reserve shall consist of actual cash on hand; cash items shall not be included in computing reserve, and no association shall carry as cash or cash items, any paper or other matter except legitimate bank exchange, which will be cleared on the same or next succeeding business day. Whenever the available funds, within the meaning of this section, shall be below twenty per cent of its deposits, such association shall not increase its liabilities by making any new loans or discounts other than by discounting or purchasing bills of exchange, payable at sight, nor make any dividend of its profits, until the required proportion between the aggregate amount of the deposits and its lawful money reserve has been restored; and the state banking board must notify any association whose lawful money reserve shall be below the amount required to be kept on hand, to make good such reserve, and if such association shall fail to do so for a period of thirty days after such notice, the state banking board may impose a penalty of not less than one hundred dollars, or more than five hundred dollars, which shall be collected in the same manner as other penalties prescribed in this chapter. [R. C. 1905, § 4655; 1890, ch. 23, § 20; 1893, ch. 27, § 20; R. C. 1899, § 3245; 1905, ch. 165, § 21.]

§ 5171. Penalties, how recovered. All fines and penalties herein provided for, to which any association under this chapter may become subject, shall be recovered on complaint of the state examiner, before any court having competent jurisdiction, and all fines and penalties so established shall be paid into the state treasury. [R. C. 1905, § 4656; 1890, ch. 23, § 21; 1893, ch. 27, § 21; R. C. 1899, § 3246; 1905, ch. 165, § 22.]

See section 5204.

§ 5172. Limit of loan to one concern. The total liability to any association of any person, corporation, company or firm, including in the liabilities of the firm the liabilities of the several members thereof, for money borrowed, and paper of the same parties as makers thereof, purchased, shall not at any time exceed fifteen per cent of the capital and surplus stock of such association actually paid in, but the discount of bills of exchange drawn in good faith against actual existing values, or loans upon produce in transit or actually in store as collateral security; provided, that all paper relating to such transactions be made payable to and such paper and the security therefor, be and remain in the possession and control of such association until the advance or debt be paid, shall not be considered as money borrowed, and such association may discount commercial or business paper actually owned by the person negotiating the same without it being deemed an addition to the loans to said negotiator. [1909, ch. 45; R. C. 1905, § 4657; 1890, ch. 23, § 22; 1893, ch. 27, § 22; R. C. 1899, § 3247; 1905, ch. 165, § 23.]

§ 5173. Penalty for violations. Any officer of any banking association, savings bank or trust company violating or knowingly permitting to be violated, the provisions of this chapter, not herein specially provided for shall upon conviction thereof pay a fine of not less than fifty dollars nor more than five hundred dollars for each offense, to be recovered before any court having competent jurisdiction, and all fines and penalties so recorded shall be paid into the state treasury. [R. C. 1905, § 4658; 1890, ch. 23, § 23; 1893, ch. 27, § 23; R. C. 1899, § 3248; 1905, ch. 165, § 24.]

See section 5204.

§ 5174. Penalty for false statements or entries. Every officer, agent or clerk of any association organized under this chapter, who willfully and knowingly subscribes or makes any false statements or entries in the books of such association, or knowingly subscribes or exhibits any false paper with intent to deceive any person authorized to examine as to the condition of such association, or willfully subscribes or makes any false report, shall be guilty of forgery as defined in the penal code of the state of North Dakota and punished accordingly. [R. C. 1905, § 4659; 1890, ch. 23, § 24; 1893, ch. 27, § 24; R. C. 1899, § 3249; 1905, ch. 165, § 25.]

See section 5204.

§ 5175. Insolvent bank not to receive deposit. No banking association shall accept or receive on deposit with or without interest any money, bank bills or notes, or United States treasury notes or currency, or other notes, bills or drafts circulating as money or currency, when such banking association is insolvent. [R. C. 1905, § 4660; 1890, ch. 23, § 25; 1893, ch. 27, § 25; R. C. 1899, § 3250; 1905, ch. 165, § 26.]

See section 5204.

Insolvent bank became trustee ex maleficio of money received for draft issued by it when officer knew there was no funds to meet draft. *Widman v. Kellogg*, 22 N. D. 396, 39 L.R.A.(N.S.) 563, 133 N. W. 1020.

Receiving deposit in bank when insolvent as a fraud. 34 L.R.A. 533.

§ 5176. Penalty for violating last section. If any such banking association shall receive or accept on deposit any such deposits as aforesaid when insolvent, any officer, director, cashier, manager, member, party or managing party thereof, who shall knowingly receive or accept, be accessory or permit or connive at the receiving or accepting on deposit therein or thereby of any such deposits as aforesaid, shall be guilty of a felony, and upon conviction thereof, shall be punished by a fine not exceeding ten thousand dollars or by imprisonment in the penitentiary not exceeding five years, or by both such fine and imprisonment. [R. C. 1905, § 4661; 1890, ch. 23, § 26; 1893, ch. 27, § 26; R. C. 1899, § 3251; 1905, ch. 165, § 27.]

See section 5204.

Liability of directors to depositors for negligence and false statements of solvency. 8 Am. St. Rep. 605.

Liability of officers for failure to close insolvent bank. 3 L.R.A.(N.S.) 438.

Criminal liability for receiving deposit in bank knowing of its insolvency. 31 L.R.A. 124.

When is a bank insolvent within statute making it an offense to receive further deposits. 20 L.R.A.(N.S.) 444.

§ 5177. Banking must be done in compliance with this chapter. Penalty. No person excepting national banking corporations shall transact a banking business nor use the words bank, banking company or banker in any sign, advertisement, letter head or envelope or in any corporate or firm name, without complying with and organizing under the provisions of this chapter. Any person violating the provisions of this section, either individually or as an interested party in any association or corporation, is guilty of a misdemeanor, and on conviction thereof shall be fined not less than five hundred nor more than one thousand dollars, or imprisoned in the county jail not less than ninety days, or both, in the discretion of the court. [R. C. 1905, § 4662; 1890, ch. 23, § 27; 1893, ch. 27, § 27; R. C. 1895, § 3252; 1905, ch. 165, § 28.]

§ 5178. Forfeiture of franchise. Every association organized under this chapter which shall refuse or neglect to comply with any requirements, lawfully made upon it by the state banking board, or by the state examiner, pursuant to this chapter, for a period of ninety days (or for a lesser period if specified in the order) after demand in writing by such board or examiner is made, shall be deemed to have forfeited its franchise and any failure on the part of such association to comply with, or any violation of any of the provisions of this chapter, shall work a forfeiture of its franchise, and in either case the attorney-general, upon demand of the state banking board, must commence an action for the purpose of annulling the existence of said association. [R. C. 1905, § 4663; 1890, ch. 23, § 28; 1893, ch. 27, § 28; R. C. 1899, § 3253; 1905, ch. 165, § 29.]

See section 5204.

§ 5179. Fees for examination. Every corporation contemplated to be by this act placed under the jurisdiction and control of the state banking board, and made subject to the examination of the state examiner and his deputy examiners, shall if a new corporation, prior to receiving its certificate of authority to commence business, and in all cases within ten days after each examination, pay into the state treasury the following fees or sums, to wit: Those having a paid-up capital stock of less than twenty thousand dollars, fifteen dollars; those having a capital of twenty thousand dollars and less than thirty thousand dollars, twenty dollars; those having a capital of thirty thousand dollars and less than forty thousand dollars, twenty-five dollars; those having a capital of forty thousand dollars and less than fifty thousand dollars, thirty dollars; those having a capital of fifty thousand dollars and less than sixty thousand dollars, thirty-five dollars; those having a capital of sixty thousand dollars and less than seventy-five thousand dollars, forty dollars; those having a capital of seventy-five thousand and not over one hundred thousand dollars, fifty dollars; those having a capital of over one hundred thousand dollars and less than two hundred thousand dollars, one hundred dollars; those having a capital of over two hundred thousand dollars, one hundred twenty-five dollars.

Building and loan associations, mutual improvement corporations, mutual investment corporations and other corporations of a mutual character, having no capital stock or a nominal capital stock, shall pay a semi-annual fee of twenty-five dollars for the first one hundred thousand dollars of assets, and five dollars for each additional one hundred thousand dollars or major fraction thereof of assets.

The treasurer shall report such payments to the banking board, and if any such corporation shall be delinquent more than twenty days in making such payments, the board may make an order suspending its functions until such payment is made, and such order shall be rescinded only upon payment of the amount due and a penalty of five dollars additional for the delay. [1911, ch. 55, § 4; R. C. 1905, § 4664; 1897, ch. 31; R. C. 1899, § 3254; 1901, ch. 94; 1905, ch. 165, § 30.]

See section 5204.

§ 5180. Oath of officers. Every active officer of any bank organized under this chapter shall, before entering upon the duties of his office, take and subscribe an oath that he will so far as the duty devolves on him, diligently and honestly administer the affairs of such association, and that he will not knowingly violate, or willingly permit to be violated any of the provisions of this chapter. All such oaths shall be presented to the board of directors and a synopsis thereof recorded in the directors' record and then filed with the state banking board. [R. C. 1905, § 4665; 1897, ch. 31; R. C. 1899, § 3255; 1905, ch. 165, § 31.]

See section 5204.

§ 5181. Bonds of officers and employees. All officers and employees of any banking association, savings bank or trust company shall, before entering upon their duties, furnish a good and sufficient bond to the association in such sum and upon such conditions as may be required by the board of directors. All such bonds shall be approved by the board of directors of such association and shall be subject to the approval of the state banking board. A record of the approval of such bonds by the board of directors of such association shall be made on the records of the bank, and then such bonds shall be filed with the state banking board. Stockholders of such banks shall not be eligible as bondsmen for such officers. [R. C. 1905, § 4666; 1897, ch. 31; R. C. 1899, § 3256; 1905, ch. 165, § 32.]

See section 5204.

§ 5182. Examination by directors. Report. It shall be the duty of the board of directors in January and July of each year to make a careful and thorough examination of the assets of the bank, examine stocks, checks, certificates of deposit and cashier's checks, count cash, examine loans and discounts of every nature, with the securities and collaterals belonging thereto, compare the aggregate with the records and make a complete report of such examination in such form as may be designated by the state banking board, with suggestions and criticisms, if in their judgment such are necessary, which report shall be spread on the records of the bank the same as the minutes of a regular meeting of the board of directors, and a duplicate thereof transmitted to the state banking board. [R. C. 1905, § 4667; R. C. 1895, § 3257; 1905, ch. 165, § 83.]

See section 5204.

§ 5183. Action against insolvent banks. The state banking board on being satisfied of the insolvency of any banking association organized under the provisions of this chapter, or of the violation of any of the provisions of this chapter by any such association, after an examination of the same, shall forthwith take charge of such insolvent bank pending the action of the court. For that purpose it is made the duty of the board to appoint a temporary receiver, who shall qualify in such manner as may be directed in the order appointing him. Immediately upon taking charge the receiver shall prepare and submit a statement of the condition of the banking association to the state banking board, who shall thereupon institute an action against the association in accordance with the provisions of chapter 27 of the code of civil procedure. [R. C. 1905, § 4668; 1897, ch. 31; R. C. 1899, § 3258; 1905, ch. 165, § 34.]

See section 5204.

When title to money deposited with or collected by bank does not vest in bank and the right to recover on insolvency. 86 Am. St. Rep. 775.

§ 5184. Overdrafts. Any bank officer or employee who shall pay out the funds of any bank upon the check, order or draft of any individual firm, corporation or association, which has not on deposit with such bank a sum equal to such check, order or draft, shall be personally liable to such bank for the amount so paid. [R. C. 1905, § 4669; 1905, ch. 165, § 35.]

See section 5204.

§ 5185. List of shareholders to be kept and filed. The president and cashier of every bank formed pursuant to the provisions of this chapter, shall at all times keep a true and correct list of the names of all the shareholders of such bank, with the amount of stock held by each, the time of transfer and to whom transferred, and shall file a copy of such list in the office of the county auditor and in the office of the state examiner on the first Monday of January and July in each year. [R. C. 1905, § 4670; 1905, ch. 165, § 36.]

See section 5204.

§ 5186. Impairment of capital. If any portion of the capital of any banking association is reduced without the approval of the state banking board or impaired for any purpose whatever, while any debts of the association

remain unsatisfied, no dividend or profit on the shares of the capital stock of the association shall thereafter be made until the deficit of the capital is made good, either by subscription of the stockholders or out of the subsequently accruing profits of the association. And, if at any time, it shall appear that the capital stock of any banking association has become impaired, the state banking board must immediately issue and enforce the necessary order restraining the declaring of dividends and requiring the deficit to be made good. [R. C. 1905, § 4671; 1905, ch. 165, § 37.]

See section 5204.

§ 5187. Assets not to be used in other business. No bank shall as principal employ its money or other of its assets, directly or indirectly, in trade or commerce, nor employ or invest any of its assets or funds in the stock of any corporation, bank, partnership, firm or association, nor shall it invest any of its assets in speculative margins of stocks, bonds, grain, provisions, produce or other commodities, except that it shall be lawful for banks to make advances for grain or other products in store or in transit to market. [R. C. 1905, § 4672; 1905, ch. 165, § 38.]

See section 5204.

§ 5188. Banks exempt from attachment and execution. Every banking association in this state shall be exempt from the legal process of attachment and execution. But if any bank fails, neglects or refuses to pay any valid final judgment or decree that may be rendered against it by any court of competent jurisdiction, not properly stayed by an appeal bond within the time prescribed by statute or order of court after rendition thereof, the state banking board shall declare such bank insolvent or in failing circumstances and shall forthwith cause a receiver to be appointed to wind up its affairs. [R. C. 1905, § 4673; 1905, ch. 165, § 39.]

See section 5204.

§ 5189. Insolvent, when. A bank shall be deemed insolvent:

1. When the actual cash market value of its assets is insufficient to pay its liabilities.
2. When it is unable to meet the demands of its creditors in the usual and customary manner.
3. When it shall fail to make good its reserve as required by law.
4. When it shall fail to comply with any lawful order of the state banking board within any time specified therein. [R. C. 1905, § 4674; 1905, ch. 165, § 40.]

See section 5204.

§ 5190. Secretary to keep bank record. It shall be the duty of the secretary of the state banking board to keep a "bank record" wherein shall be recorded the name and location of each bank in the state, its capitalization and changes thereof, its officers, and its reserve agents, and changes of the same, and in docket form such other proceedings as may have been had relative to the same, by the state banking board, and by the state examiner. [R. C. 1905, § 4675; 1905, ch. 165, § 41.]

See section 5204.

§ 5191. Repeal and saving clause. This chapter repeals all laws repugnant to and inconsistent herewith; provided, that this article shall not affect any offense committed or right accruing prior to July first, 1905, but all such offenses or rights of action shall remain and be prosecuted under the law existing at the time such offense was committed or such right of action accrued. [R. C. 1905, § 4676; 1905, ch. 165, § 42.]

CHAPTER 29.

LOANS FROM BANKING ASSOCIATIONS.

§ 5192. Certain persons not to borrow. Exceptions conditioned. That no officer or employe of any banking association in this state nor the public examiner, his deputies or any employe of such public examiner's department, shall be permitted to borrow any of the funds of the banking association upon his own note or obligation, whether secured or unsecured, without first obtaining the approval of a majority of the board of directors of said banking association or from a committee selected by a majority of the board of directors, the names of the committee so selected from the directors of said banking association to be recorded in the minutes of the association. All loans approved and obtained under authority of this act shall be made a part of the records of said banking association; provided, further, that if the directors of any incorporated banking association shall knowingly permit any of the officers, directors or employes of such banking association, or the public examiner, his deputies or any employe of the state public examiner's department to borrow any funds from such banking association in excess of that authorized by law or in a dishonest manner or in a manner incurring great risk or loss to such banking association, every director who is directly or indirectly responsible by his acts for any loss to such banking association shall be held liable in his personal and individual capacity for all damage which the corporation or any other person shall have sustained in consequence thereof. [1911, ch. 53.]

CHAPTER 30.

SAVINGS BANKS.

§ 5193. Organization. Any number of persons, not less than five, at least three of whom must be residents of this state, may associate themselves together for the purpose of organizing and operating a savings bank, by complying with the provisions of sections 4636, 4637 and 4638 of the Revised Codes and thereupon shall be vested with the powers provided for in sections 4639 and 4640 of the Revised Codes, subject to such limitations as are in this article provided. [1911, ch. 56, § 1.]

"Sections 4636, 4637 and 4638 of the Revised Codes" mentioned in this section are, respectively, sections 5147, 5148 and 5149 herein. Section 4639 as amended is section 5150 herein. Section 4640 was expressly repealed in Laws 1911, ch. 54, § 5 and again in Laws 1913, ch. 52, § 5, and sections 5151, 5152 herein are manifest substitutes for the repealed section.

§ 5194. Capital stock. The capital of every such savings bank shall be divided into shares of the par value of one hundred dollars (\$100) each, and shall not be less than twenty-five thousand dollars (\$25,000) in cities, towns or villages having a population of less than five thousand, nor less than fifty thousand dollars (\$50,000) in cities having a population of five thousand or more, and the capital stock of every association incorporated hereunder, shall be paid up in full before such corporation shall be authorized to commence business. [1911, ch. 56, § 2.]

§ 5195. Management. Officers. Meetings. The business and property of savings banks incorporated hereunder shall be managed by a board of directors, not less than five, nor more than nine, the majority of whom shall be residents of this state, all of whom shall be share-holders, and no person shall be eligible as director of any savings bank, nor can he qualify to serve as such unless he owns in his own right not less than ten (10) shares of the

capital stock in such bank. Each director before acting as such, shall take an oath that he will diligently, faithfully and impartially perform the duties imposed upon him by law, that he will not violate or willingly permit to be violated any of its provisions; that he is the owner in his own right of ten (10) shares of the capital stock of such savings bank, and that the same is not hypothecated as security to any loan or debt, which oath shall be filed with and preserved in the office of the public examiner. The directors at their first meeting and as often thereafter as the by-laws require, shall elect from their number a president, whose term shall be indeterminate but at the pleasure of a majority of the board of directors, and one or more vice-presidents, a treasurer, and a secretary of the board of directors for the ensuing year, and shall have authority to appoint a cashier and assistants to other officers and employes as may be required, and which appointees shall hold their office during the pleasure of the board of directors, and shall give such security for the faithful performance of their duties as may be required of them by the by-laws. [1911, ch. 56, § 3.]

§ 5196. **Deposits.** Savings banks organized hereunder may receive on deposit money equal to twenty times the aggregate amount of its paid up capital and surplus, and no greater amount of deposits shall be received without a corresponding increase in the aggregate paid up capital and surplus. Deposits so received shall be paid to the order of such depositor or his representative, with such interest and under such regulations as the board of directors from time to time prescribe, not inconsistent with the provisions of this chapter, which rules and regulations shall be printed in a pass book furnished the depositor, and also conspicuously exposed in the business office of the bank in some place accessible and visible to all and no alterations which may at any time be made in such rules and regulations affecting the rights of depositors acquired previously thereto in respect to the deposits or interest thereon shall be operative until sixty days after the posting of such alteration; provided, however, that in order to prevent loss to the depositor, by enforced sale of securities before their real value, it shall be lawful for the directors in their discretion, to require notice of one week before the withdrawal of any part of any savings deposits of more than ten dollars (\$10) and not exceeding one hundred dollars (\$100); of two weeks before the withdrawal of any part of any deposit of more than one hundred dollars (\$100) and not exceeding five hundred dollars (\$500); of three weeks before the withdrawal of any part of any deposit of more than five hundred dollars (\$500) and not exceeding one thousand dollars (\$1,000); of thirty days before the withdrawal of any part of any deposit of more than one thousand dollars (\$1,000) and not exceeding two thousand dollars (\$2,000); of sixty days before the withdrawal of any part of any deposit of more than two thousand dollars (\$2,000) and not exceeding three thousand dollars (\$3,000), and in case where the deposit has been made on certificate for a definite time and the depositor fails to withdraw the same within thirty days after such definite time, then notice for withdrawal may be required as prescribed above; and provided, further, that the directors of such savings bank may, and by the written consent of, and shall, at the direction of the state banking board, make any changes deemed necessary in regard to the notices heretofore required to be given by the depositor for the withdrawal of their deposits, by extending the time that notice shall be given by any depositor for the withdrawal of all deposits, to any period of time not exceeding six months; and provided, further, that the directors may limit the aggregate amount that any depositor may deposit to such sum as they deem it expedient to receive, and may in their discretion refuse to receive any deposit, and may also, at any time, return all or any part of any deposit and the accrued interest thereon to any depositor without notice. [1911, ch. 56, § 4.]

§ 5197. Limit of interest. All accounts, upon which no deposits or drafts have been made for the period of six years in succession, and the whereabouts of the depositor be not known to any officer of the savings bank, shall be so far closed that neither the sum deposited nor the interest which shall have accrued thereon shall be entitled to any interest after the expiration of six years from the date of the last deposit or draft. This provision, however, shall not apply to endowments nor to trust estates nor to other cases where special provision is made therefor at the time of the deposit thereof. [1911, ch. 56, § 5.]

§ 5198. Investment of fund. A savings bank incorporated hereunder shall invest its capital, its deposits, its surplus and its profits only as follows:

First. In bonds of the United States.

Second. In bonds or evidences of debt in this state or in the bonds of other states in the union.

Third. In bonds or warrants of any county in this state, or in the bonds or warrants of any city in this state, or any special improvement district therein, or in the bonds or warrants of any village, township, school district or drainage district in this state, issued pursuant to the authority of law, but not exceeding thirty per cent of the assets of such savings bank shall be invested in such bonds or warrants.

Fourth. In notes or bonds secured by mortgage or deed of trust upon unincumbered real estate in this state, which real estate shall be worth, exclusive of all improvements at least twice the amount loaned thereon, but, in addition thereto, there may be loaned thirty per cent of an appraised value of any buildings on said real estate provided fire insurance policies are maintained and deposited as collateral to such mortgage.

Fifth. In the mortgage bonds of any railroad corporation, incorporated under the laws of any of the United States, provided that during each of the ten fiscal years of such railroad corporation next preceding the date of such investment:

1. Such railroad corporation shall have paid the matured principal and interest of all its mortgage indebtedness.

2. Such railroad shall have paid in dividends in cash to its stockholders, an amount of at least four per cent per annum upon all its outstanding stock of every class.

Sixth. To the extent of sixty per cent of the total demand deposits, in promissory notes due not more than one year from the date of loan, but no such loan shall be made unless the obligation evidencing the same bears the signature or indorsement of at least two persons whose net worth, as shown by sworn statement, is more than ten times the amount of the loan, provided, that where there are pledged securities such as such corporation is by this chapter authorized to invest its funds, there may be loaned an amount not to exceed eighty per cent of the value of such securities, and provided, further, that no such loan shall be made to a person in excess of five per cent of the total demand deposits, and in no event more than fifteen per cent of the capital stock and surplus. [1911, ch. 56, § 6.]

§ 5199. Dividends. No dividend shall be declared or paid to any stockholder save out of the undivided profits on hand after paying or setting apart a sum sufficient for the payment of:

First. All expense for operating the bank.

Second. All interest due and accrued to depositors according to the rate fixed therefor in the by-laws.

Third. The taxes for the current year.

Fourth. Ten per cent of the net profits to the surplus fund until such fund amounts to thirty per cent of the paid-in capital stock. [1911, ch. 56, § 7.]

§ 5200. Deposits by executors, minors, etc. Deposits made by a person as executor, administrator or guardian, or in any other official position, shall be

payable to him as such official, or if personally made by a minor, shall be paid to him, although he have no guardian, or if he has a guardian, it shall not be necessary to obtain his consent to such payment, but a check, receipt of acquittance, signed by such minor therefor shall be valid and binding. If made by any corporation, association or society, payment shall be made to any person authorized by its board of directors or trustees to receive the same. [1911. ch. 56, § 8.]

§ 5201. Reserve. Each savings bank shall at all times have on hand in available funds an amount which shall equal: (1) Twenty per cent of its total deposits subject to check, or on demand, (2) eight per cent of its total deposits on time certificate, and (3) five per cent of its total savings deposits subject to notice as herein authorized, three-fifths of these amounts may consist of balances due the savings bank from such solvent state or national banks or trust companies as shall have been approved by the state banking board, but the remaining two-fifths of such reserve shall consist of actual cash on hand; cash items shall not be included in computing reserve, and no savings bank shall carry as cash or cash items any paper or other matter except legitimate bank exchange, which shall be cleared on the same or next successive business day. Whenever the available funds within the meaning of this section shall be below the percentage of its deposits stated therein, such savings bank shall not increase its liabilities by taking any new loans or make any dividend of its profits until the required proportion between the aggregate amount of the deposits and its lawful money reserve has been restored, and the said banking board shall notify any bank whose reserve shall be below the amount required, to make good such reserve, and if such savings bank shall fail to do so for a period of thirty days after such notice, the state banking board may impose a penalty of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), which penalty shall be collected in the same manner as other penalties described in this chapter. [1911, ch. 56, § 9.]

§ 5202. Savings deposits, who may take. Penalty. Every corporation organized under the provisions of this chapter shall use the words "savings bank" as a part of its corporate name, and it shall not be the same name as that of any other bank heretofore or hereafter incorporated in this state, and no corporation not organized under the provisions of this chapter shall use the word "savings" as a part of its title, and no corporation, except national banking corporations, state banks and annuity, safe deposit and trust companies organized under the laws of this state, shall receive savings deposits without first complying with and organizing under the provisions of this chapter. Any person violating the provisions of this section shall be guilty of a misdemeanor. [1911, ch. 56, § 10.]

§ 5203. Loans to directors and officers. No savings bank shall make any loan to any of its directors or officers except on security as required herein, and in addition thereto a resolution of the board of directors passed and spread on the records of the corporation. [1911, ch. 56, § 11.]

§ 5204. Other provisions applicable. Except as herein otherwise provided, the following sections of the civil code [R. C. 1950] are hereby made applicable to savings banks under this article, to wit:

Sections 4635 [am'd, 5146 herein], 4642 [5156 herein], 4643 [5158 herein], 4644 [5159 herein], 4645 [5160 herein], 4646 [5161 herein], 4647 [5162 herein], 4651 [5166 herein], 4652 [5167 herein], 4653 [5168 herein], 4654 [5169 herein], 4656 [5171 herein], 4658 [5173 herein], 4659 [5174 herein], 4660 [5175 herein], 4661 [5176 herein], 4663 [5178 herein], 4664 [am'd, 5179 herein], 4665 [5180 herein], 4666 [5181 herein], 4667 [5182 herein], 4668 [5183 herein], 4669 [5184 herein], 4670 [5185 herein], 4671 [5186 herein], 4672 [5187 herein], 4673 [5188 herein], 4674 [5189 herein] and 4675 [5190 herein]. [1911, ch. 56, § 12.]

CHAPTER 31.

ORGANIZATION AND MANAGEMENT OF ANNUITY, SAFE DEPOSIT AND TRUST COMPANIES.

§ 5205. Formation. Any number of persons, not less than nine, not less than three of whom must be residents of this state, may associate themselves, and become incorporated for the purpose of transacting business as an annuity, safe deposit, surety and trust company, upon complying with the provisions of this chapter, and any company so formed, and its successors, shall be entitled to the rights and privileges, and subject to the duties and obligations herein provided, and shall have perpetual succession. The provisions of chapter 12 of the civil code shall be applied to and be observed by persons organizing under this chapter, except as herein otherwise provided, and except as to provisions thereof inconsistent with the provisions of this chapter. [R. C. 1905, § 4677; 1897, ch. 143, §§ 1, 2; R. C. 1899, § 3258a.]

§ 5206. Capital stock. Minimum amount. Shares. The amount of capital stock of any such corporation hereafter organized shall not be less than one hundred thousand dollars, and the same shall be divided into shares of one hundred dollars each. No such corporation hereafter organized shall be authorized to transact any business or exercise any powers as such until the aforesaid minimum amount of capital stock shall have been subscribed for, and not less than fifty thousand dollars thereof shall have been actually paid in, invested and deposited as hereinafter provided. Said fifty thousand dollars shall be invested in bonds of the United States, or of the state of North Dakota, or in the bonds of other states, which shall have the approval of the state auditor, and state examiner, or in the bonds or obligations of townships, school districts, cities, villages and counties within the state of North Dakota, which bonds or obligations have not been issued as a bonus for, or purchase of, or subscription to any railroad or other private enterprise, and whose total bonded indebtedness does not exceed five per centum of the then assessed valuation thereof; or in bonds or promissory notes, secured by first mortgages or deeds of trust, upon unincumbered real estate, situated within the state of North Dakota, worth three times the amount of the obligation so secured, and the deposit of such corporation shall not be permitted, at any time, to be less than fifty thousand dollars in amount, and not less than one-sixth of its capital stock. [R. C. 1905, § 4678; 1897, ch. 143, §§ 3, 4; R. C. 1899, § 3258b.]

§ 5207. Certificate of deposit. State treasurer's duties. Whenever any such corporation shall have so invested fifty thousand dollars of its paid-in capital, and shall assign, transfer and deliver to the state treasurer the said securities and all evidences of such investment so made, he shall execute and deliver a certificate of such deposit; and thereupon the said corporation may commence and carry on business under the provisions of this chapter. The state treasurer and his successors in office shall hold the said securities so deposited with him as collateral security for the depositors and creditors of said corporation, and for the faithful execution of any trusts which may lawfully be imposed upon or accepted by such corporation; such corporation may from time to time withdraw the said securities from said state treasurer, or any part thereof, upon depositing with him other securities of equal amount and value and of the kinds specified in [section 4668], and until otherwise ordered by a court of competent jurisdiction, the said state treasurer shall pay over to such corporation, the interest dividends which he shall collect upon such securities, and any such corporation having a larger deposit with the state treasurer than fifty thousand dollars shall be allowed at any time to withdraw its deposits in excess of said sum; provided its whole deposit shall

at no time be less than one-sixth of its capital stock. [R. C. 1905, § 4679; 1897, ch. 142, § 5; R. C. 1899, § 3258c; 1903, ch. 202.]

This section is R. C. 1905, § 4679. The reference to "section 4668," here given in brackets merely for the purpose of calling attention to it, is undoubtedly erroneous. The error was committed by compilers in R. C. 1899, § 3258c, repeated by the legislature in the amendment of that section in Laws 1903, ch. 202, and again by compilers in R. C. 1905, § 4679. The original reference in Laws 1897, ch. 142, § 5, was to "section 4 of this act," which constitutes all of section 5206 herein except the first sentence of the latter. The reference in section 5707 should therefore be "section 5206."

Board of railroad commissioners may inquire into general business conduct and reliability of sureties on bonds given by grain elevator operator. *State ex rel. Dakota Trust Co. v. Stutsman*, 24 N. D. 68, 139 N. W. 83.

§ 5208. Directors. Qualifications. Terms of office. All the corporate powers of such corporation shall be exercised by a board of directors of not less than nine nor more than fifteen in number, and such officers and agents as they shall elect or appoint. A majority of such directors must be citizens of the state of North Dakota, and each director must own at least ten shares of the capital stock. The articles of association must state the names and residences of the first board of directors, of whom the first named one-third shall serve for a period of three years, the second one-third for a period of two years and the balance thereof shall serve for a period of one year from the date fixed for the commencement of such corporation. In case any of the persons so named shall not become stockholders to the amount required to qualify, or if they fail or refuse to qualify from any cause, the directors who shall qualify may elect qualified stockholders to fill such vacancies, and thereafter, at each annual meeting of the stockholders, directors shall be elected to serve three years in place of those whose terms shall then expire. [R. C. 1905, § 4680; 1897, ch. 143, § 6; R. C. 1899, § 3258d.]

§ 5209. Election of directors. Officers. Bonds. An annual election shall be held at the principal office or place of business of the company, which must be within this state, upon a day to be fixed by the articles of the association, and notice of which election shall be given by publication at least ten days prior to such date, in a newspaper printed and published at the county seat of the county in which such company has its principal place of business, at which the directors provided for in section 5207 shall be elected, and in case of a failure to elect on that day or on a day to which such annual meeting may be adjourned, the directors whose regular terms do not then expire shall proceed to elect such number of directors as shall have failed of election, and any vacancy in the office of director may be filled by the board until the next annual meeting. The board of directors at their next meeting following the election of directors and after such directors have qualified, shall elect from their own number a president and vice-president and such other officers as may be necessary to the transaction of their business. They shall define the powers, authority and duties of such officers and employes by by-laws or resolutions, fix the conditions, form and amount of their bonds, and approve the same, but no such officer or employe shall enter upon the discharge of his duties until such bond shall have been so approved and shall have been filed with the state examiner, and by him approved. [R. C. 1905, § 4681; 1897, ch. 143, § 7; R. C. 1899, § 3258e.]

§ 5210. Corporate powers. Every corporation organized under the provisions of this chapter, and qualified as provided by section 5207, shall have all the general powers and privileges of corporations generally as heretofore or hereafter provided by the general laws of the state of North Dakota, and in addition thereto, and without being required to further qualify under the laws relating to banking and insurance corporations, except as in this chapter provided, shall have special power and authority:

1. To acquire, lease, purchase, own, hold, use and improve, mortgage, lease, sell and convey such real estate and personal property as may be necessary

for the convenient transaction of its business, and for the use and occupation of its officers, agents and employes, and the safe keeping and investment of its assets, deposits and property held in trust. Any estate or interest in real estate which such corporation shall acquire under and by virtue of the foreclosure of any deed of trust, mortgage, or other security, or by the compromise, compounding or settlement of any obligation or security, or otherwise, in the course of its legitimate business, whether as owner or trustee, it may continue to own, hold, use, occupy, lease, bargain, sell and convey the same as the directors may deem best for the interests of such company, or of the particular estate or trust to which the same belongs; and to that end, it may become a purchaser at any foreclosure sale, or sale under decree or judgment, to which it is a party, as trustee or otherwise. But no part of its capital, accumulations, deposits, trust funds, property or security owned or held by such company, in trust or otherwise, shall be invested in real estate, except as herein authorized, unless the same is done under and by virtue of a particular contract, agreement or instrument, or order, judgment or decree of court, which shall confer a special power or authority so to do, and then only with or to the extent of the moneys or funds thereby provided, and belonging to such particular trust; and for the general transaction of its business, to make and deliver, and in like manner accept and receive all necessary and proper deeds, conveyances, mortgages, leases and other contracts and writings obligatory, and to have and exercise all necessary rights, franchises, muniments, estates, powers and privileges necessary to that end; and such corporation is authorized to loan money and funds and secure such loans by mortgage; and shall have the power to purchase notes, bonds, mortgages and other evidences of indebtedness, and other securities, and to convert the same into cash and into other securities.

2. To take, accept and hold by the order, judgment and decree of any court of record in this state, or of any other state, or of the United States, or by gift, grant, assignment, transfer, devise, legacy or bequest from or with any public or private corporation, or persons whomsoever, any real estate or personal property upon trusts created in accordance with, or which shall not conflict with the laws of this state, or of the United States, and to execute and perform any and all such legal and lawful trusts in regard to the same, upon the terms, conditions, limitations and restrictions, which may be declared, imposed, established by or agreed upon, in or by such order, judgment, decree, gift, grant, assignment, transfer, contract, devise, legacy or bequest. To accept from and execute for, or in behalf of, trusts for minors, and married women, in respect to their separate property, real or personal, and antenuptial settlements, or otherwise, to act for the purposes of transferring, issuing, registering or countersigning the certificates of stocks, bonds, coupons or other evidences of debt of any corporation, association, person, city, town, township, school district, state or other authority, or to receive or to pay out moneys in redemption of the bonds, coupons or other evidences of indebtedness of such public or private corporations or persons.

3. To take, accept and hold on deposit, for savings account or for safe keeping, or in escrow, any and all moneys, bonds, stocks and other securities, or personal property whatsoever, which any state, county, city, town, township or school district officer, or any corporation, public or private, person or persons, shall be authorized, permitted or required by law or otherwise to deposit in a bank or other safe deposit, or to pay into or deposit in any court of record in this state. And when any officer, corporation, public or private, or any executor, administrator, guardian, assignee, receiver, trustee or any person acting in a trust capacity of whatsoever nature, or any individual, shall be authorized, required or permitted by law or otherwise, to pay into or deposit in any court of record in this state any moneys, bonds, instruments in writing, stock or other securities, or personal property whatsoever, the same instead

thereof may be paid into or deposited with any corporation organized and acting under this chapter, which shall be designated for that purpose by the court having jurisdiction of the subject matter, or by the person, corporation, tribunal or body owning or controlling the same. Whenever any executor, administrator, guardian, assignee, receiver, trustee or any person acting in any trust capacity whatsoever, shall deposit any moneys, bonds, instruments, in writing, stocks or other securities, or any personal property whatsoever, belonging to his trust, with any corporation qualified and acting under this chapter, and shall take a receipt of such corporation therefor, he and his sureties shall thereafter be relieved from all liability therefor until the same shall again be delivered to him by such corporation; provided, that any corporation organized under chapter 31, having a savings department, shall make the same reports and be subject to the same examinations and be under the same restrictions as to their savings department as now provided by law for banks.

4. To act as trustee, assignee or receiver, in all cases where it shall be lawful for any court, officer, corporation or person to appoint a trustee, assignee or receiver, and to be appointed, commissioned and act as administrator of any estate, executor of any last will or testament of any deceased person, or estate of any minor, or of the estate of any lunatic, imbecile, spendthrift, habitual drunkard or other person disqualified to manage an estate. And it shall be lawful for any court in this state, having jurisdiction of the estates or wills of such persons, either within or without this state, to appoint or commission any such corporation organized and acting under, and having qualified with all the provisions of this chapter, as such administrator, executor, guardian, trustee, assignee or receiver in all cases where, under the laws of this state, such court could lawfully so appoint and commission any natural person; and in such cases no bond or other security or oath or other qualification shall be necessary to enable such corporation to accept such appointment and trusts.

5. To accept and receive deposits of money for general savings account, for safe keeping, or for investment, and to provide by its by-laws and regulations for the payment of interest or dividends thereon, for the investment thereof, and conditions for repaying or withdrawing the same, and when any such deposit may have been received from a minor the repayment of same to such minor or his order shall be a complete discharge of such corporation from any further liability therefor. To loan money upon such securities as may be deemed advisable by its board of directors, and to borrow money in like manner upon the security of its own property or credit.

6. To act as attorney in fact for any public or private corporation, or person, in the management or control of real estate or personal property, its sale or conveyance, in the negotiation of and sale of mortgages or other securities, the satisfaction of and discharge of record of mortgages or other securities, the collection of rents, payments of taxes, and generally to act for and represent corporations and persons under powers and letters of attorney, in all respects as a natural person could do.

7. To make, compile and certify to abstracts of title of real estate, upon such conditions and subject to such liability as may now exist or be hereafter created, by or under the laws of this state relating to abstractors, and under such conditions and restrictions as may be prescribed by its by-laws or by resolutions of its board of directors, to insure the validity and genuineness of titles to real property.

8. To insure and guarantee the fidelity and faithful performance of the duties of state, county, township, city, town and school district officers and employees; of the depositaries of public or other funds, and all persons, firms, companies or corporations who may require or are permitted to make, execute or give bonds or undertakings with security, for the faithful performance of any duty, and any court, board of auditors, board of commissioners or

trustees, or any person or persons who are now or shall hereafter be required to approve the sufficiency of any such bond or undertaking may accept such bond or undertaking and approve the same, when the conditions of such bond or undertaking are guaranteed by a corporation duly organized, qualified and acting under the provisions of this chapter, and all such corporations are vested with full power and authority to guarantee such bonds and undertakings, and the certificate provided for in section 5207 shall, until revoked, be conclusive evidence of the qualification of such corporation, and of its authority to become and be accepted as such surety; provided, that nothing herein contained shall apply to bonds given in criminal actions.

9. Whenever any sum or sums of money, or any real or personal property shall have been received by, deposited with or conveyed to be held by such corporation, for savings or investment account, or in trust under any of the provisions of subdivisions 1, 2, 3, 4 or 5 of this section, such moneys or property and all evidences of the investment of the same, and their accretions, must be kept by such corporation, separate and apart and readily identified from similar property of its own or of other persons, and the same shall not be liable for any debt or claim against said corporation, except for debts or claims accruing to and in favor of the person or persons making such deposits or creating such trusts, or the beneficiaries thereunder. [R. C. 1905, § 4682; 1897, ch. 143, § 8; R. C. 1899, § 3258f; 1903, ch. 195, § 1.]

Foreign corporation is incompetent to receive letters of administration upon estate of deceased person. *Grunow v. Simonitsch*, 21 N. D. 277, 130 N. W. 835.

Legal powers and privileges of surety and trust companies. 48 L.R.A. 587.

8. Board of railroad commissioners may inquire into general business conduct and reliability of sureties on bonds given by grain elevator operator. *State ex rel. Dakota Trust Co. v. Stutsman*, 24 N. D. 68, 139 N. W. 83.

Character of and rules governing contracts by corporations engaged for profit in business of guaranteeing fidelity or contracts of other persons. 33 L.R.A.(N.S.) 513.

§ 5211. Discretionary powers. The directors of any such corporation shall have discretionary power to invest all moneys received by it on deposit or in trust, and the investment or deposit of which shall not be otherwise limited or directed, in such securities as are not hereinafter expressly prohibited and it shall be held responsible to the owners or cestui que trust of such moneys, for the validity, regularity, quality, value and genuineness of all such investments and securities at the time said investments are so made, and for the safe keeping of the evidences and securities thereof. But if any special direction, limitation, agreement or trust is imposed upon, made or conferred in and by the order, judgment, decree, will or other document, contract, deed, conveyance or other written instrument, as to the particular manner in which or the particular class or kinds of securities, funds or property, whether real or personal, the same shall be invested in, then the said corporation shall follow and carry out such order, judgment, decree, contract, deed or written instrument or instruction, and in case of such special direction or limitation, such corporation shall not be held liable or responsible for any loss, damage or injury which may occur to or be incurred by any person or cestui que trust by reason of its proper performance of such trust as aforesaid. [R. C. 1905, § 4683; 1897, ch. 143, § 8; R. C. 1899, § 3258g.]

§ 5212. Power to accept trusts. It shall be lawful for any such corporation organized, qualified and acting under the provisions of this chapter, to become the assignee under any assignment for the benefit of creditors, or to act as receiver, or to accept any other trust which it is authorized to accept under this chapter, whether conferred by any person, corporation or court, without giving any bond or other security which would be otherwise necessary under the laws of this state, to enable a natural person to execute such trust. It shall be lawful for any such trust company to become the sole surety upon any bond or undertaking for or on behalf of any person, persons or corporation, in any suit, action or special proceeding, in any court in this state, where

bond or undertaking shall be necessary under the laws of this state, or in any other matter, municipal or otherwise, where a bond or undertaking shall be required, without any other bondsman or surety, and without justification or qualification. In case where a bond or new sureties to a bond may be required by a judge of any court of this state, or by the provisions of any statute of this state, from any person, persons or corporation, acting in any trust capacity whatever, if the value of the estate or fund is so great that the judge of the court having jurisdiction of the proceedings deems it inexpedient to require security in the full amount prescribed by law, he may direct that any securities for the payment of moneys belonging to the estate or fund be deposited, subject to the order of such person acting in such trust capacity, countersigned by a judge of said court, with any trust company organized and qualified to do business under the provisions of this chapter. After such deposit has been made, said judge may fix the amount of the bond, with respect to the value of the remainder only of such estate or fund. [R. C. 1905, § 4684; 1897, ch. 143, § 8; R. C. 1899, § 3258h.]

§ 5213. **When bond not required.** Any such corporation, organized and incorporated under the provisions of this chapter, having made the deposit and received the certificate of the state auditor as provided in section 5206, which shall hereafter be appointed to execute any trust, or to act as herein authorized in any capacity, by any court, or by any public or private corporation, or by any person, and which shall accept and enter upon the duties of any such trust, shall thereafter be fully qualified to fully discharge and perform such trust, without entering into or giving any sale bond, replevin bond, attachment bond, injunction or appeal bond, or other bond, undertaking, or security whatsoever, which a natural person would be required to furnish or enter into, in the progress of the execution of any trust, or in any suit, action or special proceeding, during the performance of any such trust, in any court in this state. [R. C. 1905, § 4685; 1897, ch. 143, § 8; R. C. 1899, § 3258i.]

§ 5214. **Transfer of trust.** Any executor, administrator, guardian, trustee, assignee or receiver, now or hereafter to be appointed, may resign his trust in favor of a corporation organized, acting and qualified under this chapter, and thereupon such corporation may be appointed, by any court having jurisdiction of the subject matter of such trust, upon such terms and conditions as such court may prescribe. [R. C. 1905, § 4686; 1897, ch. 143, § 8; R. C. 1899, § 3258j.]

§ 5215. **Compensation.** For the faithful performance of any trust, duty, obligation or service so imposed upon, conferred or accepted by any such corporation, it shall be entitled to ask, demand and receive such reasonable compensation therefor as the same shall be worth, or such compensation as may have been or may be fixed by the contract or agreement of the parties, as well as any and all advances necessarily paid out and expended in the discharge and performance thereof, and to charge legal interest upon such advances unless otherwise agreed upon, and any compensation or commission paid, or agreed to be paid, for the negotiation of any loan, or the execution of any trust by any such company shall not be deemed interest within the meaning of the laws of this state. Nor shall any excess thereof, over any rate of interest permitted by law, be decreed or held in any court of law or equity to be usury; and such company shall have a lien upon all moneys, securities and all property of every description which may come into its possession while in the performance of such trust for the payment of all sums due or to become due to it for services, expenses and advances, and the costs and expenses of enforcing such payment. [R. C. 1905, § 4687; 1897, ch. 143, § 8; R. C. 1899, § 3258k.]

§ 5216. **Investment of trust funds.** Any sum of money not less than one hundred dollars, which shall be collected or received by any such corporation in its trust capacity, and which money shall not be required for the purpose of

such trust, or is not to be accounted for within one year from the date of such collection, receipt or deposit, shall be invested by such corporation, as soon as practicable, and in such securities as are mentioned in section 5206, and the net interest and profits of such investments, less the reasonable charges and disbursements of said company in the premises, shall be accounted for and paid over as a part of such trust; and the net accumulations of such interest and profits thereon shall likewise be invested and reinvested as a part of such principal; and such investments shall be received and allowed in the settlement of such trust. [R. C. 1905, § 4688; 1897, ch. 143, § 9; R. C. 1899, § 3258l.]

§ 5217. Prohibited dealings. Indebtedness of agents. Such corporation shall not loan its funds, moneys, capital, trust funds or other property whatsoever to any director, officer, agent or other employe thereof, nor shall any such director, officer, agent or other employe become in any manner indebted to said company by means of any overdraft, promissory note, account, indorsement, guaranty or other contract whatsoever unless such indebtedness shall have been first approved or authorized by the board of directors, or an investment committee created by it, and such approval entered in the minutes of the proceedings of such board or committee, and any such director, agent or employe who shall become so indebted to said company, contrary to the provisions hereof, shall be deemed guilty of the crime of embezzlement to the amount of such indebtedness, from the time such indebtedness shall be created, and upon conviction thereof shall be punished in the manner prescribed by the laws of this state for embezzlement of like amount. The execution and delivery of the official bond of such officer, agent or employe, or his indorsement of commercial paper, however, shall not be considered as an indebtedness for the purpose of this section. [R. C. 1905, § 4689; 1897, ch. 143, § 10; R. C. 1899, § 3258m; 1903, ch. 195, § 2.]

§ 5218. Powers of court. Annual report. Any such corporation shall be subject at all times to the further orders, judgments and decrees of any court of record from which or under which it shall have accepted any trust, appointment or commission as to such trust, and shall render to such court such itemized and verified accounts, statements and reports as may be required by law, or as such courts shall order in relation to such particular trust. It shall also be subject to the general jurisdiction of the district court of the county in which its principal place of business is located. It shall render to the state examiner a full and detailed verified account of its condition, on the first day of June in each year, and such further accounts, either total or partial, or in relation to any particular investments, trusts, funds or other business as the said state examiner may from time to time direct and request, and a condensed statement of such annual report, approved by the state examiner, shall be published by the said corporation in a public newspaper, printed and published in the county in which its principal place of business is located, and if none, then in such newspaper as the state examiner shall direct. [R. C. 1905, § 4690; 1897, ch. 143, § 11; R. C. 1899, § 3258n.]

§ 5219. Capital. Increase of capital stock. Increase of deposit. Re-insurance. Every such corporation, organized under the provisions of this chapter, shall have the full amount of its subscribed capital stock paid in within two years after commencement of business, and such payment may be made in such installments as may be prescribed in its by-laws, or by resolution of its board of directors, and such capital stock may be increased from time to time by a majority vote of all the stockholders of such corporation, voting at any regularly called general or special election, in the notice of which election, the object thereof is fully set out, but no such increase of capital stock shall be valid unless paid in in cash, and certified to the state auditor in writing, and under oath by the president or secretary, or managing officer of

such corporation. Whenever it shall appear to the satisfaction of the state examiner, from an examination of the business of such company, that the deposit made by it with the state auditor, as hereinbefore provided, is insufficient to insure the safety of its deposits, trust and contingent liabilities, and he shall make an order, as hereinafter provided, requiring an increase of such deposit, then such company may deposit with the state auditor, other and further securities of the kind, class and value designated in section 5206, in an amount sufficient to comply with said order. [R. C. 1905, § 4691; 1897, ch. 143, § 13; R. C. 1899, § 3258o.]

§ 5220. Duty of public examiner. It shall be the duty of the public examiner, once in every six months, or oftener if required by the written, verified information filed with him by any person interested in any trust with which such corporation may be charged, and without notice to the officers of such company, to make a full, true, complete and accurate examination and investigation of the affairs of such corporation and to assume and exercise over such corporation, its business, officers, directors and employes, all the power and authority conferred upon him over banking and other financial or moneyed corporations. If it shall appear to the state examiner from any examination made by him that said corporation has committed a violation of the law or that it is conducting business in an unsafe or unauthorized manner, or that the deposit made by it with the state auditor as hereinbefore provided, is insufficient to protect the interests of all concerned, then the state examiner shall, by an order under his hand and the seal of his office, and addressed to such corporation, direct the discontinuance of such illegal or unsafe practice, and to conform with the requirements of the law, or to make a further deposit with the state auditor in an amount sufficient to insure the safety of its trusts, deposits and liabilities. And whenever such corporation shall refuse to comply with any such order as aforesaid, or whenever it shall appear to the said state examiner that it is unsafe or inexpedient for any such corporation to continue to transact business, he shall communicate the facts to the attorney-general, and thereupon he shall be authorized to institute such proceedings against any such corporation, as is now, or may hereafter be provided by law, in case of insolvent corporations or such other proceedings as the case may require. [R. C. 1905, § 4692; 1897, ch. 143, §§ 12, 14; R. C. 1899, § 3258p; 1903, ch. 195, § 3.]

CHAPTER 32.

SUPERVISION OF INVESTMENT COMPANIES.

§ 5221. Domestic and foreign investment companies defined. Every corporation, every copartnership or company and every association (other than state and national banks, savings banks, trust companies, real estate mortgage companies dealing exclusively in real estate mortgage notes, and corporations not organized for profit), organized or which shall be organized in this state, whether incorporated or unincorporated, which shall sell or negotiate for the sale of any stocks or investment bonds or investment certificates of any corporation, foreign or domestic, other than bonds of the United States, the state of North Dakota, or of some municipality of the state of North Dakota, to any person or persons in the state of North Dakota, other than those specifically exempted herein, shall be known for the purpose of this chapter as a domestic investment company. Every such investment company organized in any other state, territory or government, or organized under the laws of any other state, territory or government, shall be known for the purpose of this chapter as a foreign investment company. [1913, ch. 109, § 1.]

§ 5222. What documents to be filed with secretary of state. Before offering or attempting to sell any stocks or investment bonds or investment certificates

of any kind or character other than those specifically exempted in section 5221 to any person or persons, or transacting any business whatever in this state, excepting that of preparing the documents hereinafter required, every such investment company, domestic or foreign, shall file in the office of the state examiner of this state, in addition to those required by law to be filed by corporations and associations in the office of the secretary of state, together with a filing fee of fifteen dollars, the following documents, to wit: a statement showing in full detail the plan upon which it proposes to transact business; a copy of all contracts, bonds and other instruments which it proposes to make with or sell to its contributors or customers; a statement which shall show the name and location of the investment company, and an itemized account of its actual financial condition, and the amount of its property and liabilities, and such other information touching its affairs as said state examiner may require. If such investment company shall be a copartnership or an unincorporated association, it shall also file with the state examiner a copy of its articles of copartnership or association, and all other papers pertaining to its organization; and if it be a corporation organized under the laws of North Dakota it shall also file with the state examiner a copy of its articles of incorporation, constitution and by-laws, and all other papers pertaining to its organization. If it shall be an investment company organized under the laws of any other state, territory or government, incorporated or unincorporated, it shall also file with the said state examiner a copy of the laws of such state, territory or government under which it exists or is incorporated, and also a copy of its charter, articles of incorporation, constitution and by-laws and all amendments thereof which have been made and all other papers pertaining to its organization. [1913, ch. 109, § 2.]

§ 5223. Verification and certification of documents filed. All of the above described papers shall be verified by the oath of a member of a copartnership or company, if it be a copartnership or company, or by the oath of a duly authorized officer, if it be an incorporated or unincorporated association. All such papers, however, as are recorded or are on file in any public office shall be further certified to by the officer of whose records or archives they form a part as being correct copies of such records or archives. [1913, ch. 109, § 3.]

§ 5224. Filing of written consent to service of process on secretary of state. Every foreign investment company shall also file its written consent, irrevocable, that actions may be commenced against it, in the proper court of any county in this state in which a cause of action may arise, or in which the plaintiff may reside, by the service of process on the secretary of state, and stipulating and agreeing that such service of process on the secretary of state shall be taken and held, in all courts, to be as valid and binding as if due service had been made on the company itself, according to the laws of this or any other state, and such instrument shall be authenticated by the seal of said foreign investment company and by the signatures of all the members of the copartnership or company, or by the signatures of the president and secretary of the incorporated or unincorporated association, if it be an incorporated or unincorporated association, and shall be accompanied by a duly certified copy of the order or resolution of the board of directors, trustees or managers of the corporation authorizing the said secretary and president to execute the same. [1913, ch. 109, § 4.]

§ 5225. Examination by state examiner. Favorable statement; unfavorable finding. It shall be the duty of the state examiner to examine the statements and documents so filed, and if said state examiner shall deem it advisable he shall make or have made a detailed examination of such investment company's affairs, which examination shall be at the expense of such investment company, as hereinafter provided; and if he finds that such investment company is solvent, that its articles of incorporation or association, its constitution and

by-laws, its proposed plan of business and proposed contract, contain and provide for a fair, just and equitable plan for the transaction of business, and in his judgment promises a fair return on the stocks, bonds and other securities by it offered for sale, the state examiner shall issue to such investment company a statement reciting that such company has complied with the provisions of this act, that detailed information in regard to the company and its securities is on file in the state examiner's office for public inspection and information, that such investment company is permitted to do business in this state, and such statement shall also recite in bold type that the state examiner in no wise recommends the securities to be offered for sale by such security company. But if said state examiner finds that such articles of incorporation or association, charter, constitution and by-laws, plan of business or proposed contract contain any provision that is unfair, unjust, inequitable or oppressive to any class of contributors or customers, or if he decides from his examination of its affairs that said investment company is not solvent or does not intend to do a fair and honest business, or in his judgment does not promise a fair return on the stocks, bonds or other securities by it offered for sale, then he shall notify such investment company in writing of his findings, and it shall be unlawful for such company to do any further business in this state until it shall so change its constitution and by-laws, articles of incorporation or association, its proposed plan of business and proposed contract and its general financial condition in such manner as to satisfy the state examiner that it is solvent, and its articles of incorporation or association, its constitution and by-laws, its proposed plan of business and proposed contracts, provide for a fair, just and equitable plan for the transaction of business, and does, in his judgment, promise a fair return on the stocks, bonds and other securities by it offered for sale; provided, that all expenses paid or incurred and all fees or charges received or collected for any examination made under the provisions of this section of this chapter shall be reported in detail by the state examiner and a full report and record made thereof in detail. [1913, ch. 109, § 5.]

§ 5226. Conditions precedent to transacting business. It shall not be lawful for any investment company, either as principal or agent, to transact any business in form or character similar to that set forth in section 5221, except as is provided in section 5222, until it shall have filed the papers and documents above provided for. No amendment of the charter, articles of incorporation, constitution and by-laws of any such investment company shall become operative until a copy of the same has been filed with the state examiner as provided in regard to the original filing of charters, articles of incorporation, constitution and by-laws, nor shall it be lawful for any such investment company to transact business on any other plan than that set forth in the statement required to be filed by section 5222, or to make any contracts other than that shown in the copy of the proposed contract required to be filed by section 5222, until a written statement showing in full detail the proposed new plan of transacting business and a copy of the proposed new contract shall have been filed with the state examiner, in like manner as provided in regard to the original plan of business and proposed contract, and the consent of the state examiner obtained as to making such proposed new plan of business and proposed new contract. [1913, ch. 109, § 6.]

§ 5227. Registration of agents. Any investment company may appoint one or more agents, but no such agent shall do any business for said investment company in this state until he shall first register with the state examiner as agent for such investment company, and for each such registration there shall be paid to the state examiner the sum of two dollars. Such registration shall entitle such agent to represent said investment company as its agent until the first day of March following, unless said authority is sooner revoked by the state examiner, and such authority shall be subject to revocation at any time

by the state examiner for cause appearing to him sufficient. [1913, ch. 109, § 7.]

§ 5228. Appeal from examiner's refusal to grant statement. An appeal may be taken from the decision of the state examiner refusing to grant the statement provided for in this act to the district court of any county in the state of North Dakota.

Such appeal may be taken by filing with the clerk of said court a certified transcript of all papers on file in the office of the state examiner relating to such application and decision, within thirty days after the rendition of such decision, and serving notice of such appeal upon said examiner and filing a bond in the sum of two hundred and fifty dollars with said clerk, conditioned for payment of all costs in case said appeal is dismissed and decision of the examiner sustained, said bond to be approved by the clerk of said court as provided for approval of bonds in arrest and bail proceedings. The judge shall hear said appeal not less than ten nor more than thirty days after the filing of said appeal with the clerk, the day of hearing to be fixed by the court. The case shall be tried in all respects as a court case without a jury, and costs shall be allowed and taxed as costs are now taxed in said courts in civil actions, and upon like notice. [1913, ch. 109, § 8.]

§ 5229. Company to file annual or special report. Every investment company, domestic or foreign, shall file at the close of business on December thirty-first of each year, and at such other times as required by the state examiner, a statement verified by the oath of the copartnership or company, if it be a copartnership or company, or by the oath of a duly authorized officer, if it be an incorporated or unincorporated association, setting forth in such form as may be prescribed by the said state examiner, its financial condition and the amount of its assets and liabilities, and furnishing such other information concerning its affairs as said state examiner may require. Each regular statement of December thirty-first shall be accompanied by a filing fee of two dollars and fifty cents. Any investment company failing to file its report at the close of business December thirty-first of each year or within ten days of that date, or failing to file any other or special report herein required within thirty days after receipt of request or requisition therefor, shall forfeit its right to do business in this state, and shall be subject to such further penalties as hereinafter provided for violation of this chapter. [1913, ch. 109, § 9.]

§ 5230. Accounts of investment companies, how kept. The general accounts of every investment company, domestic or foreign, doing business in this state, shall be kept in double entry, and such company, its copartners or managing officers, shall at least once in each month make a trial balance of such accounts which shall be recorded in a book provided for that purpose; such trial balance and all other books and accounts of such company shall at all times during business hours, except on Sundays and legal holidays, be open to the inspection of stockholders and investors in said company or investors in the stocks, investment bonds or investment certificates by it offered for sale and to the state examiner and his deputies. [1913, ch. 109, § 10.]

§ 5231. General supervision by state examiner. Fee for examination. The state examiner shall have general supervision and control, as provided by this chapter, over any and all investment companies, domestic or foreign, doing business in this state, and all such investment companies shall be subject to examination by the state examiner or his duly authorized deputies at any time the state examiner may deem it advisable and in the same manner as is now provided for the examination of state banks. The rights, powers and privileges of the state examiner in connection with such examinations shall be the same as is now provided with reference to the examination of state

banks; and such investment company shall pay a fee for each of such examinations, not to exceed fifteen dollars for each day or fraction thereof, plus the actual traveling and hotel expenses of said state examiner or deputy that he is absent from the capitol building for the purpose of making such examination, and the failure or refusal of any investment company to pay such fee upon demand of the state examiner, or deputy, shall work a forfeiture of its right to do business in this state. [1913, ch. 109, § 11.]

§ 5232. Impairment of assets; receivership. Whenever it shall appear to the state examiner that the assets of any investment company doing business in this state are impaired to the extent that the assets do not equal its liabilities, or that it is conducting its business in an unsafe, inequitable or unauthorized manner, or is jeopardizing the interests of its stockholders or investors in stocks, investment bonds or investment certificates by it offered for sale, or whenever any investment company shall fail or refuse to file any papers, statements or documents required by this chapter, without giving satisfactory reasons therefor, said state examiner shall at once communicate such facts to the attorney-general, who shall thereupon apply to any district court, or a judge thereof, for the appointment of a receiver to take charge of and wind up the business of such investment company; and if such fact or facts be made to appear, it shall be sufficient evidence to authorize the appointment of a receiver and the making of such order and decrees in such cases as equity may require. [1913, ch. 109, § 12.]

§ 5233. Penalty for false statement or entry. Any person who shall knowingly or willfully subscribe to or make or cause to be made any false statements or false entry in any book of such investment company, or exhibit any false paper with the intention of deceiving any person authorized to examine into the affairs of such investment company, or shall make or publish any false statement of the financial condition of such investment company, or the stocks, investment bonds or investment certificates by it offered for sale, shall be deemed guilty of a felony, and upon conviction thereof shall be fined not less than two hundred dollars nor more than ten thousand dollars, or shall be imprisoned for not less than one year nor more than ten years in the state penitentiary, or by both such fine and imprisonment. [1913, ch. 109, § 13.]

§ 5234. Penalty for doing business in violation hereof. Any person or persons, agent or agents, who shall sell or attempt to sell the stock, investment bonds or investment certificates of any investment company, domestic or foreign, or the stock, investment bonds or investment certificates by it offered for sale, who have not complied with the provisions of this chapter; or any investment company, domestic or foreign, which shall do any business, or offer or attempt to do any business, except as provided in section 5222, which shall not have complied with the provisions of this chapter; or any agent or agents who shall do or attempt to do any business for any investment company, domestic or foreign, in this state, which agent is not at the time duly registered and has fully complied with the provisions of this chapter, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined for each offense not less than one hundred dollars nor more than five hundred dollars, and by imprisonment in the county jail for not more than ninety days. [1913, ch. 109, § 14.]

§ 5235. Fees and expenses of state examiner. All fees herein provided for shall be collected by the state examiner and by him shall be turned into the state treasury, and shall be kept in a special fund for the payment of the actual and necessary expenses herein provided. All money actually and necessarily paid out by the state examiner for traveling or incidental expenses on duties performed under this chapter shall be audited as other claims against the state and paid out of the special fund herein created. [1913, ch. 109, § 15.]

CHAPTER 33.

EXISTING CORPORATIONS ELECTING TO CONTINUE UNDER THIS CHAPTER.

§ 5236. **Proceedings when existing corporations elect to continue.** Any corporation existing at the time of the taking effect of this chapter formed under the laws of this state, may elect to continue its existence under the provisions of the preceding chapters applicable thereto and it may at any time thereafter make such choice or election at any meeting of the stockholders or members, or at any meeting called by the directors or trustees expressly for considering the subject, if voted for by stockholders representing a majority of the capital stock or by a majority of its members; or it may be made by the directors or trustees upon the written consent of that number of such stockholders or members. A certificate of the action of the directors or trustees, signed by them and their secretary, with the seal of the corporation, when the election is made upon such written consent, or a certificate of the proceedings of the meeting of the stockholders or members, when such election is so made, signed by the chairman and secretary of the meeting and a majority of the directors and trustees, must be filed in the office of the secretary of state and thereafter the corporation shall continue its existence under the provisions of the preceding chapters which are applicable thereto and shall possess all the rights and powers and be subject to all the obligations, restrictions and limitations prescribed thereby. [R. C. 1905, § 4693; Civ. C. 1877, § 566; R. C. 1899, § 3259.]

§ 5237. **When individuals must comply with law on corporations.** Any person or association of persons now engaged in or that may hereafter engage in the construction of any railroad, street railway, telegraph or telephone lines, ditch for conveying water, or other like work of internal improvement shall be required to comply strictly with all the provisions of the preceding chapters in the same manner as corporations, so far as the same can be done. A failure of any such person or association of persons to comply as aforesaid shall work a forfeiture of any and all rights he or they may have acquired in accordance with law. [R. C. 1905, § 4694; 1879, ch. 10, § 4; R. C. 1895, § 3260.]

Acts of unincorporated association are acts of its members. *Winona Lumber Co. v. Church*, 6 S. D. 498, 62 N. W. 107.

CHAPTER 34.

CONDITIONS PRECEDENT TO DOING BUSINESS BY CORPORATIONS.

- ARTICLE 1. FOREIGN CORPORATIONS, §§ 5238-5242.
2. DOMESTIC CORPORATIONS, §§ 5243, 5244.

ARTICLE 1.—FOREIGN CORPORATIONS.

§ 5238. **Foreign corporations can do business in this state, when.** No foreign corporation, association or joint stock company, except an insurance company shall sell or otherwise dispose of its capital stock or transact any business within this state, or acquire, hold or dispose of property real or personal within this state, until such corporation shall have filed in the office of the secretary of state a duly authenticated copy of its charter, articles of incorporation and by-laws, and shall have complied with the provisions of this chapter; provided, that the provisions of this chapter shall not apply to corporations created for religious or charitable purposes solely nor to the holding and disposing of such real estate as may be acquired only by foreclosure or otherwise, in liquidation of mortgages or other securities by corporations which may not have complied with the provisions of this article. [1911, ch.

137, § 1; R. C. 1905, § 4695; Civ. C. 1877, § 567; R. C. 1895, § 3261; 1905, ch. 68.]

Contracts of foreign corporations before compliance with statute, not void. Question can only be raised by state. *Washburn Mill Co. v. Bartlett*, 3 N. D. 138, 54 N. W. 544; *U. S. Loan Co. v. Shain*, 8 N. D. 136, 77 N. W. 1006; *Nat. Cash Register Co. v. Wilson*, 9 N. D. 112, 81 N. W. 285; *Wright v. Lee*, 2 S. D. 596, 51 N. W. 706; *American Button Hole Co. v. Moore*, 2 D. 280, 8 N. W. 131; *Fuller & Johnson Mfg. Co. v. Foster*, 4 D. 329, 30 N. W. 166; *Red River Lumber Co. v. Children of Israel*, 7 N. D. 46, 73 N. W. 203. Cannot avail of its failure to file copy of articles. *Foster v. Lumber Co.*, 5 S. D. 57, 58 N. W. 9, 49 Am. St. Rep. 859, 23 L.R.A. 490.

Right to do business cannot be questioned or determined collaterally. *Wright v. Lee*, 4 S. D. 237, 55 N. W. 931.

Attachment levied at suit of nonresident corporation which has not complied with law since amendment in 1895 will be dissolved on motion. *Bradley v. Armstrong*, 9 S. D. 267, 68 N. W. 733.

Vested right to continue action commenced before amendment of 1895, regardless of whether or not it has complied with statute. *Root v. Sweeney*, 12 S. D. 43, 80 N. W. 149.

Assignee of foreign corporation is barred from asserting cause of action or defense which domestic corporation cannot assert. *Walker v. Rein*, 14 N. D. 608, 106 N. W. 405.

Foreign corporation cannot sue in courts of state until it complies with its laws. *Bishop & B. Co. v. Schleuning*, 20 S. D. 71, 104 N. W. 854; *American Copying Co. v. Eureka Bazaar*, 20 S. D. 526, 9 L.R.A.(N.S.) 1176, 108 N. W. 15.

Foreign corporation engaged in transacting interstate business may sue on contract without complying with statute. *Sucker State Drill Co. v. Wirtz*, 17 N. D. 313, 18 L.R.A.(N.S.) 134, 115 N. W. 844.

Inapplicable to foreign corporation transacting interstate business because of expiration of agency. *Rex Buggy Co. v. Dinneen*, 23 S. D. 474, 122 N. W. 433.

Not unconstitutional as interfering with interstate commerce. *Iowa Falls Mfg. Co. v. Farrar*, 19 S. D. 632, 104 N. W. 449.

Single business transaction does not constitute "doing business." State use of *Hart-Parr Co. v. Robb-Lawrence Co.*, 15 N. D. 55, 106 N. W. 406.

Failure of foreign corporations to comply with law as to doing business in state justifies direction of verdict against it, in suit for breach of contract. *Chealey v. Soo Lignite Coal Co.*, 19 N. D. 18, 121 N. W. 73.

Foreign corporation may acquire title to real property within state without having complied with law relating to such corporations. *Reed v. Todd*, 25 S. D. 421, 127 N. W. 527.

Secretary of state is not judicial officer and judicial power cannot be vested in him. State ex rel. *Standard Oil Co. v. Blaisdell*, 22 N. D. 66, 132 N. W. 769.

Application of statute of limitations to foreign corporations. 52 Am. Dec. 256.

Who may take advantage of statute rendering foreign corporation incapable of taking title to real estate. 33 L.R.A.(N.S.) 355.

Right of foreign corporation to do business in state. 70 L.R.A. 519.

Power of the states to discriminate against foreign corporation. 95 Am. Dec. 536.

Recognition or exclusion of foreign corporation as interference with interstate commerce. 24 L.R.A. 311.

Right of foreign corporations to sue. 70 L.R.A. 514.

Liability of foreign corporation which has complied with conditions of doing business in state to attachment as nonresident. 31 L.R.A.(N.S.) 278.

Garnishment of debt due from foreign corporation in state where it is engaged in business. 67 L.R.A. 214.

Place of payment of debt due from a foreign corporation as affecting jurisdiction to garnish the same. 3 L.R.A.(N.S.) 608; 20 L.R.A.(N.S.) 264.

Sale of single cargo by foreign corporation as doing business. 2 L.R.A.(N.S.) 127.

Single or isolated transaction by foreign corporation as "doing business" within the state. 10 L.R.A.(N.S.) 693.

Soliciting trade as doing business within the state. 9 L.R.A.(N.S.) 1214; 23 L.R.A.(N.S.) 834.

Sale by foreign corporation of goods stored in state as intrastate business. 18 L.R.A.(N.S.) 134.

Establishing agency to handle a corporation's product within the state as doing business therein. 18 L.R.A.(N.S.) 142.

Effect of agreement by foreign corporation to install article within the state to bring it within statute regulating foreign corporations. 14 L.R.A.(N.S.) 674.

Effect of location of insured property within the state to prevent an action by a foreign insurance company upon a contract made in another state. 9 L.R.A.(N.S.) 417.

§ 5239. Record. Such charter or articles of incorporation shall be recorded in a book to be kept by the secretary of state for that purpose. [R. C. 1905, § 4696; Civ. C. 1877, § 568; R. C. 1899, § 3262.]

§ 5240. Appoint secretary of state attorney for service. Such corporation, association or joint stock company shall by a duly executed instrument filed in the office of the secretary of state constitute and appoint the secretary of state and his successors its true and lawful attorney upon whom all process in any action or proceeding against it may be served and therein shall agree that any process which may be served upon its said attorney shall be of the same force and validity as if served upon it personally in this state and that such appointment shall continue in force irrevocable so long as any liability of the corporation, association or joint stock company remains outstanding in this state. Service upon such attorney shall be deemed sufficient service upon the corporation, association or joint stock company. Whenever process against any foreign corporation, association or joint stock company, doing business in this state, shall be served upon the secretary of state he shall forthwith mail a copy of such process, postage prepaid, and directed to such corporation, association or joint stock company at its principal place of business, or if it is a corporation, association or joint stock company of a foreign country, to its resident manager in the United States, or to such other person as may have been previously designated by it by written notice filed in the office of the secretary of state. As a condition of valid and effectual service the plaintiff shall pay to the secretary of state at the time of the service the sum of two dollars which the plaintiff shall recover as taxable costs if he prevails in his action. The secretary of state shall keep a record of all such process which shall show the time and hour of service. [R. C. 1905, § 4697; Civ. C. 1877, § 560; 1885, ch. 36, § 1; R. C. 1895, § 3263.]

Attachment may be issued against foreign corporation, although it has not appointed agent on whom service of process may be made. *Finch v. Armstrong*, 9 S. D. 255, 68 N. W. 740.

Attachment levied by foreign corporation which has not appointed agent, will be dissolved. *Bradley, Metcalf & Co. v. Armstrong*, 9 S. D. 267, 68 N. W. 733.

"Assign" as used in statute does not include indorsee of note. *Nat. Bank of Commerce v. Pick*, 13 N. D. 74, 99 N. W. 63.

Compliance with laws of this state before making contract prerequisite to suit thereon by foreign corporation. *American Copying Co. v. Eureka Bazaar*, 20 S. D. 526, 9 L.R.A.(N.S.) 1176, 108 N. W. 15.

Single business transaction does not constitute "doing business." *State use of Hart Parr Co. v. Robb-Lawrence Co.*, 15 N. D. 55, 106 N. W. 406.

Inapplicable to foreign corporation transacting interstate commerce business because of expiration of agency. *Rex Buggy Co. v. Dinneen*, 23 S. D. 474, 122 N. W. 433.

Not unconstitutional as interfering with interstate commerce. *Iowa Falls Mfg. Co. v. Farrar*, 19 S. D. 632, 104 N. W. 449.

Foreign corporation engaged in transacting interstate business may sue on contract without complying with statute. *Sucker State Drill Co. v. Wirtz*, 17 N. D. 313, 18 L.R.A.(N.S.) 134, 115 N. W. 844.

Compelling designation of person upon whom process may be served as a condition of right to do business. 1 L.R.A.(N.S.) 558.

§ 5241. Liability of officers, etc., for failure to comply. Any failure to comply with the provisions of the last three sections and with section 4913 of this code shall render each and every officer, agent or stockholder of any corporation, association or joint stock company failing to comply therewith, jointly and severally liable on any and all contracts of such corporation, association or joint stock company made within this state during the time such corporation, association or joint stock company is so in default. Each and every officer and agent of such corporation shall further be deemed guilty of a misdemeanor. [1911, ch. 137, § 2; R. C. 1905, § 4698; 1890, ch. 193, § 1; R. C. 1895, § 3264.]

Officers and stockholders of foreign corporation are liable on implied contracts of corporation to return everything received under express contract which has been rescinded by party making claim, because of breach by corporation. *Chesley v. Soo Lig-nite Coal Co.*, 19 N. D. 18, 121 N. W. 73.

§ 5242. Failure to comply renders all contracts void. Every contract made by or on behalf of any corporation, association or joint stock company, doing business in this state, without first having complied with the provisions of

section 4913, if an insurance company, or with the provisions of section 5238 and 5240, if other than an insurance company, shall be wholly void on behalf of such corporation, association or joint stock company and its assigns, but any contract so made in violation of the provisions of this section may be enforced against such corporation, association or joint stock company. [R. C. 1905, § 4699; R. C. 1895, § 3265.]

Not unconstitutional as interfering with interstate commerce. *Iowa Falls Mfg. Co. v. Farrar*, 19 S. D. 632, 104 N. W. 449.

Single business transaction does not constitute "doing business." State use of *Hart-Parr Co. v. Robb-Lawrence Co.*, 15 N. D. 55, 106 N. W. 406.

May be prevented from exercising franchise by state. *Wright v. Lee*, 2 S. D. 596, 51 N. W. 706.

Right to do business cannot be raised or determined collaterally. *Wright v. Lee*, 4 S. D. 237, 55 N. W. 931.

Failure to comply with statute cannot be taken advantage of by corporation. *Foster v. Lumber Co.*, 5 S. D. 57, 58 N. W. 9.

Attachment by foreign corporation will be dissolved. *Bradley, Metcalf & Co. v. Armstrong*, 9 S. D. 267, 68 N. W. 733.

Foreign corporation may acquire title to real property within state without having complied with law relating to such corporations. *Reed v. Todd*, 25 S. D. 421, 127 N. W. 527.

Assignee of foreign corporation could recover price of goods sold on written orders which were accepted and filled in foreign state although these sections were not complied with. *Coffin v. Smith*, 26 S. D. 536, 128 N. W. 805.

Does not invalidate contract made by foreign corporation which has failed to comply with statute, but is reasonable condition upon which right to use of courts depend. *Sioux Remedy Co. v. Cope*, 28 S. D. 397, 133 N. W. 683.

Compliance with laws of this state before making contract prerequisite to suit thereon by foreign corporation. *American Copying Co. v. Eureka Bazaar*, 20 S. D. 526, 9 L.R.A.(N.S.) 1176, 108 N. W. 15.

Foreign corporation engaged in transacting interstate business may sue on contract without complying with statute. *Sucker State Drill Co. v. Wirtz*, 17 N. D. 313, 18 L.R.A.(N.S.) 134, 115 N. W. 844.

Inapplicable to foreign corporation transacting interstate business because of expiration of agency. *Rex Buggy Co. v. Dinneen*, 23 S. D. 474, 122 N. W. 433.

Right of foreign corporation to set up noncompliance with conditions of doing business in order to defeat recovery against it. 25 L.R.A. 569.

Right of foreign corporation which has not complied with local laws to defend action. 17 L.R.A.(N.S.) 1117.

Effect upon right of foreign corporation to maintain suit, of compliance with local law after suit is instituted. 14 L.R.A.(N.S.) 561; 23 L.R.A.(N.S.) 492.

Enforceability of subscription to stock of foreign corporation that has not complied with local laws. 29 L.R.A.(N.S.) 92.

Lack of authority of foreign corporation to do business within a state as affecting embezzlement by agent. 27 L.R.A.(N.S.) 415.

Validity of contracts made by foreign corporations which have not complied with statutory conditions of the right to do business in a state. 24 L.R.A. 315.

Validity of contracts of foreign corporations before getting permission to do business. 1 L.R.A.(N.S.) 1041.

Statutory provision for penalty as affecting validity or enforceability of contract made by foreign corporation without complying with conditions of doing business. 4 L.R.A.(N.S.) 688; 40 L.R.A.(N.S.) 857.

Right to cancellation of contract made with foreign corporation because it has not complied with the laws entitling it to do business within the state. 21 L.R.A.(N.S.) 707.

Enforceability in federal court, or court of another state, of a contract made by a foreign corporation which had not complied with the conditions of doing business within the state. 26 L.R.A.(N.S.) 999.

Recovery back of money paid under a contract to a foreign corporation which has not complied with the conditions of doing business in the state. 38 L.R.A.(N.S.) 210.

Effect on insurance of noncompliance with statutory requirements. 20 L.R.A. 405.

ARTICLE 2.—DOMESTIC CORPORATIONS.

§ 5243. **Regulating domestic corporations.** Whenever any corporation organized under the laws of the territory of Dakota or state of North Dakota shall fail or neglect for one year to transact its usual and corporate business within this state, or shall fail or neglect for one year to keep and maintain a public office at its principal place of business within this state for the trans-

action of its usual and regular business, and shall not within such year by a duly executed instrument filed in the office of the secretary of state constitute and appoint the secretary of state and his successors, its true and lawful agent and attorney, upon whom all process in any action or proceeding against it may be served, and agree therein that any process which may be served on its said agent and attorney shall be of the same force and validity as if served upon it personally within this state, and provide therein that such appointment shall continue in force irrevocable so long as any liability of the corporation remains outstanding in this state, such corporation shall be deemed to have abandoned and forfeited its franchise, and shall not thereafter commence or maintain any action in any of the courts of this state; provided, that any such corporation may file such instrument within thirty days after this article shall take effect and be in force. [R. C. 1905, § 4700; 1897, ch. 73, § 1; R. C. 1899, § 3265a.]

Migration of corporation as ground for forfeiting corporate charter. 24 L.R.A. 462.

§ 5244. Secretary shall keep record. Upon the filing of such instrument in the office of the secretary of state, service on such secretary as the agent and attorney of the corporation shall be deemed sufficient service on the corporation, and such secretary shall forthwith mail the process so served to some officer or director of the corporation if he shall know the post office address of any such officer or director, or to such person as may have been previously designated by the corporation, by written notice filed in the office of the secretary of state, and the secretary shall keep a record of all such process, which shall show the day and hour of such service. As a condition of valid service, the plaintiff shall pay to the secretary of state at the time of service the sum of two dollars, which shall be taxed as costs and recovered by him if he prevail in the action. [R. C. 1905, § 4701; 1897, ch. 73, § 2; R. C. 1899, § 3265b.]

CHAPTER 35.

NATURE OF PROPERTY.

§ 5245. Ownership defined. The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this code the thing of which there may be ownership is called property. [R. C. 1905, § 4702; Civ. C. 1877, § 159; R. C. 1899, § 3266.]

Term "use and possess" is broader than either the term "title" or "possession."

Fleming v. Sherwood, 24 N. D. 144, 42 L.R.A. (N.S.) 945, 139 N. W. 101.

As to similar provision in Cal. Civ. Code, § 654, see Fudickar v. East Riverside Irrig. Dist., 109 Cal. 29, 41 Pac. 1024; Re Stanford, 126 Cal. 112, 45 L.R.A. 788, 58 Pac. 462; Higgins v. San Diego, 131 Cal. 294, 63 Pac. 470.

§ 5246. What may be owned. There may be ownership of all inanimate things which are capable of appropriation or of manual delivery, of all domestic animals, including dogs, of all obligations, of such products of labor or skill, as the composition of an author, the good will of a business, trade-marks and signs and of rights created or granted by statute. [R. C. 1905, § 4703; Civ. C. 1877, § 160; 1891, ch. 101, § 1; R. C. 1899, § 3267.]

Court will enjoin fraudulent appropriation and use of trade-mark. Simmons Hwd. Co. v. Wiabel, 1 S. D. 488, 47 N. W. 814, 36 Am. St. Rep. 755, 11 L.R.A. 267.

Sale of good will not a contract in restraint of trade. Mapes v. Metcalf, 10 N. D. 601, 88 N. W. 713.

§ 5247. Wild animals. Animals, wild by nature, are the subjects of ownership while living, only when on the land of the person claiming them, or when tamed, or taken and held in possession or disabled and immediately pursued. [R. C. 1905, § 4704; Civ. C. 1877, § 161; R. C. 1899, § 3268.]

Property rights in bees. 40 L.R.A. 687.

Liability for injury done by animals *feræ naturæ*. 11 L.R.A. (N.S.) 748; 16 L.R.A. (N.S.) 445.

Master's liability to servant for personal injury by wild animal. 23 L.R.A. (N.S.) 1071.

As to similar provision in Cal. Civ. Code, § 656, see Kellogg v. King, 114 Cal. 378,

55 Am. St. Rep. 74, 46 Pac. 166; *Garcia v. Gunn*, 119 Cal. 315, 51 Pac. 684; *Ex parte Kenneke*, 136 Cal. 527, 89 Am. St. Rep. 177, 69 Pac. 261.

§ 5248. Property classified. Property is either:

1. Real or immovable; or,
2. Personal or movable. [R. C. 1905, § 4705; Civ. C. 1877, § 162; R. C. 1899, § 3269.]

As to similar provision in Cal. Civ. Code, § 657, see *Jeffers v. Easton E. & Co.*, 113 Cal. 345, 45 Pac. 680.

§ 5249. Real defined. Real or immovable property consists of:

1. Land.
2. That which is affixed to land.
3. That which is incidental or appurtenant to land.
4. That which is immovable by law. [R. C. 1905, § 4706; Civ. C. 1877, § 163; R. C. 1899, § 3270.]

Classification of growing fruit as real property. 16 L.R.A. 103.

Oil and gas lease as real property. 42 L.R.A.(N.S.) 472.

Whether railroad is real estate or personalty. 66 L.R.A. 33.

Nature of interest of vendor or vendee in a land contract as real or personal property. 57 L.R.A. 643.

§ 5250. Land defined. Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance. [R. C. 1905, § 4707; Civ. C. 1877, § 164; R. C. 1899, § 3271.]

In defining "land" exclude growing grain and only include such things as are annexed to the earth by roots, such as are deemed *fructus naturales*. *Bjornson v. Rostad*, 30 S. D. 40, 137 N. W. 567.

§ 5251. Fixtures. A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines or shrubs; or imbedded in it, as in the case of walls, or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts or screws. [R. C. 1905, § 4708; Civ. C. 1877, § 165; R. C. 1899, § 3272.]

Tenant has no right to remove fixtures after surrender of lease. *Sweet v. Myers*, 3 S. D. 324, 53 N. W. 187.

Buildings may be sold separate from the land. *Myrick v. Bill*, 3 D. 284, 17 N. W. 268.

House on mining claim of another is property of owner of land in absence of contract to contrary. *Milison v. Mutual Cash Guaranty F. Ins. Co.*, 24 S. D. 285, 140 Am. St. Rep. 788, 123 N. W. 839.

What are fixtures. 14 Am. Dec. 303; 17 Am. Dec. 686; 24 Am. Dec. 726.

—within meaning of bulk sale law. 34 L.R.A.(N.S.) 218.

—cold storage plant as. 30 L.R.A.(N.S.) 576.

—engine, when placed upon land by owner of realty. 8 L.R.A.(N.S.) 376.

—gas fixtures. 29 Am. Rep. 403; 37 Am. Rep. 472.

—gas pipes and other appliances. 34 Am. Rep. 354; 37 Am. Rep. 472.

—gas stoves. 17 L.R.A.(N.S.) 699.

—heating apparatus. 1 B. R. C. 972.

—machinery. 11 Am. Rep. 314; 42 Am. Rep. 447.

—manure. 14 Am. Dec. 397.

—mirrors. 37 Am. Rep. 472.

—show cases, shelving, etc. 43 L.R.A.(N.S.) 675.

—storm doors and windows and screens. 30 L.R.A.(N.S.) 1189.

—window fronts. 41 L.R.A.(N.S.) 1022.

Are things placed on land with the intention of annexing them fixtures, where they are never actually attached. 69 L.R.A. 892; 15 L.R.A.(N.S.) 727.

Character of building placed by consent on another's land as real or personal property, in the absence of an agreement as to its character. 14 L.R.A.(N.S.) 439.

When and against whom may fixtures retain character of personal property. 84 Am. St. Rep. 877.

Effect of agreement to prevent fixtures from becoming part of realty. 19 L.R.A. 441.

Effect of chattel mortgage on fixtures as against subsequent purchaser or incumbrancer. 15 L.R.A. 61.

Rights of seller of chattel, retaining title thereto or a lien thereon, as against existing mortgagees of the realty to which it is affixed by the owner. 37 L.R.A.(N.S.) 119; 1 B. R. C. 664.

Right of third person to remove fixtures as breach of covenant in a deed of real property. 35 L.R.A.(N.S.) 976.

Ejectment as proper remedy to recover fixtures. 18 L.R.A. 787.

Effect upon rights of owner of a building, or of an interest in or a lien thereon, of its wrongful removal and attachment to the land of a third person without the former's consent. 14 L.R.A.(N.S.) 435.

As to similar provision in Cal. Civ. Code, § 660, see *Miller v. Waddingham*, 91 Cal. 377, 13 L.R.A. 680, 27 Pac. 750.

§ 5252. Appurtenances. A thing is deemed to be incidental or appurtenant to land, when it is by right used with the land for its benefit, as in the case of a way or water course, or of a passage for light, air or heat from or across the land of another. Sluice boxes, flumes, hose, pipes, railway tracks, cars, blacksmith shops, mills and all other machinery or tools used in working or developing a mine are to be deemed affixed to the mine. [R. C. 1905, § 4709; Civ. C. 1877, § 166; R. C. 1899, § 3273.]

What are appurtenances. 13 Am. Dec. 657; 40 Am. Rep. 381; 81 Am. St. Rep. 764. —fixtures as. 15 L.R.A. 653.

—ponds as. 58 L.R.A. 489.

What articles will pass as appurtenances on sale of personal property. 8 L.R.A.(N.S.) 793.

Appurtenant easements. 14 L.R.A. 300; 20 L.R.A. 635.

Corporeal appurtenances to realty. 15 L.R.A. 652.

Right of way on shore as appurtenant to fishery right. 4 L.R.A.(N.S.) 879.

Way appurtenant to close from which it is separated by intervening lands. 2 L.R.A.(N.S.) 983.

American law as to easements of light, air and prospect. 22 L.R.A. 536; 8 L.R.A.(N.S.) 350.

Does lease carry right to light and air from adjoining premises of landlord. 13 L.R.A.(N.S.) 333.

Way of necessity where other possible modes of access exist. 17 L.R.A.(N.S.) 1019; 32 L.R.A.(N.S.) 1075.

Does the fact that the sale of part of a tract is involuntary prevent the implication of a way by necessity over the remainder. 12 L.R.A.(N.S.) 482.

Implication from necessity of easement other than right of way. 8 L.R.A.(N.S.) 328.

Implied grant of easement in partition deed. 3 L.R.A.(N.S.) 1082.

Grant of easement by implication. 23 Am. Rep. 446; 122 Am. St. Rep. 206.

Easement by severance of tract of land with apparent benefit existing. 26 L.R.A.(N.S.) 316.

Effect of division of tract with visible servitude in favor of one parcel upon another. 6 L.R.A.(N.S.) 410.

As to similar provision in Cal. Civ. Code, § 662, see *Dixon v. Schermier*, 110 Cal. 582, 42 Pac. 1091; *Peterson v. Machado*, 5 Cal. Unrep. 273, 43 Pac. 611.

§ 5253. Personal property defined. Every kind of property that is not real is personal. [R. C. 1905, § 4710; Civ. C. 1877, § 167; R. C. 1899, § 3274.]

Choses in action are personal property. *Sykes v. Hannawalt*, 5 N. D. 335, 65 N. W. 682.

Railroad as personal property. 66 L.R.A. 33.

Oil and gas lease as. 42 L.R.A.(N.S.) 472.

Injury from abandonment of highway as. 26 L.R.A. 665.

Classification of growing fruit as. 16 L.R.A. 103.

As to similar provision in Cal. Civ. Code, § 663, see *Raventas v. Green*, 57 Cal. 254.

CHAPTER 36.

OWNERSHIP.

- ARTICLE 1. OWNERS, §§ 5254-5256.
 2. INTERESTS IN PROPERTY, §§ 5257-5281.
 3. CONDITIONS OF OWNERSHIP, §§ 5282-5286.
 4. RESTRAINTS UPON ALIENATION, §§ 5287-5289.
 5. ACCUMULATIONS, §§ 5290-5294.
 6. RIGHTS OF OWNERS, §§ 5295, 5296.
 7. TERMINATION OF OWNERSHIP, §§ 5297-5300.

ARTICLE 1.—OWNERS.

§ 5254. Ownership. Limitation. The legislative assembly can pass no law interfering with the primary disposal of the soil. All property in this state has an owner, whether that owner is the United States or the state, and the

property public; or the owner an individual, and the property private. The state may also hold property as a private proprietor. [R. C. 1905, § 4711; Civ. C. 1877, § 168; R. C. 1899, § 3275.]

Legal title to all property in the state originally in some person, United States or state, legal title vesting legal estate in holder. State ex rel. Dillman v. Weide, 23 S. D. 109, 135 N. W. 696.

§ 5255. **Land below high water mark.** The ownership of land below ordinary high water mark and of land below the water of a navigable lake or stream is regulated by the laws of the United States or by such laws as under authority thereof, the legislative assembly may enact. The state is the owner of all property lawfully appropriated or dedicated to its own use; and of all property of which there is no other owner. [R. C. 1905, § 4712; Civ. C. 1877, § 169; R. C. 1899, § 3276.]

State and federal ownership of waters. 50 L.R.A. 737.

Right as between state and federal government to improve navigability of stream. 67 L.R.A. 824.

§ 5256. **Who may convey.** Any person, whether citizen or alien, may take, hold and dispose of property, real or personal, within this state. [R. C. 1905, § 4713; Civ. C. 1877, § 170; R. C. 1899, § 3277.]

Alien may acquire a title to mining property. Gorman v. Alexander, 2 S. D. 557, 51 N. W. 346.

As to similar provision in Cal. Civ. Code, § 671, see Re Billings, 65 Cal. 593, 4 Pac. 639.

ARTICLE 2.—INTERESTS IN PROPERTY.

§ 5257. **Ownership classified.** The ownership of property is either:

1. Absolute; or,
2. Qualified. [R. C. 1905, § 4714; Civ. C. 1877, § 171; R. C. 1899, § 3278.]
As to similar provision in Cal. Civ. Code, § 678, see Le Breton v. Cook, 107 Cal. 410, 40 Pac. 552; Spreckels v. Spreckels, 116 Cal. 339, 36 L.R.A. 497, 58 Am. St. Rep. 170, 48 Pac. 228.

§ 5258. **Absolute ownership.** The ownership of property is absolute when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws. [R. C. 1905, § 4715; Civ. C. 1877, § 172; R. C. 1899, § 3279.]

As to similar provision in Cal. Civ. Code, § 679, see Works v. Merritt, 105 Cal. 467, 38 Pac. 1109; Bank of Ukiah v. Moore, 106 Cal. 673, 39 Pac. 1071; Rodgers v. Bachman, 109 Cal. 552, 42 Pac. 448; Re Burdick, 112 Cal. 387, 44 Pac. 734; Spreckels v. Spreckels, 116 Cal. 339, 36 L.R.A. 497, 58 Am. St. Rep. 170, 48 Pac. 228.

§ 5259. **Qualified ownership.** The ownership of property is qualified:

1. When it is shared with one or more persons.
2. When the time of enjoyment is deferred or limited; or,
3. When the use is restricted. [R. C. 1905, § 4716; Civ. C. 1877, § 173; R. C. 1899, § 3280.]

Recital in deed to city that it is "understood that said premises are deeded for city hall purposes only" does not qualify ownership. Huron v. Wilcox, 17 S. D. 625, 106 Am. St. Rep. 788, 98 N. W. 88.

As to similar provision in Cal. Civ. Code, § 680, see Le Breton v. Cook, 107 Cal. 410, 40 Pac. 552; Re Burdick, 112 Cal. 387, 44 Pac. 734; Spreckels v. Spreckels, 116 Cal. 339, 36 L.R.A. 497, 58 Am. St. Rep. 170, 48 Pac. 228; Blackburn v. Webb, 133 Cal. 420, 65 Pac. 952.

§ 5260. **Sole ownership.** The ownership of property by a single person is designated as a sole or several ownership. [R. C. 1905, § 4717; Civ. C. 1877, § 174; R. C. 1899, § 3281.]

§ 5261. **Ownership by several.** The ownership of property by several persons is either:

1. Of joint interests.
2. Of partnership interests; or,
3. Of interests in common. [R. C. 1905, § 4718; Civ. C. 1877, § 175; R. C. 1899, § 3282.]

As to similar provision in Cal. Civ. Code, § 682, see Re Burdick, 112 Cal. 387, 44 Pac. 734; Spreckels v. Spreckels, 116 Cal. 339, 36 L.R.A. 497, 58 Am. St. Rep. 170, 48 Pac. 228.

§ 5262. Joint tenancy. A joint interest is one owned by several persons in equal shares by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants. [R. C. 1905, § 4719; Civ. C. 1877, § 176; R. C. 1899, § 3283.]

As to similar provision in Cal. Civ. Code, § 683, see *Denigan v. San Francisco Sav. Union*, 127 Cal. 142, 78 Am. St. Rep. 35, 59 Pac. 330.

§ 5263. Partnership. A partnership interest is one owned by several persons in partnership for partnership purposes. [R. C. 1905, § 4720; Civ. C. 1877, § 177; R. C. 1899, § 3284.]

As to similar provision in Cal. Civ. Code, § 684, see *Smith v. Cooley*, 65 Cal. 46, 2 Pac. 880; *People v. Greening*, 102 Cal. 384, 36 Pac. 665.

§ 5264. Common tenancy. An interest in common is one owned by several persons not in joint ownership or partnership. [R. C. 1905, § 4721; Civ. C. 1877, § 178; R. C. 1899, § 3285.]

As to similar provision in Cal. Civ. Code, § 685, see *Re Hittell*, 141 Cal. 432, 76 Pac. 53.

§ 5265. Definition. Every interest created in favor of several persons in their own right is an interest in common, unless acquired by them in partnership for partnership purposes, or unless declared in its creation to be a joint interest as provided in section 5262. [R. C. 1905, § 4722; Civ. C. 1877, § 179; R. C. 1899, § 3286.]

As to similar provision in Cal. Civ. Code, § 686, see *Re Hittell*, 141 Cal. 432, 75 Pac. 53.

§ 5266. Commencement and duration. In respect to the time of enjoyment an interest in property is either:

1. Present or future; and,
2. Perpetual or limited. [R. C. 1905, § 4723; Civ. C. 1877, § 180; R. C. 1899, § 3287.]

As to similar provision in Cal. Civ. Code, § 688, see *Le Breton v. Cook*, 107 Cal. 410, 40 Pac. 552.

§ 5267. Present. A present interest entitles the owner to the immediate possession of the property. [R. C. 1905, § 4724; Civ. C. 1877, § 181; R. C. 1899, § 3288.]

As to similar provision in Cal. Civ. Code, § 689, see *Le Breton v. Cook*, 107 Cal. 410, 40 Pac. 552.

§ 5268. Future. A future interest entitles the owner to the possession of the property only at a future period. [R. C. 1905, § 4725; Civ. C. 1877, § 182; R. C. 1899, § 3289.]

Person vested with title to land through will of his father, though land is subject to life interest of mother, is owner of real property subject to lien of judgment. *John Leslie Paper Co. v. Wheeler*, 23 N. D. 477, 42 L.R.A.(N.S.) 292, 137 N. W. 412.

As to similar provision in Cal. Civ. Code, § 690, see *Goldtree v. Thompson*, 79 Cal. 613, 22 Pac. 50; *Barnett v. Barnett*, 104 Cal. 298, 37 Pac. 1049; *Le Breton v. Cook*, 107 Cal. 410, 40 Pac. 552; *Dunn v. Schell*, 122 Cal. 626, 55 Pac. 595; *Blackburn v. Webb*, 133 Cal. 420, 65 Pac. 952.

§ 5269. Perpetual. A perpetual interest has a duration equal to that of the property. [R. C. 1905, § 4726; Civ. C. 1877, § 183; R. C. 1899, § 3290.]

§ 5270. Limited. A limited interest has a duration less than that of the property. [R. C. 1905, § 4727; Civ. C. 1877, § 184; R. C. 1899, § 3291.]

§ 5271. Future estates classified. A future interest is either:

1. Vested; or,
2. Contingent. [R. C. 1905, § 4728; Civ. C. 1877, § 185; R. C. 1899, § 3292.]

§ 5272. When they vest. A future interest is vested when there is a person in being who would have a right, defeasible or indefeasible, to the immediate possession of the property upon the ceasing of the immediate or precedent interest. [R. C. 1905, § 4729; Civ. C. 1877, § 186; R. C. 1899, § 3293.]

Purchaser at sale under attachment acquires no title as against deed delivered before levy but recorded after attachment. *Leonard v. Fleming*, 13 N. D. 629, 102 N. W. 308.

Person vested with title to land through will of his father, though land is subject to life estate of mother, is owner of real property subject to lien of judgment. *John Leslie Paper Co. v. Wheeler*, 23 N. D. 477, 42 L.R.A.(N.S.) 292, 137 N. W. 412.

As to similar provision in Cal. Civ. Code, § 694, see *Williams v. Williams*, 73 Cal. 99, 14 Pac. 394; *Dunn v. Schell*, 122 Cal. 626, 55 Pac. 595; *Re Fair*, 132 Cal. 523, 84 Am.

St. Rep. 70, 60 Pac. 442, 64 Pac. 1000; *Blackburn v. Webb*, 133 Cal. 420, 65 Pac. 952; *Re Sanford*, 136 Cal. 97, 68 Pac. 494.

§ 5273. How contingent. A future interest is contingent while the person in whom or the event upon which it is limited to take effect, remains uncertain. [R. C. 1905, § 4730; Civ. C. 1877, § 187; R. C. 1899, § 3294.]

Purchaser at sale under attachment acquires no title as against deed delivered before levy but recorded after attachment. *Leonard v. Fleming*, 13 N. D. 629, 102 N. W. 308.

As to similar provision in Cal. Civ. Code, § 695, see *Jewell v. Pierce*, 120 Cal. 79, 52 Pac. 132.

§ 5274. Alternative contingencies. Two or more future interests may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it and take effect accordingly. [R. C. 1905, § 4731; Civ. C. 1877, § 188; R. C. 1899, § 3295.]

§ 5275. Not void. A future interest is not void merely because of the improbability of the contingency on which it is limited to take effect. [R. C. 1905, § 4732; Civ. C. 1877, § 189; R. C. 1899, § 3296.]

§ 5276. Posthumous heir. When a future interest is limited to successors, heirs, issue or children, posthumous children are entitled to take in the same manner as if living at the death of their parent. [R. C. 1905, § 4733; Civ. C. 1877, § 190; R. C. 1899, § 3297.]

§ 5277. Future estates pass. Future interests pass by succession, will and transfer in the same manner as present interests. [R. C. 1905, § 4734; Civ. C. 1877, § 191; R. C. 1899, § 3298.]

As to similar provision in Cal. Civ. Code, § 699, see *Barnett v. Barnett*, 104 Cal. 298, 37 Pac. 1049; *Le Breton v. Cook*, 107 Cal. 410, 40 Pac. 552; *Re Walkerly*, 108 Cal. 627, 49 Am. St. Rep. 97, 41 Pac. 772; *Dunn v. Schell*, 122 Cal. 626, 55 Pac. 595; *Blackburn v. Webb*, 133 Cal. 420, 65 Pac. 952.

§ 5278. Possibilities. A mere possibility, such as the expectancy of an heir apparent, is not to be deemed an interest of any kind. [R. C. 1905, § 4735; Civ. C. 1877, § 192; R. C. 1899, § 3299.]

Release by heir in lifetime of ancestor of his interest in estate of ancestor is inoperative. *Re Thompson*, 26 S. D. 576, 128 N. W. 1127, Ann. Cas. 1913B, 446.

As to similar provision in Cal. Civ. Code, § 700, see *Re Burdick*, 112 Cal. 387, 44 Pac. 734; *Supreme Council, A. L. H. v. Gehrenbeck*, 124 Cal. 43, 56 Pac. 640; *Re Wickersham*, 138 Cal. 355, 70 Pac. 1076; *Re Ryder*, 141 Cal. 366, 74 Pac. 993.

§ 5279. Estates of realty. In respect to real or immovable property, the interests mentioned in this chapter are denominated estates, and are specially named and classified in chapter 38 of this code. [R. C. 1905, § 4736; Civ. C. 1877, § 193; R. C. 1899, § 3300.]

§ 5280. Classification. The names and classifications of interests in real property have only such application to interests in personal property as in this chapter and the succeeding seventeen chapters of this code is expressly provided. [R. C. 1905, § 4737; Civ. C. 1877, § 194; R. C. 1899, § 3301.]

§ 5281. Future interests limited. No future interest in property is recognized by the law, except such as is defined in this code. [R. C. 1905, § 4738; Civ. C. 1877, § 195; R. C. 1899, § 3302.]

ARTICLE 3.—CONDITIONS OF OWNERSHIP.

§ 5282. Conditions defined. The time when the enjoyment of property is to begin or end may be determined by computation, or be made to depend on events. In the latter case, the enjoyment is said to be upon condition. [R. C. 1905, § 4739; Civ. C. 1877, § 196; R. C. 1899, § 3303.]

As to similar provision in Cal. Civ. Code, § 707, see *Nichols v. Emery*, 109 Cal. 323, 50 Am. St. Rep. 43, 41 Pac. 1089.

§ 5283. Classified. Conditions are precedent or subsequent. The former fix the beginning, the latter the ending of the right. [R. C. 1905, § 4740; Civ. C. 1877, § 197; R. C. 1899, § 3304.]

Effect on a condition subsequent of a succeeding law or act of God preventing its performance. 21 L.R.A. 58.

Necessity of entry or formal declaration of forfeiture as a condition of maintaining action other than for damages, based on breach of condition subsequent in conveyance of freehold. 14 L.R.A.(N.S.) 1188; 23 L.R.A.(N.S.) 938.

Character and effect of provision in deed to railroad for construction of road within a specified time. 32 L.R.A.(N.S.) 117.

Condition in deed that land is to be used for a specified charitable or quasi public purpose. 19 L.R.A. 262.

Effect of specifying condition in use of real estate in devise to religious society. 11 L.R.A.(N.S.) 509.

Breach of condition in devise of real estate to religious society for specified use. 11 L.R.A.(N.S.) 525.

Execution of contract on condition that others shall sign. 45 L.R.A. 321.

Reverter of land dedicated or conveyed for purposes of courthouse upon removal of courthouse, or failure to use land for courthouse purposes. 35 L.R.A.(N.S.) 603.

Right of entry on condition broken. 60 L.R.A. 750.

Does grantor's right to rescind for breach of condition as to support descend to his heirs or representatives. 23 L.R.A.(N.S.) 232.

Suit for damages as waiver of right to forfeit deed for breach of condition. 5 L.R.A.(N.S.) 603.

§ 5284. Illegal conditions void. If a condition precedent requires the performance of an act wrong of itself, the instrument containing it is so far void and the right cannot exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful the instrument takes effect and the condition is void. [R. C. 1905, § 4741; Civ. C. 1877, § 198; R. C. 1899, § 3305.]

As to similar provision in Cal. Civ. Code, § 709, see *Hoag v. Howard*, 55 Cal. 564.

§ 5285. Restraints upon marriage. Conditions imposing restraints upon marriage, except upon the marriage of a minor, or of the widow of the person by whom the condition is imposed are void; but this does not affect limitations when the intent was not to forbid marriage, but only to give the use until marriage. [R. C. 1905, § 4742; Civ. C. 1877, § 199; R. C. 1899, § 3306.]

Validity of condition in restraint of marriage. 2 L.R.A.(N.S.) 545.

Devises or bequests conditioned upon divorce or separation or limited upon its continuance. 49 L.R.A.(N.S.) 637.

Provision in restraint of marriage in a deed or will as a condition or a limitation. 49 L.R.A.(N.S.) 615.

Validity of provision in restraint of marriage as affected by fact that the gift to which it relates is to a daughter or other female relative. 49 L.R.A.(N.S.) 606.

Validity of condition in restraint of marriage as affected by fact that a breach entails only a partial forfeiture. 49 L.R.A.(N.S.) 627.

Meaning of words "unmarried," and "without having been married," in will. 15 L.R.A. 292.

Effect of testamentary provision restricting widow to enjoyment during widowhood, upon quantum of estate taken by her. 28 L.R.A.(N.S.) 1093.

Equitable relief against forfeiture of estate under condition against marriage. 69 L.R.A. 858.

Contracts in restraint of marriage. 49 L.R.A.(N.S.) 633.

§ 5286. Restraints on alienation. Conditions restraining alienation, when repugnant to the interest created, are void. [R. C. 1905, § 4743; Civ. C. 1877, § 200; R. C. 1899, § 3307.]

Validity of limitation upon power of alienation imposed upon devise of equitable estate to married woman. 28 L.R.A.(N.S.) 426.

ARTICLE 4.—RESTRAINTS UPON ALIENATION.

§ 5287. Power of alienation. How long may be suspended. The absolute power of alienation cannot be suspended by any limitation or condition whatever for a longer period than during the continuance of the lives of persons in being at the creation of the limitation or condition, except in the single case mentioned in section 5315. [R. C. 1905, § 4744; Civ. C. 1877, § 201; R. C. 1899, § 3308.]

Power of alienation not suspended for longer than continuance of lives in being at testator's death. *Penfield v. Tower*, 1 N. D. 216, 46 N. W. 413.

Statute has no application where executor is vested with absolute and unconditional power to sell and convert land into money and devote fund to charitable use mentioned in will. *Hagen v. Sacrisson*, 19 N. D. 160, 26 L.R.A.(N.S.) 724, 123 N. W. 518.

Effect on prior takers of failure of gift because it violates the rule against perpetuities. 20 L.R.A. 509.

Devises of life estates to unborn children of living persons, as contravening the rule against perpetuities. 6 L.R.A.(N.S.) 330.

Limitation of estate upon probate of will as a violation of the rule against perpetuities. 10 L.R.A.(N.S.) 564.

Contract for indefinite option, or indefinite renewal of option, as perpetuity. 9 L.R.A.(N.S.) 913.

Allowing period for conversion of property as violation of rule against perpetuities or suspension of power of alienation. 26 L.R.A.(N.S.) 724.

Allowing specified period for election to take under devise or bequest as a violation of the rule against perpetuities, or the suspension of the power of alienation. 26 L.R.A.(N.S.) 825.

Validity of devise over upon indefinite cessation of lineal descendants of first taker. 3 L.R.A.(N.S.) 1143.

Validity of restraints on the alienation of a fee simple during a limited time. 3 L.R.A.(N.S.) 668.

Effect of rule against perpetuities on enforcement of general bequest for charity or religion. 14 L.R.A.(N.S.) 66.

Restrictions on alienation in devise of real estate to religious society for specified uses. 11 L.R.A.(N.S.) 523.

Validity of limitation of power of alienation imposed upon grant or devise of equitable estate to married woman. 28 L.R.A.(N.S.) 426.

As to similar provision in Cal. Civ. Code, § 715, see *Hinckley's Estate*, 58 Cal. 457; *Whitney v. Dodge*, 105 Cal. 192, 38 Pac. 636.

§ 5288. When future interest void. Every future interest is void in its creation, which by any possibility may suspend the absolute power of alienation for a longer period than is prescribed in this chapter. Such power of alienation is suspended when there are no persons in being by whom an absolute interest in possession can be conveyed. [R. C. 1905, § 4745; Civ. C. 1877, § 202; R. C. 1899, § 3309.]

Effect on prior takers of the failure of a gift because it violates the rule against perpetuities. 20 L.R.A. 509.

Remainder void for remoteness; effect on particular estate. 3 L.R.A.(N.S.) 639.

Effect of decree of distribution following a testamentary disposition of property void under the rule against perpetuities or as unlawfully suspending the power of alienation. 15 L.R.A.(N.S.) 900.

As to similar provision in Cal. Civ. Code, § 716, see *Goldtree v. Thompson*, 79 Cal. 613, 22 Pac. 50; *Sacramento Bank v. Alcorn*, 121 Cal. 379, 53 Pac. 813; *Re Steele*, 124 Cal. 533, 57 Pac. 564; *Blakeman v. Miller*, 136 Cal. 138, 89 Am. St. Rep. 120, 68 Pac. 587.

§ 5289. Leases limited. No lease or grant of agricultural land for a longer period than ten years, in which shall be reserved any rent or service of any kind, shall be valid. No lease or grant of any town or city for a longer period than ninety-nine years, in which shall be reserved any rent or service of any kind, shall be valid. [R. C. 1905, § 4746; Civ. C. 1877, § 203; R. C. 1899, § 3310; 1903, ch. 151.]

"Rent" means profit arising out of land and payable periodically. *Wegner v. Lubenow*, 12 N. D. 95, 95 N. W. 442.

As to similar provision in Cal. Civ. Code, § 717, see *Mann v. Mann*, 141 Cal. 326, 74 Pac. 995.

ARTICLE 5.—ACCUMULATIONS.

§ 5290. Income. Future interest. Dispositions of the income of property to accrue and to be received at any time subsequent to the execution of the instrument creating such dispositions are governed by the rules prescribed in this chapter in relation to future interests. [R. C. 1905, § 4747; Civ. C. 1877, § 204; R. C. 1899, § 3311.]

As to similar provision in Cal. Civ. Code, § 722, see *Hinckley's Estate*, 58 Cal. 457.

§ 5291. Illegal accumulation. All directions for the accumulation of the income of property, except such as are allowed by this chapter are void. [R. C. 1905, § 4748; Civ. C. 1877, § 205; R. C. 1899, § 3312.]

Effect of direction for accumulation upon validity of charitable gift. 2 B. R. C. 880.

As to similar provision in Cal. Civ. Code, § 723, see *Hinckley's Estate*, 58 Cal. 457; *Re Sanford*, 136 Cal. 97, 68 Pac. 494.

§ 5292. Income, how directed. An accumulation of the income of property for the benefit of one or more persons may be directed by any will or transfer in writing, sufficient to pass the property out of which the fund is to arise as follows:

1. If such accumulation is directed to commence on the creation of the

interest out of which the income is to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority; or,

2. If such accumulation is directed to commence at any time subsequent to the creation of the interest out of which the income is to arise, it must commence within the time in this chapter permitted for the vesting of future interests and during the minority of the beneficiaries, and terminate at the expiration of such minority. [R. C. 1905, § 4749; Civ. C. 1877, § 206; R. C. 1899, § 3313.]

As to similar provision in Cal. Civ. Code, § 724, see *Hinckley's Estate*, 58 Cal. 457; *Goldtree v. Thompson*, 79 Cal. 613, 22 Pac. 50.

§ 5293. Void beyond minority. If in either of the cases mentioned in the last section the direction for an accumulation is for a longer term than during the minority of the beneficiaries, the direction only, whether separable or not from other provisions of the instrument, is void as respects the time beyond such minority. [R. C. 1905, § 4750; Civ. C. 1877, § 207; R. C. 1899, § 3314.]

As to similar provision in Cal. Civ. Code, § 725, see *Hinckley's Estate*, 58 Cal. 457.

§ 5294. Allowance to minor from accumulations. When a minor, for whose benefit an accumulation has been directed, is destitute of other sufficient means of support and education, the county court upon application may direct a suitable sum to be applied thereto out of the fund. [R. C. 1905, § 4751; Civ. C. 1877, § 208; R. C. 1899, § 3315.]

ARTICLE 6.—RIGHTS OF OWNERS.

§ 5295. Owner owns product and accessions. The owner of a thing owns also all of its products and accessions. [R. C. 1905, § 4752; Civ. C. 1877, § 209; R. C. 1899, § 3316.]

Word "accession" used in section applies to things added to realty, and not to crops raised by adverse possessor and severed from land. *Golden Valley Land & Cattle Co. v. Johnstone*, 21 N. D. 101, 128 N. W. 691, Ann. Cas. 1913B, 631.

Title by accession to crops, fruit and timber wrongfully severed. 32 L.R.A. 422.

Title to increase of animals as between mortgagee of dam and other claimants. 17 L.R.A. 82.

Necessity that increase of animals be in gestation at time of execution of mortgage in order to be covered thereby. 17 L.R.A.(N.S.) 203.

Does chattel mortgage on domestic animals cover their increase when not mentioned therein. 14 L.R.A.(N.S.) 431.

Rights and remedies of owner of standing timber which has been manufactured into lumber after expiration of time stipulated for removal. 29 L.R.A.(N.S.) 552.

§ 5296. To whom undirected income belongs. When, in consequence of a valid limitation of a future interest, there is a suspension of the power of alienation or of the ownership, during the continuation of which the income is undisposed of, and no valid direction for its accumulation is given, such income belongs to the persons presumptively entitled to the next eventual interest. [R. C. 1905, § 4753; Civ. C. 1877, § 210; R. C. 1899, § 3317.]

ARTICLE 7.—TERMINATION OF OWNERSHIP.

§ 5297. When future interest dependent on death is defeated. A future interest, depending on the contingency of the death of any person without successors, heirs, issue or children is defeated by the birth of a posthumous child of such person capable of taking by succession. [R. C. 1905, § 4754; Civ. C. 1877, § 211; R. C. 1899, § 3318.]

Does contingency of death without issue, children, etc., import their survival of the first taker. 37 L.R.A.(N.S.) 164.

To what time contingency of death of a legatee or devisee without child or issue on which a gift is conditioned is referable. 25 L.R.A.(N.S.) 1045.

§ 5298. How future interest defeated. A future interest may be defeated in any manner, or by any act or means, which the party creating such interest provided for or authorized in the creation thereof; nor is a future interest

thus liable to be defeated to be on that ground adjudged void in its creation. [R. C. 1905, § 4755; Civ. C. 1877, § 212; R. C. 1899, § 3319.]

§ 5299. When not defeated. No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by any destruction of such precedent interest by forfeiture, surrender, merger or otherwise, except as provided by the next section or when a forfeiture is imposed by statute as a penalty for the violation thereof. [R. C. 1905, § 4756; Civ. C. 1877, § 213; R. C. 1899, § 3320.]

§ 5300. Same. No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect; but should such contingency afterwards happen, the future interest takes effect in the same manner and to the same extent as if the precedent interest had continued to the same period. [R. C. 1905, § 4757; Civ. C. 1877, § 214; R. C. 1899, § 3321.]

CHAPTER 37.

GENERAL DEFINITIONS.

§ 5301. Income includes what. The income of property, as the term is used in the two preceding chapters, includes the rents and profits of real property, the interest of money, dividends upon stock and other produce of personal property. [R. C. 1905, § 4758; Civ. C. 1877, § 215; R. C. 1899, § 3322.]

§ 5302. When limitation deemed created. The delivery of the grant, when a limitation, condition or future interest is created by grant, and the death of the testator, when it is created by will, is to be deemed the time of the creation of the limitation, condition or interest within the meaning of this code. [R. C. 1905, § 4759; Civ. C. 1877, § 216; R. C. 1899, § 3323.]

CHAPTER 38.

REAL OR IMMOVABLE PROPERTY.

- ARTICLE 1. GENERAL PROVISIONS, § 5303.
 2. ESTATES IN GENERAL, §§ 5304-5324.
 3. TERMINATION OF ESTATES, §§ 5325-5329.
 4. SERVITUDES, §§ 5330-5340.

ARTICLE 1.—GENERAL PROVISIONS.

§ 5303. Law governing real property. Real property within this state is governed by the law of this state, except when the title is in the United States. [R. C. 1905, § 4760; Civ. C. 1877, § 217; R. C. 1899, § 3324.]

As to inheritance by illegitimate child. *Moen v. Moen*, 16 S. D. 210, 92 N. W. 13.
 As to similar provision in Cal. Civ. Code, § 763, see *Barnett v. Barnett*, 104 Cal. 298, 37 Pac. 1049.

ARTICLE 2.—ESTATES IN GENERAL.

§ 5304. Estates classified as to duration. Estates in real property, in respect to the duration of their enjoyment are either:

1. Estates of inheritance, or perpetual estates.
2. Estates for life.
3. Estates for years; or,
4. Estates at will. [R. C. 1905, § 4761; Civ. C. 1877, § 218; R. C. 1899, § 3325.]

§ 5305. Estate in fee defined. Every estate of inheritance is a fee, and every such estate, when not defeasible or conditional, is a fee simple or an absolute fee. [R. C. 1905, § 4762; Civ. C. 1877, § 219; R. C. 1899, § 3326.]

Character of estate created by grant of property to one so long as he shall desire to live upon it or devote it to a particular use. 21 L.R.A.(N.S.) 575.

Right of one to whom estate is devised for life, with power to consume, to convey a good title. 13 L.R.A.(N.S.) 458.

Power of disposition bestowed on devisee as indicative of quantum of estate intended to be devised. 18 L.R.A.(N.S.) 463.

Effect of bequest for life of chattels consumable in the use. 16 L.R.A.(N.S.) 483.

§ 5306. Estates tail declared fees. Estates tail are abolished; and every estate which would be at common law adjudged to be a fee tail is a fee simple, and if no valid remainder is limited thereon, is a fee simple absolute. [R. C. 1905, § 4763; Civ. C. 1877, § 220; R. C. 1899, § 3327.]

Estates tail, creation, nature and destruction of. 7 Am. St. Rep. 428.

§ 5307. Fee tail valid as contingent limitation upon a fee. When a remainder in fee is limited upon any estate which would by the common law be adjudged a fee tail, such remainder is valid as a contingent limitation upon a fee and vests in possession on the death of the first taker without issue living at the time of his death. [R. C. 1905, § 4764; Civ. C. 1877, § 221; R. C. 1899, § 3328.]

§ 5308. Estate of freehold. Estates of inheritance and for life are called estates of freehold; estates for years are chattels real; and estates at will are chattel interests, but are not liable as such to sale on execution. [R. C. 1905, § 4765; Civ. C. 1877, § 222; R. C. 1899, § 3329.]

Equitable estate vested in purchaser under simple contract for purchase of land is inheritable and is a freehold estate. *State ex rel. Dillman v. Weide*, 29 S. D. 109, 135 N. W. 696.

§ 5309. Same. An estate during the life of a third person, whether limited to heirs or otherwise, is a freehold. [R. C. 1905, § 4766; Civ. C. 1877, § 223; R. C. 1899, § 3330.]

Estate during the life of a third person is a freehold, alienable and inheritable. *State ex rel. Dillman v. Weide*, 29 S. D. 109, 135 N. W. 696.

Devise absolutely; effect of subsequent gift over. 5 L.R.A.(N.S.) 323.

§ 5310. Future, how limited. A future estate may be limited by the act of the party to commence in possession at a future day, either without the intervention of a precedent estate, or on the termination by lapse of time or otherwise of a precedent estate created at the same time. [R. C. 1905, § 4767; Civ. C. 1877, § 224; R. C. 1899, § 3331.]

§ 5311. Reversion defined. A reversion is the residue of an estate left by operation of law in the grantor or his successors, or in the successors of a testator, commencing in possession on the determination of a particular estate granted or devised. [R. C. 1905, § 4768; Civ. C. 1877, § 225; R. C. 1899, § 3332.]

§ 5312. Remainder. When a future estate, other than a reversion, is dependent on a precedent estate, it may be called a remainder and may be created and transferred by that name. [R. C. 1905, § 4769; Civ. C. 1877, § 226; R. C. 1899, § 3333.]

Person vested with title to land through will of his father, though land is subject to life estate of mother, is owner of real property subject to lien of judgment. *John Leslie Paper Co. v. Wheeler*, 23 N. D. 477, 42 L.R.A.(N.S.) 292, 137 N. W. 412.

Power to create remainder after life estate with absolute power of disposal. 6 L.R.A.(N.S.) 1186; 39 L.R.A.(N.S.) 805.

§ 5313. Limitation of suspension of absolute ownership. The absolute ownership of a term of years cannot be suspended for a longer period than the absolute power of alienation can be suspended in respect to fee. [R. C. 1905, § 4770; Civ. C. 1877, § 227; R. C. 1899, § 3334.]

§ 5314. Further defined. The suspension of all power to alienate the subject of a trust, other than a power to exchange it for other property to be held upon the same trust, or to sell it and reinvest the proceeds to be held upon the same trust is a suspension of the power of alienation within the

meaning of section 5287. [R. C. 1905, § 4771; Civ. C. 1877, § 228; R. C. 1899, § 3335.]

As to similar provision in Cal. Civ. Code, § 771, see *Hinckley's Estate*, 58 Cal. 457; *Re Walkerly*, 108 Cal. 627, 49 Am. St. Rep. 97, 41 Pac. 772.

§ 5315. Creation of a remainder on prior remainder. A contingent remainder in fee may be created on a prior remainder in fee to take effect in the event that the persons to whom the first remainder is limited die under the age of twenty-one years or upon any other contingency by which the estate of such persons may be determined before they attain majority. [R. C. 1905, § 4772; Civ. C. 1877, § 229; R. C. 1899, § 3336.]

As to similar provision in Cal. Civ. Code, § 772, see *Hinckley's Estate*, 58 Cal. 457; *Crew v. Pratt*, 119 Cal. 139, 51 Pac. 38.

§ 5316. Creation of future freehold estates, etc. Subject to the rules of this chapter and of chapters 35, 36 and 37 a freehold estate, as well as a chattel real, may be created to commence at a future day; an estate for life may be created in a term of years and a remainder limited thereon; a remainder of a freehold or chattel real, either contingent or vested, may be created, expectant on the determination of a term of years; and a fee may be limited on a fee upon a contingency which, if it should occur, must happen within the period prescribed in this chapter. [R. C. 1905, § 4773; Civ. C. 1877, § 230; R. C. 1899, § 3337.]

As to similar provision in Cal. Civ. Code, § 773, see *Blakeman v. Miller*, 136 Cal. 138, 89 Am. St. Rep. 120, 68 Pac. 587.

§ 5317. What life estates void. Successive estates for life cannot be limited except to persons in being at the creation thereof, and all life estates subsequent to those of persons in being are void; and upon the death of those persons the remainder, if valid in its creation, takes effect in the same manner as if no other life estate had been created. [R. C. 1905, § 4774; Civ. C. 1877, § 231; R. C. 1899, § 3338.]

§ 5318. Remainder upon successive life estates. No remainder can be created upon successive estates for life, provided for in the preceding section, unless such remainder is in fee; nor can a remainder be created upon such estate in a term of years unless it is for the whole residue of such term. [R. C. 1905, § 4775; Civ. C. 1877, § 232; R. C. 1899, § 3339.]

§ 5319. Contingent remainder on term of years. A contingent remainder cannot be created on a term of years, unless the nature of the contingency on which it is limited is such that the remainder must vest in interest during the continuance or at the termination of lives in being at the creation of such remainder. [R. C. 1905, § 4776; Civ. C. 1877, § 233; R. C. 1899, § 3340.]

As to similar provision in Cal. Civ. Code, § 776, see *Blakeman v. Miller*, 136 Cal. 138, 89 Am. St. Rep. 120, 68 Pac. 587.

§ 5320. Estate for life as remainder on term of years. No estate for life can be limited as a remainder on a term of years, except to a person in being at the creation of such estate. [R. C. 1905, § 4777; Civ. C. 1877, § 234; R. C. 1899, § 3341.]

§ 5321. Conditional limitation. A remainder may be limited on a contingency which, in case it should happen, will operate to abridge or determine the precedent estate; and every such remainder is to be deemed a conditional limitation. [R. C. 1905, § 4778; Civ. C. 1877, § 235; R. C. 1899, § 3342.]

§ 5322. To heirs of body. When a remainder is limited to the heirs or heirs of the body, of a person to whom a life estate in the same property is given the persons who on the termination of the life estate are the successors or heirs of the body of the owner for life are entitled to take by virtue of the remainder so limited to them and not as mere successors of the owner for life. [R. C. 1905, § 4779; Civ. C. 1877, § 236; R. C. 1899, § 3343.]

Full treatment of rule in *Shelley's Case*. 29 L.R.A.(N.S.) 963.

Effect upon rule in *Shelley's Case*, of express prohibition against conveyance or incumbrance of property by life tenant. 7 L.R.A.(N.S.) 1109.

Extent to which rule in *Shelley's Case* controls in the United States. 30 Am. Dec. 415.

Effect of videlicet following word "heirs" in a grant or devise of real property to restrict estate given to the first taker. 33 L.R.A.(N.S.) 191.

Construction of word "heirs" to mean children. 1 L.R.A.(N.S.) 319.

As to similar provision in Cal. Civ. Code, § 779, see *Barnett v. Barnett*, 104 Cal. 298, 37 Pac. 1049.

§ 5323. On death of first taker. When a remainder on an estate for life or for years is not limited on a contingency defeating or avoiding such precedent estate it is to be deemed intended to take effect only on the death of the first taker or the expiration by lapse of time of such term of years. [R. C. 1905, § 4780; Civ. C. 1877, § 237; R. C. 1899, § 3344.]

§ 5324. Unexecuted power. A general or special power of appointment does not prevent the vesting of a future estate, limited to take effect in case such power is not executed. [R. C. 1905, § 4781; Civ. C. 1877, § 238; R. C. 1899, § 3345.]

As to similar provision in Cal. Civ. Code, § 781, see *Re Fair*, 132 Cal. 523, 84 Am. St. Rep. 70, 60 Pac. 442, 64 Pac. 1000.

ARTICLE 3.—TERMINATION OF ESTATES.

§ 5325. Of estate at will. A tenancy or other estate at will, however created, may be terminated by the landlord's giving notice to the tenant in the manner prescribed by the next section to remove from the premises within a period specified in the notice of not less than one month. [R. C. 1905, § 4782; Civ. C. 1877, § 239; R. C. 1899, § 3346.]

§ 5326. Requisites of notice. Service. The notice prescribed by the last section must be in writing and must be served by delivering the same to the tenant or to some person of discretion residing on the premises, or, if neither can with reasonable diligence be found, the notice may be served by affixing it on a conspicuous part of the premises where it may be conveniently read. [R. C. 1905, § 4783; Civ. C. 1877, § 240; R. C. 1899, § 3347.]

§ 5327. Subsequent action. After the notice prescribed by sections 5325 and 5326 has been served in the manner therein directed and the period specified by such notice has expired, but not before, the landlord may re-enter or proceed according to law to recover possession. [R. C. 1905, § 4784; Civ. C. 1877, § 241; R. C. 1899, § 3348.]

§ 5328. Three days' notice. Whenever the right of re-entry is given to a grantor or lessor in any grant or lease, or otherwise, such re-entry may be made at any time after the right has accrued upon three days' previous written notice of intention to re-enter served in the mode prescribed by section 5326. [R. C. 1905, § 4785; Civ. C. 1877, § 242; R. C. 1899, § 3349.]

Eviction on three days' notice for nonpayment of rent; no re-entry clause necessary in lease. *Dakota Hot Springs Co. v. Young*, 9 S. D. 577, 70 N. W. 842.

As to similar provision in Cal. Civ. Code, § 791, see *Earl Orchard Co. v. Fava*, 138 Cal. 76, 70 Pac. 1073.

§ 5329. Without notice. An action for the possession of real property, leased or granted with a right of re-entry, may be maintained at any time after the right to re-enter has accrued without the notice prescribed in section 5328. [R. C. 1905, § 4786; Civ. C. 1877, § 243; R. C. 1899, § 3350.]

ARTICLE 4.—SERVITUDES.

§ 5330. Easements attached to other lands. The following land burdens or servitudes upon land may be attached to other lands as incidents or appurtenances, and are then called easements:

1. The right of pasturage.
2. The right of fishing.
3. The right of taking game.
4. The right of way.
5. The right of taking water, wood, minerals and other things.
6. The right of transacting business upon land.
7. The right of conducting lawful sports upon land.

8. The right of receiving air, light or heat from or over, or discharging the same upon or over land.
9. The right of receiving water from or discharging the same upon land
10. The right of flooding land.
11. The right of having water flow without diminution or disturbance of any kind.
12. The right of using a wall as a party wall.
13. The right of receiving more than natural support from adjacent land or things affixed thereto.
14. The right of having the whole of a division fence maintained by a coterminous owner.
15. The right of having public conveyances stopped, or of stopping the same on land.
16. The right of a seat in church.
17. The right of burial. [R. C. 1905, § 4787; Civ. C. 1877, § 244; R. C. 1899, § 3351.]

As to right to acquire land for park purposes by common-law dedication. *Cole v. Minnesota Loan & T. Co.*, 17 N. D. 409, 117 N. W. 354, 17 A. & E. Ann. Cas. 304.

Grant of easement by implication. 23 Am. Rep. 446; 40 Am. Rep. 537; 122 Am. St. Rep. 206.

Implied grant of by severance and sale of property. 34 Am. St. Rep. 708; 26 L.R.A.(N.S.) 316.

Restrictive covenants as to use of property as easement. 37 L.R.A.(N.S.) 36.

When easements by necessity exist. 36 Am. Rep. 415.

As to similar provision in Cal. Civ. Code, § 801, see *Lux v. Haggin*, 69 Cal. 255, 10 Pac. 674; *McDaniel v. Cummings*, 83 Cal. 515, 8 L.R.A. 575, 23 Pac. 795; *Dorris v. Sullivan*, 90 Cal. 279, 27 Pac. 216; *Painter v. Pasadena Land & Water Co.*, 91 Cal. 74, 27 Pac. 539; *Kennedy v. Burnap*, 120 Cal. 488, 40 L.R.A. 476, 52 Pac. 843; *Los Angeles Terminal Land Co. v. Muir*, 136 Cal. 36, 68 Pac. 308.

2. Right of way on shore as appurtenant to fishery right. 4 L.R.A.(N.S.) 879.

4. Ways of necessity. 13 Am. Dec. 746; 35 Am. Dec. 464; 85 Am. Dec. 675.

Ways and the rights and remedies of the parties entitled thereto. 88 Am. Dec. 279; 100 Am. Dec. 115; 50 Am. Rep. 64; 95 Am. St. Rep. 318.

Way of necessity where other possible modes of access exist. 17 L.R.A.(N.S.) 1019; 32 L.R.A.(N.S.) 1075.

Way appurtenant to close from which it is separated by intervening lands. 2 L.R.A.(N.S.) 983.

Does the fact that the sale of part of a tract is involuntary prevent the implication of a way by necessity over the remainder. 12 L.R.A.(N.S.) 482.

Effect of bounding grant on private way to carry title thereto. 24 L.R.A.(N.S.) 539.

Right of grantee to claim an easement, implied covenant or estoppel, as against the grantor, by a call in the deed for a street or alley in which the grantor owns the fee. 14 L.R.A.(N.S.) 878.

Right of purchaser of property according to plat to easements in streets or ways indicated thereon other than those on which his property abuts. 28 L.R.A.(N.S.) 1024.

Bounding land on alley as covenant that alley exists, where grantor does not own the fee thereof. 10 L.R.A.(N.S.) 964.

5. Right of riparian owner to use water of creek flowing over his land, not easement but an incident to the land. Right limited to actual amount used. *Stenger v. Thorp*, 17 S. D. 13, 94 N. W. 402.

8. Ancient lights. 46 Am. Dec. 583.

Easement of light and air. 7 Am. Dec. 49; 32 Am. Dec. 412.

—of light and air from public streets. 41 Am. St. Rep. 323.

American law as to easements of light, air and prospect. 22 L.R.A. 536; 8 L.R.A.(N.S.) 350.

Does lease carry right to light and air from adjoining premises of landlord. 13 L.R.A.(N.S.) 333.

10. Right to flood another's land is easement acquisition of which by prescription requires continuous enjoyment for period of statute of limitations governing actions to recover land. *Shearer v. Hutterische Bruder Geineinde*, 26 S. D. 509, 134 N. W. 63.

11. Servitude of easement to receive the flow of water. 32 Am. Dec. 123.

12. Conveyance by two parties of land for party wall each to the other is an easement. *Scottish-American Mortg. Co. v. Russell*, 20 S. D. 42, 104 N. W. 607.

Right to lateral support. 33 Am. St. Rep. 446.

—presumption of grant of right of. 29 Am. Rep. 399.

—prescriptive right to. 7 Am. Dec. 62.

Nature of right to lateral and subjacent support. 68 L.R.A. 683.

§ 5331. Others not attached may be granted. The following land burdens or servitudes upon land may be granted and held, though not attached to land:

1. The right to pasture, and of fishing and taking game.
2. The right of a seat in church.
3. The right of burial.
4. The right of taking rents and tolls.
5. The right of way.
6. The right of taking water, wood, minerals or other things. [R. C. 1905, § 4788; Civ. C. 1877, § 245; R. C. 1899, § 3352.]

Easement in ditch acquired by landowner's continued acquiescence without objection. Scott v. Toomey, 8 S. D. 639, 67 N. W. 838.

Acquisition of easement by adverse possession by. 11 Am. Dec. 663.

Void parol conveyance of easement as foundation for easement by prescription. 13 L.R.A.(N.S.) 991.

Burden of showing that use upon which an easement by prescription is claimed was permissive, and not under claim of right. 8 L.R.A.(N.S.) 149.

Implied easement by exhibiting unfilled plat to intending purchaser. 35 L.R.A.(N.S.) 938.

Prescriptive right by use of underground water pipes. 2 L.R.A.(N.S.) 976.

Prescriptive right to lateral support of buildings. 20 L.R.A. 730.

Acquisition by prescription of party-wall easement in common division wall. 18 L.R.A.(N.S.) 131.

As to similar provision in Cal. Civ. Code, § 802, see Dixon v. Schermeier, 110 Cal. 582, 42 Pac. 1091.

1. Prescriptive right to fish. 60 L.R.A. 496.

3. Interest of owner in burial lot as easement. 67 L.R.A. 119.

Prescription or adverse possession of grave or burial lot. 40 L.R.A.(N.S.) 752.

5. Acquisition of prescriptive right of way across railroad tracks. 35 L.R.A.(N.S.) 190.

Effect of protest by owner to prevent acquisition of right of way by prescription. 25 L.R.A.(N.S.) 174.

Right of way on shore by custom or prescription. 4 L.R.A.(N.S.) 880.

Grant of right of way on shore. 4 L.R.A.(N.S.) 881.

Validity of contract by public-service corporation for exclusive right of way across private property. 36 L.R.A.(N.S.) 456.

Right of way for irrigation ditch; right of fee owner to cross. 3 L.R.A.(N.S.) 1148.

Leaving bars or gates for convenience of neighbor when fencing land, as affecting the acquisition of easement of way by prescription. 35 L.R.A.(N.S.) 941.

§ 5332. Dominant tenement. The land to which an easement is attached is called the dominant tenement; the land upon which a burden or servitude is laid is called the servient tenement. [R. C. 1905, § 4789; Civ. C. 1877, § 246; R. C. 1899, § 3353.]

§ 5333. Who can create servitude. A servitude can be created only by one who has a vested estate in the servient tenement. [R. C. 1905, § 4790; Civ. C. 1877, § 247; R. C. 1899, § 3354.]

Creation and conveyance of easements appurtenant. 136 Am. St. Rep. 680.

Cotenant's power to create. 21 Am. St. Rep. 593.

Power of husband to create easements in homestead without wife's consent. 27 L.R.A.(N.S.) 963.

§ 5334. Who cannot hold. A servitude thereon cannot be held by the owner of the servient tenement. [R. C. 1905, § 4791; Civ. C. 1877, § 248; R. C. 1899, § 3355.]

§ 5335. Extent of. The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired. [R. C. 1905, § 4792; Civ. C. 1877, § 249; R. C. 1899, § 3356.]

Extent of indefinite easement as affected by the extent to which it has been used. 5 L.R.A.(N.S.) 851.

Rights conferred by grant of unrestricted easement as limited to a reasonable use. 15 L.R.A.(N.S.) 292.

Duration of easements appurtenant. 20 L.R.A. 635.

Continuance of easement on the severance of a heritage. 57 Am. Dec. 759.

When easement is revocable. 43 Am. Rep. 195.

As to similar provision in Cal. Civ. Code, § 806, see Allen v. San Jose Land & Water Co., 92 Cal. 138, 15 L.R.A. 93, 28 Pac. 215.

§ 5336. Partition of. Burden apportioned. In case of partition of the dominant tenement the burden must be apportioned according to the division of the dominant tenement, but not in such a way as to increase the burden upon the servient tenement. [R. C. 1905, § 4793; Civ. C. 1877, § 250; R. C. 1899, § 3357.]

§ 5337. Right of future owner. The owner of a future estate in a dominant tenement may use easements attached thereto for the purpose of viewing waste, demanding rent or removing an obstruction to the enjoyment of such easement, although such tenement is occupied by a tenant. [R. C. 1905, § 4794; Civ. C. 1877, § 251; R. C. 1899, § 3358.]

§ 5338. Right of action. The owner of any estate in a dominant tenement, or the occupant of such tenement, may maintain an action for the enforcement of an easement attached thereto. [R. C. 1905, § 4795; Civ. C. 1877, § 252; R. C. 1899, § 3359.]

Right of property owner to compensation for interference with light or air by railroad structure on company's own property. 20 L.R.A.(N.S.) 1061.

Abutter's right to compensation for interference with easement of light, air and access by railroad in street 36 L.R.A.(N.S.) 736, 778.

Injunction against interference with view from street. 5 L.R.A.(N.S.) 486.

Mandatory injunction for removal of obstruction to light. 20 L.R.A. 161.

What constitutes a "taking" of easements of light, air and prospect. 18 L.R.A. 166.

§ 5339. Same. The owner in fee of a servient tenement may maintain an action for the possession of the land against any one unlawfully possessed thereof, though a servitude exists thereon in favor of the public. [R. C. 1905, § 4796; Civ. C. 1877, § 253; R. C. 1899, § 3360.]

Ejectment by original owner of land dedicated to public against permanent incumbrancer inconsistent with dedication. *N. P. Ry. Co. v. Lake*, 10 N. D. 541, 88 N. W. 461.

Ejectment for public easement. 11 L.R.A.(N.S.) 123.

Right of owner of right of way over another's land to compensation when the land is taken for a public highway. 2 L.R.A.(N.S.) 598.

§ 5340. Extinguishment. A servitude is extinguished:

1. By the vesting of the right to the servitude and the right to the servient tenement in the same person.

2. By the destruction of the servient tenement.

3. By the performance of an act upon either tenement by the owner of the servitude or with his assent which is incompatible with its nature or exercise; or,

4. When the servitude was acquired by enjoyment, by disuse thereof by the owner of the servitude for the period prescribed for acquiring title by enjoyment. [R. C. 1905, § 4797; Civ. C. 1877, § 254; R. C. 1899, § 3361.]

Abandonment of highway by nonuser. 26 L.R.A. 449.

Will failure to maintain easement raise a presumption of its abandonment. 2 L.R.A.(N.S.) 832.

As to similar provision in Cal. Civ. Code, § 811, see *Smith v. Worn*, 93 Cal. 206, 28 Pac. 944; *Smith v. Hawkins*, 110 Cal. 122, 42 Pac. 453; *Los Angeles v. Pomeroy*, 125 Cal. 420, 58 Pac. 69.

1. Effect upon easement of unity of seisin of dominant and servient estates. 1 B. R. C. 477.

2. Dedication of land as affecting easement. 31 L.R.A.(N.S.) 1028.

Extinguishment of easement for private way by its incorporation into a public way. 21 L.R.A.(N.S.) 1002.

Effect of destruction of building to terminate adjoining owner's easement of support. 19 L.R.A.(N.S.) 883.

Right of abutting owner to continue enjoyment of pathway across highway. 12 L.R.A.(N.S.) 918.

3. Abandonment of private way by nonuser or improvements inconsistent with its use. 22 L.R.A.(N.S.) 880; 42 L.R.A.(N.S.) 741.

4. Extinguishment of easement by statute of limitations. 14 Am. St. Rep. 278.

Inclosure of right of way as adverse possession. 1 L.R.A.(N.S.) 565.

CHAPTER 39.

RIGHTS OF OWNERS.

- ARTICLE 1. INCIDENTS OF OWNERSHIP, §§ 5341-5350.
 2. BOUNDARIES, §§ 5351-5356.
 3. OBLIGATIONS OF OWNERS, §§ 5357, 5358.

ARTICLE 1.—INCIDENTS OF OWNERSHIP.

§ 5341. Land includes water. The owner of the land owns water standing thereon, or flowing over or under its surface, but not forming a definite stream. Water running in a definite stream formed by nature over or under the surface may be used by him as long as it remains there; but he may not prevent the natural flow of the stream or of the natural spring from which it commences its definite course, nor pursue nor pollute the same. [R. C. 1905, § 4798; Civ. C. 1877, § 255; R. C. 1899, § 3362.]

Underground water not in a defined stream, not "running water." Deadwood Cent. R. Co. v. Barker, 14 S. D. 558, 86 N. W. 619.

Riparian owner may use reasonable quantity of water for irrigation purposes. Lone Tree Ditch Co. v. Ditch Co., 15 S. D. 519, 91 N. W. 352.

Water coming to surface in a spring belongs to landowner. Metcalf v. Nelson, 8 S. D. 87, 65 N. W. 911, 59 Am. St. Rep. 746.

Right of homesteader to use of water flowing overland superior to that of mining claim afterward located. Sturr v. Beck, 6 D. 71, 50 N. W. 486, 133 U. S. 541, 33 Led. 761, 10 S. Ct. R. 350.

Riparian owner's right to have stream flow over land is such property as may be condemned for railroad purposes. Bigelow v. Draper, 6 N. D. 152, 69 N. W. 570.

Riparian rights of pre-emptor of public land attach at time of settlement, and not at date of final proof. Lone Tree Ditch Co. v. Cyclone Ditch Co., 15 S. D. 519, 91 N. W. 352; Sturr v. Beck, 133 U. S. 541, 33 Led. 761, 10 S. Ct. R. 350.

Riparian owner was entitled as against lower riparian owner to divert water on land of upper owners with their consent, so long as quantity of water taken does not exceed amount defendants are entitled to use. Redwater Land & Canal Co. v. Reed, 26 S. D. 466, 128 N. W. 702.

Property in water. 7 Am. Dec. 531.

Rights in subterranean waters. 19 L.R.A. 92; 64 Am. Dec. 727; 99 Am. St. Rep. 66.

Constitutionality of statutes to prevent waste of subterranean water. 23 L.R.A. (N.S.) 436.

Character of water flowing underground in a defined but unknown channel. 2 B. R. C. 991.

Percolating waters, what are. 67 Am. St. Rep. 663.

—correlative rights in. 64 L.R.A. 236; 17 L.R.A. (N.S.) 650; 23 L.R.A. (N.S.) 331; 25 L.R.A. (N.S.) 465; 37 L.R.A. (N.S.) 193; 64 Am. Dec. 727; 99 Am. St. Rep. 66.

—right to drain or interrupt flow of. 9 Am. Rep. 284.

—liability for interference with. 28 Am. Rep. 101.

—remedy for diversion of. 6 L.R.A. (N.S.) 1099.

—mandatory injunction as to diversion or obstruction. 20 L.R.A. 164.

—pollution of. 48 Am. Rep. 194.

Right to water of new spring. 30 L.R.A. (N.S.) 1158.

Right of flowage and liability for injuring property thereby. 57 Am. Dec. 684.

Correlative rights of upper and lower proprietors as to flow of water. 41 L.R.A. 743.

Right of one land owner to accelerate or diminish flow of water to or from the lands of another. 85 Am. St. Rep. 707.

Riparian proprietor's right to use and detain water and to the natural flow of the stream. 79 Am. Dec. 638.

Right as to flow of surface water. 16 Am. St. Rep. 710; 21 L.R.A. 593.

What is surface water. 25 L.R.A. 527.

Rights and liabilities of owners of dams. 57 Am. Dec. 684.

Liability for damming back water of stream. 59 L.R.A. 817.

§ 5341a. Water course defined. A water course entitled to the protection of the law is constituted, if there is a sufficient natural and accustomed flow of water to form and maintain a distinct and a defined channel. It is not essential that the supply of water should be continuous or from a perennial living source. It is enough if the flow arises periodically from natural causes

and reaches a plainly defined channel of a permanent character. [1907, ch. 271.]

What waters are navigable. 42 L.R.A. 305.

§ 5342. Rights of owner of life estate. The owner of a life estate may use the land in the same manner as the owner of a fee simple, except that he must do no act to the injury of the inheritance. [R. C. 1905, § 4799; Civ. C. 1877, § 256; R. C. 1899, § 3363.]

Rights and remedies of life tenants. 14 Am. St. Rep. 630.

Duty of life tenant to remainderman and reversioners. 137 Am. St. Rep. 651.

Allowance to life tenant for improvements. 81 Am. St. Rep. 183; 13 L.R.A.(N.S.) 514.

Duty of life tenant to keep property in repair. 33 L.R.A.(N.S.) 669.

Must life tenant or remainderman bear the cost of a public improvement. 10 L.R.A.(N.S.) 342.

§ 5343. Rights of tenant. A tenant for years or at will, unless he is a wrongdoer by holding over, may occupy the buildings, take the annual products of the soil, work mines and quarries open at the commencement of his tenancy and cultivate and harvest the crops growing at the end of his tenancy. [R. C. 1905, § 4800; Civ. C. 1877, § 257; R. C. 1899, § 3364.]

Timber rights of life tenant. 37 L.R.A.(N.S.) 763.

Mineral rights of life tenant. 36 L.R.A.(N.S.) 1100.

Right to emblements. 69 Am. Dec. 511.

Right to estovers. 64 Am. Dec. 367.

Manure made on the farm belongs to the realty. 28 Am. Rep. 39.

As to similar provision in Cal. Civ. Code, § 819, see *Marshall v. Luiz*, 115 Cal. 622, 47 Pac. 597.

§ 5344. Same. How determined. A tenant for years or at will has no other rights to the property than such as are given to him by the agreement or instrument by which his tenancy is acquired or by the last section. [R. C. 1905, § 4801; Civ. C. 1877, § 258; R. C. 1899, § 3365.]

§ 5345. Succession to rights. A person to whom any real property is transferred or devised upon which rent has been reserved, or to whom any such rent is transferred, is entitled to the same remedies for recovery of rent, for nonperformance of any of the terms of the lease or for any waste or cause of forfeiture as his grantor or devisor might have had. [R. C. 1905, § 4802; Civ. C. 1877, § 259; R. C. 1899, § 3366.]

Grantee of land is entitled to recover money due under contract made between his grantor and cropper who was in possession of land. *Martin v. Royer*, 19 N. D. 504, 125 N. W. 1027.

§ 5346. Assignees of lessor or lessee. Whatever remedies the lessor of any real property has against his immediate lessee for the breach of an agreement in the lease or for recovery of the possession, he has against the assignees of the lessee for any cause of action accruing while they are such assignees, except when the assignment is made by way of security for a loan and is not accompanied by possession of the premises. Whatever remedies the lessee of any real property may have against his immediate lessor for the breach of any agreement in the lease he may have against the assigns of the lessor and the assigns of the lessee may have against the lessor and his assigns, except upon covenants against incumbrances or relating to the title or possession of the premises. [R. C. 1905, § 4803; Civ. C. 1877, § 260; R. C. 1899, § 3367.]

Covenants run with the land. *N. P. Ry. Co. v. McClure*, 9 N. D. 73, 81 N. W. 52.

Remedies against assignees and sublessees. 15 Am. Dec. 543.

§ 5347. Notice to change terms. In all leases of lands or tenements, or of any interest therein, from month to month the landlord may, upon giving notice in writing at least fifteen days before the expiration of the month, change the terms of the lease to take effect at the expiration of the month. The notice, when served upon the tenant, shall of itself operate and be effectual to create and establish as a part of the lease the terms, rent and conditions specified in the notice, if the tenant shall continue to hold the premises

after the expiration of the month. [R. C. 1905, § 4804; Civ. C. 1877, § 261; R. C. 1899, § 3368.]

§ 5348. Life lease rent. Rent due upon a lease for life may be recovered in the same manner as upon a lease for years. [R. C. 1905, § 4805; Civ. C. 1877, § 262; R. C. 1899, § 3369.]

§ 5349. After death. Rent dependent on the life of a person may be recovered after as well as before his death. [R. C. 1905, § 4806; Civ. C. 1877, § 263; R. C. 1899, § 3370.]

§ 5350. Right of action. A person having an estate in fee, in remainder or reversion, may maintain an action for an injury done to the inheritance, notwithstanding an intervening estate for life or years and although after its commission his estate is transferred and he has no interest in the property at the commencement of the action. [R. C. 1905, § 4807; Civ. C. 1877, § 264; R. C. 1899, § 3371.]

Landowner may sue for damages to realty, though in possession of tenant. *Arneson v. Spawn*, 2 S. D. 269, 49 N. W. 1066, 39 Am. St. Rep. 783.

Which is real party in interest by whom action affecting rights of landlord and tenant must be brought. 64 L.R.A. 611.

Right of landlord to maintain trespass *quare clausum fregit*. 30 L.R.A.(N.S.) 248.

Right of owner to recover damages to property from nuisance not of a permanent character, while in possession of tenant. 3 L.R.A.(N.S.) 1060.

Right of remaindermen to maintain ejectment. 18 L.R.A. 790.

Rights of remaindermen on condemnation of property. 21 L.R.A. 212.

Right to partition among remaindermen pending life estate. 28 L.R.A.(N.S.) 125.

ARTICLE 2.—BOUNDARIES.

§ 5351. Above and below surface. The owner of land in fee has the right to the surface and to everything permanently situated beneath or above it. [R. C. 1905, § 4808; Civ. C. 1877, § 265; R. C. 1899, § 3372.]

The owner of property abutting on street dedicated by plat may recover for injury to trees planted by him. *Lovejoy v. Campbell*, 16 S. D. 231, 92 N. W. 24.

§ 5352. Banks and beds of streams. Except when the grant under which the land is held indicates a different intent, the owner of the upland, when it borders on a navigable lake or stream, takes to the edge of the lake or stream at low water mark, and all navigable rivers shall remain and be deemed public highways. In all cases when the opposite banks of any stream not navigable belong to different persons the stream and the bed thereof shall become common to both. [R. C. 1905, § 4809; Civ. C. 1877, § 266; R. C. 1899, § 3373.]

Owner of land bordering on nonnavigable lake takes to center. *Olson v. Huntamer*, 6 S. D. 364, 61 N. W. 479.

Grant of border land as including river bed. *Tossini v. Donahue*, 22 S. D. 277, 117 N. W. 148.

Where land abuts on stream, shore line is boundary and not meander line. *Heald v. Yumisko*, 7 N. D. 422, 75 N. W. 807.

Waters and watercourses as boundaries. 10 Am. Dec. 385; 30 Am. Dec. 286; 27 Am. St. Rep. 56.

Running side lines of water lots. 23 Am. Dec. 536.

Effect of bounding grant on river or tide water. 42 L.R.A. 502.

Effect of deed to carry title to water's edge, where a street or highway intervenes. 13 L.R.A.(N.S.) 551.

Government grant bounded by nontidal river as carrying title to land thereunder. 24 L.R.A.(N.S.) 1240.

§ 5353. To center of highway. An owner of land bounded by a road or street is presumed to own to the center of the way, but the contrary may be shown. [R. C. 1905, § 4810; Civ. C. 1877, § 267; R. C. 1899, § 3374.]

The owner of property abutting on street dedicated by plat, may recover for injury to trees planted by him. *Lovejoy v. Campbell*, 16 S. D. 231, 92 N. W. 24.

Rights of abutting owner in street are distinct and separate from easement in public generally. *Edmison v. Lowry*, 3 S. D. 77, 52 N. W. 583, 44 Am. St. Rep. 774, 17 L.R.A. 275.

Abutting lot owner owning fee in street may construct and use therein an area subject to public easement. *Dell Rapids Merchant Co. v. City of Dell Rapids*, 11 S. D. 116, 75 N. W. 898, 74 Am. St. Rep. 783.

Conveyance of property fronting on highway is presumed to carry title to center thereof, unless the fee is expressly reserved. *Sweatman v. Bathrick*, 17 S. D. 138, 95 N. W. 422.

Abutting lot owner may enjoin use of street for telephone poles. *Donovan v. Allert*, 11 N. D. 289, 58 L.R.A. 775, 95 Am. St. Rep. 720, 91 N. W. 441.

Ownership of fee is in enjoining land owner. *Meek v. Meade County*, 12 S. D. 162, 80 N. W. 182; *Edmison v. Lowry*, 3 S. D. 77, 52 N. W. 583, 44 Am. St. Rep. 774, 17 L.R.A. 275; *Dell Rapids Mer. Co. v. City of Dell Rapids*, 11 S. D. 116, 75 N. W. 898, 74 Am. St. Rep. 783; *Donovan v. Allert*, 11 N. D. 289, 58 L.R.A. 775, 95 Am. St. Rep. 720, 91 N. W. 441.

Effect of bounding grant on private way to carry title thereto. 24 L.R.A.(N.S.) 539.

Bounding land on street or alley as covenant that the street or alley exists, where grantor does not own the fee thereof. 10 L.R.A.(N.S.) 964.

Conveyance of parcel abutting on abandoned street as carrying grantor's title to fee of former street. 32 L.R.A.(N.S.) 778.

When streets or highways are included within boundaries. 54 Am. Dec. 797.

Construction of "beginning at the side of a road." 39 Am. Rep. 305.

Preventive remedy of nonconsenting abutting property owner where use of highway for street railway is authorized by public. 28 L.R.A.(N.S.) 1082.

What use of a street or highway constitutes an additional burden. 17 L.R.A. 474.

Telegraph and telephone poles and wires in street as additional burden on easement. 17 L.R.A. 480; 24 L.R.A. 721.

Telephone or telegraph as additional servitude on highway. 3 L.R.A.(N.S.) 323; 7 L.R.A.(N.S.) 87.

Electric power or light line in street or highway as an additional burden. 36 L.R.A.(N.S.) 185.

Railroad in street as additional burden. 36 L.R.A.(N.S.) 698.

Street railway as additional burden. 17 L.R.A. 477; 36 L.R.A.(N.S.) 709.

Interurban trolley road as additional burden. 4 L.R.A.(N.S.) 202; 40 L.R.A.(N.S.) 254.

As to similar provision in Cal. Civ. Code, § 831, see *Weyl v. Sonoma Valley R. Co.*, 69 Cal. 202, 10 Pac. 510.

§ 5354. Lateral support from adjoining land. Each coterminous owner is entitled to the lateral and adjacent support which his land receives from the adjoining land, subject to the right of the owner of the adjoining land to make proper and usual excavations on the same for purposes of construction on using ordinary care and skill and taking reasonable precautions to sustain the land of the other and giving previous reasonable notice to the other of his intention to make such excavations. [R. C. 1905, § 4811; Civ. C. 1877, § 268; R. C. 1899, § 3375.]

Verbal notice before excavation may be sufficient. *Novotny v. Danforth*, 9 S. D. 301, 68 N. W. 749.

Notice of intention to excavate does not relieve from liability for negligence. *Ulrick v. Dak. L. & T. Co.*, 2 S. D. 285, 49 N. W. 1054.

Right to remove lateral support by dredging water bed. 64 L.R.A. 275.

Condemnation or grant of land for railroad right of way as carrying right to lateral and subjacent support. 32 L.R.A.(N.S.) 155.

Liability of railroad company in constructing its roadway, for removal of lateral support to adjoining property. 21 L.R.A.(N.S.) 318.

Liability for removal of lateral support for land in natural state. 68 L.R.A. 673.

Liability for injuries to buildings on adjoining land by negligent removal of lateral support of the soil. 6 L.R.A.(N.S.) 243.

Right to lateral support as against public by adverse possession of highway or city street. 18 L.R.A. 150.

Liability of municipal corporation for injury to lateral support in making street improvements. 12 L.R.A.(N.S.) 696.

Duty of abutting owner to preserve lateral support to highway. 20 L.R.A.(N.S.) 287.

Liability of employer for injury to lateral support by independent contractor. 65 L.R.A. 849; 66 L.R.A. 148.

Right to lateral support from adjacent land. 66 Am. Dec. 646; 29 Am. Rep. 339; 33 Am. St. Rep. 446.

Prescriptive right of adjoining land owners to lateral support. 7 Am. Dec. 62.

As to similar provision in Cal. Civ. Code, § 832, see *Aston v. Nolan*, 63 Cal. 269; *Dunton v. Niles*, 95 Cal. 494, 30 Pac. 762; *Sullivan v. Zeiner*, 98 Cal. 346, 20 L.R.A. 730, 33 Pac. 209; *Conboy v. Dickinson*, 92 Cal. 600, 28 Pac. 809.

§ 5355. Trees on land of one owner. Trees whose trunks stand wholly upon the land of one owner belong exclusively to him although their roots

grow into the land of another. [R. C. 1905, § 4812; Civ. C. 1877, § 269; R. C. 1899, § 3376.]

Rights of adjoining proprietors to trees growing on or near boundary. 82 Am. Dec. 330.
Property rights in trees on a boundary line. 21 L.R.A. 729.

Trees near boundary as a nuisance. 2 B. R. C. 901.

Removal of trees near boundary as a nuisance. 21 L.R.A. 730.

§ 5356. Same on line. Trees whose trunks stand partly on the land of two or more coterminous owners belong to them in common. [R. C. 1905, § 4813; Civ. C. 1877, § 270; R. C. 1899, § 3377.]

ARTICLE 3.—OBLIGATIONS OF OWNERS.

§ 5357. Repairs and taxes. The owner of a life estate must keep the buildings and fences in repair from ordinary waste and must pay the taxes and other annual charges and a just proportion of extraordinary assessments benefiting the whole inheritance. [R. C. 1905, § 4814; Civ. C. 1877, § 271; R. C. 1899, § 3378.]

Applicable to surviving husband holding homestead as such. *Wells v. Sweeney*, 16 S. D. 489, 102 Am. St. Rep. 813, 94 N. W. 394.

Measure of damages for allowing land to become infested with weeds. 12 L.R.A.(N.S.) 88.

Right of life tenant who pays off liens or incumbrances as against remainderman. 29 L.R.A.(N.S.) 153.

Right of life tenant, or person claiming under him, to recover for improvements. 13 L.R.A.(N.S.) 514.

Duty of life tenant to keep property in repair. 33 L.R.A.(N.S.) 669.

Duty of life tenant to pay taxes. 32 L.R.A. 744; 114 Am. St. Rep. 448.

Effect of tax sale on land held by life tenant. 32 L.R.A. 805.

Effect on estates in reversion or remainder of tax sale during life estate. 33 L.R.A. 688.

Life tenant's right to timber for payment of taxes. 37 L.R.A.(N.S.) 767.

Must life tenant or remainderman bear the cost of a public improvement. 10 L.R.A.(N.S.) 342.

§ 5358. Boundaries. Fences. Coterminous owners are mutually bound equally to maintain:

1. The boundaries and monuments between them.

2. The fences between them, unless one of them chooses to let his land lie open as a public common, in which case, if he afterwards incloses it, he must refund to the other a just proportion of the value at that time of any division fence made by the latter. [R. C. 1905, § 4815; Civ. C. 1877, § 272; R. C. 1899, § 3379.]

As to similar provision in Cal. Civ. Code, § 841, see *Gonzales v. Wasson*, 51 Cal. 295; *Meade v. Watson*, 67 Cal. 591, 8 Pac. 311; *Bliss v. Sneath*, 103 Cal. 43, 36 Pac. 1029; *Bliss v. Sneath*, 119 Cal. 526, 51 Pac. 848.

1. Suits to ascertain and declare boundaries. 119 Am. St. Rep. 66.

Construction of survey and establishing lost corners. 22 Am. St. Rep. 34.

Rules governing inconsistent or uncertain description of boundaries. 30 Am. Dec. 734.

General rule for the location of boundaries. 129 Am. St. Rep. 990.

Limitations of actions founded on mistakes in boundaries. 62 Am. Dec. 527.

Location of boundaries by acquiescence or agreement. 69 Am. Dec. 711; 27 Am. Rep. 239.

Conclusiveness of established boundaries. 110 Am. St. Rep. 677.

Equity jurisdiction in case of confusion of boundaries. 15 Am. Dec. 745.

Construction of boundaries. 22 Am. St. Rep. 34; 30 Am. St. Rep. 453.

Possession taken and held beyond boundaries through mistake or ignorance. 24 Am. St. Rep. 388.

Proof of boundaries by declarations and other hearsay testimony. 36 Am. Rep. 749; 60 Am. Rep. 589; 15 Am. Dec. 628; 94 Am. St. Rep. 678.

Settlement of disputed boundaries by an express or implied agreement. 27 Am. Dec. 121.

Effect of compromise agreement locating division line at place known not to be the true boundary. 10 L.R.A.(N.S.) 610.

Judgment against plaintiff in action involving boundary as establishing boundary claimed by defendant. 38 L.R.A.(N.S.) 1020.

Effect of taking possession on disputed boundaries. 3 L.R.A.(N.S.) 805.

Injunctive relief to compel or prevent erection, maintenance or removal of boundary fences in settlement of disputed boundary lines. 7 L.R.A.(N.S.) 57.

2. Partition fences; liability for injuries arising from defects in. 54 Am. St. Rep. 513.
Lack of division fence as affecting liability for damages by trespassing cattle. 22 L.R.A. 60.

Extent of liability for permitting another's live stock to escape from pasture by failure to keep proper division fence. 20 L.R.A. 479.

Injunction to compel or prevent erection, maintenance or removal of fences. 7 L.R.A.(N.S.) 55.

Covenants to build fences; whether run with the land. 56 Am. Rep. 161.

CHAPTER 40.

USES AND TRUSTS.

§ 5359. What are. Uses and trusts in relation to real property are those only which are specified in this chapter. [R. C. 1905, § 4816; Civ. C. 1877, § 273; R. C. 1899, § 3380.]

Sections 5359 to 5362 construed in *Smith v. Security Loan & Trust Co.*, 8 N. D. 451, 79 N. W. 981.

As to similar provision in Cal. Civ. Code, § 847, see *Hinckley's Estate*, 58 Cal. 457; *Re Fair*, 132 Cal. 523, 84 Am. St. Rep. 70, 60 Pac. 442, 64 Pac. 1000; *McCurdy v. Otto*, 140 Cal. 48, 73 Pac. 748.

§ 5360. Who deemed to have legal estate. Every person who by virtue of any transfer or devise is entitled to the actual possession of real property and the receipt of the rents and profits thereof is deemed to have a legal estate therein of the same quality and duration and subject to the same conditions as his beneficial interest. [R. C. 1905, § 4817; Civ. C. 1877, § 275; R. C. 1899, § 3381.]

Beneficial owner of land may sue to quiet title. *Dalrymple v. Trust Co.*, 9 N. D. 306, 83 N. W. 245.

Legal estate, when vests in beneficiaries under the statute of uses. 78 Am. Dec. 406.

§ 5361. Trust valid, if connected with power. The last section does not divest the estate of any trustee in a trust heretofore existing, when the title of such trustee is not merely nominal, but is connected with some power of actual disposition or management in relation to the real property which is the subject of the trust. [R. C. 1905, § 4818; Civ. C. 1877, § 276; R. C. 1899, § 3382.]

§ 5362. Transfer must be direct. Every disposition of real property, whether by transfer or will, must be made directly to the person in whom the right to the possession and profits is intended to be vested, and not to any other, to the use of or in trust for such person; and if made to any person to the use of or in trust for another no estate or interest vests in the trustee; but he must execute a release of the property to the beneficiary on demand, the latter paying the expense thereof. [R. C. 1905, § 4819; Civ. C. 1877, § 277; R. C. 1899, § 3383.]

Right to compel trustee of dry trust to convey to beneficiary. 38 L.R.A.(N.S.) 198.

Right of one whose interest is merely contingent, to maintain suit to establish or enforce a trust. 7 L.R.A.(N.S.) 999.

§ 5363. Qualification of preceding sections. The preceding sections of this chapter do not extend to trusts arising or resulting by implication of law, nor prevent or affect the creation of such express trusts as are hereinafter authorized and defined. [R. C. 1905, § 4820; Civ. C. 1877, § 278; R. C. 1899, § 3384.]

§ 5364. Requisites of trusts. No trust in relation to real property is valid unless created or declared:

1. To sell real property and apply or dispose of the proceeds in accordance thereto authorized in writing.

2. By the instrument under which the trustee claims the estate affected; or,

3. By operation of law. [R. C. 1905, § 4821; Civ. C. 1877, § 279; R. C. 1899, § 3385.]

The statutes under this title are not qualified by S. D. Rev. Civ. Code, §§ 1612 et seq. (Sections 6276 et seq. herein.) *Murphey v. Cook*, 11 S. D. 47, 75 N. W. 387.

Enforceability of promise by beneficiary to pay proceeds of life insurance policy to third person. 40 L.R.A.(N.S.) 692.

When deposits in savings banks create trusts. 31 Am. Rep. 453.

As to similar provision in Cal. Civ. Code, § 852, see *Hinckley's Estate*, 58 Cal. 457; *Hellman v. McWilliams*, 70 Cal. 449, 11 Pac. 659; *Mallagh v. Mallagh*, 2 Cal. Unrep. 837, 16 Pac. 535; *Brison v. Brison*, 75 Cal. 525, 7 Am. St. Rep. 189, 17 Pac. 689; *Barr v. O'Donnell*, 76 Cal. 469, 9 Am. St. Rep. 242, 18 Pac. 429; *Roach v. Caraffa*, 85 Cal. 436, 25 Pac. 22; *Garnsey v. Gothard*, 90 Cal. 603, 27 Pac. 516; *Re Groome*, 94 Cal. 69, 29 Pac. 487; *Baker v. Baker*, 3 Cal. Unrep. 597, 31 Pac. 355; *Hayne v. Hermann*, 97 Cal. 259, 32 Pac. 171; *Lynch v. Rooney*, 112 Cal. 279, 44 Pac. 565; *Wittfield v. Forster*, 124 Cal. 418, 57 Pac. 219; *Sheehan v. Sullivan*, 126 Cal. 189, 58 Pac. 543; *Barker v. Hurley*, 132 Cal. 21, 63 Pac. 1071; *Faylor v. Faylor*, 136 Cal. 92, 68 Pac. 482; *Kimball v. Tripp*, 136 Cal. 631, 69 Pac. 428.

1. Declaration of trust cannot be enforced unless in writing. *Reagan v. McKibben*, 11 S. D. 270, 76 N. W. 943.

Express trust cannot be created by parol. *Cardiff v. Marquis*, 17 N. D. 110, 114 N. W. 1088.

Trust deed; construction; title conveyed. *Smith v. Trust Co.*, 8 N. D. 451, 79 N. W. 981; *Dalrymple v. Trust Co.*, 9 N. D. 306, 83 N. W. 245.

As to validity of agreement relating to trust in real property. *Berry v. Evendon*, 14 N. D. 1, 103 N. W. 748.

Creation of trust in land by parol. 115 Am. St. Rep. 774.

Creation of trusts by writings payable to or in favor of "trustee." 82 Am. St. Rep. 513.

May statute of frauds be satisfied by a declaration of trust signed by the trustee alone. 38 L.R.A.(N.S.) 646.

Parol agreement to take title to real property, sell the same and account for the proceeds, as affected by statute of frauds. 20 L.R.A.(N.S.) 298.

Statute of frauds as affecting legal remedy for breach of contract to purchase land for and in the name of another. 5 L.R.A.(N.S.) 123.

§ 5365. When trust presumed. When a transfer of real property is made to one person and the consideration therefor is paid by or for another a trust is presumed to result in favor of the person by or for whom such payment is made. [R. C. 1905, § 4822; Civ. C. 1877, § 280; R. C. 1899, § 3386.]

Trust must be established by substantial proof that title was to be taken in trust. *Graham v. Selbie*, 8 S. D. 604, 67 N. W. 831.

Such deed operates to vest entire estate in beneficiary. *Dalrymple v. Trust Co.*, 9 N. D. 306, 83 N. W. 245; *Smith v. Trust Co.*, 8 N. D. 451, 79 N. W. 981.

As to trust relation of parties on conveyance of land to one and payment by another. *Fleischer v. Fleischer*, 11 N. D. 221, 91 N. W. 51.

One who advances money to pay for part of interest purchased in mining claim is entitled to pro rata portion of interest. *Sing You v. Wong Free Lee*, 16 S. D. 383, 92 N. W. 1073.

It is immaterial when consideration for transfer of property to another is paid. *Hickson v. Culbert*, 19 S. D. 207, 102 N. W. 774.

Equity will apply property, paid for by debtor but deeded to another, to payment of debtor's obligations. *Watt v. Morrow*, 19 S. D. 317, 103 N. W. 45.

Contemporaneous facts are admissible to show resulting trust. *Sutton v. Whetstone*, 21 S. D. 341, 112 N. W. 850.

It will be presumed that person who purchased land paid for same and if deeded to third person that such first mentioned person was equitable owner. *J. F. Anderson Lumber Co. v. Spears*, 25 S. D. 624, 127 N. W. 643.

Deed vests title, both legal and equitable, in beneficiary. *Smith v. Security Loan & Trust Co.*, 8 N. D. 451, 79 N. W. 981.

Definition of resulting trust and when created. 51 Am. Dec. 751.

When resulting trust arises in favor of a husband or wife who pays the purchase price and takes title in the name of the other spouse. 127 Am. St. Rep. 252.

Resulting trust in partnership lands. 27 L.R.A. 468, 37 L.R.A.(N.S.) 899.

Resulting trust in favor of one who purchases stock exchange seat in name of another. 4 L.R.A.(N.S.) 435.

Effect of investment by husband in his own name of wife's separate property in real estate, to create trust in her favor. 6 L.R.A.(N.S.) 381; 26 L.R.A.(N.S.) 161.

Effect of statute of limitations on the trust relationship arising from the taking of title in the husband's name, to lands inherited by or purchased with the money of the wife. 12 L.R.A.(N.S.) 493.

Evidence contradicting recital of payment in the consideration clause of deeds, whether admissible to prove trusts in favor of grantors. 90 Am. Dec. 270.

As to similar provision in Cal. Civ. Code, § 853, see *Tryon v. Huntoon*, 67 Cal. 325, 7 Pac. 741; *Roach v. Caraffa*, 85 Cal. 436, 25 Pac. 22; *South San Bernardino Land &*

Improv. Co. v. San Bernardino Nat. Bank, 127 Cal. 245, 59 Pac. 699; Faylor v. Faylor, 136 Cal. 92, 68 Pac. 482; Los Angeles & B. Oil & Development Co. v. Occidental Oil Co. 144 Cal. 528, 78 Pac. 25.

§ 5366. Innocent purchaser. No implied or resulting trust can prejudice the right of a purchaser or incumbrancer of real property for value and without notice of the trust. [R. C. 1905, § 4823; Civ. C. 1877, § 281; R. C. 1899, § 3387.]

Purchaser and incumbrancer stand on same ground and resulting trust will be enforced against either, taking with notice thereof. Cottonwood County Bank v. Case, 25 S. D. 77, 125 N. W. 298.

As to similar provision in Cal. Civ. Code, § 856, see Tripp v. Duane, 74 Cal. 85, 15 Pac. 439; Warnock v. Harlow, 96 Cal. 298, 31 Am. St. Rep. 209, 31 Pac. 166; Marshall v. Farmers' Bank, 115 Cal. 330, 42 Pac. 418, 47 Pac. 52; Chappius v. Blankman, 128 Cal. 362, 60 Pac. 925, 20 Mor. Min. Rep. 461.

§ 5367. For what trusts may be created. Express trusts may be created for any of the following purposes:

1. To sell real property and apply or dispose of the proceeds in accordance with the instrument creating the trust.

2. To mortgage or lease real property for the benefit of annuitants or other legatees or for the purpose of satisfying any charge thereon.

3. To receive the rents and profits of real property and pay them to or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family during the life of such person or for any shorter term, subject to the rules of chapter 28 of this code; or,

4. To receive the rents and profits of real property and to accumulate the same for the purposes and within the limits prescribed by the same chapter. [R. C. 1905, § 4824; Civ. C. 1877, § 282; R. C. 1899, § 3388.]

Deed of land to "L. as assignee of P. and B.," without declaring any purpose, P. and B. never having made an assignment, is void, and creates no trust. Murphey v. Cook, 11 S. D. 47, 75 N. W. 387.

Trust deed will be presumed to take effect immediately in the absence of provision to contrary. Brace v. Van Eps, 12 S. D. 191, 80 N. W. 197.

Power of sale dependent upon void trust falls with trust. Penfield v. Tower, 1 N. D. 216, 46 N. W. 413.

The written contract is controlling. Its terms cannot be changed by warranties relating to the quality of the goods. Dowagiac Mfg. Co. v. Mahon & Robinson, 13 N. D. 517, 101 N. W. 903.

Trusts are within the rule against perpetuities. 49 Am. St. Rep. 128.

Trusts for burial and for keeping burial lots. 58 Am. Rep. 596.

Severability of trusts from perpetuities and forbidden trusts. 64 Am. St. Rep. 634.

Property of spendthrift, whether may be exempted from execution and creditors' suits. 9 Am. St. Rep. 405; 24 Am. St. Rep. 686.

What combinations constitute. 74 Am. St. Rep. 235.

As to similar provision in Cal. Civ. Code, § 857, see Hinckley's Estate, 58 Cal. 457; Oglesby v. Hollister, 76 Cal. 136, 9 Am. St. Rep. 177, 18 Pac. 146; Simpson v. Simpson, 80 Cal. 237, 22 Pac. 167; Morffew v. San Francisco & S. R. R. Co., 107 Cal. 587, 40 Pac. 810; Escondido High School Dist. v. Escondido Seminary, 130 Cal. 128, 62 Pac. 401; Re Fair, 132 Cal. 523, 84 Am. St. Rep. 70, 60 Pac. 442, 64 Pac. 1000; Blackburn v. Webb, 133 Cal. 420, 65 Pac. 352; Banta v. Wise, 135 Cal. 277, 67 Pac. 129; Re Sanford, 136 Cal. 97, 68 Pac. 494; Keogh v. Noble, 136 Cal. 153, 68 Pac. 579; Re Pichoir, 139 Cal. 682, 73 Pac. 606.

§ 5368. When devise valid as power in trust. A devise of real property to executors or other trustees to be sold or mortgaged, when the trustees are not also empowered to receive the rents and profits, vests no estate in them; but the trust is valid as a power in trust. [R. C. 1905, § 4825; Civ. C. 1877, § 283; R. C. 1899, § 3389.]

§ 5369. When surplus subject to creditors' claims. When a trust is created to receive the rents and profits of real property and no valid direction for accumulation is given the surplus of such rents and profits beyond the sum that may be necessary for the education and support of the person for whose benefit the trust is created is liable to the claims of the creditors of such person in the same manner as personal property which cannot be

reached by execution. [R. C. 1905, § 4826; Civ. C. 1877, § 284; R. C. 1899, § 3390.]

Liens against trust estates in favor of creditors or trustees. 19 Am. St. Rep. 67.

As to similar provision in Cal. Civ. Code, § 859, see *Magner v. Crooks*, 139 Cal. 640, 73 Pac. 585.

§ 5370. When trust valid as power. When an express trust in relation to real property is created for any purpose not enumerated in the preceding section, such trust vests no estate in the trustees; but the trust, if directing or authorizing the performance of any act which may be lawfully performed under a power, is valid as a power in trust, subject to the provisions in relation to such powers contained in chapter 41 of this code. [R. C. 1905, § 4827; Civ. C. 1877, § 285; R. C. 1899, § 3391.]

§ 5371. Power in trust not prohibited. Nothing in this chapter prevents the creation of a power in trust for any of the purposes for which an express trust may be created. [R. C. 1905, § 4828; Civ. C. 1877, § 286; R. C. 1899, § 3392.]

§ 5372. Realty passes when trust valid as power. In every case when a trust is valid as a power in trust the real property to which the trust relates remains in or passes by succession to the person otherwise entitled, subject to the execution of the trust as a power in trust. [R. C. 1905, § 4829; Civ. C. 1877, § 287; R. C. 1899, § 3393.]

§ 5373. Whole estate vests in trustees. Except as hereinafter otherwise provided, every express trust in real property, valid as such in its creation, vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust. [R. C. 1905, § 4830; Civ. C. 1877, § 288; R. C. 1899, § 3394.]

Beneficiaries only can question validity of exchange of trust property for other property. *Brace v. Van Eps*, 12 S. D. 191, 80 N. W. 197.

Beneficiaries may enforce performance of trust in equity. *Penfield v. Tower*, 1 N. D. 216, 46 N. W. 413.

Who may execute trust after the death of one or all of the trustees. 130 Am. St. Rep. 508.

As to similar provision in Cal. Civ. Code, § 863, see *Ward v. Waterman*, 85 Cal. 488, 24 Pac. 930; *Wilhoit v. Cunningham*, 87 Cal. 453, 25 Pac. 675; *Morffew v. San Francisco & S. R. R. Co.*, 107 Cal. 587, 40 Pac. 810; *Re Walkerly*, 108 Cal. 627, 49 Am. St. Rep. 97, 41 Pac. 772; *Re Fair*, 132 Cal. 523, 84 Am. St. Rep. 70, 60 Pac. 442, 64 Pac. 1000; *Blackburn v. Webb*, 133 Cal. 420, 65 Pac. 952.

§ 5374. Contingent trust. Notwithstanding anything contained in the last section, the author of a trust may in its creation prescribe to whom the real property to which the trust relates shall belong in the event of the failure or termination of the trust, and may transfer or devise such property, subject to the execution of the trust. [R. C. 1905, § 4831; Civ. C. 1877, § 289; R. C. 1899, § 3395.]

As to similar provision in Cal. Civ. Code, § 861, see *King v. Gotz*, 70 Cal. 236, 11 Pac. 656; *Schlessinger v. Mallard*, 70 Cal. 326, 11 Pac. 728; *Wilhoit v. Cunningham*, 87 Cal. 453, 25 Pac. 675; *Fatjo v. Swasey*, 111 Cal. 628, 44 Pac. 225; *Sacramento Bank v. Alcorn*, 121 Cal. 379, 53 Pac. 813; *Re Fair*, 132 Cal. 523, 84 Am. St. Rep. 70, 60 Pac. 442, 64 Pac. 1000.

§ 5375. Legal estate. The grantee or devisee of real property subject to a trust acquires a legal estate in the property as against all persons except the trustees and those lawfully claiming under them. [R. C. 1905, § 4832; Civ. C. 1877, § 290; R. C. 1899, § 3396.]

As to similar provision in Cal. Civ. Code, § 865, see *King v. Gotz*, 70 Cal. 236, 11 Pac. 656; *Sacramento Bank v. Alcorn*, 121 Cal. 379, 53 Pac. 813.

§ 5376. Undisposed estates. When an express trust is created in relation to real property every estate not embraced in the trust and not otherwise disposed of is left in the author of the trust or his successors. [R. C. 1905, § 4833; Civ. C. 1877, § 291; R. C. 1899, § 3397.]

As to similar provision in Cal. Civ. Code, § 866, see *Schlessinger v. Mallard*, 70 Cal. 326, 11 Pac. 728; *Nichols v. Emery*, 109 Cal. 323, 50 Am. St. Rep. 43, 41 Pac. 1089; *Wittfield v. Forster*, 124 Cal. 418, 57 Pac. 219; *Re Fair*, 132 Cal. 523, 84 Am. St. Rep.

70, 60 Pac. 442, 64 Pac. 1000; *Re Sanford*, 136 Cal. 97, 68 Pac. 494; *Eakle v. Ingram*, 142 Cal. 15, 100 Am. St. Rep. 99, 75 Pac. 566.

§ 5377. Limited disposal. The beneficiary of a trust for the receipt of the rents and profits of real property or for the payment of an annuity out of such rents and profits may be restrained from disposing of his interests in such trust during his life or for a term of years by the instrument creating the trust. [R. C. 1905, § 4834; Civ. C. 1877, § 292; R. C. 1899, § 3398.]

As to similar provision in Cal. Civ. Code, § 867, *Fatjo v. Swasey*, 111 Cal. 628, 44 Pac. 225; *Blackburn v. Webb*, 133 Cal. 420, 65 Pac. 952; *Eakle v. Ingram*, 142 Cal. 15, 100 Am. St. Rep. 99, 75 Pac. 566.

§ 5378. Grant separate from trust. When absolute. When an express trust is created in relation to real property, but is not contained or declared in the grant to the trustee or in an instrument signed by him and recorded in the same office with the grant to the trustee, such grant must be deemed absolute in favor of the subsequent creditors of the trustee not having notice of the trust and in favor of purchasers from such trustee without notice and for a valuable consideration. [R. C. 1905, § 4835; Civ. C. 1877, § 293; R. C. 1899, § 3399.]

§ 5379. When transfer of trustees void. When a trust in relation to real property is expressed in the instrument creating the estate, every transfer or other act of the trustees in contravention of the trust is absolutely void. [R. C. 1905, § 4836; Civ. C. 1877, § 294; R. C. 1899, § 3400.]

As to similar provision in Cal. Civ. Code, § 870, see *Tripp v. Duane*, 2 Cal. Unrep. 757, 13 Pac. 860; *Savings & L. Soc. v. Burnett*, 106 Cal. 514, 39 Pac. 922; *Re Walkerly*, 108 Cal. 627, 49 Am. St. Rep. 97, 41 Pac. 772; *Chapman v. Hughes*, 134 Cal. 641, 58 Pac. 298, 60 Pac. 974, 66 Pac. 982; *Callahan v. James*, 7 Cal. Unrep. 82, 71 Pac. 104; *Gardiner v. Cord*, 145 Cal. 157, 78 Pac. 544.

§ 5380. When trust ceases. When the purpose for which an express trust was created ceases, the estate of the trustees also ceases. [R. C. 1905, § 4837, Civ. C. 1877, § 295; R. C. 1899, § 3401.]

Sections 5359 to 5380 not qualified by section 6276. *Murphey v. Cook*, 11 S. D. 47, 75 N. D. 387.

Dissolution and termination of trusts, and decrees declaring. 100 Am. St. Rep. 101. Termination of trust and presumption of conveyance by the trustee to the beneficiary. 58 Am. Dec. 472.

As to similar provision in Cal. Civ. Code, § 871, see *Weisenberg v. Truman*, 58 Cal. 63; *Schlessinger v. Mallard*, 70 Cal. 326, 11 Pac. 728; *Sacramento Bank v. Alcorn*, 121 Cal. 379, 53 Pac. 813; *Wittfield v. Forster*, 124 Cal. 418, 57 Pac. 219; *Re Sanford*, 136 Cal. 97, 68 Pac. 494; *Gardiner v. Cord*, 145 Cal. 157, 78 Pac. 544.

CHAPTER 41.

POWERS.

§ 5381. What powers permitted. Powers in relation to real property are those only which are specified in this chapter. [R. C. 1905, § 4838; Civ. C. 1877, § 296; R. C. 1899, § 3402.]

§ 5382. Power of attorney excluded. The provisions of this chapter do not extend to a simple power of attorney to convey real property in the name of the owner and for his benefit. [R. C. 1905, § 4839; Civ. C. 1877, § 297; R. C. 1899, § 3403.]

§ 5383. Power defined. A power as the term is used in this chapter is an authority to do some act in relation to real property, or to the creation or revocation of an estate therein or a charge thereon which the owner granting or reserving such power might himself perform for any purpose. [R. C. 1905, § 4840; Civ. C. 1877, § 298; R. C. 1899, § 3404.]

Power of sale in mortgage is substantial part of the security, and is not revoked or suspended by mortgagor's death. *Reilly v. Phillips*, 4 S. D. 604, 57 N. W. 780; *Grandin v. Emmons*, 10 N. D. 223, 86 N. W. 723.

An invalid trust not providing for the doing of any act, or creation of any charge, or revocation of any estate in land conveyed, is not valid as a power in trust. *Murphey v. Cook*, 11 S. D. 47, 75 N. W. 387.

Interest in the thing itself is essential to a power coupled with an interest. *Wambole v. Foote*, 2 D. 1, 2 N. W. 239.

Marketability of title based on exercise of power of sale. 38 L.R.A.(N.S.) 18.

Is power to give option included in power to sell real estate. 10 L.R.A.(N.S.) 867.

§ 5384. Author defined. The author of a power as the term is used in this chapter is the person by whom a power is created, whether by grant or devise; and the holder of a power is the person in whom a power is vested, whether by grant, devise or reservation. [R. C. 1905, § 4841; Civ. C. 1877, § 299; R. C. 1899, § 3405.]

§ 5385. Powers classified. Powers are general or special and beneficial or in trust. [R. C. 1905, § 4842; Civ. C. 1877, § 300; R. C. 1899, § 3406.]

§ 5386. General. A power is general when it authorizes the alienation or incumbrance of a fee in the property embraced therein by a grant, will or charge, or any of them, in favor of any person whatever. [R. C. 1905, § 4843; Civ. C. 1877, § 301; R. C. 1899, § 3407.]

Bequest of stocks, bonds or notes under power of appointment as general or specific. 11 L.R.A.(N.S.) 73.

§ 5387. Special. A power is special:

1. When a person or class of persons is designated to whom the disposition of property under the power is to be made; or,

2. When it authorizes the alienation or incumbrance by means of a grant, will or charge of only an estate less than a fee. [R. C. 1905, § 4844; Civ. C. 1877, § 302; R. C. 1899, § 3408.]

§ 5388. Beneficial. A power is beneficial when no person other than its holder has by the terms of its creation any interest in its execution. [R. C. 1905, § 4845; Civ. C. 1877, § 303; 1899, § 3409.]

Interest of donee in power of appointment. 41 Am. Dec. 704.

§ 5389. In trust. A power is in trust when any person or class of persons, other than its holder, has by the terms of its creation an interest in its execution. [R. C. 1905, § 4846; Civ. C. 1877, § 304; R. C. 1899, § 3410.]

§ 5390. General power. When in trust. A general power is in trust when any person or class of persons, other than its holder, is designated as entitled to the proceeds or the disposition or charge authorized by the power or to any portion of the proceeds or other benefits to result from its execution. [R. C. 1905, § 4847; Civ. C. 1877, § 305; R. C. 1899, § 3411.]

§ 5391. Special. Same. A special power is in trust:

1. When the disposition or charge which it authorizes is limited to be made to any person or class of persons other than the holder of the power; or,

2. When any person or class of persons, other than the holder, is designated as entitled to any benefit from the disposition or charge authorized by the power. [R. C. 1905, § 4848; Civ. C. 1877, § 306; R. C. 1899, § 3412.]

§ 5392. Capacity to create. No person is capable of creating a power who is not at the same time capable of granting some estate in the property to which the power relates. [R. C. 1905, § 4849; Civ. C. 1877, § 307; R. C. 1899, § 3413.]

§ 5393. In whom vested. A power may be vested in any person. [R. C. 1905, § 4850; Civ. C. 1877, § 308; R. C. 1899, § 3414.]

§ 5394. How created. A power may be created only:

1. By a suitable clause contained in a grant of some estate in the real property to which the power relates or in an agreement to execute such a grant; or,

2. By a devise contained in a will. [R. C. 1905, § 4851; Civ. C. 1877, § 309; R. C. 1899, § 3415.]

Mortgage containing power of sale may be foreclosed by advertisement. *Male v. Longstaff*, 9 S. D. 389, 69 N. W. 577.

§ 5395. Power reserved. The grantor in any conveyance may reserve to himself any power, beneficial or in trust, which he might lawfully grant to another; and every power thus reserved is subject to the provisions of this

chapter in the same manner as if granted to another. [R. C. 1905, § 4852; Civ. C. 1877, § 310; R. C. 1899, § 3416.]

§ 5396. When irrevocable. Every power, beneficial or in trust, is irrevocable unless an authority to revoke it is given or reserved in the instrument creating the power. [R. C. 1905, § 4853; Civ. C. 1877, § 311; R. C. 1899, § 3417.]

§ 5397. When power is a lien. A power is a lien upon the real property which it embraces from the time the instrument in which it is contained takes effect, except that against creditors, purchasers and incumbrances in good faith and without notice from any person having an estate in such real property, the power is a lien only from the time the instrument in which it is contained is duly recorded. [R. C. 1905, § 4854; Civ. C. 1877, § 312; R. C. 1899, § 3418.]

§ 5398. When power deemed part of security. When a power to sell real property is given to a mortgagee or other incumbrancer in an instrument intended to secure the payment of money, the power is to be deemed a part of the security and vests in any person who by assignment becomes entitled to the money so secured to be paid and may be executed by him whenever the assignment is duly acknowledged and recorded. [R. C. 1905, § 4855; Civ. C. 1877, § 313; R. C. 1899, § 3419.]

Power of sale contained in real estate mortgage is one so coupled with an interest that it survives grantor's death. *Reilly v. Phillips*, 4 S. D. 604, 57 N. W. 780; *Grandin v. Emmons*, 10 N. D. 223, 86 N. W. 723.

Power of sale contained in mortgage is part of security, and passes by assignment of the mortgage. *Hickey v. Richards*, 3 D. 345, 20 N. W. 428.

Assignee for creditors may enforce power of sale in mortgage. *Thompson v. Browne*, 10 S. D. 344, 73 N. W. 194.

Effect of bar of other remedies to prevent a sale of property under a power in a trust deed or mortgage. 13 L.R.A.(N.S.) 1210.

Right to enjoin sale under power in mortgage against which the statute of limitations has run. 6 L.R.A.(N.S.) 510.

Injunction against sale under power in mortgage because of overstatement of amount due. 35 L.R.A.(N.S.) 909.

Reformation of mortgage after foreclosure under power of sale. 39 L.R.A.(N.S.) 93.

Right of mortgagee to exercise power of sale during pendency of mortgage foreclosure, or of action for debt secured. 2 B. R. C. 841.

Does power of sale in a mortgage or deed of trust confer an interest which prevents its revocation by death of mortgagor. 70 L.R.A. 135.

As to similar provision in Cal. Civ. Code, § 858, see *Sacramento Bank v. Alcorn*, 121 Cal. 379, 53 Pac. 813; *Re Fair*, 132 Cal. 523, 84 Am. St. Rep. 70, 60 Pac. 442, 64 Pac. 1000.

§ 5399. Who cannot execute power. A power cannot be executed by any person not capable of disposing of real property. [R. C. 1905, § 4856; Civ. C. 1877, § 314; R. C. 1899, § 3420.]

Minor cannot give a delegation of power. *Wamble v. Foote*, 2 D. 1, 2 N. W. 239.

Right to recover money paid out at wrongful tax sale, is an assignable "thing in action." *Erickson v. Brookings County*, 3 S. D. 434, 53 N. W. 857, 18 L.R.A. 347.

Executor executing power of sale under will after discharge. 2 L.R.A.(N.S.) 623.

Will special power, other than power of sale, conferred on executor by will, pass to an administrator with the will annexed. 29 L.R.A.(N.S.) 264.

§ 5400. Married woman. A married woman may execute the power during her marriage without the concurrence of her husband, unless otherwise prescribed by the terms of the power. [R. C. 1905, § 4857; Civ. C. 1877, § 315; R. C. 1899, § 3421.]

§ 5401. Married woman cannot execute before majority. No power can be executed by a married woman before she attains her majority. [R. C. 1905, § 4858; Civ. C. 1877, § 316; R. C. 1895, § 3422.]

§ 5402. How power executed. A power can be executed only by a written instrument which would be sufficient to pass the estate or interest intended to pass under the power, if the person executing the power was the actual owner. [R. C. 1905, § 4859; Civ. C. 1877, § 317; R. C. 1899, § 3423.]

Validity of exercise of a power of appointment by the creation of a charge. 6 L.R.A.(N.S.) 746.

§ 5403. Execution. By all of several. By survivors, if one dies. When a power is vested in several persons all must unite in its execution; but in case any one or more of them is dead the power may be executed by the survivor or survivors, unless otherwise prescribed by the terms of the power. [R. C. 1905, § 4860; Civ. C. 1877, § 318; R. C. 1899, § 3424.]

Construction of powers given to two or more. 22 Am. St. Rep. 726.

As to similar provision in Cal. Civ. Code, § 860, see *Re Fair*, 132 Cal. 523, 84 Am. St. Rep. 70, 60 Pac. 442, 64 Pac. 1000.

§ 5404. How executed by will. When a power to dispose of real property is confined to a disposition by devise or will the instrument of execution must be a will duly executed according to the provisions of chapter 52. [R. C. 1905, § 4861; Civ. C. 1877, § 319; R. C. 1899, § 3425.]

Powers in wills and who may execute. 80 Am. St. Rep. 96.

Sufficiency of execution of power by will. 64 L.R.A. 849.

§ 5405. How by grant. When a power is confined to a disposition by grant, it cannot be executed by will even though the disposition is not intended to take effect until after the death of the person executing the power. [R. C. 1905, § 4862; Civ. C. 1877, § 320; R. C. 1899, § 3426.]

§ 5406. When directed by insufficient instrument. When the author of a power has directed or authorized it to be executed by an instrument which would not be sufficient in law to pass the estate the power is not void, but its execution is to be governed by the rules before prescribed in this chapter. [R. C. 1905, § 4863; Civ. C. 1877, § 321; R. C. 1899, § 3427.]

§ 5407. Formalities unnecessary. When the author of a power has directed any formalities to be observed in its execution, in addition to those which would be sufficient to pass the estate, the observance of such additional formalities is not necessary to a valid execution of the power. [R. C. 1905, § 4864; Civ. C. 1877, § 322; R. C. 1899, § 3428.]

§ 5408. Trivial conditions disregarded. When the conditions annexed to a power are merely nominal and evince no intention of actual benefit to the party to whom or in whose favor they are to be performed, they may be wholly disregarded in the execution of the power. [R. C. 1905, § 4865; Civ. C. 1877, § 323; R. C. 1899, § 3429.]

§ 5409. Binding conditions. With the exceptions contained in the preceding sections the intentions of the author of a power as to the mode, time and conditions of its execution must be observed, subject to the power of a district court to supply a defective execution in the cases provided in sections 4875 and 4899. [R. C. 1905, § 4866; Civ. C. 1877, § 324; R. C. 1899, § 3430.]

§ 5410. Consent, how expressed. When the consent of a third person to the execution of a power is requisite, such consent must be expressed in the instrument by which the power is executed or be certified in writing thereon. In the first case the instrument of execution, in the second, the certificate must be subscribed by the party whose consent is required and to entitle the instrument to be recorded such signature must be duly approved or acknowledged according to the chapter on recording transfers. [R. C. 1905, § 4867; Civ. C. 1877, § 325; R. C. 1899, § 3431.]

§ 5411. Consent of all survivors. When the consent of several persons to the execution of a power is requisite all must consent thereto; but in case any one or more of them is dead the consent of the survivors is sufficient, unless otherwise prescribed by the terms of the power. [R. C. 1905, § 4868; Civ. C. 1877, § 326; R. C. 1899, § 3432.]

§ 5412. Valid without recital. Every instrument executed by the holder of a power, conveying an estate or creating a charge which such holder would have no right to convey or create except by virtue of his power, is to be deemed a valid execution of the power, even though not recited or referred to therein. [R. C. 1905, § 4869; Civ. C. 1877, § 327; R. C. 1899, § 3433.]

§ 5413. When to be deemed conveyance. Every instrument, except a will in execution of a power, even though the power is one of revocation only, is

to be deemed a conveyance within the meaning of the chapter on recording transfers. [R. C. 1905, § 4870; Civ. C. 1877, § 328; R. C. 1899, § 3434.]

Assignment of mortgage in transfer of property within meaning of section. *Sommers v. Wagner*, 21 N. D. 531, 131 N. W. 797.

§ 5414. Disposition beyond authority. A disposition or charge by virtue of a power more extensive than was authorized thereby is not therefore void: but every estate or interest so created so far as it is embraced by the terms of the power is valid. [R. C. 1905, § 4871; Civ. C. 1877, § 329; R. C. 1899, § 3435.]

§ 5415. Time runs from creation of power. The period during which the absolute right of alienation may be suspended by an instrument in execution of a power must be computed, not from the date of the instrument, but from the time of the creation of the power. [R. C. 1905, § 4872; Civ. C. 1877, § 330; R. C. 1899, § 3436.]

Effect of power of appointment on time for ascertaining member of class described as testator's "heirs," "next of kin," "relations," etc., to whom estate in real or personal property is limited by way of remainder or executory gift. 33 L.R.A. (N.S.) 20.

§ 5416. Conditions at creation determine legality. No estate or interest can be given or limited to any person, by an instrument in execution of a power which could not have been given or limited at the time of the creation of the power. [R. C. 1905, § 4873; Civ. C. 1877, § 331; R. C. 1899, § 3437.]

§ 5417. Married woman's power. When a married woman, entitled to an estate in fee, is authorized by a power to dispose of such estate during her marriage, she may by virtue of such power create any estate which she might create if unmarried. [R. C. 1905, § 4874; Civ. C. 1877, § 332; R. C. 1899, § 3438.]

§ 5418. Relief of purchasers from defects. Purchasers for a valuable consideration, claiming under a defective execution of a power, are entitled to the same relief as similar purchasers claiming under a defective conveyance from an actual owner. [R. C. 1905, § 4875; Civ. C. 1877, § 333; R. C. 1899, § 3439.]

§ 5419. Fraud. Instruments in execution of a power are affected by fraud in the same manner as like instruments executed by owners or trustees. [R. C. 1905, § 4876; Civ. C. 1877, § 334; R. C. 1899, § 3440.]

§ 5420. Power to married woman. A general and beneficial power is valid which gives to a married woman power to dispose, during her marriage and without the concurrence of her husband, of a present or future estate in real property conveyed or devised to her in fee. [R. C. 1905, § 4877; Civ. C. 1877, § 335; R. C. 1899, § 3441.]

§ 5421. Estates changed into fee. When an absolute power of disposition not accompanied by any trust is given to the owner of a particular estate for life or years, such estate is changed into a fee, absolute in favor of creditors, purchasers and incumbrancers, but subject to any future estates limited thereon, in case the power should not be executed or the property should not be sold for the satisfaction of debts. [R. C. 1905, § 4878; Civ. C. 1877, § 336; R. C. 1899, § 3442.]

When interest in property with power to dispose of it amounts to an estate in fee. 49 Am. Dec. 115.

§ 5422. Same. When an absolute power of disposition not accompanied by any trust is given to any person to whom no particular estate is limited, such person also takes a fee, subject to any future estate that may be limited thereon, but absolute in favor of creditors, purchasers and incumbrancers. [R. C. 1905, § 4879; Civ. C. 1877, § 337; R. C. 1899, § 3443.]

§ 5423. Same. In all cases when an absolute power of disposition is given, not accompanied by any trust, and no remainder is limited on the estate of the holder of the power, he is entitled to an absolute fee. [R. C. 1905, § 4880; Civ. C. 1877, § 338; R. C. 1899, § 3444.]

As to when sale of land by guardian of minors to corporation for railroad purposes passes unconditional fee title. *Sherman v. Sherman*, 23 S. D. 486, 122 N. W. 439.

See S. D. Rev. Pol. C. § 894, N. D. Rev. C. § 4923.

§ 5424. Same. When a general and beneficial order to devise the inheritance is given to the owner of an estate for life or for years, he is deemed to possess an absolute power of disposition within the meaning of the last three sections. [R. C. 1905, § 4881; Civ. C. 1877, § 339; R. C. 1899, § 3445.]

Power to create remainder after life estate with absolute power of disposal. 6 L.R.A.(N.S.) 1186; 39 L.R.A.(N.S.) 805.

§ 5425. When power deemed absolute. Every power of disposition is deemed absolute by means of which the holder is enabled in his lifetime to dispose of the entire fee in possession or in expectancy for his own benefit. [R. C. 1905, § 4882; Civ. C. 1877, § 340; R. C. 1899, § 3446.]

Limitation to heirs under rule in Shelley's Case by power of appointment. 29 L.R.A.(N.S.) 1007.

Power of disposition bestowed on devisee as indicative of quantum of estate intended to be devised. 18 L.R.A.(N.S.) 463.

§ 5426. Grantor deemed owner. When power of revocation reserved. When the grantor in any conveyance reserves to himself for his own benefit an absolute power of revocation, such grantor is still to be deemed the absolute owner of the estate conveyed so far as the rights of creditors and purchasers are concerned. [R. C. 1905, § 4883; Civ. C. 1877, § 341; R. C. 1899, § 3447.]

§ 5427. When special and beneficial power valid. A special and beneficial power is valid which is granted:

1. To a married woman to dispose, during the marriage, of any estate less than a fee belonging to her in the property to which the power relates; or

2. To the owner of a life estate in the property embraced in the power to make leases, commencing in possession during his life. [R. C. 1905, § 4884; Civ. C. 1877, § 342; R. C. 1899, § 3448.]

§ 5428. How far power to lease void. A special and beneficial power to make leases of agricultural land for more than ten years or of town or city lots for more than twenty years is void only as to the time beyond ten or twenty years and authorizes leases for those terms or less. [R. C. 1905, § 4885; Civ. C. 1877, § 343; 1899, § 3449.]

§ 5429. When power to lease transferable. The power of the owner of a life estate to make leases is not transferable as a separate interest, but is annexed to his estate and will pass, unless specially excepted, by any grant of such estate. If specially excepted in any such grant it is extinguished. [R. C. 1905, § 4886; Civ. C. 1877, § 344; R. C. 1899, § 3450.]

§ 5430. Power to lease released. The power of the owner of a life estate to make leases may be released by him to any person entitled to a future estate in the property and is thereupon extinguished. [R. C. 1905, § 4887; Civ. C. 1877, § 345; R. C. 1899, § 3451.]

§ 5431. Mortgage does not extinguish power. A mortgage executed by the owner of a life estate having a power to make leases or by a married woman by virtue of any beneficial power does not extinguish or suspend the power, but the power is bound by the mortgage in the same manner as the real property embraced therein. [R. C. 1905, § 4888; Civ. C. 1877, § 346; R. C. 1899, § 3452.]

§ 5432. Effects of same. The effects on the power of a lien by mortgage such as is mentioned in the last section, are:

1. That the mortgagee is entitled to an execution of the power so far as the satisfaction of his lien may require it; and,

2. That any subsequent estate created by the owner in execution of the power becomes subject to the mortgage in the same manner as if in terms embraced therein. [R. C. 1905, § 4889; Civ. C. 1877, § 347; R. C. 1899, § 3453.]

§ 5433. When power subject to creditors' claims. Every special and beneficial power is liable to the claims of creditors in the same manner as other interests that cannot be reached by execution and the execution of the power

may be adjudged for the benefit of the creditors entitled. [R. C. 1905, § 4890; Civ. C. 1877, § 348; R. C. 1899, § 3454.]

§ 5434. Other powers void. No beneficial power, general or special, not already specified and defined in this chapter can hereafter be created. [R. C. 1905, § 4891; Civ. C. 1877, § 349; R. C. 1899, § 3455.]

§ 5435. Powers enforceable for parties interested. Every trust power unless its execution is made expressly to depend on the will of the trustees is imperative and imposes a duty on the trustee, the performance of which may be compelled for the benefit of the parties interested. [R. C. 1905, § 4892; Civ. C. 1877, § 350; R. C. 1899, § 3456.]

§ 5436. Same. A trust power does not cease to be imperative when the trustee has the right to select any and exclude others of the persons designated as the beneficiaries of the trust. [R. C. 1905, § 4893; Civ. C. 1877, § 351; R. C. 1899, § 3457.]

§ 5437. Equal shares. When a disposition under a power is directed to be made to, among or between several persons, without any specification of the share or sum to be allotted to each, all the persons designated are entitled to equal proportions. [R. C. 1905, § 4894; Civ. C. 1877, § 352; R. C. 1899, § 3458.]

§ 5438. Discretionary power. When the terms of a power import that the estate or fund is to be distributed among several persons designated in such manner or proportions as the trustee of the power may think proper, the trustee may allot the whole to any one or more of such persons in exclusion of the others. [R. C. 1905, § 4895; Civ. C. 1877, § 353; R. C. 1899, § 3459.]

§ 5439. Death of trustee. If the trustee of a power with the right of selection dies, leaving the power unexecuted, its execution must be adjudged for the benefit equally of all the persons designated as objects of the trust. [R. C. 1905, § 4896; Civ. C. 1877, § 354; R. C. 1899, § 3460.]

§ 5440. Execution by district court. When a power in trust is created by will and the testator has omitted to designate, expressly or by necessary implication, by whom the power is to be executed its execution devolves on the district court. [R. C. 1905, § 4897; Civ. C. 1877, § 355; R. C. 1899, § 3461.]

§ 5441. Execution for benefit of creditors. The execution in whole or in part of any trust power may be adjudged for the benefit of the creditors or assignees of any person entitled as one of the beneficiaries of the trust to compel its execution when his interest is transferable. [R. C. 1905, § 4898; Civ. C. 1877, § 356; R. C. 1899, § 3462.]

§ 5442. Defects cured. When the execution of a power in trust is defective in whole or in part under the provisions of this chapter, its proper execution may be adjudged in favor of the persons designated as the objects of the trust. [R. C. 1905, § 4899; Civ. C. 1877, § 357; R. C. 1899, § 3463.]

§ 5443. Certain other laws apply. The provisions of chapters 69 and 70, saving the rights of other persons from prejudice by the misconduct of trustees and authorizing the court to remove and appoint trustees; the provisions of chapter 53, devolving express trusts upon the court on the death of the trustee; and the provisions of section 5380 apply equally to powers in trust and the trustees of such powers. [R. C. 1905, § 4900; Civ. C. 1877, § 358; R. C. 1899, § 3464.]

CHAPTER 42.

PERSONAL OR MOVABLE PROPERTY.

- ARTICLE 1. PERSONAL PROPERTY IN GENERAL, § 5444.
 2. THINGS IN ACTION, §§ 5445, 5446.
 3. SHIPPING, §§ 5447-5453.
 4. RULES OF NAVIGATION, §§ 5454-5457.

ARTICLE 1.—PERSONAL PROPERTY IN GENERAL.

§ 5444. **Governed by law of domicile.** If there is no law to the contrary in the place where personal property is situated it is deemed to follow the person of its owner and is governed by the law of his domicile. [R. C. 1905, § 4901; Civ. C. 1877, § 359; R. C. 1899, § 3465.]

Extraterritorial effect of transfers of personal property. 55 Am. Rep. 129.

ARTICLE 2.—THINGS IN ACTION.

§ 5445. **Defined.** A thing in action is a right to recover money or other personal property by a judicial proceeding. [R. C. 1905, § 4902; Civ. C. 1877, § 360; R. C. 1899, § 3466.]

A chose in action is worth *prima facie* what appears due upon it. *Anderson v. Bank*, 6 N. D. 497, 72 N. W. 916.

Attachment of chose in action in hands of assignee for creditors. 26 L.R.A. 593.
 Equitable remedy to subject chose in action to judgment after return of no property found. 63 L.R.A. 673; 15 L.R.A.(N.S.) 976.

As to similar provision in Cal. Civ. Code, § 953, see *Haskins v. Jordan*, 123 Cal. 157, 55 Pac. 786.

§ 5446. **Transferable.** A thing in action, arising out of the violation of a right of property or out of an obligation, may be transferred by the owner. Upon the death of the owner it passes to his personal representatives, except when in the cases provided by law it passes to his devisees or successor in office. [R. C. 1905, § 4903; Civ. C. 1877, § 361; R. C. 1899, § 3467.]

Assignment of decree for alimony. 7 L.R.A.(N.S.) 179.

—of claim for penalty against national bank taking usurious interest. 56 L.R.A. 695.

—of option. 21 L.R.A. 133.

—of cause of action for personal tort. 14 L.R.A. 512.

—of cause of action for personal injury. 44 L.R.A. 177.

—of vendor's lien. 13 L.R.A. 188.

—of mechanics' lien. 13 L.R.A. 704.

—of insurance agent's right to commissions on renewal premiums. 18 L.R.A.(N.S.) 193.

Effect of statute declaring cause of action for death survivable, to render it assignable. 27 L.R.A.(N.S.) 404.

Right of third person to take advantage of champerty in assignment. 35 L.R.A.(N.S.) 512.

Effect of assignment of a claim *ex delicto* to one against whom it was asserted, to enable him to maintain an action thereon against a third party. 7 L.R.A.(N.S.) 534.

ARTICLE 3.—SHIPPING.

§ 5447. **Ship defined.** The term "ship" or "shipping," when used in this code, includes steamboats, sailing vessels, canal boats, barges and every structure adapted to be navigated from place to place for the transportation of merchandise or persons. [R. C. 1905, § 4904; Civ. C. 1877, § 362; R. C. 1899, § 3468.]

§ 5448. **Appurtenances.** All things belonging to the owners which are on board a ship and are connected with its proper use for the objects of the voyage and adventure in which the ship is engaged are deemed its appurtenances. [R. C. 1905, § 4905; Civ. C. 1877, § 363; R. C. 1899, § 3469.]

What articles will pass as appurtenances on sale of ship. 8 L.R.A.(N.S.) 793.

§ 5449. **Navigation classified.** Ships are engaged either in foreign or domestic navigation. Ships are engaged in foreign navigation when passing

to or from a foreign country, and in domestic navigation when passing from place to place within the United States. [R. C. 1905, § 4906; Civ. C. 1877, § 364; R. C. 1899, § 3470.]

§ 5450. **Domestic and foreign ships.** A ship in the port of the state or territory to which it belongs is called a domestic ship; in another port it is called a foreign ship. [R. C. 1905, § 4907; Civ. C. 1877, § 365; R. C. 1899, § 3471.]

§ 5451. **Power of court.** If a ship belongs to several persons, not partners, and they differ as to its use or repair the controversy may be determined by any court of competent jurisdiction. [R. C. 1905, § 4908; Civ. C. 1877, § 366; R. C. 1899, § 3472.]

§ 5452. **Possessor liable.** If the owner of a ship commits its possession and navigation to another, that other and not the owner is responsible for its repairs and supplies. [R. C. 1905, § 4909; Civ. C. 1877, § 367; R. C. 1899, § 3473.]

§ 5453. **Congress regulates.** The registry, enrollment and license of ships are regulated by acts of congress. [R. C. 1905, § 4910; Civ. C. 1877, § 368; R. C. 1899, § 3474.]

ARTICLE 4.—RULES OF NAVIGATION.

§ 5454. **Meeting ships. Limitation.** In case of ships meeting the following rules must be observed in addition to those prescribed by any statutes of this state, which relate to navigation:

1. Whenever any ship proceeding in one direction meets another ship proceeding in another direction so that if both ships were to continue their respective courses they would pass so near as to involve the risk of a collision, the helms of both ships must be put to port so as to pass on the port side of each other, except when the circumstances of the case are such as to render a departure from the rule necessary in order to avoid immediate danger and subject also to a due regard to the dangers of navigation.

2. A steamer navigating a narrow channel must, whenever it is safe and practicable, keep to that side of that fair way or mid-channel which lies on the starboard side of the steamer. A steamer when passing another steamer in such channel must always leave the other upon the larboard side.

3. When steamers must inevitably or necessarily cross so near that by continuing their respective courses there would be a risk of collision each vessel must put her helm to port so as always to pass on the larboard side of each other.

The rules of this section do not apply to any case for which a different rule is provided by the regulations for the government of pilots of steamers approaching each other within sound of the steam whistle, or by the regulations concerning lights upon steamers, or other matters prescribed under authority of any act of congress. [R. C. 1905, § 4911; Civ. C. 1877, § 369; R. C. 1899, § 3475.]

Private action for violation of law and rules of navigation. 9 L.R.A.(N.S.) 375.

Duty of navigator to avoid injury by propelling vessel against property of others.

64 L.R.A. 979.

Relative duties of steamers and small craft propelled by oars on rivers and in narrow channels. 5 L.R.A.(N.S.) 303.

§ 5455. **Infringement. Damages.** If it appears that a collision was occasioned by failure to observe any rule of the foregoing section the owner of the ship by which such rule is infringed cannot recover compensation for damages sustained by the ship in such collision, unless it appears that the circumstances of the case made a departure from the rule necessary. [R. C. 1905, § 4912; Civ. C. 1877, § 370; R. C. 1899, § 3476.]

Right of vessel causing collision to claim salvage for rescuing other vessel. 1 L.R.A.(N.S.) 873.

§ 5456. **Damage presumed from default.** Damage to person or property arising from the failure of a ship to observe any rule of section 5454 must be

deemed to have been occasioned by the willful default of the person in charge of the deck of such ship at the time, unless it appears that the circumstances of the case made a departure from the rule necessary. [R. C. 1905, § 4913; Civ. C. 1877, § 371; R. C. 1899, § 3477.]

§ 5457. Liability defined. Losses caused by collision are to be borne as follows:

1. If either party was exclusively in fault he must bear his own loss and compensate the other for any loss he has sustained.

2. If neither party was in fault the loss must be borne by him on whom it falls.

3. If both were in fault the loss is to be equally divided, unless it appears that there was a great disparity in fault, in which case the loss must be equitably apportioned; or,

4. If it cannot be ascertained where the fault lies the loss must be equally divided. [R. C. 1905, § 4914; Civ. C. 1877, § 372; R. C. 1899, § 3478.]

When collisions at sea deemed acts of God. 46 Am. Dec. 592.

Liability for damages caused by collision of vessels. 45 Am. Dec. 51.

Liability of owners for wrongful or negligent acts of master of vessel causing collision. 27 L.R.A. 182.

Allowance of interest on value of property destroyed in collision. 18 L.R.A. 453.

Right to interest on unliquidated damages incurred in collision of vessels. 28 L.R.A. (N.S.) 7, 80.

CHAPTER 43.

PRODUCTS OF THE MIND.

§ 5458. Ownership of. The author of any product of the mind, whether it is an invention, or a composition in letters or art, or a design, with or without delineation, or other graphical representation, has an exclusive ownership therein and in the representation or expression thereof, which continues so long as the product and the representations or expressions thereof made by him remain in his possession. [R. C. 1905, § 4915; Civ. C. 1877, § 570; R. C. 1899, § 3479.]

Common-law rights of authors in intellectual productions. 51 L.R.A. 353.

Respective rights of master and servant in intellectual work of employee. 51 L.R.A. 359; 5 L.R.A. (N.S.) 1187; 1 B. R. C. 324.

§ 5459. Ownership of joint products. Unless otherwise agreed, a product of the mind in the production of which several persons are jointly concerned is owned by them as follows:

1. If the product is single, in equal proportions; or,

2. If it is not single, in proportion to the contribution of each. [R. C. 1905, § 4916; Civ. C. 1877, § 571; R. C. 1899, § 3480.]

§ 5460. Transfer. The owner of any product of the mind, or of any representation or expression thereof, may transfer his property in the same. [R. C. 1905, § 4917; Civ. C. 1877, § 572; R. C. 1899, § 3481.]

Validity of contract in restraint of trade in publications of authors. 22 L.R.A. 674.

Rights and remedies of author who has parted with property rights in work. 3 L.R.A. (N.S.) 622.

§ 5461. Publication. If the owner of a product of the mind intentionally makes it public a copy or reproduction may be made public by any person without responsibility to the owner so far as the law of this state is concerned. [R. C. 1905, § 4918; Civ. C. 1877, § 573; R. C. 1899, § 3482.]

§ 5462. Subsequent production of same thing. If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same thing has the same right therein as the prior author, which is exclusive to the same extent against all persons except the prior author, or those claiming under him. [R. C. 1905, § 4919; Civ. C. 1877, § 574; R. C. 1899, § 3483.]

§ 5463. Ownership of private communications. Letters and other private communications in writing belong to the person to whom they are addressed

and delivered; but they cannot be published against the will of the writer, except by authority of law. [R. C. 1905, § 4920; Civ. C. 1877, § 575; R. C. 1899, § 3484.]

CHAPTER 44.

OTHER KINDS OF PERSONAL PROPERTY.

§ 5464. Trade-marks. One who produces or deals in a particular thing or conducts a particular business may appropriate to his exclusive use as a trade-mark any form, symbol or name which has not been so appropriated by another to designate the origin or ownership thereof; but he cannot exclusively appropriate any designation, or part of a designation, which relates only to the name, quality or the description of the thing or business, or the place where the thing is produced or the business carried on. [R. C. 1905, § 4921; Civ. C. 1877, § 576; R. C. 1899, § 3485.]

Tests of trademarks and tradenames. 44 Am. Rep. 737.

What constitutes trademark and what are infringements of it. 47 Am. Dec. 284.

What words may constitute valid trademark. 85 Am. St. Rep. 83.

Descriptive word adopted from foreign language as subject of trademark. 32 L.R.A.(N.S.) 439.

Letters of the alphabet as trademark. 34 Am. Rep. 593.

Right to protection against use of a particular number by a competitor. 8 L.R.A.(N.S.) 1153.

Right to use geographical name as trademark. 26 L.R.A.(N.S.) 73.

Right to protection in use of geographical name as a trademark or tradename or upon the ground of unfair competition. 26 L.R.A.(N.S.) 73.

Right of members of organization to protection in use of name which their efforts have made valuable. 28 L.R.A.(N.S.) 458.

Relief against infringement of tradename not used in connection with manufactured article. 15 L.R.A.(N.S.) 625.

Right to use a word substantially similar to that used by another, as tradename, as affected by differences in appearance in other respects. 12 L.R.A.(N.S.) 729.

Power of equity on enjoining infringement of tradename to require defendant to pay damages sustained by complainant as distinguished from profits realized by defendant. 21 L.R.A.(N.S.) 526.

When equity will interfere to restrain infringement of trademark or tradename. 25 Am. St. Rep. 191.

When use of names will be enjoined. 33 Am. Rep. 335.

—family name. 38 Am. Rep. 81.

Limitation of right to use one's own name as tradename. 1 L.R.A.(N.S.) 660; 28 L.R.A.(N.S.) 934.

Restraining one from use of his own name. 12 Am. Rep. 410.

Invalidity of deceptive trademark. 19 L.R.A. 53.

Use of trademark on articles other than those to which it is applied by the owner. 30 L.R.A.(N.S.) 167.

Territorial extent of right in trademark or tradename used in limited locality where used by another in a different locality. 35 L.R.A.(N.S.) 251.

Acquisition of tradename in restricted locality notwithstanding use in other places. 2 L.R.A.(N.S.) 964.

Sale of a trademark. 1 L.R.A.(N.S.) 705.

Transfer of trademark by bankruptcy or insolvency assignment. 46 L.R.A. 541.

Assignment of trademark or tradename of which assignor's name is a part. 17 Am. St. Rep. 496.

As to similar provision in Cal. Civ. Code, § 991, see *Schmidt v. Brieg*, 100 Cal. 672, 22 L.R.A. 790, 35 Pac. 623; *Castle v. Siegfried*, 103 Cal. 71, 37 Pac. 210; *Hainque v. Cyclops Iron Works*, 136 Cal. 351, 68 Pac. 1014.

§ 5465. Good will. The good will of a business is the expectation of continued public patronage, but it does not include a right to use the name of any person from whom it was acquired. [R. C. 1905, § 4922; Civ. C. 1877, § 577; R. C. 1899, § 3486.]

Tradename as part of good will of business. 15 L.R.A. 462.

Does good will pass with transfer of business without specific mention. 5 L.R.A.(N.S.) 1077.

Devise or bequest of property as passing good will with business conducted in connection therewith. 16 L.R.A.(N.S.) 240.

Taxation of good will as part of capital stock. 58 L.R.A. 566.

Good will of a partnership, and the means of making it productive on the death of a member, or other dissolution of the firm. 96 Am. St. Rep. 610.

§ 5466. Is property. Transferable. The good will of a business is property, transferable like any other. [R. C. 1905, § 4923; Civ. C. 1877, § 578; R. C. 1899, § 3487.]

Good will may form subject-matter of contract of sale. *Mapes v. Metcalf*, 10 N. D. 601, 88 N. W. 713.

Failure to comply with statute must be taken advantage of by answer. *Acme Mercantile Agency v. Rochford*, 10 S. D. 203, 72 N. W. 466, 65 Am. St. Rep. 714.

Whether sale of good will prevents vendor from setting up a rival establishment. 48 Am. Rep. 223.

Right of one selling good will of professional practice to solicit patronage of former clients. 10 L.R.A.(N.S.) 1200.

Sale of business and good will as a limitation upon vendor's right to engage in competing business. 19 L.R.A.(N.S.) 762.

Effect on right of individual partners of sale by firm of good will of business with or without an agreement not to engage in the same business. 19 L.R.A.(N.S.) 769.

§ 5467. Title deeds. Instruments essential to the title of real property and which are not kept in a public office as a record pursuant to law belong to the person in whom for the time being such title may be vested and pass with the title. [R. C. 1905, § 4924; Civ. C. 1877, § 579; R. C. 1899, § 3488.]

Replevin to recover deed of real property. 20 L.R.A.(N.S.) 507.

CHAPTER 45.

ACQUISITION OF PROPERTY.

- ARTICLE 1. MODES IN WHICH PROPERTY MAY BE ACQUIRED, § 5468.
 2. OCCUPANCY, §§ 5469-5471.
 3. ACCESSION TO REAL PROPERTY, §§ 5472-5478.
 4. ACCESSION TO PERSONAL PROPERTY, §§ 5479-5487.

ARTICLE 1.—MODES IN WHICH PROPERTY MAY BE ACQUIRED.

§ 5468. How property acquired. Property is acquired by:

1. Occupancy.
2. Accession.
3. Transfer.
4. Will; or,
5. Succession. [R. C. 1905, § 4925; Civ. C. 1877, § 580; R. C. 1899, § 3489.]

ARTICLE 2.—OCCUPANCY.

§ 5469. Title by occupancy. Occupancy for any period confers a title sufficient against all except the state and those who have title by prescription, accession, transfer, will or succession. [R. C. 1905, § 4926; Civ. C. 1877, § 581; R. C. 1899, § 3490.]

Prima facie title shown by occupancy of land as against those having no title may be overcome by evidence showing superior right in one holding legal or equitable title. *Joy v. Midland State Bank*, 28 S. D. 262, 133 N. W. 276.

As to similar provision in Cal. Civ. Code, § 1006, see *King v. Gotz*, 70 Cal. 236, 11 Pac. 656.

§ 5470. Prescription. Occupancy for the period prescribed by the code of civil procedure or any law of this state as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all. [R. C. 1905, § 4927; Civ. C. 1877, § 582; R. C. 1899, § 3491.]

Right to flood another's land is easement acquisition of which by prescription requires continuous enjoyment for period of statute of limitations governing actions to recover land. *Shearer v. Hutterische, Bruder Gemeinde*, 28 S. D. 509, 134 N. W. 63.

Power of state to secure title to private property by adverse possession. 15 L.R.A.(N.S.) 1120.

Acquisition of title by prescription against public. 26 L.R.A. 451.

Acquisition by prescription of title to land for purposes of canal. 61 L.R.A. 877.

Adverse possession of railroad right of way. 2 L.R.A.(N.S.) 272.

Acquisition of prescriptive right of way across railroad tracks. 35 L.R.A.(N.S.) 190.

Rights acquired as against the public by adverse possession of highway or city street. 18 L.R.A. 146.

Encroachment on public street or alley by occupier of abutting property, for storage or other similar purposes, as basis of adverse possession. 36 L.R.A.(N.S.) 1056.

As to similar provision in Cal. Civ. Code, § 1007, see *Langford v. Poppe*, 56 Cal. 73; *Thomas v. England*, 71 Cal. 456, 12 Pac. 491; *Labory v. Los Angeles Orphan Asylum*, 97 Cal. 270, 32 Pac. 231; *Sullivan v. Zeiner*, 98 Cal. 346, 20 L.R.A. 730, 33 Pac. 209; *Goodwin v. Scheerer*, 106 Cal. 690, 40 Pac. 18; *Woodward v. Faria*, 109 Cal. 12, 41 Pac. 781; *Rice v. Meiners*, 136 Cal. 292, 68 Pac. 817.

§ 5471. Titles to real property. All titles to real property vested in any person or persons who have been or hereafter may be in actual open adverse and undisputed possession of the land under such title for a period of ten years and shall have paid all taxes and assessments legally levied thereon, shall be and the same are declared good and valid in law, any law to the contrary notwithstanding. [R. C. 1905, § 4928; 1899, ch. 158; R. C. 1899, § 3491a.]

Valid as against claim that bill was not constitutionally passed. *Woolfolk v. Albrecht*, 22 N. D. 36, 133 N. W. 310.

Inapplicable to payment of taxes by devisee of tenant in common. *Barrett v. McCarty*, 20 S. D. 75, 104 N. W. 907.

Compliance with section operates to confer good and valid title. *Woolfolk v. Albrecht*, 22 N. D. 36, 133 N. W. 310.

Technically illegal assessment of taxes for part of ten years will not affect title acquired by payment of taxes. *Murphy v. Nelson*, 19 S. D. 197, 102 N. W. 691.

Tacking statutory right; payment of taxes. *Streeter v. Fredrickson*, 11 N. D. 300, 91 N. W. 692; *Power v. Kitching*, 10 N. D. 254, 86 N. W. 737.

Deed from heirs of Indian within five years after issuance of homestead patent and tax deed, constitute color of title. *Murphy v. Pierce*, 17 S. D. 207, 95 N. W. 925.

Taxes need not be paid for ten successive years within each year to acquire title. *Murphy v. Redeker*, 16 S. D. 615, 102 Am. St. Rep. 722, 94 N. W. 697.

Statutory limitation may be shortened by legislature, provided reasonable time is allowed within which actions may be brought. *Power v. Kitching*, 10 N. D. 254, 86 N. W. 737; *Osborne v. Lindstrom*, 9 N. D. 1, 81 N. W. 72, 46 L.R.A. 715.

Adverse possession cannot be made out in part by adverse possession and payment of taxes by claimant's grantor. *J. B. Streeter, Jr., Co. v. Fredrickson*, 11 N. D. 300, 91 N. W. 692.

As to form of pleading. *Schneller v. Plankinton*, 12 N. D. 561, 98 N. W. 77.

As to sufficiency of title as color of title. *Stiles v. Granger*, 17 N. D. 502, 117 N. W. 777.

Person bound to pay taxes as owner of land cannot purchase at tax sale and such purchase operates only as payment of taxes. *Grant v. Burton*, 26 S. D. 52, 127 N. W. 480.

Conveyance of homestead void because wife did not join was color of title. *Ford v. Ford*, 24 S. D. 644, 124 N. W. 1108.

Abstract failing to show when action involving title to land was commenced is not sufficient to show period of adverse possession as such period could not be computed. *Hohn v. Bidwell*, 27 S. D. 249, 130 N. W. 837.

Proof must be made of open adverse possession for full period of ten years under color of title and that taxes were paid by claimant. *Wright v. Jones*, 23 N. D. 191, 135 N. W. 1120.

The ten-year period is to be reckoned from the time the adverse possession begins, and not from the time the first payment of taxes is made. *Schauble v. Schulz*, 137 Fed. 389.

The title to land becomes valid by ten years' adverse possession and payment of taxes, as against minors as well as adults notwithstanding the provisions of section 7372. *Schauble v. Schulz*, 137 Fed. 389.

The possession of a vendee of land who enters under an executory contract for the sale of land and subsequently receives a conveyance in fulfillment thereof, is adverse from the time of the entry as to all persons except the vendor. *Schauble v. Schulz*, 137 Fed. 389.

The statute is retrospective in its operation but is not for that reason unconstitutional as a deprivation of property without due process of law as against one who had an opportunity for more than a year after its passage to assert a claim to the land or pay the taxes thereon before his title was extinguished by the statute. *Schauble v. Schulz*, 137 Fed. 389.

Title by adverse possession as marketable title. 38 L.R.A.(N.S.) 26.

Use of possessory title as a weapon of offense. 46 L.R.A.(N.S.) 487.

ARTICLE 3.—ACCESSION TO REAL PROPERTY.

§ 5472. Fixtures, when tenant may remove. When a person affixes his property to the land of another without an agreement permitting him to remove it, the thing affixed belongs to the owner of the land, unless he chooses to require the former to remove it; provided, that a tenant may remove from the demised premises any time during the continuance of his term anything affixed thereto for the purpose of trade, manufacture, ornament or domestic use, if the removal can be effected without injury to the premises, unless the thing has by the manner in which it is affixed become an integral part of the premises. [R. C. 1905, § 4929; Civ. C. 1877, § 583; R. C. 1899, § 3492.]

Fixtures remaining attached to a building at expiration of lease belong to owner of building. *Sweet v. Myers*, 3 S. D. 324, 53 N. W. 187.

Fixtures may become personal property by agreement. *Myrick v. Bill*, 3 D. 284, 17 N. W. 268.

Provisions relating to right of tenant to remove property placed on leased land is incorporated in lease by relation. *Joslin v. Linder*, 26 S. D. 420, 128 N. W. 500.

Effect upon the rights of the owner of a building, or of an interest in or a lien thereon, of its wrongful removal and attachment to the land of a third person without the former's consent. 14 L.R.A.(N.S.) 435.

When and against whom may fixtures retain character of personal property. 84 Am. St. Rep. 877.

When tenants may remove fixtures. 11 Am. Dec. 241.

Effect of agreement to prevent fixtures from becoming part of realty as to purchasers. 19 L.R.A. 443.

Heating apparatus as part of realty, as between landlord and tenant. 1 B. R. C. 980.

Is the right, as between landlord and tenant, to remove trade fixtures, conditional upon their susceptibility to removal without injury to themselves. 18 L.R.A.(N.S.) 423.

Right of tenant to remove electric chandeliers, etc. 3 L.R.A.(N.S.) 69.

Effect of renewing tenancy without reserving right to remove fixtures. 1 L.R.A.(N.S.) 1192; 17 L.R.A.(N.S.) 1135.

Agreement between landlord and tenant as to removal of fixtures and improvements by latter as affecting third person claiming a mechanic's lien. 45 L.R.A.(N.S.) 100.

Effect of agreement to prevent erections by tenant from becoming part of realty. 19 L.R.A. 443.

Removal of fixtures by tenant as violation of covenant to leave premises in good condition. 64 L.R.A. 662.

Are things placed on land with the intention of annexing them fixtures, where they are never actually attached. 69 L.R.A. 892.

Scope of provision that lessee shall leave alterations, improvements, additions, etc., on the premises. 42 L.R.A.(N.S.) 546.

§ 5473. Riparian accretions. When from natural causes land forms by imperceptible degrees upon the bank of a river or stream, navigable or not navigable, either by accumulation of material or by the recession of the stream, such land belongs to the owner of the bank, subject to any existing right of way over the bank. [R. C. 1905, § 4930; Civ. C. 1877, § 584; R. C. 1899, § 3493.]

Land formed by accretion and gradual reliction of nonnavigable lake belongs to adjoining owner. *Olson v. Huntamer*, 6 S. D. 364, 66 N. W. 313.

Does public easement in street terminating at shore line follow recession of shore line. 22 L.R.A.(N.S.) 593.

What constitutes accretions. 58 L.R.A. 193.

Alluvium and reliction and the title acquired thereby. 33 Am. Dec. 276; 35 Am. St. Rep. 307.

Leaseholder's right to accretions to shore lands. 58 L.R.A. 210.

Right to follow accretions across division line previously submerged by the action of the water. 51 L.R.A. 425.

Meander line or water line as basis for division of accretions. 12 L.R.A.(N.S.) 687.

Division of alluvium between adjoining riparian owners. 21 L.R.A. 776; 25 L.R.A.(N.S.) 257.

As to similar provision in Cal. Civ. Code, § 1014 see *Fillmore v. Jennings*, 78 Cal. 634, 21 Pac. 536.

§ 5474. Land removed by stream reclaimed, when. If a river or stream, navigable or not navigable, carries away by sudden violence a considerable and distinguishable part of a bank and bears it to the opposite bank or to another part of the same bank, the owner of the part carried away may reclaim it within a year after the owner of the land to which it has been united takes possession thereof. [R. C. 1905, § 4931; Civ. C. 1877, § 585; R. C. 1899, § 3494.]

§ 5475. Islands in navigable streams. Islands and accumulations of land formed in the beds of streams which are navigable, belong to the state, if there is no title or prescription to the contrary. [R. C. 1905, § 4932; Civ. C. 1877, § 586; R. C. 1899, § 3495.]

Title to islands. 33 Am. Dec. 281.

—as between governments. 58 L.R.A. 673.

—as between state and subject. 58 L.R.A. 673.

—as between opposite owners. 58 L.R.A. 674.

—island attached to shore by accretion. 6 L.R.A.(N.S.) 194.

How far islands included in government grants. 58 L.R.A. 675.

Accretions to islands. 35 Am. St. Rep. 312; 72 Am. St. Rep. 280.

§ 5476. In other streams. An island or accumulation of land formed in a stream which is not navigable belongs to the owner of the shore on that side where the island or accumulation is formed, or if not formed on one side only, to the owners of the shore on the two sides, divided by an imaginary line drawn through the middle of the river. [R. C. 1905, § 4933; Civ. C. 1877, § 587; R. C. 1899, § 3496.]

Effect of island on division of rights between opposite riparian owners. 26 L.R.A. 285.

Right to island attached to shore by accretion. 6 L.R.A.(N.S.) 194.

§ 5477. Island formed by new channel. If a stream, navigable or not navigable, in forming itself a new arm divides itself and surrounds land belonging to the owner of the shore and thereby forms an island, the island belongs to such owner. [R. C. 1905, § 4934; Civ. C. 1877, § 588; R. C. 1899, § 3497.]

§ 5478. When ancient bed taken as indemnity. If a stream, navigable or not navigable, forms a new course, abandoning its ancient bed, the owners of the land newly occupied take by way of indemnity the ancient bed abandoned, each in proportion to the land of which he has been deprived. [R. C. 1905, § 4935; Civ. C. 1877, § 589; R. C. 1899, § 3498.]

ARTICLE 4.—ACCESSION OF PERSONAL PROPERTY.

§ 5479. Things inseparably united. When things belonging to different owners have been united so as to form a single thing and cannot be separated without injury the whole belongs to the owner of the thing which forms the principal part, who must, however, reimburse the value of the residue to the other owner or surrender the whole to him. [R. C. 1905, § 4936; Civ. C. 1877, § 590; R. C. 1899, § 3499.]

Inventor of secret cost and selling marks has a property which law will protect. *Simmons Hwd. Co. v. Waibel*, 1 S. D. 488, 47 N. W. 814, 36 Am. St. Rep. 755, 11 L.R.A. 267.

Title by accession. 54 Am. Dec. 583.

May title to personal property taken by one not the owner be acquired by accession. 44 Am. St. Rep. 444.

Accession, alteration in the form of property which do not affect the title. 4 Am. Dec. 369; 5 Am. Dec. 205.

Replevin for undivided interest in commingled goods. 37 L.R.A.(N.S.) 270.

Title by accession to crops, fruit and timber wrongfully severed. 32 L.R.A. 422.

§ 5480. Principal part defined. That part is to be deemed the principal part to which the other has been united only for the use, ornament or completion of the former, unless the latter is the more valuable and has been united without the knowledge of its owner, who may in the latter case require it to be separated and returned to him, although some injury should result to the thing to which it has been united. [R. C. 1905, § 4937; Civ. C. 1877, § 591; R. C. 1899, § 3500.]

§ 5481. Further defined. If neither part can be considered the principal within the rule prescribed by the last section, the more valuable, or if the values are nearly equal, the more considerable in bulk is to be deemed the principal part. [R. C. 1905, § 4938; Civ. C. 1877, § 592; R. C. 1899, § 3501.]

§ 5482. Thing made from another's materials. If one makes a thing from materials belonging to another the latter may claim the thing on reimbursing the value of the workmanship unless the value of the workmanship exceeds

the value of the materials, in which case the thing belongs to the maker on reimbursing the value of the materials. [R. C. 1905, § 4939; Civ. C. 1877, § 593; R. C. 1899, § 3502.]

Accession by labor bestowed on personal property. 26 Am. Rep. 525.

Rights and remedies of owner of standing timber which has been manufactured into lumber after expiration of time stipulated for removal. 29 L.R.A.(N.S.) 552.

§ 5483. Blended materials. When one has made use of materials which in part belong to him and in part to another in order to form a thing of a new description without having destroyed any of the materials, but in such a way that they cannot be separated without inconvenience, the thing formed is common to both proprietors in proportion, as respects the one, of the materials belonging to him, and as respects the other, of the materials belonging to him and the price of his workmanship. [R. C. 1905, § 4940; Civ. C. 1877, § 594; R. C. 1899, § 3503.]

§ 5484. Admixtures of materials. When a thing has been formed by the admixture of several materials of different owners and neither can be considered the principal substance, an owner, without whose consent the admixture was made, may require separation if the materials can be separated without inconvenience. If they cannot be thus separated the owners acquire the thing in common in proportion to the quantity, quality and value of their materials; but if the materials of one were far superior to those of the others, both in quantity and value, he may claim the thing on reimbursing to the others the value of their materials. [R. C. 1905, § 4941; Civ. C. 1877, § 595; R. C. 1899, § 3504.]

§ 5485. Foregoing sections not applicable to willful use. The foregoing sections of this chapter are not applicable to cases in which one willfully uses the materials of another without his consent; but in such cases the product belongs to the owner of the material if its identity can be traced. [R. C. 1905, § 4942; Civ. C. 1877, § 596; R. C. 1899, § 3505.]

§ 5486. Material restored in kind or value paid. In all cases when one whose material has been used without his knowledge in order to form a product of a different description, can claim an interest in such product, he has an option to demand either restitution of his material in kind in the same quantity, weight, measure and quality, or the value thereof; or when he is entitled to the product, the value thereof in place of the product. [R. C. 1905, § 4943; Civ. C. 1877, § 597; R. C. 1899, § 3506.]

§ 5487. Damages. One who wrongfully employs materials belonging to another is liable to him in damages, as well as under the foregoing provisions of this chapter. [R. C. 1905, § 4944; Civ. C. 1877, § 598; R. C. 1899, § 3507.]

CHAPTER 46.

TRANSFER.

- ARTICLE 1. DEFINITION OF TRANSFER, §§ 5488, 5489.
 2. WHAT MAY BE TRANSFERRED, §§ 5490-5492.
 3. MODE OF TRANSFER, §§ 5493-5500.
 4. INTERPRETATION OF GRANTS, §§ 5501-5507.
 5. EFFECT OF TRANSFER, §§ 5508-5510.

ARTICLE 1.—DEFINITION OF TRANSFER.

§ 5488. Transfer defined. Transfer is an act of the parties or of the law by which the title to property is conveyed from one living person to another. [R. C. 1905, § 4945; Civ. C. 1877, § 599; R. C. 1899, § 3508.]

Transfer of corporate stock under execution. *Van Cise v. Bank*, 4 D. 485, 33 N. W. 897.
 Conveyance without consideration is valid between parties. *Bernardy v. Colonial & U. S. Mortg. Co.*, 17 S. D. 637, 106 Am. St. Rep. 791, 98 N. W. 166.

As to real estate being subject to mortgage by holder of legal title between foreclosure sale and expiration of redemption period. *North Dakota Horse & Cattle Co. v. Serumgard*, 17 N. D. 466, 29 L.R.A.(N.S.) 508, 117 N. W. 453.

§ 5489. Consideration unnecessary to validity. A voluntary transfer is an executed contract, subject to all rules of law, concerning contracts in general except that a consideration is not necessary to its validity. [R. C. 1905, § 4946; Civ. C. 1877, § 600; R. C. 1899, § 3509.]

Acknowledgment of consideration in deed and its effect. 17 Am. Dec. 523.

Consideration necessary to sustain covenant to stand seized. 8 Am. Dec. 366.

As to similar provision in Cal. Civ. Code, § 1040, see *Feeney v. Howard*, 79 Cal. 525, 4 L.R.A. 826, 12 Am. St. Rep. 162, 21 Pac. 984.

ARTICLE 2.—WHAT MAY BE TRANSFERRED.

§ 5490. What may be transferred. Property of any kind may be transferred except as otherwise provided by this article. [R. C. 1905, § 4947; Civ. C. 1877, § 601; R. C. 1899, § 3510.]

As to real estate being subject to mortgage by holder of legal title between foreclosure sale and expiration of redemption period. *North Dakota Horse & Cattle Co. v. Serumgard*, 17 N. D. 466, 29 L.R.A.(N.S.) 508, 117 N. W. 453.

As to similar provision in Cal. Civ. Code, § 1044, see *La Rue v. Groezinger*, 84 Cal. 281, 18 Am. St. Rep. 179, 24 Pac. 42.

§ 5491. Possibility not transferable. A mere possibility, not coupled with an interest, cannot be transferred. [R. C. 1905, § 4948; Civ. C. 1877, § 602; 1899, § 3511.]

Release by heir in lifetime of ancestor of his interest in estate of ancestor is inoperative. *Re Thompson*, 26 S. D. 576, 128 N. W. 1127, Ann. Cas. 1913B, 446.

§ 5492. Right of re-entry not transferable. A mere right of re-entry or of repossession for breach of a condition subsequent cannot be transferred to any one except the owner of the property affected thereby. [R. C. 1905, § 4949; Civ. C. 1877, § 603; R. C. 1899, § 3512.]

What law determines the right to a divorce. 59 L.R.A. 141.

ARTICLE 3.—MODE OF TRANSFER.

§ 5493. How made. A transfer may be made without writing in every case in which a writing is not expressly required by statute. [R. C. 1905, § 4950; Civ. C. 1877, § 604; R. C. 1899, § 3513.]

Chose in action transferable by parol or written assignment. *Roberts v. Bank*, 8 N. D. 474, 79 N. W. 993.

Validity of oral agreement to assume or assign land contract. 3 L.R.A.(N.S.) 147.

As to similar provision in Cal. Civ. Code, § 1052, see *Edwards v. Wagner*, 121 Cal. 376, 53 Pac. 821; *Smith v. Peck*, 128 Cal. 527, 61 Pac. 77.

§ 5494. Written transfers named. A transfer in writing is called a grant, or conveyance or bill of sale. The term "grant" in this and the next two articles includes all these instruments unless it is especially applied to real property. [R. C. 1905, § 4951; Civ. C. 1877, § 605; R. C. 1899, § 3514.]

§ 5495. Grant effectual only on delivery. A grant takes effect so as to vest the interest intended to be transferred only upon its delivery by the grantor. [R. C. 1905, § 4952; Civ. C. 1877, § 606; 1899, § 3515.]

Deed passes no title if neither actually nor constructively delivered. *McManus v. Commow*, 10 N. D. 340, 87 N. W. 8.

Undelivered written transfer or assignment of property as a gift. 21 L.R.A. 693.

Undelivered deed as memorandum to satisfy statute of frauds. 22 L.R.A. 273.

Validation of undelivered deed by ratification or estoppel of grantor. 9 L.R.A.(N.S.) 945.

§ 5496. Delivery presumed at its date. A grant duly executed is presumed to have been delivered at its date. [R. C. 1905, § 4953; Civ. C. 1877, § 607; R. C. 1899, § 3516.]

On presumption as to delivery of deed on day of its date. *Leonard v. Fleming*, 13 N. D. 629, 102 N. W. 308.

Presumption that grant was delivered at its date does not apply to deed in possession of grantor. *Cassidy v. Holland*, 27 S. D. 287, 130 N. W. 771.

Whether delivery of deeds presumed to have been at their dates or at the dates of their acknowledgment. 86 Am. Dec. 63.

As to similar provision in Cal. Civ. Code, § 1055, see *Ward v. Dougherty*, 75 Cal. 240, 7 Am. St. Rep. 151, 17 Pac. 193; *Lewis v. Burns*, 122 Cal. 358, 55 Pac. 132.

§ 5497. Delivery is absolute. A grant cannot be delivered to the grantee conditionally. Delivery to him or to his agent as such is necessarily absolute; and the instrument takes effect thereupon, discharged of any condition on which the delivery was made. [R. C. 1905, § 4954; Civ. C. 1877, § 608; R. C. 1899, § 3517.]

No conditional delivery of duplicate of valid contract which has already been actually delivered and taken effect. *Bank of Gilby v. Farnsworth*, 7 N. D. 6, 72 N. W. 901, 38 L.R.A. 843.

Delivery of deed to grantee or his agent as such is absolute. *Merrill v. Hurley*, 6 S. D. 592, 62 N. W. 958, 55 Am. St. Rep. 859.

Agent cannot deliver grant conditionally reserving benefit to himself adverse to his employer. *Holt v. Colton*, 4 D. 67, 22 N. W. 495.

Mortgage takes effect on its delivery discharged of any condition on which delivery was made. *Sargent v. Cooley*, 12 N. D. 1, 94 N. W. 576.

Manual delivery of deed of land by grantor to grantee is absolute and conveys title to grantee. *Ueland v. More Bros.*, 22 N. D. 283, 133 N. W. 543.

Fact that party may have manual possession of contract does not show complete delivery as question is still open whether other party intended delivery beyond power of recall. *Koester v. Northwestern Port Huron Co.*, 24 S. D. 546, 124 N. W. 740.

Delivery of deed. 16 Am. Dec. 35; 58 Am. Rep. 289; 53 Am. St. Rep. 537.

Effect of delivery of deed to grantee, subject to a future extrinsic condition. 16 L.R.A.(N.S.) 941.

§ 5498. Delivery in escrow. A grant may be deposited by the grantor with a third person to be delivered on the performance of a condition and on delivery by the depositary it will take effect. While in the possession of the third person and subject to condition it is called an escrow. [R. C. 1905, § 4955; Civ. C. 1877, § 609; R. C. 1899, § 3518.]

Transfer and pledge of corporate stock. *Van Cise v. Bank*, 4 D. 485, 33 N. W. 897.

What constitutes escrow. *Nichols & Shepard Co. v. Bank*, 6 N. D. 404, 71 N. W. 135.

Escrows. 130 Am. St. Rep. 910.

—deeds delivered in. 53 Am. St. Rep. 555.

Effect of deed delivered in escrow as further security for mortgage debt. 2 L.R.A.(N.S.) 628.

Effect of delivery in escrow of bond unsigned by principal obligor. 12 L.R.A.(N.S.) 1120.

Effect of delivery in escrow as to bona fide purchaser from grantee who has wrongfully obtained and recorded the deed. 17 L.R.A. 511.

Delivery of deed in escrow as change of title or interest. 38 L.R.A.(N.S.) 142.

Effect upon escrow of the imposition of conditions in violation of vendor's contract. 11 L.R.A.(N.S.) 1183.

Proof of escrow agreement by parol. 18 L.R.A.(N.S.) 337.

When deeds remain in escrow and when deemed presently operative. 28 Am. Dec. 408.

Negotiable instruments deposited in escrow and put in circulation without authority. 11 Am. St. Rep. 314.

§ 5499. Redelivery does not retransfer. Redelivering a grant of real property to the grantor or cancelling it does not operate to retransfer the title. [R. C. 1905, § 4956; Civ. C. 1877, § 610; R. C. 1899, § 3519.]

Return and cancellation of deed will not revest legal title in grantor. *Parszyk v. Mach*, 10 S. D. 555, 74 N. W. 1027.

Destruction of deed does not divest title; person deliberately destroying his deed not permitted to produce secondary evidence to sustain it. *Russell v. Meyer*, 7 N. D. 335, 75 N. W. 262, 47 L.R.A. 637.

Offer to redeliver deed is not an offer to restore property. *Johnson v. Burnside*, 3 S. D. 230, 52 N. W. 1057.

As to redelivery of deed transferring equitable title. *Barnhart v. Anderson*, 22 S. D. 395, 118 N. W. 31.

Effect of destruction, cancellation or delivery to grantor for that purpose of delivered but unrecorded deed. 18 L.R.A.(N.S.) 1167; 34 L.R.A.(N.S.) 495.

§ 5500. When deemed constructively delivered. Though a grant is not actually delivered into the possession of the grantee it is yet to be deemed constructively delivered in the following cases:

1. When the instrument is by the agreement of the parties at the time of execution understood to be delivered and under such circumstances that the grantee is entitled to immediate delivery; or,

2. When it is delivered to a stranger for the benefit of a grantee and his assent is shown or may be presumed. [R. C. 1905, § 4957; Civ. C. 1877, § 611; R. C. 1899, § 3520.]

Grantee may accept a deed first delivered to stranger; such acceptance relates back to time of delivery. *Arnegard v. Arnegard*, 7 N. D. 475, 75 N. W. 797, 41 L.R.A. 258.

Right of grantor to revoke deed delivered to stranger to be delivered by him to grantee after grantor's death. 4 L.R.A.(N.S.) 816; 9 L.R.A.(N.S.) 317.

Permitting undelivered deed wrongfully recorded by grantee to remain on record, as estoppel of grantor or his successors to deny its delivery as against one purchasing in reliance on the record. 7 L.R.A.(N.S.) 712.

Delivery to third person, or for record, or record of deed. 54 L.R.A. 865; 9 L.R.A.(N.S.) 224; 38 L.R.A.(N.S.) 941.

Delivery of deed to a third person for the use of the grantee. 40 Am. Rep. 217.

As to similar provision in Cal. Civ. Code, § 1059, see *Hibberd v. Smith*, 67 Cal. 547, 56 Am. Rep. 726, 4 Pac. 473, 8 Pac. 46.

ARTICLE 4.—INTERPRETATION OF GRANTS.

§ 5501. Interpreted same as contracts. Grants are to be interpreted in like manner with contracts in general except so far as is otherwise provided by this article. [R. C. 1905, § 4958; Civ. C. 1877, § 612; R. C. 1899, § 3521.]

Where grantor describes land properly and then adds an incorrect specific description by metes and bounds, first description prevails. *Novotny v. Danforth*, 9 S. D. 301, 68 N. W. 749.

Words sufficient to constitute a conveyance. 31 Am. St. Rep. 26.

When words of present grant do not convey title. 48 Am. Dec. 45.

As to similar provision in Cal. Civ. Code, § 1066, see *Barnett v. Barnett*, 104 Cal. 298, 37 Pac. 1049.

§ 5502. Limitation not controlled by words less clear. A clear and distinct limitation in a grant is not controlled by other words less clear and distinct. [R. C. 1905, § 4959; Civ. C. 1877, § 613; R. C. 1899, § 3522.]

Construction of the words "more or less" and "from" or "to." 28 Am. St. Rep. 631.

As to similar provision in Cal. Civ. Code, § 1067, see *Watson v. Sutro*, 86 Cal. 500, 24 Pac. 172, 25 Pac. 64.

§ 5503. When recourse had to recitals. If the operative words of a grant are doubtful recourse may be had to its recitals to assist the construction. [R. C. 1905, § 4960; Civ. C. 1877, § 614; R. C. 1899, § 3523.]

§ 5504. In favor of grantee except public grants. A grant is to be interpreted in favor of the grantee, except that a reservation in any grant and every grant by a public officer or body, as such, to a private party is to be interpreted in favor of the grantor. [R. C. 1905, § 4961; Civ. C. 1877, § 615; R. C. 1899, § 3524.]

As to when sale of land by guardian of minors to corporation for railroad purposes passes unconditional fee title. *Sherman v. Sherman*, 23 S. D. 486, 122 N. W. 439.

As to similar provision in Cal. Civ. Code, § 1069, see *Cullen v. Sprigg*, 83 Cal. 56, 23 Pac. 222; *Adams v. Hopkins*, 144 Cal. 19, 77 Pac. 712.

§ 5505. Former part prevails. If several parts of a grant are absolutely irreconcilable the former part prevails. [R. C. 1905, § 4962; Civ. C. 1877, § 616; R. C. 1899, § 3525.]

In grant containing correct description of land followed by incorrect description by metes and bounds, first description prevails. *Novotny v. Danforth*, 9 S. D. 301, 68 N. W. 749.

Construction of repugnant clauses of deed. 111 Am. St. Rep. 770.

Effect of other language in deed to cut down estate conveyed by granting clause. 13 L.R.A.(N.S.) 956; 24 L.R.A.(N.S.) 514; 42 L.R.A.(N.S.) 379.

As to similar provision in Cal. Civ. Code, § 1070, see *Pellissier v. Corker*, 103 Cal. 516, 37 Pac. 465.

§ 5506. Without issue defined. When a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of his body, or without issue, or in equivalent words such words must be taken to mean successors or issue living at the death of the person named as ancestor. [R. C. 1905, § 4963; Civ. C. 1877, § 617; R. C. 1899, § 3526.]

§ 5507. Words unnecessary to fee. Words of inheritance or succession are not requisite to transfer a fee in real property. [R. C. 1905, § 4964; Civ. C. 1877, § 618; R. C. 1899, § 3527.]

Instrument in writing may transfer title without words of inheritance. *Evenson v. Webster*, 3 S. D. 382, 53 N. W. 747, 44 Am. St. Rep. 802.

As to similar provision in Cal. Civ. Code, § 1072, see *Painter v. Pasadena Land & Water Co.*, 91 Cal. 74, 27 Pac. 539; *Barnett v. Barnett*, 104 Cal. 298, 37 Pac. 1049.

ARTICLE 5.—EFFECT OF TRANSFER.

§ 5508. Vests actual title. A transfer vests in the transferee all the actual title to the thing transferred which the transferor then has unless a different intention is expressed or is necessarily implied. [R. C. 1905, § 4965; Civ. C. 1877, § 619; R. C. 1899, § 3528.]

Transfer of note secured by mortgage carries mortgage with it. *Parker v. Randolph*, 5 S. D. 549, 59 N. W. 722, 29 L.R.A. 33.

Transfer vests only such title as the grantor has. *Rosenbaum v. Foss*, 7 S. D. 83, 63 N. W. 538.

As to real estate being subject to mortgage by holder of legal title between foreclosure sale and expiration of redemption period. *North Dakota Horse & Cattle Co. v. Serungard*, 17 N. D. 466, 29 L.R.A.(N.S.) 508, 117 N. W. 453.

§ 5509. Thing includes incidents. The transfer of a thing transfers also all its incidents unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself. [R. C. 1905, § 4966; Civ. C. 1877, § 620; R. C. 1899, § 3529.]

Transfer of note carries with it lien of mortgage given to secure it. *State v. Mellette*, 16 S. D. 297, 92 N. W. 395.

What appurtenances pass by deed. 81 Am. St. Rep. 764.

Will real estate pass under the word "effects" in a written instrument. 12 L.R.A.(N.S.) 661.

How far title to islands is included in private grant. 58 L.R.A. 677.

How far grant of mill includes water rights. 58 L.R.A. 487.

Right to use water for irrigation passing by deed. 65 L.R.A. 409.

Grants of parcel abutting on abandoned street as carrying grantor's title to fee of former street. 32 L.R.A.(N.S.) 778.

Conveyance of real property as carrying right to telephone service. 42 L.R.A.(N.S.) 1021.

Right to subjacent support upon conveyance of minerals apart from surface. 2 L.R.A.(N.S.) 1115.

Condemnation or grant of land for railroad right of way as carrying right to lateral and subjacent support. 32 L.R.A.(N.S.) 155.

Devise or bequest of property as passing good will with business conducted in connection therewith. 16 L.R.A.(N.S.) 240.

What articles will pass as appurtenances on sale of business plant. 8 L.R.A.(N.S.) 795.

What articles will pass as appurtenances upon sale of chattels. 8 L.R.A.(N.S.) 793.

Assignment of copyrighted story as carrying exclusive right to dramatize it. 41 L.R.A.(N.S.) 1002.

As to similar provision in Cal. Civ. Code, § 1084, see *Cross v. Kitts*, 69 Cal. 217, 58 Am. Rep. 558, 10 Pac. 409; *Duncan v. Hawn*, 104 Cal. 10, 37 Pac. 626.

§ 5510. Benefit taken though unnamed. A present interest and the benefit of a condition or covenant respecting property may be taken by any natural person under a grant, although not named a party thereto. [R. C. 1905, § 4967; Civ. C. 1877, § 621; R. C. 1899, § 3530.]

CHAPTER 47.

TRANSFER OF REAL PROPERTY.

- ARTICLE 1. MODE OF TRANSFER, §§ 5511-5517.
 2. TRANSFERS SUBJECT TO COAL DEPOSITS, §§ 5518, 5519.
 3. EFFECT OF TRANSFER, §§ 5520-5532.

ARTICLE 1.—MODE OF TRANSFER.

§ 5511. **Only by law or writing.** An estate in real property other than an estate at will or for a term not exceeding one year, can be transferred only by operation of law or by an instrument in writing, subscribed by the party disposing of the same or by his agent thereunto authorized by writing. [R. C. 1905, § 4968; Civ. C. 1877, § 622; R. C. 1899, § 3531.]

Any instrument in writing subscribed by grantor in which grantor, grantee, consideration and property are specified, is sufficient, though term "grant" not used. *Evenson v. Webster*, 3 S. D. 382, 53 N. W. 747, 44 Am. St. Rep. 802.

Section not applicable to oral contract to reconvey land held as security. *Phillips v. Swenson*, 16 S. D. 357, 92 N. W. 1065.

Lease for a year need not be in writing. *Pitts Agricultural Works v. Young*, 6 S. D. 557, 62 N. W. 432.

As to what constitutes valid transfer of real property. *State v. Mellette*, 16 S. D. 297, 92 N. W. 395.

Inapplicable to oral advancement of purchase price by one taking title. *Phillips v. Swenson*, 16 S. D. 357, 92 N. W. 1065.

Agent not authorized by writing cannot insert grantee's name in an acknowledged deed. *Lund v. Thackery*, 18 S. D. 113, 99 N. W. 856.

Standing timber cannot be transferred by oral contract. *Polk v. Carney*, 21 S. D. 295, 130 Am. St. Rep. 719, 112 N. W. 147.

Railway right of way across land of another constitutes interest in land under statute of frauds, which must be evidenced by grant in writing. *Spawn v. South Dakota C. R. Co.*, 26 S. D. 1, 127 N. W. 648, Ann. Cas. 1912D, 979.

When may instrument otherwise ineffective as a conveyance of real property be upheld as a covenant to stand seized to uses. 38 L.R.A.(N.S.) 937.

Execution of deed in name of deputy. 42 L.R.A.(N.S.) 880.

Execution of deed by attorney in fact or agent. 41 L.R.A.(N.S.) 805.

Signing deeds by proxy. 22 L.R.A. 297.

Proof of signature by mark when attesting witnesses are dead or cannot remember transaction. 44 L.R.A. 146.

As to similar provision in Cal. Civ. Code, § 1091, see *Blaisdell v. Leach*, 101 Cal. 405, 40 Am. St. Rep. 65, 35 Pac. 1019; *Tuffree v. Polhemus*, 108 Cal. 670, 41 Pac. 806; *Siddall v. Haight*, 132 Cal. 320, 64 Pac. 410; *Nathan v. Dierssen*, 134 Cal. 282, 66 Pac. 485.

§ 5512. **By-laws empowering officers to execute.** Any foreign or domestic corporation may in its by-laws empower any one or more of its officers severally or conjointly to execute and acknowledge in its behalf conveyances, transfers, assignments, releases, satisfactions or other instruments affecting liens upon, titles to or interests in real estate. [R. C. 1905, § 4969; 1893, ch. 42, § 1; R. C. 1899, § 3532.]

§ 5513. **Who executes if not so empowered.** In the absence of any by-laws the president or secretary of any corporation, and the president, secretary, treasurer or cashier of any loan, trust or banking corporation may execute and acknowledge such instruments when authorized by resolution of the board of directors. [R. C. 1905, § 4970; 1893, ch. 42, § 5; R. C. 1899, § 3533.]

§ 5514. **Prior instruments legalized.** All instruments affecting liens upon, titles to or interests in real estate heretofore executed and acknowledged in good faith by the treasurer or cashier in behalf of any loan, trust or banking corporation are declared valid and effectual to the same extent as they would have been had the last two sections been in force at the time of their execution. [R. C. 1905, § 4971; 1893, ch. 42, § 3; 1895, § 3534.]

§ 5515. Form of corporation signature. The signature of a corporation to any instrument mentioned in section 5512 shall be as follows:

..... (full name of corporation.)
 By (some officer authorized by resolution or the by-laws of the corporation
 to execute and acknowledge such instrument).
 (official designation of person signing.)

Attest:

[Seal.]

....., Secretary.
 [R. C. 1905, § 4972; R. C. 1895, § 3535.]

§ 5516. Proved by subscribing witness. Seal unnecessary. Form of grant. The execution of a grant of such estate in real property, if it is not duly acknowledged must, to entitle the grant to be recorded, be proved by a subscribing witness or as otherwise provided in sections 5571 and 5572. The absence of the seal of any grantor or his agent from any grant of an estate in real property heretofore or hereafter made shall not invalidate or in any manner impair the same. A grant of an estate in real property may be made in substance as follows:

This grant made the day of, in the year, between A. B., of, of the first part, and C. D., of, of the second part, witnesseth: That the party of the first part hereby grants to the party of the second part in consideration of dollars, now received, all the real property situated in, and bounded (or described) as follows:

Witness the hand of the party of the first part.

A. B.

[R. C. 1905, § 4973; Civ. C. 1877, §§ 623, 624; R. C. 1899, §§ 3536, 3537.]

Validity of tax deed unaffected by omission of seal therefrom. *Northwestern Mortg. Trust Co. v. Levitzow*, 23 S. D. 562, 122 N. W. 600.

§ 5517. Separate deeds of husband and wife to same property legalized. In all cases where a married man or woman has heretofore conveyed real property which may have been the homestead of himself or herself, or family, by a deed duly signed and acknowledged, but not signed by the wife or husband of such grantor, and such wife or husband, either before or after, by a deed duly signed and acknowledged, conveys the same real estate to the same grantee or a subsequent grantee from him, this conveyance by such separate deeds shall be valid and effectual to pass the title to such grantee or subsequent grantee, the same as if the conveyance had been made by a single instrument duly executed and acknowledged by both husband and wife. [1913, ch. 182; R. C. 1905, § 4974; 1905, ch. 156.]

ARTICLE 2.—TRANSFERS SUBJECT TO COAL DEPOSITS.

§ 5518. Reservation of coal or other deposits limited to description. That all deeds and transfers of real property in this state that reserve to the grantor the coal or other deposits in said property shall contain an accurate description of the coal or other mineral deposits reserved to the grantor, its nature, length, width and thickness and the coal or other mineral deposits reserved to the grantor shall be limited to such description. Provided that the provisions hereof shall not apply to state and school lands. [1911, ch. 304, § 1.]

§ 5519. Reservation without description ineffectual. Every deed and transfer of real property in this state that recites a reservation to the grantor of the coal deposits in said property, but which does not contain an accurate description of such deposits as required in section 5518 shall be construed to transfer to the grantee named in such deed, all right, title and interest to such property and all deposits of coal or other minerals imbedded therein, notwithstanding such attempted reservation. [1911, ch. 304, § 2.]

ARTICLE 3.—EFFECT OF TRANSFER.

§ 5520. Passes easements. Creates an easement. A transfer of real property passes all easements attached thereto and creates in favor thereof an easement to use other real property of the person whose estate is transferred in the same manner and to the same extent as such property was obviously and permanently used by the person whose estate is transferred for the benefit thereof at the time when the transfer was agreed upon or completed. [R. C. 1905, § 4975; Civ. C. 1877, § 627; R. C. 1899, § 3538.]

Implied easement by exhibiting unfilled plat to intending purchaser. 35 L.R.A.(N.S.) 938.

Right of purchaser of property according to plat to easements in streets or ways indicated thereon, other than those on which his property abuts. 28 L.R.A.(N.S.) 1024.

Right of grantee to claim an easement, implied covenant or estoppel, as against the grantor, by a call in the deed for a street or alley in which the grantor owns the fee. 14 L.R.A.(N.S.) 878.

Effect of bounding grant on private way to carry title thereto. 24 L.R.A.(N.S.) 539.

Bounding land on alley as covenant that alley exists, where grantor does not own the fee thereof. 10 L.R.A.(N.S.) 964.

Implied grant of easement in partition deed. 3 L.R.A.(N.S.) 1082.

Devise as carrying visible easement. 38 L.R.A.(N.S.) 882.

Effect of division of tract with visible servitude in favor of one parcel upon another. 6 L.R.A.(N.S.) 410.

Easement by severance of tract of land with apparent benefit existing. 26 L.R.A.(N.S.) 316.

Implication from necessity of easement other than right of way. 8 L.R.A.(N.S.) 328.

Creation of easements of light and air by severance of tract of land with apparent benefit existing. 26 L.R.A.(N.S.) 369.

As to similar provision in Cal. Civ. Code, § 1104, see *Cave v. Crafts*, 53 Cal. 135; *Blum v. Weston*, 102 Cal. 362, 41 Am. St. Rep. 188, 36 Pac. 778; *Jones v. Sanders*, 138 Cal. 405, 71 Pac. 506; *Pendola v. Ramm*, 138 Cal. 517, 71 Pac. 624.

§ 5521. Covenants implied from use of word "grant." From the use of the word "grant" in any conveyance by which an estate of inheritance or fee simple is to be passed the following covenant and none other, on the part of the grantor for himself and his heirs to the grantee, his heirs and assigns, are implied unless restrained by express terms contained in such conveyance:

1. That previous to the time of the execution of such conveyance the grantor has not conveyed the same estate, or any right, title or interest therein to any person other than the grantee.

2. That such estate is at the time of the execution of such conveyance free from incumbrances done, made or suffered by the grantor or any person claiming under him. Such covenants may be sued upon in the same manner as if they had been expressly inserted in the conveyance. [R. C. 1905, § 4976; Civ. C. 1877, § 628; R. C. 1899, § 3539.]

Deed may omit covenants of warranty and grantor is bound by such covenants as he chooses to insert in addition to those implied by word "grant." *Citizens' Bank v. Shaw*, 14 S. D. 197, 84 N. W. 779.

Rule that grantee in quitclaim deed of realty takes subject to prior equities not applicable to bill of sale of personalty given and intended as mortgage. *Rosenbaum v. Foss*, 14 S. D. 184, 56 N. W. 114.

Wife joining in quitclaim deed not purporting to convey fee-simple title is not within statute, so that her after-acquired title will not pass to grantee. *State v. Kemmerer*, 14 S. D. 169, 84 N. W. 771.

Implied covenant raised by word "grant" is restrained by express covenant against incumbrances, limited by its terms. *Dunn v. Dietrich*, 3 N. D. 3, 53 N. W. 81.

Covenants implied in deeds. 2 Am. Dec. 234.

As to similar provision in Cal. Civ. Code, § 1113, see *Jeffers v. Easton, E. & Co.*, 113 Cal. 345, 45 Pac. 680; *Woodward v. Brown*, 119 Cal. 283, 63 Am. St. Rep. 108, 51 Pac. 2, 542; *Holzheuer v. Hayee*, 133 Cal. 456, 55 Pac. 968; *Lyles v. Perrin*, 134 Cal. 417, 66 Pac. 472.

§ 5522. Grant conclusive against whom. Every grant of an estate in real property is conclusive against the grantor and every one subsequently claiming under him, except a purchaser or incumbrancer who in good faith and for a valuable consideration, acquires a title or lien by an instrument that

is first duly recorded. [R. C. 1905, § 4977; Civ. C. 1877, § 629; R. C. 1899, § 3540.]

Grantee of land from entryman before issuance of patent has title paramount to mortgagee after issuance, where grantee's deed was recorded. *Bernardy v. Colonial & U. S. Mortg. Co.*, 17 S. D. 637, 106 Am. St. Rep. 791, 98 N. W. 166.

When grantees become liable upon covenants. 47 Am. Rep. 473.

As to similar provision in Cal. Civ. Code, § 1107, see *Foorman v. Wallace*, 75 Cal. 552, 17 Pac. 680; *Warnock v. Harlow*, 96 Cal. 298, 31 Am. St. Rep. 209, 31 Pac. 166; *Riley v. Martinelli*, 97 Cal. 575, 21 L.R.A. 33, 33 Am. St. Rep. 209, 32 Pac. 579; *Adler v. Sargent*, 109 Cal. 42, 41 Pac. 799; *Murphy v. Clayton*, 113 Cal. 153, 45 Pac. 267.

§ 5523. Grant valid pro tanto. A grant made by the owner of an estate for life or years, purporting to transfer a greater estate than he could lawfully transfer, does not work a forfeiture of his estate, but passes to the grantee all the estate which the grantor could lawfully transfer. [R. C. 1905, § 4978; Civ. C. 1877, § 630; R. C. 1899, § 3541.]

§ 5524. Title to highway. A transfer of land bounded by a highway passes the title of the person whose estate is transferred to the soil of the highway in front to the center thereof unless a different intent appears from the grant. [R. C. 1905, § 4979; Civ. C. 1877, § 631; R. C. 1899, § 3542.]

Conveyance of property fronting on highway is presumed to carry title to center thereof, unless the fee is expressly reserved. *Sweetman v. Bathrick*, 17 S. D. 138, 95 N. W. 422.

Construction of deed when lands are bounded by streets or highways. 23 Am. Rep. 233.

Grants of parcel abutting on abandoned street as carrying grantor's title to fee of former street. 32 L.R.A.(N.S.) 778.

§ 5525. Attornment not necessary. Grants of rents or of reversions or of remainders are good and effectual without attornments of the tenants, but no tenant who before notice of grant shall have paid rent to the grantor must suffer any damage thereby. [R. C. 1905, § 4980; Civ. C. 1877, § 632; R. C. 1899, § 3543.]

As to similar provision in Cal. Civ. Code, § 1111, see *McDonald v. Hanlon*, 79 Cal. 442, 21 Pac. 861; *Dreyfus v. Hart*, 82 Cal. 621, 23 Pac. 193; *Harris v. Foster*, 97 Cal. 292, 33 Am. St. Rep. 187, 32 Pac. 246.

§ 5526. Lineal and collateral warranties abolished. Lineal and collateral warranties with all their incidents are abolished; but the heirs and devisees of any person who has made any covenant or agreement in reference to the title of, in or to any real property are answerable upon such covenant or agreement to the extent of the land descended or devised to them in the cases and in the manner prescribed by law. [R. C. 1905, § 4981; Civ. C. 1877, § 633; R. C. 1899, § 3544.]

Instrument not purporting to convey fee simple not within this section. *State v. Kemmerer*, 14 S. D. 169, 84 N. W. 771.

Action not maintainable against heir until claim has been presented for payment in due course of administration of estate. This section does not create new and independent cause of action against heirs, but simply declares remedy upon covenant of ancestors. *Woods v. Ely*, 7 S. D. 471, 64 N. W. 531.

Tax title subsequently acquired by vendor under warranty deed based on outstanding certificate inures to benefit of vendee. *Zerfing v. Seelig*, 12 S. D. 25, 80 N. W. 140.

A wife not owner of the property, merely joining husband in quitclaim deed, not estopped to assert title in her own right subsequently acquired. *State v. Kemmerer*, 15 S. D. 504, 90 N. W. 150.

Applicable to deed absolute in form. *Bernardy v. Colonial & U. S. Mortg. Co.*, 20 S. D. 193, 105 N. W. 737.

As to when sale of land by guardian of minors to corporation for railroad purposes passes unconditional fee title. *Sherman v. Sherman*, 23 S. D. 486, 122 N. W. 439.

Indian's warranty deed conveys valid title to land on which he subsequently receives patent. *Simonson v. Monson*, 22 S. D. 238, 117 N. W. 133; *Bernardy v. Colonial & U. S. Mortg. Co.*, 17 S. D. 637, 106 Am. St. Rep. 791, 98 N. W. 166.

Liability of heirs on covenant or specialty debt of ancestor. 21 L.R.A. 90.

§ 5527. Grant presumes fee simple title. A fee simple title is presumed to be intended to pass by a grant of real property unless it appears from the grant that a lesser estate was intended. [R. C. 1905, § 4982; Civ. C. 1877, § 633; R. C. 1899, § 3545.]

As to similar provision in Cal. Civ. Code, § 1105, see *Klumpke v. Baker*, 68 Cal. 559, 10 Pac. 197; *People v. Blake*, 84 Cal. 611, 22 Pac. 1142, 24 Pac. 313; *Painter v. Pasadena*

Land & Water Co., 91 Cal. 74, 27 Pac. 539; Pellissier v. Corker, 103 Cal. 516, 37 Pac. 465; Bates v. Howard, 105 Cal. 173, 38 Pac. 715.

§ 5528. Grant takes effect on performance of condition. An instrument purporting to be a grant of real property to take effect upon a condition precedent passes the estate upon the performance of the condition. [R. C. 1905, § 4983; Civ. C. 1877, § 633; R. C. 1899, § 3546.]

What are conditions precedent in deed. 102 Am. St. Rep. 366.

Impossibility of performance of conditions precedent and subsequent. 70 Am. St. Rep. 829.

§ 5529. After acquired title. When a person purports by proper instrument to grant property in fee simple and subsequently acquires any title or claim of title thereto the same passes by operation of law to the grantee or his successors. [R. C. 1905, § 4984; Civ. C. 1877, § 633; R. C. 1899, § 3547.]

Subsequent acquired tax title based on certificate acquired prior to sale inures to benefit of vendee. Zerfing v. Seelig, 12 S. D. 25, 80 N. W. 140.

Instrument not purporting to convey fee simple not within statute. Wife joining husband in such instrument not estopped to assert subsequently acquired title. State v. Kemmerer, 14 S. D. 169, 84 N. W. 771; see also 15 S. D. 504, 90 N. W. 150.

As to similar provision in Cal. Civ. Code, § 1105, see Klumpke v. Baker, 68 Cal. 559, 10 Pac. 197; Re Ryder, 141 Cal. 366, 74 Pac. 993.

Acquisition of after-acquired title by estoppel. 37 Am. Dec. 129; 54 Am. Dec. 635; 41 Am. St. Rep. 722.

When after-acquired title passes to grantee. 58 Am. Dec. 583.

Effect of quitclaim deed upon after-acquired title. 35 L.R.A.(N.S.) 1182.

Right of grantor of mining claim to relocate same for his own benefit. 50 L.R.A. 186.

Estoppel of one who executes deed as executor or administrator to set up an existing title in himself. 21 L.R.A.(N.S.) 60.

Right of one receiving advancement and executing release of interest in estate to share in after-acquired property. 65 L.R.A. 578.

Estoppel of heir to claim interest in expectancy from ancestor. 32 L.R.A. 597.

Doctrine of estoppel as applied to sale of expectancy by prospective heir. 33 L.R.A. 273, 281.

§ 5530. Reconveyance when estate defeated by nonperformance of condition subsequent. When a grant is made upon condition subsequent and is subsequently defeated by the nonperformance of the condition, the person otherwise entitled to hold under the grant must reconvey the property to the grantor or his successors by grant duly acknowledged for record. [R. C. 1905, § 4985; Civ. C. 1877, § 633; R. C. 1899, § 3548.]

Conditions precedent and subsequent, impossibility of performance. 70 Am. St. Rep. 829.

Conditions subsequent in deed. 31 Am. St. Rep. 46.

—mode of taking advantage of breaches of. 93 Am. St. Rep. 372.

—what language creates. 57 Am. Rep. 63; 79 Am. St. Rep. 747.

—when and at whose instance may be avoided for a breach of. 44 Am. Dec. 743.

§ 5531. Incumbrances defined. The term "incumbrances" includes taxes, assessments and all liens upon real property. [R. C. 1905, § 4986; Civ. C. 1877, § 633; 1899, ch. 89; R. C. 1899, § 3549.]

§ 5532. Liability of grantor. Whoever conveys real estate by deed or mortgage containing a covenant that it is free from all incumbrances, when an incumbrance appears of record to exist thereon whether known or unknown to him shall be liable in an action of contract, to the grantee, his heirs, executors, administrators, successors, grantees or assigns, for all damages sustained in removing the same. [R. C. 1905, § 4987; Civ. C. 1877, § 633; 1899, ch. 89; R. C. 1899, § 3549.]

Effect of purchaser's knowledge of incumbrance in action for breach of covenant. 4 L.R.A.(N.S.) 310; 32 L.R.A.(N.S.) 737.

Will covenant of general warranty sustain action by remote grantee evicted under incumbrance, where deed also contains covenants against incumbrances not running with the land. 26 L.R.A.(N.S.) 1094.

Actions for breach of covenant of seisin or of good right to convey, what damages recoverable in. 99 Am. Dec. 73.

Damages recoverable for breach of warranty of title. 24 Am. St. Rep. 266.

Measure of damages in actions for breach of covenant of quiet enjoyment. 58 Am. Rep. 606.

CHAPTER 48.

TRANSFERS OF PERSONAL PROPERTY.

- ARTICLE 1. MODE OF TRANSFER, §§ 5533, 5534.**
2. WHAT OPERATES AS A TRANSFER, §§ 5535-5537.
3. GIFTS, §§ 5538-5545.

ARTICLE 1.—MODE OF TRANSFER.

§ 5533. Ships and trusts. An interest in a ship or in an existing trust can be transferred only by operation of law or by a written instrument subscribed by the person making the transfer or by his agent. [R. C. 1905, § 4988; Civ. C. 1877, § 634; R. C. 1899, § 3550.]

§ 5534. Other personalty. The mode of transferring other personal property by sale is regulated by the chapter on that subject in this code. [R. C. 1905, § 4989; Civ. C. 1877, § 635; R. C. 1899, § 3551.]

ARTICLE 2.—WHAT OPERATES AS A TRANSFER.

§ 5535. When title passes. The title to personal property sold or exchanged passes to the buyer whenever the parties agree upon a present transfer and the thing itself is identified, whether it is separated from other things or not. [R. C. 1905, § 4990; Civ. C. 1877, § 636; R. C. 1899, § 3552.]

As to what constitutes executory contract for sale of personalty. *Lumley v. Miller*, 23 S. D. 16, 119 N. W. 1014.

Separation is immaterial on sale of personal property mixed with like property, where same is identified. *O'Keefe v. Leistikow*, 14 N. D. 355, 104 N. W. 515, 9 A. & E. Ann. Cas. 25.

A bona fide purchaser for value of personal property obtains good title even though vendor's title obtained by fraud. *Tetrault v. O'Connor*, 8 N. D. 15, 76 N. W. 225.

Implied notice of transfer of negotiable paper chargeable to maker. Otherwise as to ordinary debt. *Hollinshead v. Stuart & Co.*, 8 N. D. 35, 77 N. W. 89.

If there is no condition in agreement permitting mortgagor to sell property as his own title passes to buyer and mortgagee could not recover possession. *Mariner v. Patten*, 28 S. D. 613, 132 N. W. 685.

Title to property does not pass so long as contract of sale made by agent in excess of authority remains executory. *Westby v. J. I. Case Threshing Mach. Co.*, 21 N. D. 575, 132 N. W. 137.

Seller's mistake as to identity of vendee, as affecting the passing of title to the goods sold. 13 L.R.A.(N.S.) 413.

Effect of indorsing and mailing to purchaser a bill of lading, naming seller as consignee, to pass title to purchaser. 34 L.R.A.(N.S.) 293.

Sufficiency of selection or designation of goods sold out of larger lot. 26 L.R.A.(N.S.) 5.

As to similar provision in Cal. Civ. Code, § 1140, see *Blackwood v. Cutting Packing Co.*, 76 Cal. 212, 9 Am. St. Rep. 199, 18 Pac. 248.

§ 5536. When transfer by executory agreement operative. Title is transferred by an executory agreement for the sale or exchange of personal property, only when the buyer has accepted the thing, or when the seller has completed it, prepared it for delivery and offered it to the buyer, with intent to transfer the title thereto in the manner prescribed by the second subdivision of article 4 of chapter 54. [R. C. 1905, § 4991; Civ. C. 1877, § 637; R. C. 1899, § 3553.]

When title to personal property is transferred. *Dowagiac Mfg. Co. v. Higinbotham*, 15 S. D. 547, 91 N. W. 330.

Property not in being may be transferred; future earnings of a threshing rig may be mortgaged. *Sykes v. Hannawalt*, 5 N. D. 335, 65 N. W. 682.

Under executory contract, no title passes until buyer accepts. *Nichols & Shepard Co. v. Paulson*, 6 N. D. 400, 71 N. W. 136.

As to what constitutes executory contract for sale of personalty. *Lumley v. Miller*, 23 S. D. 16, 119 N. W. 1014.

Until acceptance no title to threshing machine passes under agreement to purchase which provided that it might be returned if defective. *Colean Mfg. Co. v. Feckler*, 20 N. D. 188, 126 N. W. 1019.

Provision for payment of installments of price of article during construction as indicating intention to pass title. 2 B. R. C. 646.

Necessity of delivery of goods sold to pass title. 17 L.R.A. 177.
 Right of purchasers of, or creditors levying on, goods sold for cash, but delivered without payment. 13 L.R.A.(N.S.) 696; 29 L.R.A.(N.S.) 709.
 Effect of premature delivery to pass title to purchaser. 31 L.R.A.(N.S.) 942.
 Effect on sale, of destruction of property after actual or constructive delivery, preventing the ascertainment of the price according to the terms of the contract. 19 L.R.A.(N.S.) 197.
 When title passes under consignment of goods for sale with provision in effect that consignee purchase balance of consignment. 39 L.R.A.(N.S.) 620.
 Passing of title to property by delivery thereof to a carrier for transportation to consignee or vendee. 22 L.R.A. 415.
 Where title passes upon shipment of intoxicating liquor C. O. D. 2 L.R.A.(N.S.) 383; 24 L.R.A.(N.S.) 143.
 Passing of title to consignee on delivery to carrier as affected by provisions of bill of lading and attachment of draft thereto. 2 L.R.A.(N.S.) 79.
 When title passes where vendor consigns goods to himself and vendee is to be notified of their arrival and to receive them upon payment of draft. 39 L.R.A.(N.S.) 309.
 Passing of title by delivery f. o. b. 62 L.R.A. 802; 83 L.R.A.(N.S.) 54.

§ 5537. Transfer by agent. When the possession of personal property together with the power to dispose thereof is transferred by its owner to another person an executed sale by the latter, while in possession, to a buyer in good faith and in the ordinary course of business for value, transfers to such buyer the title of the former owner, though he may be entitled to rescind and does rescind the transfer made by him. [R. C. 1905, § 4992; Civ. C. 1877, § 638; R. C. 1899, § 3554.]

Delivery of goods for sale on commission does not constitute sale. *Gilman v. Gilby Township*, 8 N. D. 627, 80 N. W. 969.

Title to property does not pass so long as contract of sale made by agent in excess of authority remains executory. *Westby v. J. I. Case Threshing Mach. Co.*, 21 N. D. 575, 132 N. W. 137.

ARTICLE 3.—GIFTS.

§ 5538. Gift defined. A gift is a transfer of personal property made voluntarily and without consideration. [R. C. 1905, § 4993; Civ. C. 1877, § 639; R. C. 1899, § 3555.]

Execution and delivery of written assignment delivery of property itself. *Luther v. Hunter*, 7 N. D. 544, 75 N. W. 916.

Delivery must clearly appear. *Luther v. Hunter*, 7 N. D. 544, 75 N. W. 916.

Where husband takes property in name of wife that fact alone and unexplained raises presumption of gift; presumption may be overcome by evidence to contrary. *Bem v. Bem*, 4 S. D. 138, 55 N. W. 1102.

Gift of check. 18 L.R.A. 855; 27 L.R.A.(N.S.) 308.

Note as subject of gift by maker. 27 L.R.A.(N.S.) 308.

May a promissory note executed by a parent to a child be the subject of a valid gift by the former to the latter. 7 L.R.A.(N.S.) 156.

Gift amounting to a disposition of property with intent to defraud, sustaining attachment. 30 L.R.A. 476.

Gift by testator as ademption of general legacy to donee. 38 L.R.A.(N.S.) 588.

Does donor's expectation that donee will allow him to share in the benefit of the property raise an implied trust to that effect. 24 L.R.A.(N.S.) 1043.

Conveyances which must be regarded as gift. 65 Am. St. Rep. 798.

Parol gift as conveyance. 67 L.R.A. 461.

Degree of proof necessary to establish parol gift of real estate. 9 L.R.A.(N.S.) 508.

As to similar provision in Cal. Civ. Code, § 1146, see *Yosemite Stage & Turnp. Co. v. Dunn*, 83 Cal. 264, 23 Pac. 369; *Knight v. Tripp*, 121 Cal. 674, 54 Pac. 267; *Calkins v. Equitable Bldg. & L. Asso.*, 126 Cal. 531, 59 Pac. 30; *Pullen v. Placer County Bank*, 138 Cal. 169, 94 Am. St. Rep. 19, 66 Pac. 740, 71 Pac. 83; *Driscoll v. Driscoll*, 143 Cal. 528, 77 Pac. 471.

§ 5539. Requisites of valid verbal gift. A verbal gift is not valid unless the means of obtaining possession and control of the thing are given, nor, if it is capable of delivery, unless there is an actual or symbolical delivery of the thing to the donee. [R. C. 1905, § 4994; Civ. C. 1877, § 640; R. C. 1899, § 3556.]

To constitute a gift inter vivos delivery must clearly appear. *Luther v. Hunter*, 7 N. D. 544, 75 N. W. 916.

Delivery sufficient to support gift. 50 Am. Rep. 178.

When deposit in bank amounts to gift. 23 Am. Rep. 451.

Gift of deposit of money in bank in the name of another. 39 Am. Rep. 310.
 Gifts by an assignment of a fund or by check on a bank. 26 Am. Rep. 684.
 Effect of delivery of bank book to sustain gift of money in bank. 18 L.R.A. 171; 19 L.R.A. 700.

Delivery necessary to complete gift of a savings bank account when the book is already in the possession of the donee. 17 L.R.A.(N.S.) 181.

Effect of delivery of order for savings account without a book to complete a gift of the account. 22 L.R.A.(N.S.) 568.

Necessity of actual delivery of certificate to complete gift of shares of stock. 29 L.R.A.(N.S.) 166.

Sufficiency of constructive delivery to sustain gift causa mortis. 18 L.R.A. 170.

Transfer of key to receptacle as delivery of possession sustaining gift of contents. 40 L.R.A.(N.S.) 901.

Retention or resumption of possession by donor as affecting gift. 32 L.R.A.(N.S.) 219

Undelivered written transfer or assignment of property as gift. 21 L.R.A. 693.

Gift to a class, who entitled to take. 73 Am. St. Rep. 413.

Subsequent lunacy of donor as affecting incomplete gift. 34 L.R.A. 297.

As to similar provision in Cal. Civ. Code, § 1147, see *Ruiz v. Dow*, 113 Cal. 490, 45 Pac. 867; *Hart v. Ketchum*, 121 Cal. 426, 53 Pac. 931; *Knight v. Tripp*, 121 Cal. 674, 54 Pac. 267; *Pullen v. Placer County Bank*, 138 Cal. 169, 94 Am. St. Rep. 19, 66 Pac. 740, 71 Pac. 83; *Driscoll v. Driscoll*, 143 Cal. 528, 77 Pac. 471.

§ 5540. Irrevocable. Exception. A gift, other than a gift in view of death, cannot be revoked by the giver. [R. C. 1905, § 4995; Civ. C. 1877, § 641; R. C. 1899, § 3557.]

Revocability of gift. 11 L.R.A. 687; 2 L.R.A.(N.S.) 285.

Retention or resumption of possession by donor as affecting gift. 32 L.R.A.(N.S.) 219.

Specific performance of gift. 23 Am. Dec. 429.

§ 5541. In view of death defined. A gift in view of death is one which is made in contemplation, fear or peril of death and with intent that it shall take effect only in case of the death of the giver. [R. C. 1905, § 4996; Civ. C. 1877, § 642; R. C. 1899, § 3558.]

Gift causa mortis. 99 Am. St. Rep. 890.

—delivery sufficient to support. 50 Am. Rep. 178; 18 L.R.A. 170.

—of money on deposit in savings bank. 26 Am. Rep. 684; 48 Am. Rep. 506.

—of promissory note. 26 L.R.A. 305.

—of notes and other choses in action payable to order. 23 Am. Dec. 600; 25 Am. Dec. 389.

As to similar provision in Cal. Civ. Code, § 1149, see *Zeller v. Jordan*, 105 Cal. 143, 38 Pac. 640.

§ 5542. When presumed. A gift made during the last illness of the giver or under circumstances which would naturally impress him with an expectation of speedy death is presumed to be a gift in view of death. [R. C. 1905, § 4997; Civ. C. 1877, § 643; R. C. 1899, § 3559.]

As to similar provision in Cal. Civ. Code, § 1150, see *Knight v. Tripp*, 121 Cal. 674, 54 Pac. 267.

§ 5543. Revocable. Rights of purchaser. A gift in view of death may be revoked by the giver at any time and is revoked by his recovery from the illness or escape from the peril under the presence of which it was made or by the occurrence of any event which would operate as a revocation of a will made at the same time; but when the gift has been delivered to the donee the rights of a bona fide purchaser from the donee before the revocation shall not be affected by the revocation. [R. C. 1905, § 4998; Civ. C. 1877, § 644; R. C. 1899, § 3560.]

As to similar provision in Cal. Civ. Code, § 1151, see *Adams v. Atherton*, 132 Cal. 164, 64 Pac. 283.

§ 5544. Not affected by will. A gift in view of death is not affected by a previous will; nor by a subsequent will unless it expresses an intent to revoke the gift. [R. C. 1905, § 4999; Civ. C. 1877, § 645; R. C. 1899, § 3561.]

§ 5545. Treated as a legacy as to creditors. A gift in view of death must be treated as a legacy so far as relates only to the creditors of the giver. [R. C. 1905, § 5000; Civ. C. 1877, § 646; R. C. 1899, § 3562.]

Subject of gift causa mortis forms no part of donor's estate; personal representative cannot claim it, except when necessary to pay debts. *Seybold v. Bank*, 5 N. D. 460, 67 N. W. 682.

Recovery of gift by administrator for benefit of creditors. *Bright v. Ecker*, 9 S. D. 192, 68 N. W. 326.

CHAPTER 49.

RECORDING TRANSFERS.

- ARTICLE 1. WHAT MAY BE RECORDED, §§ 5546-5552.
 2. REGISTRATION OF FARM NAMES, §§ 5553-5556.
 3. MODE OF RECORDING, §§ 5557-5562.
 4. PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS, §§ 5563-5593.
 5. EFFECT OF RECORDING OR THE WANT THEREOF, §§ 5594-5598.

ARTICLE 1.—WHAT MAY BE RECORDED.

§ 5546. **What may be recorded.** 1. Any instrument or judgment affecting the title to or possession of real property may be recorded under this chapter.

2. Judgments affecting the title to or the possession of real property, authenticated by the certificate of the clerk of court in which such judgments were rendered, may be recorded without acknowledgments or further proof.

3. Letters patent from the United States, duplicate final registers' receipts, or certificates, from the United States land offices, contracts between the state and purchasers of school and institution lands for the purchase and sale of such lands and assignments of such contracts, when such assignments have been approved by the board of university and school lands, may be recorded without acknowledgment or further proof; and certified copies of such patents and duplicate final registers' receipts or certificates, certified and proved according to the laws of the United States and of this state in such manner as to entitle them to admission as evidence in the courts of this state are likewise entitled to be recorded without acknowledgment or further proof, and when so recorded shall be notice in like manner and to the same extent as the originals thereof would have been if the same had been recorded, and the record of all such instruments, or copies thereof, heretofore recorded which are certified in accordance therewith, is hereby validated, and from the taking effect of this article such record shall operate as notice to the same extent as hereinbefore provided for such certified copies of such instruments to be hereafter recorded. [1911, ch. 258; R. C. 1905, § 5001; Civ. C. 1877, § 647; 1879, ch. 47, § 1; R. C. 1899, § 3563; 1905, ch. 159.]

Bond for deed may be recorded; notice to public of its contents. *Shelly v. Mikkelson*, 5 N. D. 22, 63 N. W. 210.

Lease as conveyance within meaning of recording statutes. 24 L.R.A.(N.S.) 879.

Right of abstracters to have access to public records. 124 Am. St. Rep. 911.

§ 5547. **Abstract prima facie evidence of title.** In any and all cases where the records of deeds, mortgages, liens, judgments and instruments of like nature in any county have been lost or destroyed, the abstract of a regular bonded abstractor or abstractors of said county in which the same are lost or destroyed shall be deemed prima facie evidence of title and any regularly certified abstract may be recorded as are other instruments. [1907, ch. 2.]

§ 5548. **Prerequisites to record.** Before an instrument can be recorded unless it belongs to a class provided for in either section 5001 or 5032 its execution must be acknowledged by the person executing the same, or if executed by a corporation, by the person authorized to execute it by sections 4969 and 4970, or proved by a subscribing witness, or as provided in sections 5019 and 5020, and the acknowledgment or proof certified in the manner prescribed by article 3 of this chapter. [R. C. 1905, § 5002; Civ. C. 1877, § 648; R. C. 1895, § 3564.]

Record of instrument recorded without prescribed acknowledgment not constructive notice. *Cannon v. Deming*, 3 S. D. 421, 53 N. W. 863; *American Mort. Co. v. Live Stock Co.*, 10 N. D. 290, 86 N. W. 965.

No deed recorded except upon proper certificate of acknowledgment. *Wambole v. Foote*, 2 D. 1. 2 N. W. 239.

Mortgage must be acknowledged in order to be recorded. *N. W. L. & B. Co. v. Jonason*, 11 S. D. 566, 79 N. W. 840.

Conveyance of homestead by husband and wife not required to be acknowledged, except for purpose of record. *First Nat. Bank v. Prior*, 10 N. D. 146, 86 N. W. 362.

Instrument executed in foreign state cannot be recorded unless it shows that officer taking acknowledgment had power. *Goss v. Herman*, 20 N. D. 295, 127 N. W. 78.

§ 5549. **When proved instrument recorded.** An instrument proved and certified pursuant to sections 5571 and 5572 may be recorded in the proper office if the original is at the same time deposited therein to remain for public inspection, but not otherwise. [R. C. 1905, § 5003; Civ. C. 1877, § 649; R. C. 1899, § 3565.]

§ 5550. **Transfers by way of mortgage.** Transfers of or liens on property by way of mortgage are required to be recorded in the cases specified in the chapter on mortgages. [R. C. 1905, § 5004; Civ. C. 1877, § 650; R. C. 1895, § 3566.]

As to similar provision in Cal. Civ. Code, § 1164, see *Cardenas v. Miller*, 108 Cal. 250, 49 Am. St. Rep. 84, 39 Pac. 783, 41 Pac. 472.

§ 5551. **Variation in spelling, etc. Affidavit to cure.** Wherever, in the record of title to real estate, in the office of the register of deeds of any county of this state, there appears in the chain of title any variation in the spelling of the names of any persons appearing in such chain of title, or any instruments affecting the title to real estate, or where any grantor, mortgagor, vendor, lessor or other maker of any such instruments signs without the joinder of the spouse, any person may make an affidavit setting forth therein that he is personally cognizant of the facts stated by him in such affidavit, and may state the identity of any person appearing in such chain of title under names varying in the spelling thereof, or in the use of initials, and such affidavit may also state whether or not, at the time of the transfer or incumbrance, to which the affidavit relates, that the land described therein was or was not the homestead of the grantors, mortgagors or vendors or the person whose title is divested or incumbered, wholly or in part, or in any way affected by such transfer or conveyance. [1909, ch. 220, § 1.]

§ 5552. **Affidavit entitled to record.** The affidavit provided for in section 5551, duly verified according to law, and containing a description of the land to which it relates, may be recorded in the office of the register of deeds of any county in this state, in the proper book of miscellaneous records, in such office. [1909, ch. 220, § 2.]

ARTICLE 2.—REGISTRATION OF FARM NAMES.

§ 5553. **Registration of farm names authorized. Certificate.** Any owner of a farm in the state of North Dakota may have the name of his farm, together with a description of his land to which said name applies, recorded in a register kept for that purpose in the office of the register of deeds of the county in which said farm is located, and said register of deeds shall furnish to such land owner a proper certificate setting forth said name and the description of such land. When any name shall have been recorded as the name of any farm in such county, such name shall not be recorded as the name of any other farm in the same county. [1913, ch. 164, § 1.]

§ 5554. **Fee.** Any person having the name of his farm recorded, as provided in this act, shall first pay to the register of deeds a fee of one dollar, which fee shall be paid to the county treasurer in the same manner as other fees are paid to the county treasurer by the register of deeds, and credited to the special salary fund. [1913, ch. 164, § 2.]

§ 5555. **Transfer of farm may include registered name.** When any owner of a farm, the name of which has been recorded as provided in this article, his heirs, executors or administrators, transfers by deed or otherwise, the whole of such farm, such transfer may include the registered name thereof; but if it is desired to transfer only a portion of such farm, then in that event the reg-

istered name thereof shall not be transferred to the purchaser unless so stated in the deed of conveyance. [1913, ch. 164, § 3.]

§ 5556. Cancellation of registered name. Fee. Whenever any owner of a registered farm, his heirs, executors or administrators, desires to cancel the registered name thereof, the same shall be accomplished in the same manner as now provided for cancellation of real estate mortgages. For such service the register of deeds shall be paid a fee of fifty cents, which shall be paid to the county treasurer in the same manner as other fees herein provided for. [1913, ch. 164, § 4.]

ARTICLE 3.—MODE OF RECORDING.

§ 5557. Where recorded. Fee indorsed. Instruments entitled to be recorded must be recorded by the register of deeds of the county in which the real property affected thereby is situated. The register must in all cases indorse the amount of his fee for the recording on the instruments recorded. [R. C. 1905, § 5005; Civ. C. 1877, § 651; R. C. 1899, § 3567.]

Instrument filed for record when deposited with the register of deeds and proper fee paid. *Coler v. Rhoda Twp.*, 6 S. D. 640, 63 N. W. 158; *Stone v. Crow*, 2 S. D. 525, 51 N. W. 335.

Where grantee's agent delivered deed for record, his subsequent unauthorized withdrawal before record will not affect operation as recorded instrument. *Parish v. Mahany*, 10 S. D. 276, 73 N. W. 97, 65 Am. St. Rep. 715.

Unless party is actually misled by error in record of instrument, no rights are affected by such mistake. *Citizens' Bank v. Shaw*, 14 S. D. 197, 84 N. W. 779.

Mortgage containing power of sale may be foreclosed by advertisement although recording officer omitted to transcribe such power. *Shelby v. Bowden*, 16 S. D. 531, 94 N. W. 416.

§ 5558. When deemed recorded. An instrument is deemed to be recorded when, being duly acknowledged or proved and certified, it is deposited in the register's office with the proper officer for record. [R. C. 1905, § 5006; Civ. C. 1877, § 651; R. C. 1899, § 3568.]

Public officer presumed to perform such duties as law expressly imposes. Instrument delivered to register of deeds and placed by him in file box presumed to have been filed though no filing mark on instrument. *Coler v. Rhoda School Township*, 6 S. D. 640, 63 N. W. 158.

Where grantee's agent had delivered a deed for record, his subsequent, unauthorized act in directing its return did not affect its operation as a recorded instrument. *Parrish v. Mahany*, 10 S. D. 276, 73 N. W. 97.

Grantee regarded as having discharged his entire duty when instrument delivered for record, and subsequent mistake of register of deeds, which does not actually mislead, does not affect operation as recorded instrument. *Citizens Bank v. Shaw*, 14 S. D. 197, 84 N. W. 779.

What constitutes filing of papers. 15 Am. St. Rep. 294.

Federal courts following state decisions as to construction and effect of recording acts. 40 L.R.A. (N.S.) 420.

Effect of failure to pay registration tax or fee. 43 L.R.A. (N.S.) 146.

As to similar provision in Cal. Civ. Code, § 1170, see *Watkins v. Wilhoit*, 4 Cal. Unrep. 450, 35 Pac. 646; *Watkins v. Wilhoit*, 104 Cal. 395, 38 Pac. 53; *Edwards v. Grand*, 121 Cal. 254, 53 Pac. 796; *Cady v. Purser*, 131 Cal. 552, 82 Am. St. Rep. 391, 63 Pac. 844.

§ 5559. Instruments in unorganized counties, where recorded. The unorganized counties of the state in any judicial subdivision are hereby attached to and made a part of the county where the court is held for such subdivision for the purpose of filing and recording all deeds, mortgages and other instruments, so long as such counties remain unorganized and the filing and record of all such deeds, mortgages and other instruments heretofore made in the manner herein provided for are hereby declared to be legal and valid. [R. C. 1905, § 5007; 1881, ch. 121, § 1; R. C. 1899, § 3569.]

§ 5560. Separate books for grants and mortgages. Grants, absolute in terms, are to be recorded in one set of books and mortgages in another. [R. C. 1905, § 5008; Civ. C. 1877, § 652; R. C. 1899, § 3570.]

Deed absolute in form, although intended as mortgage, is properly recorded in record of deeds. *Merchants State Bank v. Tufts*, 14 N. D. 238, 116 Am. St. Rep. 682, 103 N. W. 760.

§ 5561. Duty of register. The duties of registers of deeds in respect to recording instruments are prescribed by statute. [R. C. 1905, § 5009; Civ. C. 1877, § 653; R. C. 1899, § 3571.]

Liability of register of deeds for nonperformance or misperformance of his duties. 95 Am. St. Rep. 85.

Liability of registrar of deeds for neglect, delay or mistake in registering or indexing instrument affecting title to real property. 23 L.R.A.(N.S.) 127.

§ 5562. Transfers of vessels. The mode of recording transfers of vessels registered under the laws of the United States is regulated by acts of congress. [R. C. 1905, § 5010; Civ. C. 1877, § 654; R. C. 1899, § 3572.]

ARTICLE 4.—PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS.

§ 5563. At any place in state, before whom. The proof or acknowledgment of an instrument may be made at any place within this state before a justice or clerk of the supreme court, or notary public. [R. C. 1905, § 5011; Civ. C. 1877, § 655; R. C. 1899, § 3573.]

Validity of acknowledgment taken over telephone. 30 L.R.A.(N.S.) 358.

§ 5564. Within district in state, before whom. The proof or acknowledgment of an instrument may be made in this state within the judicial district, county, subdivision or city for which the officer was elected or appointed, before either:

1. A judge or clerk of a court of record; or,
2. A mayor of a city; or,
3. A register of deeds; or,
4. A justice of the peace; or,
5. A United States circuit or district court commissioners; or,
6. A county auditor. [R. C. 1905, § 5012; Civ. C. 1877, § 656; 1885, ch. 1, § 1; R. C. 1895, § 3574.]

As to similar provision in Cal. Civ. Code, § 1181, see *Ex parte Carpenter*, 64 Cal. 267, 30 Pac. 816; *Malone v. Bosch*, 104 Cal. 680, 38 Pac. 516.

§ 5565. Without state, but within United States, before whom. The proof or acknowledgment of an instrument may be made without the state, but within the United States and within the jurisdiction of the officer, before either:

1. A justice, judge or clerk of any court of record of the United States.
2. A justice, judge or clerk of any court of record of any state or territory; or,
3. A notary public; or,
4. Any other officer of the state or territory where the acknowledgment is made, authorized by its laws to take such proof or acknowledgment.
5. A commissioner appointed for the purpose by the governor of this state, pursuant to the political code. [R. C. 1905, § 5013; Civ. C. 1877, § 657; R. C. 1899, § 3575.]

Signature of notary public need not be attested by certificate of officer of higher rank. *Grandin v. Emmons*, 10 N. D. 223, 86 N. W. 723.

Instrument executed in foreign state cannot be recorded unless it shows that officer taking acknowledgment had power. *Goss v. Herman*, 20 N. D. 295, 127 N. W. 78.

§ 5566. Without the United States, before whom. The proof or acknowledgment of an instrument may be made without the United States before either:

1. A minister, commissioner or charge d'affaires of the United States, resident and accredited in the country where the proof or acknowledgment is made; or,
2. A secretary of legation, consul, vice-consul or consular agent of the United States, resident in the country where the proof or acknowledgment is made; or,
3. A judge, clerk, register or commissioner of a court of record of the country where the proof or acknowledgment is made; or
4. A notary public of such country; or
5. An officer authorized by the laws of the country where the proof or acknowledgment is taken, to take proof or acknowledgments; or,

6. When any of the officers mentioned in this article are authorized by law to appoint a deputy, the acknowledgment or proof may be taken by such deputy in the name of his principal, as deputy or by such deputy as deputy.

All proofs or acknowledgments taken according to the provisions of this chapter prior to the taking effect of this section are hereby declared to be sufficiently authenticated and to be entitled to record, and all such records hereafter made shall be notice of the contents of the instruments so recorded. [R. C. 1905, § 5014; Civ. C. 1877, § 658; 1889, ch. 4, § 1; R. C. 1895, § 3576; 1901, ch. 3; 1903, ch. 1.]

Power of consul to take acknowledgment of deeds and powers of attorney. 45 L.R.A. 499.

§ 5567. What knowledge officer taking acknowledgment must have. The acknowledgment of an instrument must not be taken, unless the officer taking it knows or has satisfactory evidence on the oath or affirmation of a credible witness that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is authorized to make it as provided in sections 5512 and 5513. [R. C. 1905, § 5015; Civ. C. 1877, § 659; R. C. 1895, § 3577.]

Acknowledgment by married woman. *Wambole v. Foote*, 2 D. 1, 2 N. W. 239.

Recorded deed without prescribed certificate not constructive notice. *Cannon v. Deming*, 3 S. D. 421, 53 N. W. 863.

Deputy sheriff may, in his principal's name, execute and acknowledge certificate of sale. *Wilson v. Russell*, 4 D. 376, 31 N. W. 645.

Certificate of acknowledgment by officer of corporation, which does not state that person signing same was known to him to be such officer, is insufficient. *Holt v. Trust Co.*, 11 S. D. 456, 78 N. W. 947.

Proof of execution of chattel mortgage, when in issue and subscribing witnesses are absent. *Brynjolfson v. Elevator Co.*, 6 N. D. 450, 71 N. W. 555, 66 Am. St. Rep. 612.

Sufficiency of acknowledgment of assignment of trust deed by corporation to record same. *Erickson v. Conniff*, 19 S. D. 41, 101 N. W. 1104.

Sufficiency of notary's certificate of acknowledgment by corporation. *State v. Coughran*, 19 S. D. 271, 103 N. W. 31.

Validity of acknowledgment taken over telephone. 30 L.R.A.(N.S.) 358.

Acknowledgment of deed executed by attorney in fact or agent. 41 L.R.A.(N.S.) 823.

Impeachment of certificate of acknowledgment. 41 L.R.A.(N.S.) 1161.

Sufficiency of evidence to impeach certificate of acknowledgment of deed. 6 L.R.A.(N.S.) 442.

Effect of defective acknowledgment on marketability of title. 38 L.R.A.(N.S.) 20.

As to similar provision in Cal. Civ. Code, § 1185, see *Hatton v. Holmes*, 97 Cal. 208, 31 Pac. 1131; *Joost v. Craig*, 131 Cal. 504, 82 Am. St. Rep. 374, 63 Pac. 840.

§ 5568. Conveyance by married woman. A conveyance or other instrument executed by a married woman has the same effect as if she was unmarried and may be acknowledged in the same manner. [R. C. 1905, § 5016; Civ. C. 1877, § 661; 1881, ch. 2, § 2; R. C. 1895, § 3578.]

Form and sufficiency of certificate of married woman's acknowledgment. 45 L.R.A.(N.S.) 1109.

As to similar provision in Cal. Civ. Code, § 1187, see *Wedel v. Herman*, 59 Cal. 507; *Loupe v. Smith*, 123 Cal. 491, 56 Pac. 254.

§ 5569. How proof made, when not acknowledged. Proof of the execution of an instrument, when not acknowledged may be made either:

1. By the party executing it, or either of them; or,
2. By a subscribing witness; or,
3. By other witnesses in cases mentioned in sections 5019 and 5020. [R. C. 1905, § 5017; Civ. C. 1877, § 662; R. C. 1899, § 3579.]

This and two following sections inapplicable to proof of execution of note. *Mississippi Lumber & Coal Co. v. Kelly*, 19 S. D. 577, 104 N. W. 265, 9 A. & E. Ann. Cas. 449.

§ 5570. Knowledge required by officer taking proof. If, by a subscribing witness, such witness must be personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a credible witness. The subscribing witness must prove that the person whose name is subscribed to the instrument

as a party is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness. [R. C. 1905, § 5018; Civ. C. 1877, § 662; R. C. 1899, § 3580.]

§ 5571. When other proof received. The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

1. When the parties and all the subscribing witnesses are dead; or,
2. When the parties and all the subscribing witnesses are nonresidents of the state; or,
3. When the place of their residence is unknown to the party desiring the proof, and cannot be ascertained by the exercise of due diligence; or,
4. When the subscribing witness conceals himself, or cannot be found by the officer by the exercise of due diligence in attempting to serve a subpoena or attachment; or,
5. In case of the continued failure or refusal of the witness to testify for the space of one hour after his appearance. [R. C. 1905, § 5019; Civ. C. 1877, § 663; R. C. 1899, § 3581.]

§ 5572. What proof must show. The evidence taken under the preceding section must satisfactorily prove to the officer the following facts:

1. The existence of one or more of the conditions mentioned therein; and,
2. That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature and that it is genuine; and,
3. That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature and that it is genuine; and,
4. The place of residence of the witness. [R. C. 1905, § 5020; Civ. C. 1877, § 664; R. C. 1899, § 3582.]

§ 5573. Contents of certificate. An officer taking proof of the execution of an instrument must, in his certificate indorsed thereon or attached thereto, set forth all the matters required by law to be done or known by him or proved before him on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their evidence. [R. C. 1905, § 5021; Civ. C. 1877, § 665; R. C. 1899, § 3583.]

§ 5574. Forms of certificates. An officer taking the acknowledgment of an instrument must indorse thereon or attach thereto a certificate substantially in the forms hereinafter prescribed.

1. Such certificate of acknowledgment, unless it is otherwise in this article provided, must be in substantially the following form:

State of }
County of } ss.

On this day day of in the year before me personally appeared, known to me (or proved to me on the oath of) to be the person who is described in and who executed the within instrument, and acknowledged to me that he (or they) executed the same.

2. The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

State of }
County of } ss.

On this day of, in the year, before me (here insert the name and quality of the officer), personally appeared, known to me (or proved to me on the oath of) to be the president (or the secretary) of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

3. The certificate of acknowledgment by an attorney in fact must be substantially in the following form:

State of } ss.
County of }

On this day of, in the year, before me (here insert the name and quality of the officer), personally appeared known to me (or proved to me on the oath of) to be the person who is described in and whose name is subscribed to the within instrument as the attorney in fact of and acknowledged to me that he subscribed the name of thereto as principal and his own name as attorney in fact.

4. All acknowledgments of deeds or other instruments in writing made by any deputy sheriff of this state shall be made substantially according to the following form:

State of } ss.
County of }

On this day of, in the year before me, a, in and for said county, personally appeared, known to me to be the person who is described in and whose name is subscribed to the within instrument as deputy sheriff of said county and acknowledged to me that he subscribed the name of thereto as sheriff of said county and his own name as deputy sheriff. [R. C. 1905, § 5022; Civ. C. 1877, § 666; 1887, ch. 2, § 1; R. C. 1899, § 3584.]

Certificate of acknowledgment must substantially conform to statute. *Cannon v. Deming*, 3 S. D. 421, 53 N. W. 863; *Holt v. Trust Co.*, 11 S. D. 456, 78 N. W. 947.

Recitals of certificate are evidence without further proof. *N. W. Loan Co. v. Jonassen*, 11 S. D. 566, 79 N. W. 840.

When defects in certificate of acknowledgment fatal and when not. 108 Am. St. Rep. 525.

Sufficiency of abbreviation to show official character of officer. 14 L.R.A. 815.

Effect of grammatical defects in certificates of acknowledgment. 11 L.R.A. (N.S.) 643.

Conclusiveness of certificate of acknowledgment. 1 Am. Dec. 81; 54 Am. St. Rep. 150.

Amending and perfecting certificates of acknowledgment. 52 Am. Dec. 519.

Right to attach or correct certificate of acknowledgment after date of acknowledgment. 22 L.R.A. (N.S.) 216.

Leaving blank for name of party in certificate of acknowledgment. 19 L.R.A. 279.

Presumption as to time of alteration in acknowledgment. 39 L.R.A. (N.S.) 115.

As to similar provision in Cal. Civ. Code, § 1188, see *Banbury v. Arnold*, 91 Cal. 606, 27 Pac. 934.

2. Sufficiency of acknowledgment by corporation. *Gessner v. Minneapolis*, St. P. & S. Ste. M. R. Co., 15 N. D. 560, 108 N. W. 786.

Sufficiency of acknowledgment of assignment of trust deed by corporation to record same. *Erickson v. Conniff*, 19 S. D. 41, 101 N. W. 1104.

Sufficiency of notary's certificate of acknowledgment by corporation. *State v. Coughran*, 19 S. D. 271, 103 N. W. 31.

3. Deeds signed and sealed "Patrick M. Atty. in fact for Amelia B.," is deed of Amelia, although words "he," "his," etc., are used in deed. *Donovan v. Welch*, 11 N. D. 113, 90 N. W. 262.

4. Acknowledgment by deputy sheriff. *Wilson v. Russell*, 4 D. 376, 31 N. W. 645; *Hodgdon v. Davis*, 6 D. 21, 50 N. W. 478.

Defective acknowledgments by deputy sheriffs legalized in North Dakota. *McCardia v. Billings*, 10 N. D. 373, 87 N. W. 1008.

§ 5575. **Legalizing former acknowledgments.** All acknowledgments heretofore made by any deputy sheriff of the several counties of this state, either by or for himself as such deputy, or in the name of or for his principal, to any sheriff's certificate of sale, certificate of redemption, or sheriff's deed, or other instrument appertaining to the sale, redemption or conveyance of any real estate sold at sheriff's sale upon execution or by foreclosure, either by action or advertisement shall be and the same is hereby declared to be legal and of binding force and effect. The acknowledgments of all deeds, mortgages or other instruments in writing, taken and certified by any township or city clerk, or auditor of any city, recorder of any town or village in this

state, and which have been duly recorded in the proper counties in this state, be, and the same hereby are declared to be legal and valid; and in all courts of law and equity in this state and elsewhere, they shall be so taken; and in such courts all instruments so acknowledged, and the record of such instruments shall have the same force and evidentiary value as instruments, the acknowledgment of which was taken before any officer qualified to take such acknowledgments and certified by him; provided, that nothing herein contained shall in any manner affect the right or title of a bona fide purchaser, without notice, of such instrument or the record thereof, for a valuable consideration, of any property or real estate; provided, further, that a purchaser on execution at foreclosure sale of any lands affected by this section shall be considered a bona fide purchaser. [R. C. 1905, § 5023; 1897, ch. 2, § 2; 1899, ch. 1; R. C. 1899, § 3585.]

Acknowledgment of deputy sheriff but not for himself and in behalf of sheriff, legalized. *McCardia v. Billings*, 10 N. D. 373, 87 N. W. 1008.

§ 5576. Defective acknowledgments. The acknowledgments of all deeds, mortgages or other instruments in writing, taken and certified previous to January first, 1901, and which have been duly recorded in the proper counties in this state, are hereby declared to be legal and valid in all courts of law and equity in this state or elsewhere, anything in the laws of this state in regard to acknowledgments to the contrary, notwithstanding; provided, that nothing herein contained shall in any manner affect the right or title of any bona fide purchaser without notice of such instrument or record thereof, for a valuable consideration, of any such property prior to said January first, 1901; provided, further, that a purchaser at any execution or foreclosure sale of any lands affected by this article, shall be considered a bona fide purchaser. [R. C. 1905, § 5024; 1901, ch. 2.]

Inapplicable to prior foreclosure of mortgage void because assignment was not properly acknowledged. *Cooper v. Harvey*, 21 S. D. 471, 113 N. W. 717.

Invalid foreclosure proceedings had several years prior, is not validated. *Kenny v. McKenzie*, 23 S. D. 111, 120 N. W. 781.

Certificate of acknowledgment which does not show authority of officer cannot be cured. *Goss v. Herman*, 20 N. D. 295, 127 N. W. 78.

Constitutionality of statute validating acknowledgment. 22 L.R.A. 382.

Constitutionality of statutes curing defective acknowledgments of conveyances of real property. 31 L.R.A.(N.S.) 1076.

§ 5577. Execution, acknowledgment, filing and recording legalized. The execution, acknowledgment, filing and recording of all deeds, mortgages and other instruments in writing, affecting the title to real property in this state, in good faith made, taken or certified to prior to the first day of January, 1913, and which have been filed or recorded in the proper counties of this state, be, and the same are hereby, declared to be legal and valid for all purposes, anything in the laws of the territory of Dakota or the state of North Dakota, or of any other state, territory or country at the time of such execution, acknowledgment, witnessing, filing or recording, to the contrary notwithstanding. [1913, ch. 133, § 1; 1911, ch. 99, § 1; 1909, ch. 151, § 1; R. C. 1905, § 5025; 1905, ch. 155, § 1.]

§ 5578. Acts of executors, administrators, deputies, officers or attorneys in fact legalized. The acts of all properly appointed and constituted executors, administrators, officers of corporations, deputy public officials and attorneys in fact, done in good faith, in the execution and acknowledgment of such instruments, are hereby declared to be legal and valid for all purposes, notwithstanding the fact that such executor, administrator, officer, deputy officer or attorney in fact may not have signed the same in the form provided by law in force at that time, or that the same was not sealed or stamped as required by laws in force at the time of such execution, and notwithstanding the fact that the certificate of acknowledgment thereon may not be in the form required or sealed as required by any laws in force at the time of making

the same. [1913, ch. 133, § 2; 1911, ch. 99, § 2; 1909, ch. 151, § 2; R. C. 1905, § 5026; 1905, ch. 155, § 2.]

§ 5579. Acknowledgments legalized. The acts of all notaries public or other officers, done in good faith in taking or certifying to the acknowledgments of such instruments, whether such officers were qualified or otherwise by law at the time to do so or not, are hereby declared legal and valid for all purposes. [1913, ch. 133, § 3; 1911, ch. 99, § 3; 1909, ch. 151, § 3; R. C. 1905, § 5027; 1905, ch. 155, § 3.]

§ 5580. Good faith presumed. Good faith shall be presumed on the part of all persons and officers in the execution, acknowledgment, filing and recording of such instruments, and it shall be prima facie presumed that such officer acted within the scope of his authority. [1913, ch. 133, § 4; 1911, ch. 99, § 4; 1909, ch. 151, § 4; R. C. 1905, § 5027; 1905, ch. 155, § 4.]

Impeachment of certificate of acknowledgment. 41 L.R.A. (N.S.) 1161.

§ 5581. Deeds, judgments, decrees legalized. Deeds, judgments or decrees affecting the title to real property in this state, in good faith taken, made or rendered in favor of the estate of a person deceased prior to the first day of January, 1913, shall be construed and held to be made in favor of, and be in favor of, the executor or administrator (as the case may be) of the estate of such person deceased, subject, however, to administration of such estate in the probate court of this state which shall be entitled to jurisdiction, and the same are hereby declared to be legal and valid for all purposes. [1913, ch. 126.]

§ 5582. How officer's certificate authenticated. Officers taking and certifying acknowledgments or proof of instruments for record must authenticate their certificates by affixing thereto their signatures followed by the name of their offices; also their seals of office, if by the laws of the territory, state or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals. Judges and clerks of courts of record must authenticate their certificates as aforesaid by affixing thereto the seal of their proper court; and mayors of cities by the seal thereof. [R. C. 1905, § 5028; Civ. C. 1877, § 666; R. C. 1899, § 3586.]

Certificate of acknowledgment must substantially conform to statute. Cannon v. Deming, 3 S. D. 421, 53 N. W. 863; Holt v. Trust Co., 11 S. D. 456, 78 N. W. 947.

Recitals of certificate are evidence without further proof. N. W. Loan Co. v. Jonassen, 11 S. D. 566, 79 N. W. 840.

Defective acknowledgments by deputy sheriffs legalized in North Dakota. McCardia v. Bulings, 10 N. D. 373, 87 N. W. 1008.

Deed signed and sealed "Patrick M., Atty. in fact for Amelia B." is deed of Amelia, although words "he," "his," etc., are used in deed. Donovan v. Welch, 11 N. D. 113, 90 N. W. 262.

Sufficiency of acknowledgment by corporation. Gessner v. Minneapolis, St. P. & S. Ste. M. R. Co., 15 N. D. 560, 108 N. W. 786.

Sufficiency of acknowledgment of assignment of trust deed by corporation to record same. Erickson v. Conniff, 19 S. D. 41, 101 N. W. 1104.

Sufficiency of notary's certificate of acknowledgment by corporation. State v. Coughran, 19 S. D. 271, 103 N. W. 31.

As to similar provision in Cal. Civ. Code, § 1193, see Emeric v. Alvarado, 90 Cal. 444, 27 Pac. 356.

§ 5583. Certificate of clerk. Acknowledgment before justice. The certificate of proof or acknowledgment, if made before a justice of the peace, when used in any county other than that in which he resides must be accompanied by a certificate under the hand and seal of the clerk of the district court, or of any other county court of record of the county in which the justice resides, setting forth that such justice at the time of taking such proof or acknowledgment was authorized to take the same and that the clerk is acquainted with his handwriting and believes that the signature to the original certificate is genuine. [R. C. 1905, § 5029; Civ. C. 1877, § 666; R. C. 1899, § 3587.]

Certificate of acknowledgment must substantially conform to statute. Cannon v. Deming, 3 S. D. 421, 53 N. W. 863; Holt v. Trust Co., 11 S. D. 456, 78 N. W. 947.

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Sufficiency of acknowledgment by corporation. *Gessner v. Minneapolis*, St. P. & S. Ste. M. R. Co., 15 N. D. 560, 108 N. W. 786.

Sufficiency of acknowledgment of assignment of trust deed by corporation to record same. *Erickson v. Conniff*, 19 S. D. 41, 101 N. W. 1104.

Sufficiency of notary's certificate of acknowledgment by corporation. *State v. Coughran*, 19 S. D. 271, 103 N. W. 31.

§ 5584. Action to correct certificate. When the acknowledgment or proof of execution of an instrument is properly made, but defectively certified, any party interested may have an action in the district court to obtain a judgment correcting the certificate. [R. C. 1905, § 5030; Civ. C. 1877, § 667; R. C. 1899, § 3588.]

Defective certificate to be reformed in accordance with the truth. *Cannon v. Deming*, 3 S. D. 421, 53 N. W. 863.

As to similar provision in Cal. Civ. Code, § 1202, see *Hutchinson v. Ainsworth*, 63 Cal. 286; *Hutchinson v. Ainsworth*, 73 Cal. 452, 2 Am. St. Rep. 823, 15 Pac. 82; *Poledori v. Newman*, 116 Cal. 375, 48 Pac. 325.

§ 5585. Action to prove instrument. Any person interested under an instrument entitled to be proved for record may institute an action in the district court against the proper parties to obtain a judgment proving such instrument. [R. C. 1905, § 5031; Civ. C. 1877, § 667; R. C. 1899, § 3589.]

As to similar provision in Cal. Civ. Code, § 1203, see *Judson v. Porter*, 53 Cal. 482.

§ 5586. What entitles judgment to record. A certified copy of the judgment in a proceeding instituted under either of the two preceding sections, showing the proof of the instrument, and attached thereto, entitles the instrument to record with like effect as if acknowledged. [R. C. 1905, § 5032; Civ. C. 1877, § 667; R. C. 1899, § 3590.]

§ 5587. Authority of officers in taking proof. Officers authorized to take the proof of instruments are authorized in such proceedings:

1. To administer oaths or affirmations.
2. To employ and swear interpreters.
3. To issue subpoenas, obedience to which may be enforced as provided in the code of civil procedure. [R. C. 1905, § 5033; Civ. C. 1877, § 668; R. C. 1895, § 3591.]

§ 5588. Code does not affect former instruments. The legality of the execution, acknowledgment, proof, form or record of any conveyance or other instrument made before this amended code goes into effect, executed, acknowledged, proved or recorded is not affected by anything contained in this chapter, but depends for its validity and legality except as to seals, upon the laws in force when the act was performed. [R. C. 1905, § 5034; Civ. C. 1877, § 669; R. C. 1899, § 3592.]

As to similar provision in Cal. Civ. Code, § 1205, see *Judson v. Porter*, 53 Cal. 482.

§ 5589. Force and record of former instruments. All conveyances of real property made before this amended code goes into effect and acknowledged or proved according to the laws in force at the time of such making and acknowledgment or proof have the same force as evidence and may be recorded in the same manner and with like effect as conveyances executed and acknowledged in pursuance of this chapter. [R. C. 1905, § 5035; Civ. C. 1877, § 670; R. C. 1899, § 3593.]

§ 5590. Certain instruments legalized. Any officer of any foreign or domestic corporation may execute and acknowledge in its behalf assignments of, release of, satisfaction of or other instruments affecting liens upon real estate. All assignments of, releases of, satisfactions of or other instruments affecting liens upon real estate heretofore executed and acknowledged in good faith by any officer of any foreign or domestic corporation in its behalf, are declared valid and effectual to the same extent as they would have been

had this section been in force at the time of their execution. [R. C. 1905, § 5036; 1903, ch. 150.]

§ 5591. Who may execute instruments for partnership. Any one member of a partnership may execute and acknowledge in behalf of the partnership and in behalf of all of the members thereof, assignments of, releases of, satisfactions of and other instruments affecting liens upon real property situated in this state. [1909, ch. 177, § 1.]

§ 5592. Former acknowledgments for partnership validated. All assignments of, releases of, satisfactions of and other instruments affecting liens upon real estate heretofore executed and acknowledged by one member of any partnership in behalf of such partnership are declared valid and effectual to the same extent as they would have been if section one hereof had been in force at the time of their execution. [1909, ch. 177, § 2.]

§ 5593. Who shall not execute acknowledgments. No person heretofore or hereafter authorized by law to take or receive the proof or acknowledgment of the execution of an instrument or affidavit, and to certify thereto, shall take or receive such proof or acknowledgment or affidavit, or certify to the same, if he shall be a party to such instrument, or a member of any partnership which partnership shall or may be a party to such instrument, nor if the husband or wife of such person or officer shall be a party to such instrument. Nothing herein contained, nor in the laws of the state of North Dakota, heretofore enacted, relating to the proof and acknowledgment of instruments, and taking of affidavits, shall be construed to invalidate or affect the proof or acknowledgment, affidavit or the certificate thereof, of any instrument to which a corporation may be a party, and which instrument shall have been or may be proven or acknowledged or sworn to before, or certified to by an officer or person authorized by law, who may be an officer, director, employe or stockholder of such corporation, and no person otherwise qualified or authorized by law to take and receive the proof or acknowledgment of instruments or affidavits, and to certify thereto, shall be disqualified by reason of being an officer, director, employe or stockholder of any corporation, a party to such instrument, and such proof, acknowledgments, and certificates thereof shall be and are hereby declared valid for all purposes. All officers and persons authorized by law to take the proof or acknowledgment of instruments and affidavits and to certify thereto, may take such proof or acknowledgment and certify to the same, in all cases not prohibited by this section. [R. C. 1905, § 5037; 1899, ch. 2; R. C. 1899, § 3593a.]

Disqualification of officer taking acknowledgment. 32 Am. Dec. 757; 58 Am. St. Rep. 707.

Right of interested persons to take acknowledgment. 33 L.R.A. 332; 56 Am. St. Rep. 798.

Validity of acknowledgment of deed of trust taken by trustee. 16 L.R.A. 719.

Acknowledgment before a stockholder or officer of a corporation which is a party to the instrument. 23 L.R.A.(N.S.) 1075; 41 L.R.A.(N.S.) 375.

ARTICLE 5.—EFFECT OF RECORDING OR THE WANT THEREOF.

§ 5594. Recording, effect. Every conveyance by deed, mortgage or otherwise, of real estate within this state, shall be recorded in the office of the register of deeds of the county where such real estate is situated, and every such conveyance not so recorded shall be void as against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate, or any part or portion thereof, whose conveyance, whether in the form of a warranty deed or deed of bargain and sale, deed of quit claim and release, of the form in common use or otherwise, is first duly recorded; or as against any attachment levied thereon or any judgment lawfully obtained, at the suit of any party, against the person in whose name the title to such land appears of record, prior to the recording of such conveyance. Every conveyance aforesaid heretofore executed, and not so recorded, and which shall not be

so recorded within three months from the taking effect of this article, shall be void as against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate or any portion thereof, claiming under or through a deed of quit claim and release, of the form in common use, heretofore so recorded, or which may be recorded before such prior conveyance. The fact that such first recorded conveyance of such subsequent purchaser for a valuable consideration is in the form, or contains the terms of a deed of quit claim and release aforesaid, shall not affect the question of good faith of subsequent purchaser, or be of itself notice to him of any unrecorded conveyance of the same real estate or any part thereof; provided, however, that all deeds, mortgages and other instruments affecting real estate, situated in any unorganized county, may be recorded in the county to which such unorganized county is attached for judicial purposes; and records of such instruments which have been or shall be so made, shall have the same effect as if recorded in a county where the premises are situated. [R. C. 1905, § 5038; Civ. C. 1877, § 671; R. C. 1899, § 3594; 1903, ch. 152, § 1.]

Grantee of land from entryman before issuance of patent has title paramount to mortgagee after issuance, where grantee's deed was recorded. *Bernardy v. Colonial & U. S. Mortg. Co.*, 17 S. D. 637, 106 Am. St. Rep. 791, 98 N. W. 166.

Recording of mortgage or deed is notice only as to subsequent incumbrancers or purchasers. *Charles v. McGee*, 1 N. D. 365, 48 N. W. 231, 26 Am. St. Rep. 633.

Record of defectively acknowledged deed not entitled to record does not carry constructive notice of contents. *Banbury v. Sherin*, 4 S. D. 88, 55 N. W. 723.

Deed once delivered for record is valid as against subsequent deed by grantor, though first deed withdrawn without authority before recording. *Parrish v. Mahany*, 10 S. D. 276, 73 N. W. 97, 65 Am. St. Rep. 715.

An unrecorded deed or mortgage is good as against an attaching creditor. *Kohn v. Lapham*, 13 S. D. 78, 82 N. W. 408; *Murphy v. Bank*, 13 S. D. 501, 83 N. W. 575.

An unrecorded deed; protection of registry law to those taking titles or security upon faith of records; how destroyed or lost; want of good faith. *Betts v. Letcher*, 1 S. D. 182, 46 N. W. 193.

Actual notice of prior unrecorded conveyance impeaches good faith of subsequent purchaser. *Gress v. Evans*, 1 D. 371, 46 N. W. 1132.

Protects only purchasers in good faith. *Hunter v. Coe*, 12 N. D. 505, 97 N. W. 869.

Judgment creditors as innocent purchasers. *Merchants State Bank v. Tufts*, 14 N. D. 238, 116 Am. St. Rep. 682, 103 N. W. 760.

Sheriff's deed under execution conveys good title as against unrecorded deed unknown to creditor and purchaser. *Enderlin Invest. Co. v. Nordhagen*, 18 N. D. 517, 123 N. W. 390.

Unrecorded warranty deed has precedence over subsequently recorded quit claim deed. *Fowler v. Will*, 19 S. D. 131, 117 Am. St. Rep. 938, 102 N. W. 598, 8 A. & E. Ann. Cas. 1093.

Mortgage given by insolvent and recorded within four months of his bankruptcy constitutes preference. *Bowler v. First Nat. Bank*, 21 S. D. 449, 130 Am. St. Rep. 725, 113 N. W. 618.

Lease not recorded is void as against subsequent lessee in so far as removal of fixtures is concerned. *Joslin v. Linder*, 26 S. D. 420, 128 N. W. 500.

Words "in good faith" have reference not only to subsequent purchasers, but to attachment and judgment creditors as well. *Ilvoldsen v. First State Bank*, 24 N. D. 227, 139 N. W. 105.

Effect of defects and irregularities in recording deeds. 30 Am. Dec. 463; 91 Am. Dec. 106; 26 Am. Rep. 309; 96 Am. St. Rep. 397.

First and last days in computing time for recording deeds. 49 L.R.A. 242.

Delay in recording conveyance as fraud against creditors. 32 L.R.A. 69.

Failure to record conveyance as a fraud upon creditors. 31 L.R.A. 638.

Estoppel by allowing record title to remain in another. 22 L.R.A. 256.

Protection of purchaser from apparent vendee under instrument apparently a conveyance but intended as a mortgage. 32 L.R.A.(N.S.) 1046.

Right of one claiming through heir or devisee to protection against unrecorded conveyance by ancestor or his personal representative. 34 L.R.A.(N.S.) 328.

Protection under recording acts of mortgage given as security for pre-existing debt. 33 L.R.A.(N.S.) 57.

Priority of unrecorded deed as against purchaser at judicial sale. 21 L.R.A. 33.

When mechanics' lien superior to earlier unrecorded mortgage. 14 L.R.A. 306.

Precedence as between quitclaim deed and senior unrecorded deed. 12 L.R.A.(N.S.) 240; 26 L.A.R.(N.S.) 159.

Precedence as between conveyance of land for a nominal or inadequate consideration and senior unrecorded conveyance. 16 L.R.A.(N.S.) 1073.

Necessity for recording assignment for creditors as against attaching creditor. 26 L.R.A. 594.

Burden of proof as to bona fides of purchaser claiming against prior unrecorded conveyance or incumbrance. 36 L.R.A.(N.S.) 1124.

Failure to file defeasance as affecting right of creditors of grantee in deed intended as a mortgage. 5 L.R.A.(N.S.) 387.

When local law deemed to require registering or recording of a transfer within meaning of section 60a of the bankruptcy law. 5 L.R.A.(N.S.) 148; 18 L.R.A.(N.S.) 1233.

Failure to record conveyance to insured as affecting his sole unconditional ownership. 22 L.R.A.(N.S.) 732.

Remedy of one who fails to record a deed against his grantor who subsequently conveys to an innocent third person. 26 L.R.A.(N.S.) 284.

Effect of destruction or cancellation, or redelivery to grantor for that purpose, of delivered but unrecorded deed. 18 L.R.A.(N.S.) 1167; 34 L.R.A.(N.S.) 495.

Record of deed by grantor as delivery to grantee. 54 L.R.A. 865; 9 L.R.A.(N.S.) 224; 38 L.R.A.(N.S.) 941.

Effect of recording undelivered transfer or assignment. 21 L.R.A. 696.

Permitting undelivered deed wrongfully recorded by grantee to remain on record, as estoppel of grantor or his successors to deny its delivery as against one purchasing in reliance on the record. 7 L.R.A.(N.S.) 712.

Effect of quitclaim deed in otherwise perfect record title. 29 L.R.A. 33.

As to similar provision in Cal. Civ. Code, § 1214, see *Odd Fellows' Sav. Bank v. Banton*, 46 Cal. 603; *Walker v. Buffandeau*, 63 Cal. 312; *Schluter v. Harvey*, 65 Cal. 158, 3 Pac. 659; *Gassen v. Hendrick*, 74 Cal. 444, 16 Pac. 242; *Dreyfus v. Hirt*, 82 Cal. 621, 23 Pac. 193; *Bank of Ukiah v. Petaluma Sav. Bank*, 100 Cal. 590, 35 Pac. 170.

§ 5595. Conveyances and purchasers defined. The term "conveyance," as used in the last section, embraces every instrument in writing by which any estate or interest in real property is created, aliened, mortgaged or incumbered, or by which the title to any real property may be affected, except wills and powers of attorney. The word "purchaser" as used shall embrace every person to whom any estate or interest in real estate is conveyed for a valuable consideration, and also every assignee of a mortgage, lease or other conditional estate. [1907, ch. 250; R. C. 1905, § 5039; Civ. C. 1877, § 672; R. C. 1899, § 3595; 1903, ch. 152, § 2.]

Assignments of real estate mortgages are conveyances within this section. *Henniges v. Paschke*, 9 N. D. 489, 84 N. W. 350, 81 Am. St. Rep. 588.

Mortgage and assignment thereof are "conveyances." *Merrill v. Luce*, 6 S. D. 354, 61 N. W. 43, 55 Am. St. Rep. 844.

Assignment of mortgage is a transfer of property within section. *Sommers v. Wagner*, 21 N. D. 531, 131 N. W. 797.

Mortgage, though given to secure antecedent debt, is supported by sufficient consideration to constitute mortgagee an incumbrance for value, where extension of time is granted. *Farmers' & M. Bank v. Citizens' Nat. Bank*, 25 S. D. 91, 125 N. W. 642.

Executory contract for the sale or purchase of land not a conveyance, and execution does not destroy legal estate. *State ex rel. Dillman v. Weide*, 29 S. D. 109, 135 N. W. 696.

Quitclaim deed is a conveyance within recording act. *Shutz v. Tidrick*, 26 S. D. 505, 128 N. W. 811.

As to similar provision in Cal. Civ. Code, § 1215, see *Odd Fellows' Sav. Bank v. Banton*, 46 Cal. 603; *Re McConnell*, 74 Cal. 217, 15 Pac. 746; *Tolman v. Smith*, 74 Cal. 345, 16 Pac. 189; *Warnock v. Harlow*, 96 Cal. 298, 31 Am. St. Rep. 209, 31 Pac. 166; *Stewart v. Powers*, 98 Cal. 514, 33 Pac. 486; *Garber v. Gianella*, 98 Cal. 527, 33 Pac. 458; *Savings & L. Asso. v. McKoon*, 120 Cal. 177, 52 Pac. 305.

§ 5596. Requisites of instrument to revoke power to convey. No instrument containing a power to convey or execute instruments affecting real property which has been recorded is revoked by any act of the party by whom it was executed, unless the instrument containing such revocation is also acknowledged or proved, certified and recorded in the same office in which the instrument containing the power was recorded. [R. C. 1905, § 5040; Civ. C. 1877, § 673; R. C. 1899, § 3596.]

Power of attorney, though irrevocable during life of party, becomes extinct by his death, except where coupled with an interest. *Brown v. Skotland*, 12 N. D. 450, 97 N. W. 543.

§ 5597. Record constructive notice. Admissible in evidence without further proof. The recording and deposit of an instrument approved and certified according to the provisions of sections 5549, 5569, 5570, 5571 and 5572 are constructive notice of the execution of such instrument to all purchasers

and incumbrancers subsequent to the recording; and all instruments entitled to record, the record thereof, or a duly certified transcript of such record, or copy of such instrument, shall be admissible in evidence in all the courts of this state, and may be read in evidence without further proof. [R. C. 1905, § 5041; Civ. C. 1877, § 674; R. C. 1899, § 3597; 1901, ch. 145.]

Grantee of land from entryman before issuance of patent has title paramount to mortgagee after issuance, where grantee's deed was recorded. *Bernardy v. Colonial & U. S. Mortg. Co.*, 17 S. D. 637, 106 Am. St. Rep. 791, 98 N. W. 166.

Right to rely on representations as to title to real property. 37 L.R.A. 603.

Purchaser's duty to examine records to determine location of property. 38 L.R.A. (N.S.) 307.

Right to inspect public records. 27 L.R.A. 82.

Certainty and accuracy necessary in respect to Christian names or initials in record or index relied on as imparting constructive notice. 7 L.R.A. (N.S.) 415; 25 L.R.A. (N.S.) 1211.

Effect of recording conveyance by one cotenant to third person to found adverse possession against others. 32 L.R.A. (N.S.) 708.

Effect of recorded agreement not incorporated in a conveyance restricting use of property upon successor in title. 15 L.R.A. (N.S.) 1129.

Doctrine of notice from registration, of conveyance recorded before grantor obtained title. 23 L.R.A. 565.

Recordation of lien on fixtures as personalty, as notice to purchaser or mortgagee of realty. 1 B. R. C. 691.

Notice by record as affecting fraudulent statements. 37 L.R.A. 603.

Destruction of record of deed or mortgage as affecting constructive notice imparted thereby. 23 L.R.A. (N.S.) 1180.

Record of instrument not entitled to be recorded as actual notice. 38 L.R.A. (N.S.) 400.

Record of instrument acknowledged before a stockholder or officer of a corporation which is a party to the instrument, as notice. 41 L.R.A. (N.S.) 376.

§ 5598. Unrecorded instruments valid as to whom. An unrecorded instrument is valid as between the parties thereto and those who have notice thereof; but knowledge of the record of an instrument out of the chain of title does not constitute such notice. [R. C. 1905, § 5042; 1899, ch. 167; R. C. 1899, § 3598.]

Knowledge of facts sufficient to put prudent man on inquiry precludes bona fide purchase. *Doran v. Dazey*, 5 N. D. 167, 64 N. W. 1023, 57 Am. St. Rep. 550.

Unrecorded instrument valid as between parties. *Mach v. Blanchard*, 15 S. D. 432, 90 N. W. 1042.

Unrecorded title of occupant is good as against claimant under sheriff's deed against original owner, in absence of estoppel. *Bliss v. Waterbury*, 27 S. D. 429, 131 N. W. 731.

Possession under unrecorded instrument as notice of title. 13 L.R.A. (N.S.) 51.

Effect of notice of prior unrecorded conveyance on rank of lien of judgment. 16 L.R.A. 670.

Priority of unrecorded mortgage as against purchaser at judicial sale. 21 L.R.A. 38.

Possession as notice of an unrecorded instrument. 64 Am. Dec. 241.

As to similar provision in Cal. Civ. Code, § 1217, see *Scheerer v. Cuddy*, 85 Cal. 270, 24 Pac. 713; *Warnock v. Harlow*, 96 Cal. 298, 31 Am. St. Rep. 209, 31 Pac. 166; *Bank of Ukiah v. Petaluma Sav. Bank*, 100 Cal. 590, 35 Pac. 170; *Fette v. Lane*, 4 Cal. Unrep. 813, 37 Pac. 914; *Prouty v. Devin*, 118 Cal. 258, 50 Pac. 380; *Lee v. Murphy*, 119 Cal. 364, 51 Pac. 549, 955; *Farmers' Exchange Bank v. Purdy*, 130 Cal. 455, 62 Pac. 738.

CHAPTER 50.

UNLAWFUL TRANSFERS.

§ 5599. Instruments made with intent to defraud void. Every instrument other than a will affecting an estate in real property, including every charge upon real property or upon its rents or profits, made with intent to defraud prior or subsequent purchasers thereof or incumbrancers thereon is void as against every purchaser or incumbrancer for value of the same property or the rents or profits thereof. [R. C. 1905, § 5043; Civ. C. 1877, § 676; R. C. 1899, § 3599.]

Conveyance of land by husband to wife without consideration while deeply in debt not necessarily fraudulent. *First State Bank v. O'Leary*, 13 S. D. 204, 83 N. W. 45.

That mortgagee is brother of mortgagor not evidence of fraudulent intent. *Lane v. Starr*, 1 S. D. 107, 45 N. W. 212.

Husband's fraudulent intent will not invalidate conveyance to wife in payment of debt, if wife has no knowledge of fraud. *Williams v. Harris*, 4 S. D. 22, 54 N. W. 926, 46 Am. St. Rep. 753.

Purchaser of property must show his good faith, where another purchaser shows that sale was made with intent to defraud him. *Barnhart v. Anderson*, 22 S. D. 395, 118 N. W. 31.

Effect on legal title of conveyance of land in fraud of creditors. 67 L.R.A. 865.

Is a judgment in a suit to set aside a fraudulent conveyance, which purports to divest entirely the title of the grantee, res judicata, as between grantor and grantee or their privies. 21 L.R.A.(N.S.) 481.

Right of client to recover property placed in name of his attorney in order to defraud creditors. 37 L.R.A.(N.S.) 161.

What intent to defraud by sale of property will sustain an attachment. 30 L.R.A. 476.

Recovery of nonexempt property conveyed to avoid nonexistent or unfounded demand. 1 L.R.A.(N.S.) 1007.

§ 5600. Privity to fraud cures it. No instrument is to be avoided under the last preceding section in favor of a subsequent purchaser or incumbrancer having notice thereof at the time his purchase was made or his lien acquired, unless the person in whose favor the instrument was made was privy to the fraud intended. [R. C. 1905, § 5044; Civ. C. 1877, § 677; R. C. 1899, § 3600.]

Purchaser of property must show his good faith, where another purchaser shows that sale was made with intent to defraud him. *Barnhart v. Anderson*, 22 S. D. 395, 118 N. W. 31.

Purchaser's ignorance of debtor's fraudulent intent in conveyance to him. 36 L.R.A. 338.

Participation by purchaser in vendor's fraud which will invalidate transfer for good consideration. 32 L.R.A. 33.

§ 5601. If power to revoke reserved, subsequent grant is revocation. When a power to revoke or modify an instrument affecting the title to or the enjoyment of an estate in real property is reserved to the grantor or given to any other person, a subsequent grant of or charge upon the estate by the person having the power of revocation in favor of a purchaser or incumbrancer for value operates as a revocation of the original instrument to the extent of the power in favor of such purchaser or incumbrancer. [R. C. 1905, § 5045; Civ. C. 1877, § 678; R. C. 1899, § 3601.]

§ 5602. When power deemed executed. When a person having a power of revocation within the provisions of the last section is not entitled to execute it until after the time at which he makes such a grant or charge as is described in that section, the power is deemed to be executed as soon as he is entitled to execute it. [R. C. 1905, § 5046; Civ. C. 1877, § 679; R. C. 1899, § 3602.]

§ 5603. Good faith of purchaser protected. The rights of a purchaser or incumbrancer in good faith and for value are not to be impaired by any of the foregoing provisions of this chapter. [R. C. 1905, § 5047; Civ. C. 1877, § 680; R. C. 1899, § 3603.]

Purchaser of property must show his good faith, where another purchaser shows that sale was made with intent to defraud him. *Barnhart v. Anderson*, 22 S. D. 395, 118 N. W. 31.

§ 5604. Other unlawful transfers. Other provisions concerning unlawful transfers are contained in chapter 111 of this code concerning the special relations of debtor and creditor. [R. C. 1905, § 5048; Civ. C. 1877, § 682; R. C. 1899, § 3604.]

Action maintainable by grantee to recover land possessed adversely to grantor, although grant made before passage of act. *Campbell v. Equitable Loan & T. Co.*, 17 S. D. 31, 94 N. W. 401.

Mesne conveyances, by which land was conveyed from mortgagor while one claiming under foreclosure was in actual, notorious and peaceable possession, are void. *Shelby v. Bowden*, 16 S. D. 531, 94 N. W. 416.

CHAPTER 51.

HOMESTEAD.

§ 5605. Homestead defined. Exempt. The homestead of every head of a family residing in this state, not exceeding in value five thousand dollars, and if within a town plat, not exceeding two acres in extent, and if not within a town plat, not exceeding in the aggregate more than one hundred and sixty acres, and consisting of a dwelling house in which the homestead claimant resides and all its appurtenances and the land on which the same is situated shall be exempt from judgment lien and from execution or forced sale except as provided in this chapter. [R. C. 1905, § 5049; 1891, ch. 67, § 1; R. C. 1895, § 3605.]

As to "homestead estate" attaching only to such property as constituted decedent's homestead at time of death. *Calmer v. Calmer*, 15 N. D. 120, 106 N. W. 684.

Homestead laws are remedial and should be liberally construed with view of carrying out their obvious purpose. *Dieter v. Fraine*, 20 N. D. 484, 128 N. W. 684.

Depends on the intention. *Clark v. Evans*, 6 S. D. 244, 60 N. W. 862.

Three years' absence from home and her husband not abandonment by a wife. *Rosholt v. Mehus*, 3 N. D. 513, 57 N. W. 783, 23 L.R.A. 239.

Purchase of site and erection of dwelling house thereon, with intent to establish a homestead, impresses character. *Kingman v. O'Callahan*, 4 S. D. 628, 57 N. W. 912; *Brown v. Edmonds*, 9 S. D. 273, 68 N. W. 734.

Mere intention to occupy land as not sufficient to exempt it as such, in absence of act indicative of carrying intention into immediate execution. *Brokken v. Baumann*, 10 N. D. 453, 88 N. W. 84.

Partner cannot obtain homestead right in firm real estate, as against his copartner. Divorced wife retains no homestead right in husband's real estate, in absence of decree to that effect. *Brady v. Kreuger*, 8 S. D. 464, 66 N. W. 1083, 59 Am. St. Rep. 771.

Prior to act of 1890, unmarried person entitled to homestead rights. *Hesnard v. Plunkett*, 6 S. D. 73, 60 N. W. 159.

Unmarried man not entitled to homestead rights in 1888. *McCanna v. Anderson*, 6 N. D. 482, 71 N. W. 769.

Exempt from sale for purchase money. *N. W. Loan Co. v. Jonasen*, 11 S. D. 566, 79 N. W. 840.

Will attach to land held under contract of purchase. *Myrick v. Bill*, 5 D. 167, 37 N. W. 369.

Estate in the land is essential. *Myrick v. Bill*, 3 D. 284, 17 N. W. 268.

May be claimed in an undivided interest in land. *Oswald v. McCauley*, 6 D. 289, 42 N. W. 769.

Cannot be determined on affidavits on motion to set aside a levy. *Dorsey v. Hall*, 5 D. 505, 41 N. W. 471; *Froelick v. Aylward*, 11 S. D. 635, 80 N. W. 131.

Secret antenuptial transfer of homestead by husband is void as to his wife. *Arnegard v. Arnegard*, 7 N. D. 475, 75 N. W. 797, 41 L.R.A. 258.

Right of, not extended to lands included within limits of incorporated city or town, by repeal of pre-emption law. *King v. McAndrews*, 104 Fed. 430.

Temporary removal from land will not destroy. *Edmonson v. White*, 8 N. D. 72, 76 N. W. 986.

May be selected from any portion of lands owned by debtor contiguous to residence. *Foogmann v. Patterson*, 9 N. D. 254, 83 N. W. 15.

Homestead is not bound by lien of judgments against owner. *Dalrymple v. Security Improv. Co.*, 11 N. D. 65, 88 N. W. 1033.

Sale of homestead under execution conveys no title. *Johnson v. Twitchell*, 13 N. D. 426, 100 N. W. 318.

Term "homestead" is not defined by statute. *Calmer v. Calmer*, 15 N. D. 120, 106 N. W. 684.

Husband is entitled to claim homestead exempt from execution sale, although fee is vested in wife. *Bremseth v. Olson*, 16 N. D. 242, 13 L.R.A.(N.S.) 170, 112 N. W. 1056, 14 A. & E. Ann. Cas. 1155.

Title, after acquired by patent to homesteader, inures to mortgagee as of date of execution and delivery of mortgage. *Adams v. McClintock*, 21 N. D. 483, 131 N. W. 394.

Constitutionality of statutes exempting homestead as applied to pre-existing contracts. 37 Am. Dec. 464.

What may be exempt as homestead. 70 Am. Dec. 344.

May homestead be acquired in an undivided interest in lands. 63 Am. Dec. 122.

Homestead rights in land held under estate by entireties. 30 L.R.A. 313.

Homestead rights in partnership land. 28 L.R.A. 105.

Right to claim homestead in property used as a hotel or boarding house. 41 L.R.A.(N.S.) 303.

Is continuance of family a condition of the continuance of homestead, where its existence is a condition of the inception of the homestead. 16 L.R.A.(N.S.) 111.

Exemption of proceeds of homestead. 45 Am. St. Rep. 237.

Exemption of proceeds of homestead sold for reinvestment. 19 L.R.A. 36.

Does homestead exemption attach to the surplus upon foreclosure of a lien paramount to the homestead right. 18 L.R.A.(N.S.) 491.

Crops grown on homestead, or proceeds thereof, as exempt. 32 L.R.A.(N.S.) 577.

Exemption of homestead from liability for torts. 24 L.R.A. 789; 16 L.R.A.(N.S.) 947.

Abandonment of homestead by parent, effect on rights of children. 56 L.R.A. 80.

Right to testify as to intent with reference to residence, occupation or use of homestead. 23 L.R.A.(N.S.) 397.

Abandonment of homestead during insanity of one spouse. 13 L.R.A.(N.S.) 430.

Effect of insanity and imprisonment as abandonment of homestead. 3 L.R.A.(N.S.) 515.

What constitutes abandonment of homestead. 60 Am. Dec. 607; 36 Am. Rep. 728; 102 Am. St. Rep. 388.

Adverse possession of homestead by wife or husband. 18 Am. St. Rep. 113.

Husband's insurable interest in homestead. 66 L.R.A. 660.

Injunction against sale of homestead under execution. 30 L.R.A. 100.

As to similar provision in Cal. Civ. Code, § 1237, see *Babcock v. Gibbs*, 52 Cal. 629; *Tiernan v. His Creditors*, 62 Cal. 286; *Re Noah*, 73 Cal. 590, 2 Am. St. Rep. 834, 15 Pac. 290; *Maloney v. Hefer*, 75 Cal. 422, 7 Am. St. Rep. 180, 17 Pac. 539; *Re Liggett*, 117 Cal. 352, 59 Am. St. Rep. 190, 49 Pac. 211; *Bank of Woodland v. Oberhaus*, 125 Cal. 320, 57 Pac. 1070; *Reid v. Englehart-Davidson Mercantile Co.*, 126 Cal. 527, 77 Am. St. Rep. 206, 58 Pac. 1063.

§ 5606. How selected. If the homestead claimant is married the homestead may be selected from the separate property of the husband, or with the consent of the wife, from her separate property. When the homestead claimant is not married, but is the head of a family within the meaning of section 5070, the homestead may be selected from any of his or her property; provided, that the homestead so selected must in no case embrace different lots or tracts of land unless they are contiguous. [R. C. 1905, § 5050; 1891, ch. 67, § 2; R. C. 1899, § 3606.]

Party owning more than quarter section of land may select, how. *Foogman v. Patterson*, 9 N. D. 254, 83 N. W. 15.

Husband is entitled to claim homestead exempt from execution sale, although fee is vested in wife. *Bremseth v. Olson*, 16 N. D. 242, 13 L.R.A.(N.S.) 170, 112 N. W. 1056, 14 A. & E. Ann. Cas. 1155.

Right of husband, as against creditors, to claim homestead as exempt where title is vested in wife. 13 L.R.A.(N.S.) 170.

As to similar provision in Cal. Civ. Code, § 1238, see *King v. Gotz*, 70 Cal. 236, 11 Pac. 656; *Arendt v. Mace*, 76 Cal. 315, 9 Am. St. Rep. 207, 18 Pac. 376.

§ 5607. When subject to execution. The homestead is subject to execution or forced sale in satisfaction of judgments obtained:

1. On debts secured by mechanics' or laborers' liens for work or labor done or material furnished exclusively for the improvement of the same.

2. On debts secured by mortgage on the premises executed and acknowledged by both husband and wife, or an unmarried claimant.

3. On debts created for the purchase thereof and for all taxes accruing and levied thereon. [R. C. 1905, § 5051; 1891, ch. 67, § 3; R. C. 1899, § 3607.]

Homestead or proceeds thereof are absolutely exempt from seizure by creditor, except as specified in statute. *Dieter v. Fraine*, 20 N. D. 484, 128 N. W. 684.

Attachment and judgment liens against homestead. 34 Am. St. Rep. 496; 38 Am. St. Rep. 247.

For what claims and credits homestead is liable. 45 Am. St. Rep. 383.

Money decree for permanent alimony or separate maintenance as lien on. 35 L.R.A.(N.S.) 137.

As to similar provision in Cal. Civ. Code, § 1241, see *Chalmers v. Stockton Bldg. & L. Soc.*, 64 Cal. 77, 28 Pac. 59; *Richards v. Shear*, 70 Cal. 187, 11 Pac. 607; *Fitzell v. Leaky*, 72 Cal. 477, 14 Pac. 198; *Walsh v. McMenemy*, 74 Cal. 356, 16 Pac. 17; *Davies-Henderson Lumber Co. v. Gottschalk*, 81 Cal. 641, 22 Pac. 860; *First Nat. Bank v. Bruce*, 94 Cal. 77, 29 Pac. 488; *Beaton v. Reid*, 111 Cal. 484, 44 Pac. 167; *Glas v. Glas*, 114 Cal. 566, 55 Am. St. Rep. 90, 46 Pac. 667; *Lee v. Murphy*, 119 Cal. 364, 51 Pac. 549, 955; *Edwards v. Grand*, 121 Cal. 254, 53 Pac. 796.

1. Enforcement of mechanics' lien against building only erected upon homestead lands. 62 L.R.A. 375.

3. S. D. Laws 1890, ch. 86, exempting from all process, levy or sale; bestows immunity from sale for purchase money. *N. W. Loan Co. v. Jonasen*, 11 S. D. 566, 79 N. W. 840.

Mortgage of, to secure purchase price, executed by fee owner, need not be signed by husband or wife. *Roby v. Bank*, 4 N. D. 156, 59 N. W. 719, 50 Am. St. Rep. 633.

Lien for purchase money of homestead. 99 Am. Dec. 574; 86 Am. St. Rep. 174.

Mortgage to secure money advanced to purchase property as a purchase money mortgage not subject to homestead rights. 40 L.R.A.(N.S.) 275.

Is money loaned to improve land part of the purchase price within the rule that a purchase money lien takes priority over homestead rights. 41 L.R.A.(N.S.) 89.

§ 5608. How conveyed. The homestead of a married person cannot be conveyed or incumbered, unless the instrument by which it is conveyed or incumbered is executed and acknowledged by both husband and wife. [R. C. 1905, § 5052; 1891, ch. 67, § 4; R. C. 1899, § 3608.]

Homestead exemption is intended for protection and preservation of home for benefit of family as whole. *Dieter v. Fraine*, 20 N. D. 484, 128 N. W. 684.

Contract by husband to convey 320 acres of land, 160 acres of which, to knowledge of purchaser, was homestead, was wholly invalid. *Kaiser v. Klein*, 29 S. D. 464, 137 N. W. 52.

Requiring spouse to join in execution of deed to homestead does not confer on spouse any estate in land, but valid deed cannot be made without spouse joining therein. *Somers v. Somers*, 27 S. D. 500, 36 L.R.A.(N.S.) 1024, 131 N. W. 1091.

Mortgage of, by husband and wife binds latter, whether she acknowledged same or not. *Karcher v. Gans*, 13 S. D. 383, 83 N. W. 431, 79 Am. St. Rep. 893.

Signature of wife may be made by notary taking acknowledgment. *N. W. Loan Co. v. Jonasen*, 11 S. D. 566, 79 N. W. 840.

Wife's signature not necessary to mortgage on government homestead on which she has never resided. *Brokken v. Baumann*, 10 N. D. 453, 88 N. W. 84.

Husband alone cannot continue a mortgage on, after payment. *Luce v. Mortgage Co.*, 6 D. 122, 50 N. W. 621.

Wife not bound by implied warranty when she joins in mortgage only to release homestead right. *Dunn v. Dietrich*, 3 N. D. 3, 53 N. W. 81.

Wife retains no interest in homestead in husband's name after divorce in the absence of a provision in the decree to that effect. *Brady v. Kreuger*, 8 S. D. 464, 66 N. W. 1083, 59 Am. St. Rep. 771.

Insolvency of husband; claim of wife as head of family. *Ness v. Jones*, 10 N. D. 587, 88 N. W. 706.

Mortgage of, for unpaid purchase money is good, although not signed by husband. *Roby v. Bank*, 4 N. D. 156, 59 N. W. 719, 50 Am. St. Rep. 633.

Statute to be liberally construed. *Kingman v. O'Callaghan*, 4 S. D. 628, 57 N. W. 912.

Exempt from sale for mechanic's lien. *Morgan v. Beuthein*, 10 S. D. 650, 75 N. W. 204, 65 Am. St. Rep. 733; *Fallibee v. Wittmayer*, 9 S. D. 479, 70 N. W. 642.

Inapplicable where homestead is not selected. *Wegner v. Lubenow*, 12 N. D. 95, 95 N. W. 442.

Concurrence of husband and wife essential to conveyance of homestead. *Helgebye v. Dammen*, 13 N. D. 167, 100 N. W. 245.

On necessity of both husband and wife acknowledging conveyance of homestead. *Patnode v. Deschenes*, 15 N. D. 100, 106 N. W. 573.

Not unconstitutional as interfering with vested rights. *Gaar, S. & Co. v. Collin*, 15 N. D. 622, 110 N. W. 81.

As to necessity of wife executing contract for sale of homestead. *Silander v. Gronna*, 15 N. D. 552, 125 Am. St. Rep. 616, 108 N. W. 544.

As not affecting general equity doctrine of estoppel in pais. *Engholm v. Ekrem*, 18 N. D. 185, 119 N. W. 35.

Effect of conveyance of homestead by husband to wife. 69 L.R.A. 379.

Constructive trust in deed of homestead by husband to wife, with proviso attempting to derogate from her right of survivorship. 1 L.R.A.(N.S.) 312.

Conveyance or incumbrance by one spouse only. 95 Am. St. Rep. 909.

Conveyance by one spouse, whether may become operative on abandonment or other future event. 12 Am. St. Rep. 683.

Husband's power without wife's consent to abandon homestead or convey premises by his sole deed after abandonment. 37 L.R.A.(N.S.) 807.

Conveyance of homestead by husband after abandonment by wife. 8 L.R.A.(N.S.) 565.

Power of husband to create easements in homestead without wife's consent. 27 L.R.A.(N.S.) 963.

Power of legislature to take away husband's right to convey or incumber homestead property. 36 L.R.A.(N.S.) 1029.

Validity of conveyance or incumbrance of homestead by wife after abandonment by husband. 36 L.R.A.(N.S.) 1024.

Effect of a wife's separate deed of homestead in connection with a conveyance or incumbrance by husband, or her subsequent joinder therein. 8 L.R.A.(N.S.) 748.

Effect of mistake of law as to contract with reference to homestead as ground of reformation. 28 L.R.A.(N.S.) 872.

As to similar provision in Cal. Civ. Code, § 1242, see *Gleason v. Spray*, 81 Cal. 217,

15 Am. St. Rep. 47, 22 Pac. 551; *Powell v. Patison*, 100 Cal. 236, 34 Pac. 677; *Mathews v. Davis*, 102 Cal. 202, 36 Pac. 358; *Dickey v. Gibson*, 113 Cal. 26, 54 Am. St. Rep. 321, 45 Pac. 15; *San Francisco v. Grote*, 120 Cal. 59, 41 L.R.A. 335, 65 Am. St. Rep. 155, 52 Pac. 127; *California Fruit Transp. Co. v. Anderson*, 79 Fed. 404.

§ 5609. Statute of limitations. No action, defense or counterclaim founded upon a right of homestead in property heretofore conveyed or incumbered, otherwise than as provided by the law in force at the time of the execution of such conveyance or incumbrance, and for which no declaration of homestead shall have been filed previous to the taking effect of this section shall be effectual or maintainable, unless such action is commenced or such defense or counterclaim interposed on or before the first day of January, 1900; provided, nevertheless, that such limitation shall not apply if the homestead claimant was at the time of the execution of such conveyance or incumbrance in the actual possession of the property claimed and had not quit such possession previous to the commencement of such action or the interposing of such defense or counterclaim. [R. C. 1905, § 5053; R. C. 1895, § 3609.]

§ 5610. Actions may be commenced against homestead, when. No action, defense or counterclaim founded upon a right of homestead in property conveyed or incumbered prior to the taking effect of this article and since the taking effect of section 5609, otherwise than is provided by the law in force at the time of the execution of such conveyance or incumbrance, and for which no declaration of homestead shall have been filed previous to the taking effect of this article, shall be effectual or maintainable, unless such action is commenced, or such defense or counterclaim interposed on or before the first day of January, 1906; and no action, defense or counterclaim founded upon a right of homestead in property hereafter conveyed or incumbered, otherwise than as provided by the law in force at the time of the execution of such conveyance or incumbrance, and for which no declaration of homestead shall have been filed previous to the execution of such conveyance or incumbrance, shall be effectual or maintainable, unless such action is commenced, or such defense or counterclaim interposed within two years after the execution of such conveyance or incumbrance; provided, nevertheless, that such limitation shall not apply, if the homestead claimant was, at the time of the execution of such conveyance or incumbrance, in the actual possession of the property claimed and had not quit such possession previous to the commencement of such action, or the interposing of such defense or counterclaim; and provided, further, that this section shall not in any way affect claims to the homestead which may have become barred under the provisions of said section 5609. [R. C. 1905, § 5054; 1905, ch. 3.]

Mortgagor of homestead cannot set up homestead rights unless they are asserted within period fixed by this section. *Justice v. Souder*, 19 N. D. 613, 125 N. W. 1029.

§ 5611. When appraised. When an execution for the enforcement of a judgment obtained in a case not within the classes enumerated in section 5607 is levied upon the homestead the judgment creditor may apply to the district court in the county in which such homestead is situated for the appointment of persons to appraise the value thereof. [R. C. 1905, § 5055; 1891, ch. 67, § 5; R. C. 1895, § 3610.]

§ 5612. Application for appraisers. The application for appraisers must be made upon a verified petition showing:

1. The fact that an execution has been levied upon the homestead.
2. The name of the claimant.
3. That the value of the homestead exceeds the amount of the homestead exemption. [R. C. 1905, § 5056; 1891, ch. 67, § 6; R. C. 1895, § 3611.]

§ 5613. Petition filed. The petition must be filed with the clerk of the district court and a copy thereof with notice of the time and place of hearing served on the claimant at least ten days before the hearing. [R. C. 1905, § 5057; 1891, ch. 67, § 7; R. C. 1899, § 3612.]

§ 5614. Appointment of appraisers. Oath and duties. At the hearing the court upon proof of the service of such notice and petition and of the facts

stated in the petition may appoint three disinterested residents of the county to appraise the value of the homestead, who must take an oath impartially to appraise the same. They must view the premises and appraise the value thereof and if the appraised value exceeds the homestead exemption they must determine whether the real property claimed can be divided without material injury. [R. C. 1905, § 5058; 1891, ch. 67, § 8; R. C. 1895, § 3613.]

As to similar provision in Cal. Civ. Code, §§ 1249, 1251, see *Brown v. Starr*, 79 Cal. 608, 12 Am. St. Rep. 180, 21 Pac. 973; *Harrier v. Bassford*, 145 Cal. 529, 78 Pac. 1038.

§ 5615. Report to judge. Within fifteen days after their appointment the appraisers must present to the judge a report in writing, which report must show the appraised value of the homestead and their determination upon the matter of a division of the real property claimed. [R. C. 1905, § 5059; R. C. 1895, § 3614.]

§ 5616. Homestead, how divided. If from the appraisers' report it appears that the real property claimed as a homestead can be divided without material injury the court shall by order direct the appraisers to set off to the claimant so much of the real property, including the residence, as will amount in value to the homestead exemption and the execution may be enforced against the remainder of the real property. [R. C. 1905, § 5060; 1891, ch. 67, § 9; R. C. 1895, § 3615.]

§ 5617. When sold. If from the appraisers' report it appears to the court that the real property claimed as a homestead exceeds in value the amount of the homestead exemption and that it cannot be divided without material injury, he must make an order directing its sale under the execution; but at such sale no bid must be received unless it exceeds the amount of the homestead exemption. [R. C. 1905, § 5061; 1891, ch. 67, § 10; R. C. 1895, § 3616.]

§ 5618. Proceeds of sale exempt. Disposition of. If the sale is made the proceeds thereof to the amount of the homestead exemption must be paid to the claimant and the residue applied to the satisfaction of the execution; provided, that when the execution is against a husband, whose wife is living, the court may, in its discretion, direct the five thousand dollars to be deposited in court to be paid out only on the joint receipt of the husband and wife and it shall, whether paid directly to the claimant or to the husband and wife jointly, possess all the protection against legal process and voluntary disposition by the husband as did the original homestead premises. [R. C. 1905, § 5062; 1891, ch. 67, § 11; R. C. 1895, § 3617.]

§ 5619. Fees of appraisers. The appraisers shall receive the same fees as jurors in civil cases in the district court, which with all other costs of these proceedings must be paid by the execution creditors in the first instance, but in the cases provided for in sections 5617 and 5618 the amount paid must be added as costs on execution and collected accordingly. [R. C. 1905, § 5063; 1891, ch. 67, § 12; R. C. 1899, § 3618.]

§ 5620. Proceeds of sale exempt. If the homestead is conveyed as provided in section 5608 or sold for the satisfaction of any lien mentioned in section 5607, the price thereof or the proceeds of the sale beyond the amount necessary to satisfy such lien, and not exceeding in either case the amount of the homestead exemption, shall be entitled thereafter to the same protection against legal process as the law gives to the homestead. [R. C. 1905, § 5064; 1891, ch. 67, § 13; R. C. 1895, § 3619.]

§ 5621. Who may make declaration of homestead. Any person who is the head of a family may make a declaration of homestead in the manner provided in the next two sections, but a failure to make such declaration shall not impair the homestead right. [R. C. 1905, § 5065; R. C. 1895, § 3620.]

§ 5622. How executed and acknowledged. In order to select a homestead the husband or other head of a family, or in case the husband has not made such selection, the wife must execute and acknowledge in the same manner

as a grant of real property is acknowledged a declaration of homestead and file the same for record. [R. C. 1905, § 5066; R. C. 1895, § 3621.]

As to similar provision in Cal. Civ. Code, § 1262, see *Ham v. Santa Rosa Bank*, 62 Cal. 125, 45 Am. Rep. 654; *Farley v. Hopkins*, 79 Cal. 203, 21 Pac. 737.

§ 5623. Contents of. The declaration of homestead must contain:

1. A statement showing that the person making it is the head of a family; or, when the declaration is made by the wife, showing that her husband has not made such declaration for their joint benefit.

2. A statement that the person making it is residing on the premises and claims them as a homestead.

3. A description of the premises.

4. An estimate of their cash value. [R. C. 1905, § 5067; R. C. 1895, § 3622.]

As to similar provision in Cal. Civ. Code, § 1263, see *Ashley v. Olmstead*, 54 Cal. 616; *Ames v. Eldred*, 55 Cal. 136; *Ham v. Santa Rosa Bank*, 62 Cal. 125, 45 Am. Rep. 654; *Read v. Rahm*, 65 Cal. 343, 4 Pac. 111; *Jones v. Waddy*, 66 Cal. 457, 6 Pac. 92; *Re Crowey*, 71 Cal. 300, 12 Pac. 230; *Farley v. Hopkins*, 79 Cal. 203, 21 Pac. 737; *Knock v. Bunnell*, 3 Cal. Unrep. 105, 21 Pac. 961; *Cunha v. Hughes*, 122 Cal. 111, 68 Am. St. Rep. 27, 54 Pac. 535; *Reid v. Englehart-Davidson Mercantile Co.*, 126 Cal. 527, 77 Am. St. Rep. 206, 58 Pac. 1063.

§ 5624. Must be recorded. The declaration must be recorded in the office of the register of deeds of the county in which the land is situated. [R. C. 1905, § 5068; R. C. 1895, § 3623.]

§ 5625. Effect of sale of homestead. The sale and disposition of one homestead shall not be held to prevent the selection or purchase of another as provided in this chapter. [R. C. 1905, § 5069; 1891, ch. 67, § 14; R. C. 1899, § 3624.]

§ 5626. "Head of family" defined. The phrase "head of a family" as used in this chapter includes within its meaning:

1. The husband or wife when the claimant is a married person; but in no case are both husband and wife entitled each to a homestead under the provisions of this chapter.

2. Every person who has residing on the premises with him or her and under his or her care and maintenance, either:

(a) His or her child or the child of his or her deceased wife or husband, whether by birth or adoption.

(b) A minor brother or sister or the minor child of a deceased brother or sister.

(c) A father, mother, grandfather or grandmother.

(d) The father or mother, grandfather or grandmother of a deceased husband or wife.

(e) An unmarried sister or any other of the relatives mentioned in this section who have attained the age of majority and are unable to take care of or support themselves. [R. C. 1905, § 5070; 1891, ch. 67, § 15; R. C. 1899, § 3625.]

A single person was entitled to homestead right prior to act of 1890. *Hesnard v. Plunkett*, 6 S. D. 73, 60 N. W. 159. *Contra*, *McCanna v. Anderson*, 6 N. D. 482, 71 N. W. 769.

Selection; extent and value; presumption from failure to assert. *Foogman v. Patterson*, 9 N. D. 254, 83 N. W. 15.

As to when divorced husband is no longer head of family entitled to homestead exemption. *Holcomb v. Holcomb*, 18 N. D. 561, 120 N. W. 547.

Widow without children may occupy during her lifetime. *Fore v. Fore*, 2 N. D. 260, 50 N. W. 712.

Who is head of family and what constitutes a family. 61 Am. Dec. 586; 70 Am. St. Rep. 107.

What constitutes a family. 4 L.R.A.(N.S.) 366.

Who is within the meaning of the law allowing exemption to head of family. 32 Am. Rep. 30.

As to similar provision in Cal. Civ. Code, § 1261, see *Roth v. Insley*, 86 Cal. 134, 24 Pac. 853; *Simonson v. Burr*, 121 Cal. 582, 54 Pac. 87.

As to similar provision in Neb. Comp. Stat. 1897, ch. 36, § 15, see *Schaller v. Kurtz*, 25 Neb. 658, 41 N. W. 642.

§ 5627. Descent and distribution of homestead estates. Upon the death of a person in whom the title to real property constituting a homestead as

defined in this chapter is vested a homestead estate in such real property shall survive, descend and be distributed to the persons and in the order following:

1. To the surviving husband or wife for life; or,
2. There being no surviving husband or wife, to the decedent's minor child or children until the youngest attains majority; or,
3. The surviving husband or wife dying before, then thereafter to the decedent's minor child or children until the youngest attains majority. [R. C. 1905, § 5071; 1891, ch. 67, § 16; R. C. 1895, § 3626.]

No homestead estate can survive, descend or be distributed where decedent was not entitled to homestead exemption at time of death. *Holcomb v. Holcomb*, 18 N. D. 561, 120 N. W. 547.

Homestead cannot be partitioned among heirs, while occupied as homestead by surviving husband, wife or minor child. *Wells v. Sweeney*, 16 S. D. 489, 102 Am. St. Rep. 813, 94 N. W. 394.

Widow's right to convey, lease or incumber homestead during minority of children. 10 L.R.A.(N.S.) 787.

Effect of alienation of incumbrance of homestead by surviving spouse on rights of children. 56 L.R.A. 71.

Right of child in homestead of parent as affected by will. 56 L.R.A. 38.

Right of adopted children to take parent's homestead. 56 L.R.A. 54.

Federal courts following state decisions as to construction and effect of wills. 40 L.R.A.(N.S.) 430.

As to similar provision in Cal. Civ. Code, § 1265, see *Re Headen*, 52 Cal. 294; *Gagliardo v. Dumont*, 54 Cal. 496; *Schuler v. Savings & L. Soc.*, 64 Cal. 397, 1 Pac. 479; *Beck v. Soward*, 76 Cal. 527, 18 Pac. 650; *Re Burdick*, 76 Cal. 639, 18 Pac. 805; *Tyrrell v. Baldwin*, 78 Cal. 470, 21 Pac. 116; *Farley v. Hopkins*, 79 Cal. 203, 21 Pac. 737; *Re Ackerman*, 80 Cal. 208, 13 Am. St. Rep. 116, 22 Pac. 141; *Gleason v. Spray*, 81 Cal. 217, 15 Am. St. Rep. 47, 22 Pac. 551; *Roth v. Insley*, 86 Cal. 134, 24 Pac. 853; *Re Walkerly*, 108 Cal. 627, 48 Am. St. Rep. 97, 41 Pac. 772; *Dickey v. Gibson*, 113 Cal. 26, 54 Am. St. Rep. 321, 45 Pac. 15.

§ 5628. "Homestead estate" and "youngest" defined. The term "homestead estate" employed in this chapter shall be construed to mean the right to the possession, use, control, income and rents of the real property held or occupied by such decedent as a homestead at death; and the term "youngest" as employed in this chapter shall be construed to mean the decedent's child, whether by birth or adoption, last to attain majority. [R. C. 1905, § 5072; R. C. 1895, § 3627.]

§ 5629. Ascertaining and setting off homestead after death of owner. If a homestead in such real property had been ascertained and set off to such decedent before death as provided in this chapter the homestead estate provided for in section 5627 shall be commensurate therewith and must not be again ascertained; but if such homestead had not been so ascertained and set off, the county court must ascertain in the manner provided in the probate code and set off and decree the homestead estate to the surviving husband or wife, or minor child or children, as the case may be; provided, however, that the real property which is subjected to the homestead estate by the county court and in which such estate is ascertained and set off by such court must not exceed in value or area the value or area prescribed in section 5605. [R. C. 1905, § 5073; R. C. 1895, § 3628.]

§ 5630. Decree of county court. Provisions of. The county court shall ascertain and set forth in its decree setting off the homestead estate to the surviving husband or wife or minor child or children, whether ascertained by it or not, the name of and the dates at which the minor child, or each minor child, if more than one, will attain majority and direct in such decree that in case the surviving husband or wife dies before the last of such dates is reached, the minor child or children then surviving shall from the time of such death succeed to such homestead estate until the youngest attains majority. If a surviving minor child dies before a full satisfaction of the homestead estate such estate shall thereafter be proceeded with as though such child had never lived. [R. C. 1905, § 5074; R. C. 1895, § 3629.]

§ 5631. Estate decends exempt. Exception. The real property subjected to such homestead estate shall, subject to the full satisfaction of such estate, descend exempt from decedent's debts except as provided in section 5607 and be distributed in the same manner as real property not subjected to a homestead estate, or as directed in the decedent's will; provided, that in no case shall the real property constituting the homestead of a decedent, or any part thereof, descend or be distributed to any person other than the surviving husband or wife and decedent's heirs in the direct descending line as prescribed in chapter 53 until all the decedent's debts are fully paid. [R. C. 1905, § 5075; R. C. 1895, § 3630.]

§ 5632. May be devised subject to homestead estate. Subject to the homestead estate as defined by law and the payment of decedent's debts, the homestead may be devised to persons other than those mentioned in section 5631 like other real property of the testator. [R. C. 1905, § 5076; 1891, ch. 67, § 18; R. C. 1895, § 3631.]

§ 5633. Conveyance in case of insanity. If either the husband or wife shall become insane, the county court of the county in which the homestead is situated may, upon application of the husband or wife not insane and upon due proof of such insanity, make an order permitting the husband or wife not insane to sell and convey or mortgage such homestead. [R. C. 1905, § 5077; 1891, ch. 67, § 19; R. C. 1895, § 3632.]

§ 5634. Requisites of petition. Such application shall be made by a petition to the court subscribed and sworn to by the applicant, setting forth the name and age of the insane husband or wife; the number, age and sex of the children of such insane husband or wife; a description of the premises constituting the homestead; the value of the same; the county in which it is situated; and such facts in addition to that of the insanity of the husband or wife, relating to the circumstances or necessities of the applicant and his or her family, as he or she may rely upon in support of the petition. [R. C. 1905, § 5078; R. C. 1895, § 3633.]

§ 5635. Notice, on whom and how served. Notice of the application for such order shall be served upon such persons and in such manner as the court shall by order direct and in such order the court shall fix a time for the hearing of the application. [R. C. 1905, § 5079; R. C. 1895, § 3634.]

§ 5636. Order of sale recorded. A certified copy of the order granting permission to sell and convey or mortgage the homestead shall be filed for record and recorded in the office of the register of deeds of the county in which the homestead is situated. [R. C. 1905, § 5080; R. C. 1895, § 3635.]

§ 5637. Court may direct disposition of funds. On granting an order authorizing a sale of the homestead the court may direct that a part of the funds derived from such sale, not to exceed one-third thereof, be set aside and may direct its investment for the use and benefit of the insane husband or wife. If such husband or wife dies while insane the sum so set aside reverts to the surviving husband or wife. If he or she is dead at the time the insane husband or wife dies, then such sum shall descend in accordance with the laws of succession as provided in this code. [R. C. 1905, § 5081; 1891, ch. 67, § 21; R. C. 1895, § 3636.]

§ 5638. Appeal. On the hearing of such application any of the kindred of the insane person may appear and be heard in the premises, and may appeal from any order made on the subject to the district court for the county in which the land is situated in the manner provided for appeals in other cases. [R. C. 1905, § 5082; 1891, ch. 67, § 22; 1895, § 3637.]

§ 5639. Such conveyance valid. A conveyance or mortgage of the homestead made pursuant to the last six sections shall be as valid and effectual as if the insane husband or wife had been sane and had joined in the execution and acknowledgment of such conveyance or mortgage. [R. C. 1905, § 5083; R. C. 1895, § 3638.]

CHAPTER 52.

WILL.

- ARTICLE 1. EXECUTION AND REVOCATION OF WILL, §§ 5640-5684.
 2. INTERPRETATION OF WILLS AND EFFECT OF VARIOUS PROVISIONS, §§ 5685-5719.
 3. GENERAL PROVISIONS, §§ 5720-5740.

ARTICLE 1.—EXECUTION AND REVOCATION OF WILL.

§ 5640. Who may make. Every person over the age of eighteen years of sound mind may by last will dispose of all his estate, real and personal, and such estate not disposed of by will is succeeded to as provided in chapter 53 of this code, being chargeable in both cases with the payment of all the decedent's debts as provided in the probate code. [R. C. 1905, § 5084; Civ. C. 1877, § 683; R. C. 1895, § 3639.]

Person making will must be of sound mind at the time. *Re Corson*, 29 S. D. 14, 135 N. W. 666.

What constitutes testamentary capacity or incapacity. 27 L.R.A.(N.S.) 2.

Testamentary capacity at the time of giving instructions for will as affecting measure of capacity which must exist at time of execution. 2 B. R. C. 41.

Drunkenness as affecting testamentary capacity. 39 L.R.A. 220.

Conflict of laws as to testator's capacity. 2 L.R.A.(N.S.) 414.

Adjudication of insanity, or existence of guardianship, as showing want of testamentary capacity. 140 Am. St. Rep. 346.

Insane delusions. 8 Am. Rep. 184; 63 Am. St. Rep. 94; 12 L.R.A. 161; 27 L.R.A.(N.S.) 62.

Belief in spiritualism. 36 Am. Rep. 426; 15 L.R.A.(N.S.) 673.

Aversion to relatives. 117 Am. St. Rep. 582.

As to similar provision in Cal. Civ. Code, § 1270, see *Hinckley's Estate*, 58 Cal. 457; *Re Ross*, 140 Cal. 282, 73 Pac. 976.

§ 5641. Married woman same right. A married woman may dispose of all her separate estate by will without the consent of her husband and may alter or revoke in like manner as if she was single. Her will must be executed and proved in like manner as other wills. [R. C. 1905, § 5085; Civ. C. 1877, § 684; R. C. 1899, § 3640.]

Right of wife under statute removing disabilities of married woman to devise property held by her husband and herself as joint tenants. 7 L.R.A.(N.S.) 701.

Sufficiency of husband's consent to wife's will. 37 L.R.A.(N.S.) 1133.

§ 5642. Undue influence. A will or part of a will procured to be made by duress, menace, fraud or undue influence may be denied probate; and a revocation procured by the same means may be declared void. [R. C. 1905, § 5086; Civ. C. 1877, § 685; R. C. 1899, § 3641.]

Undue influence affecting will. 16 Am. Dec. 257; 31 Am. St. Rep. 670.

—presumption of. 44 Am. Rep. 537; 21 Am. St. Rep. 94.

—burden of proof as to. 17 L.R.A. 494; 36 L.R.A. 724, 733.

Will prepared by beneficiaries. 71 Am. Dec. 129.

Effect of unnatural testamentary disposition on question of undue influence. 6 L.R.A.(N.S.) 202; 22 L.R.A.(N.S.) 1024.

Character of presumption as to undue influence in bequest to mistress. 11 L.R.A.(N.S.) 554.

Effect of meretricious relations between testator and beneficiary on validity of devise or bequest. 17 L.R.A.(N.S.) 477.

Ante-testamentary declarations as evidence of undue influence. 3 L.R.A.(N.S.) 749.

Omitting part of will from probate because of undue influence. 34 L.R.A.(N.S.) 749.

Evidentiary force of circumstance that one benefited by a will was the draftsman thereof, or was active in procuring its execution. 28 L.R.A.(N.S.) 270.

As to similar provision in Cal. Civ. Code, § 1272, see *Re Kohler*, 79 Cal. 313, 21 Pac. 758.

§ 5643. What may be willed. Every estate and interest in real or personal property to which heirs, husband, widow or next of kin might succeed may be disposed of by will. [R. C. 1905, § 5087; Civ. C. 1877, § 686; R. C. 1899, § 3642.]

Will of adopting parent cannot defeat rights of adopted child as established by contract with natural parent and by decree of court at time of adoption. *Quinn v. Quinn*, 5 S. D. 328, 58 N. W. 808, 49 Am. St. Rep. 875.

Parent's right to will custody of child. 2 L.R.A.(N.S.) 203.

Right of entry for condition broken as subject of a devise. 60 L.R.A. 762.

Burial lot as subject of devise. 67 L.R.A. 121.

Right of entryman to devise claim or interest in public lands. 34 L.R.A.(N.S.) 397.

Contingent remainder as subject of devise by remainderman. 21 L.R.A.(N.S.) 121.

Applicability to devise, of rule against conveyance of land held adversely. 35 L.R.A.(N.S.) 734.

Power of insured to destroy rights of beneficiary by bequeathing policy. 49 L.R.A. 748, 752.

Right to change beneficiary in policy by will. 4 L.R.A.(N.S.) 939.

Bequest of policy of insurance or proceeds thereof as a specific legacy. 7 L.R.A.(N.S.) 592.

Right to designate by will the beneficiary of benefit insurance. 42 L.R.A.(N.S.) 1161.

As to similar provision in Cal. Civ. Code, § 1274, see *Re Burdick*, 112 Cal. 387, 44 Pac. 734.

§ 5644. Made to any one capable of taking. A testamentary disposition may be made to any person capable by law of taking the property so disposed of, except that no corporation can take under a will, unless expressly authorized by statute so to take. [R. C. 1905, § 5088; Civ. C. 1877, § 687; R. C. 1895, § 3643.]

Right of private person to contest power of corporation to take or hold property under a will. 32 L.R.A. 297.

Right to question power of corporation to take by will property in excess of its charter authority. 9 L.R.A.(N.S.) 689.

Who may take advantage of statute rendering foreign corporation incapable of taking title to real estate. 33 L.R.A.(N.S.) 355.

As to similar provision in Cal. Civ. Code, § 1275, see *Bulmer's Estate*, 59 Cal. 131; *Eastman's Estate*, 60 Cal. 308; *Re Robinson*, 63 Cal. 620; *Re Royer*, 123 Cal. 614, 44 L.R.A. 364, 56 Pac. 461; *Tobin's Estate*, *Myrick*, Prob. Ct. Rep. (Cal.) 134; *Wright's Estate*, *Myrick*, Prob. Ct. Rep. (Cal.) 213.

§ 5645. Nuncupative will. Requisites. To make a nuncupative will valid and to entitle it to be admitted to probate the following requisites must be observed:

1. The estate bequeathed must not exceed in value the sum of one thousand dollars.

2. It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator at the time to bear witness that such was his will, or to that effect.

3. The decedent must at the time have been in actual military service in the field or doing duty on shipboard at sea and in either case in actual contemplation, fear or peril of death, or the decedent must have been at the time in expectation of immediate death from an injury received the same day. [R. C. 1905, § 5089; Civ. C. 1877, § 688; R. C. 1899, § 3644.]

Nuncupative wills. 20 Am. Dec. 44; 67 Am. St. Rep. 572.

What is "last sickness" permitting a nuncupative will. 13 L.R.A.(N.S.) 1092.

§ 5646. Mutual will. A conjoint or mutual will is valid, but it may be revoked by any of the testators in like manner with any other will. [R. C. 1905, § 5090; Civ. C. 1877, § 689; R. C. 1899, § 3645.]

Joint wills and their effect. 68 Am. Dec. 407.

Joint, mutual, reciprocal or multi wills. 136 Am. St. Rep. 592.

Contents of joint or mutual wills as affecting right to probate. 34 L.R.A.(N.S.) 976.

Revocability of mutual will. 27 L.R.A.(N.S.) 508; 37 L.R.A.(N.S.) 1196.

§ 5647. Conditional will may be denied probate. A will, the validity of which is made by its own terms conditional, may be denied probate, according to the event, with reference to the condition. [R. C. 1905, § 5091; Civ. C. 1877, § 690; R. C. 1899, § 3646.]

§ 5648. Olographic will. An olographic will is one that is entirely written, dated and signed by the hand of the testator himself. It is subject to no other form and may be made in or out of this state and need not be witnessed. [R. C. 1905, § 5092; Civ. C. 1877, § 691; R. C. 1899, § 3647.]

Deed not having essentials of will but passing present interest in land in fee simple is not a will. *Jones v. Jones*, 20 S. D. 632, 108 N. W. 23.

What are olographic or holographic wills. 52 Am. Dec. 591; 104 Am. St. Rep. 22.
 Revocation of previous will by holographic will. 37 L.R.A. 566.
 Writing name in body of holographic will as a signature thereto. 29 L.R.A.(N.S.) 64.
 Violation of requirement that holographic will shall be written by testator. 26 L.R.A.(N.S.) 1145.

Necessity of witnesses to an holographic will. 14 L.R.A.(N.S.) 968.
 Sufficiency of showing that paper offered as a holographic will was intended as such. 33 L.R.A.(N.S.) 1018.

Custody of holographic will. 37 L.R.A.(N.S.) 842.
 As to similar provision in Cal. Civ. Code, § 1277, see *Martin's Estate*, 58 Cal. 530; *Re Rand*, 61 Cal. 468, 44 Am. Rep. 555; *Billings's Estate*, 64 Cal. 427, 1 Pac. 701; *Re Learned*, 70 Cal. 140, 11 Pac. 587; *Mitchell v. Donohue*, 100 Cal. 202, 38 Am. St. Rep. 279, 34 Pac. 614; *Re Stratton*, 112 Cal. 513, 44 Pac. 1028; *Re Lakemeyer*, 135 Cal. 28, 87 Am. St. Rep. 96, 66 Pac. 961; *Re Fay*, 145 Cal. 82, 104 Am. St. Rep. 17, 78 Pac. 340; *Re Clisby*, 145 Cal. 407, 104 Am. St. Rep. 58, 78 Pac. 964; *Donoho's Estate*, *Myrick*, Prob. Ct. Rep. (Cal.) 140.

§ 5649. How wills must be executed and attested. Every will, other than a nuncupative will, must be in writing; and every will, other than an olographic will and a nuncupative will, must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself, or some person in his presence and by his direction must subscribe his name thereto.
 2. The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them to have been made by him or by his authority.

3. The testator must at the time of subscribing or acknowledging the same declare to the attesting witnesses that the instrument is his will; and,

4. There must be two attesting witnesses, each of whom must sign his name as a witness at the end of the will at the testator's request and in his presence. [R. C. 1905, § 5093; Civ. C. 1877, § 691; R. C. 1899, § 3648.]

When will not fully executed is valid. 36 Am. Dec. 316.

As to similar provision in Cal. Civ. Code, § 1276, see *Toomes's Estate*, 54 Cal. 509, 35 Am. Rep. 83; *Re McCabe*, 68 Cal. 519, 9 Pac. 554; *Re Guilfoyle*, 96 Cal. 598, 22 L.R.A. 370, 31 Pac. 553; *Re Comassi*, 107 Cal. 1, 28 L.R.A. 414, 40 Pac. 15; *Re Walker*, 110 Cal. 387, 30 L.R.A. 460, 52 Am. St. Rep. 104, 42 Pac. 815; *Re Tyler*, 5 Cal. Unrep. 851, 50 Pac. 927; *Re Lynch*, 142 Cal. 373, 75 Pac. 1086; *Re Clisby*, 145 Cal. 407, 104 Am. St. Rep. 58, 78 Pac. 964; *Re Seaman*, 146 Cal. 455, 106 Am. St. Rep. 53, 80 Pac. 700, 2 Ann. Cas. 726; *Taney's Estate*, *Myrick*, Prob. Ct. Rep. (Cal.) 210; *Donoho's Estate*, *Myrick*, Prob. Ct. Rep. (Cal.) 140.

1. What is a sufficient signing of will. 42 Am. Dec. 571.

Signature by other person. 6 L.R.A. 357; 22 L.R.A. 299.

Signature by mark. 23 L.R.A. 370.

Does ability to write invalidate signature made by mark or by aid of other person guiding the pen. 7 L.R.A.(N.S.) 1193.

Proof of signature by mark when attesting witnesses are dead or cannot remember. 44 L.R.A. 142.

When will deemed to have been signed or subscribed at the end. 17 L.R.A.(N.S.) 353; 23 L.R.A.(N.S.) 515; 30 L.R.A.(N.S.) 1173.

Writing name in body of will as a signature thereto. 23 L.R.A.(N.S.) 63.

Writing name in body of holographic will as signature thereto. 29 L.R.A.(N.S.) 64.

Signing of will at end of instrument where name follows attestation clause. 17 L.R.A.(N.S.) 354.

Collateral attack on probate where decree or will affirmatively shows matter below testator's signature. 42 L.R.A.(N.S.) 458.

2. Necessity that witnesses see testator sign or that they see his signature, 38 L.R.A.(N.S.) 161.

What amounts to signing in the presence of witnesses. 60 Am. Rep. 285.

4. Attestation and witnessing of will. 10 Am. Dec. 516; 114 Am. St. Rep. 209.

Effect of fact that person who executed will was not previously known to witness. 21 L.R.A.(N.S.) 531.

Collateral attack on probate where decree or will affirmatively shows the will to be invalid because of defects as to attesting witnesses. 42 L.R.A.(N.S.) 456.

Signature of witnesses to will before testator signs it. 14 L.R.A. 160; 26 L.R.A.(N.S.) 1126.

When witness is deemed to subscribe in testator's presence. 1 L.R.A.(N.S.) 393; 28 Am. Rep. 595.

Attestation of will by mark. 22 L.R.A. 372.

Necessity of attestation clause of will. 14 L.R.A.(N.S.) 255.

§ 5650. What unnecessary in nuncupative wills. A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities. [R. C. 1905, § 5094; Civ. C. 1877, § 692; R. C. 1899, § 3649.]

§ 5651. How witnessed. A witness to a written will must write with his name his place of residence; and a person who subscribes a testator's name by his direction must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will. [R. C. 1905, § 5095; Civ. C. 1877, § 693; R. C. 1899, § 3650.]

§ 5652. When codicil republishes will. The execution of a codicil, referring to a previous will, has the effect to republish the will as modified by the codicil. [R. C. 1905, § 5096; Civ. C. 1877, § 694; R. C. 1899, § 3651.]

How far will modified by codicil. 1 L.R.A.(N.S.) 397.

Revocation of prior will by codicil. 37 L.R.A. 571.

Effect of republication of will by codicil to incorporate extrinsic document into will. 68 L.R.A. 381.

Effect of signature to codicil of will not signed at the end. 17 L.R.A.(N.S.) 357.

As to similar provision in Cal. Civ. Code, § 1287, see *Re Ladd*, 94 Cal. 670, 30 Pac. 99; *Re McCauley*, 138 Cal. 432, 71 Pac. 512.

§ 5653. Law of place governs. A will of real or personal property, or both, or a revocation thereof made out of this state by a person not having his domicile in this state is as valid when executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, as if it was made in this state and according to the provisions of this chapter. [R. C. 1905, § 5097; Civ. C. 1877, § 695; R. C. 1899, § 3652.]

Law of testator's domicile controls as to personal property. 2 Am. Dec. 454.

§ 5654. Validity of will depends on compliance with law. No will or revocation is valid unless executed either according to the provisions of this chapter, or according to the law of the place in which it was made, or in which the testator was at the time domiciled. [R. C. 1905, § 5098; Civ. C. 1877, § 696; R. C. 1899, § 3653.]

§ 5655. Law where made governs, though domicile subsequently changed. Whenever a will or a revocation thereof is duly executed according to the law of the place in which the same was made, or in which the testator was at the time domiciled, the same is regulated as to the validity of its execution by the law of such place, notwithstanding that the testator subsequently changed his domicile to a place by the law of which such will would be void. [R. C. 1905, § 5099; Civ. C. 1877, § 697; R. C. 1899, § 3654.]

§ 5656. Deposit with county judge. His duties. Every county judge must deposit in his office any will delivered to him for that purpose and give a written receipt to the depositor; and must inclose such will in a sealed wrapper so that it cannot be read and indorse thereon the name of the testator, his residence and the date of the deposit; and such wrapper must not be opened until its delivery under the provisions of the next section. [R. C. 1905, § 5100; Civ. C. 1877, § 698; R. C. 1899, § 3655.]

§ 5657. How disposed of. A will deposited under the provisions of the last section must be delivered only:

1. To the testator in person.
2. Upon his written order duly proved by the oath of a subscribing witness.
3. After his death, to the person, if any, named in the indorsement on the wrapper of the will; or,
4. If there is no such indorsement and if the will was not deposited with the county judge having jurisdiction of its probate, then to the county judge who has jurisdiction. [R. C. 1905, § 5101; Civ. C. 1877, § 699; R. C. 1899, § 3656.]

§ 5658. Opened after death by county judge. The county judge with whom a will is deposited, or to whom it is delivered, must after the death of the testator publicly open and examine the will and file it in his office, there to remain until duly proved, or deliver it to the county judge having jurisdic-

tion of its probate. [R. C. 1905, § 5102; Civ. C. 1877, § 700; R. C. 1899, § 3657.]

§ 5659. Proof of lost will. A lost or destroyed will of real or personal property, or both, may be established in the cases provided in the probate code or any act in force on that subject. [R. C. 1905, § 5103; Civ. C. 1877, § 701; R. C. 1899, § 3658.]

Presumption as to revocation of missing will. 38 L.R.A. 433.

§ 5660. Revocation of wills. Except in the cases in this chapter mentioned no written will, nor any part thereof, can be revoked or altered otherwise than:

1. By a written will or other writing of the testator, declaring such revocation or alteration and executed with the same formalities with which a will should be executed by such testator; or,

2. By being burnt, torn, cancelled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction. [R. C. 1905, § 5104; Civ. C. 1877, § 702; R. C. 1899, § 3659.]

Revocation of will. 45 Am. Rep. 338; 28 Am. St. Rep. 344.

—by implication. 15 Am. Dec. 659.

—by mistake or under an erroneous assumption of fact. 48 Am. St. Rep. 198.

—by subsequent birth of issue. 26 Am. Rep. 153.

—from change in condition or circumstances of testator, other than marriage or birth of issue. 130 Am. St. Rep. 628.

—how accomplished. 45 Am. Rep. 338.

Partition deed as revocation of will. 57 L.R.A. 339.

Effect of divorce to revoke gift by will. 69 L.R.A. 940.

Divorce as affecting right to take under gift to "husband," "wife" or "widow." 33 L.R.A.(N.S.) 826.

Settlement of property rights between husband and wife on account of divorce as implied revocation of will. 20 L.R.A.(N.S.) 1073.

Power of one lacking testamentary capacity to revoke will. 18 L.R.A.(N.S.) 99.

Revocability of mutual will. 27 L.R.A.(N.S.) 508; 37 L.R.A.(N.S.) 1196.

Republication of revoked will. 76 Am. St. Rep. 249.

As to similar provision in Cal. Civ. Code, § 1292, see *Clarke v. Ransom*, 50 Cal. 595; *Re Tillman*, 3 Cal. Unrep. 677, 31 Pac. 563; *Re Hickman*, 101 Cal. 609, 36 Pac. 118; *Re Comassi*, 107 Cal. 1, 28 L.R.A. 414, 40 Pac. 15; *Re Lones*, 108 Cal. 688, 41 Pac. 771; *Re McCauley*, 138 Cal. 432, 71 Pac. 512.

2. Revocation by obliterations or interlineations. 25 Am. Rep. 35.

Cancellation or mutilation of will as affected by invalidity of a second will. 6 L.R.A.(N.S.) 1107.

Attempt to revoke portions of a will by burning, tearing, cancelling, obliterating or destroying. 38 L.R.A.(N.S.) 797.

Declarations of testator as admissible on issue of his intent in destroying will. 24 L.R.A.(N.S.) 180.

Subsequent ratification of unauthorized destruction as revocation of will. 2 B. R. C. 550.

§ 5661. How cancellation must be proved. When a will is cancelled or destroyed by any other person than the testator, the direction of the testator and the fact of such injury or destruction must be proved by two witnesses. [R. C. 1905, § 5105; Civ. C. 1877, § 703; R. C. 1899, § 3660.]

§ 5662. Effect of partial erasure. A revocation by obliteration on the face of the will may be partial or total, and is complete if the material part is so obliterated as to show an intention to revoke; but when, in order to effect a new disposition, the testator attempts to revoke a provision of the will by altering or obliterating it on the face thereof, such revocation is not valid unless the new disposition is legally effected. [R. C. 1905, § 5106; Civ. C. 1877, § 704; R. C. 1899, § 3661.]

Attempt to revoke portions of a will by burning, tearing, cancelling, obliterating or destroying. 38 L.R.A.(N.S.) 797.

Burden of explaining erasures or alterations appearing on face of will. 17 L.R.A.(N.S.) 184.

§ 5663. Revocation of will in duplicate. The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates. [R. C. 1905, § 5107; Civ. C. 1877, § 705; R. C. 1899, § 3662.]

§ 5664. When subsequent will revokes prior. A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will. [R. C. 1905, § 5108; Civ. C. 1877, § 706; R. C. 1899, § 3663.]

Revocation of will by subsequent will. 37 L.R.A. 561.

As to similar provision in Cal. Civ. Code, § 1296, see *Re Murphy*, 104 Cal. 554, 38 Pac. 543.

§ 5665. Revocation does not revive former will without express words. If, after making a will, the testator duly makes and executes a subsequent will, the destruction, cancelling or revocation of the latter does not revive the former unless it appears by the terms of such revocation that it was his intention to revive the former will, or unless after such destruction, cancelling or revocation he duly republishes the prior will. [R. C. 1905, § 5109; Civ. C. 1877, § 707; R. C. 1895, § 3664.]

Presumption that one of two wills known to have been made was destroyed for purpose of revocation, and that the one retained is the last one, is overcome by contradicted testimony of person who drew both that the one not found was drawn last. *Starkweather v. Bell*, 13 S. D. 475, 83 N. W. 566.

Effect of revocation of later will to revive an earlier one. 37 L.R.A. 575; 14 L.R.A. (N.S.) 937; 37 L.R.A. (N.S.) 291; 76 Am. Dec. 652; 45 Am. Rep. 327.

As to similar provision in Cal. Civ. Code, § 1297, see *Re Lones*, 108 Cal. 688, 41 Pac. 771.

§ 5666. Will made before marriage revoked, if issue unprovided for. If, after having made a will, the testator marries and has issue of such marriage, born either in his lifetime or after his death and the wife or issue survives him, the will is revoked, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received. [R. C. 1905, § 5110; Civ. C. 1877, § 707; R. C. 1899, § 3665.]

Husband and wife are heirs at law to each other's estate, the portion which each will inherit depending upon presence or absence of other heirs. *Fore v. Fore*, 2 N. D. 260, 50 N. W. 712.

Will is revoked by testator's subsequent marriage where wife is not mentioned therein nor otherwise provided for. *Griffing v. Gilason*, 21 S. D. 56, 109 N. W. 646.

Will made before death of first wife without issue, revoked on marriage to second. *Re Larsen*, 18 S. D. 335, 100 N. W. 738, 5 A. & E. Ann. Cas. 794.

Revocation of will by marriage. 80 Am. Dec. 516.

Adopted child as a "child" within statute relating to revocation of will. 30 L.R.A. (N.S.) 916.

As to similar provision in Cal. Civ. Code, § 1298, see *Sanders v. Simcich*, 65 Cal. 50, 2 Pac. 741; *Re Comassi*, 107 Cal. 1, 28 L.R.A. 414, 40 Pac. 15.

§ 5667. Same, if wife unprovided for. If after making a will the testator marries and the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract or unless she is provided for in the will or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation must be received. [R. C. 1905, § 5111; Civ. C. 1877, § 708; R. C. 1899, § 3666.]

Collateral attack on probate where decree or will affirmatively shows its revocation by testator's marriage. 42 L.R.A. (N.S.) 457.

As to similar provision in Cal. Civ. Code, § 1299, see *Sanders v. Simcich*, 65 Cal. 50, 2 Pac. 741; *Corker v. Corker*, 87 Cal. 643, 25 Pac. 922; *Re Comassi*, 107 Cal. 1, 28 L.R.A. 414, 40 Pac. 15.

§ 5668. Marriage of woman revokes. A will executed by an unmarried woman is revoked by a subsequent marriage and is not revived by the death of her husband. [R. C. 1905, § 5112; Civ. C. 1877, § 709; R. C. 1899, § 3667.]

Revocation of will by marriage of a woman. 49 Am. Rep. 329.

Collateral attack on probate where decree or will affirmatively shows its revocation by testator's marriage. 42 L.R.A. (N.S.) 457.

As to similar provision in Cal. Civ. Code, § 1300, see *Re Comassi*, 107 Cal. 1, 28 L.R.A. 414, 40 Pac. 15.

§ 5669. Effect of sale of devised property. An agreement made by a testator for the sale or transfer of property disposed of by a will previously made does not revoke such disposal; but the property passes by the will, subject to the same remedies on the testator's agreement for a specific performance or otherwise against the devisees or legatees as might be had against the testator's successors if the same had passed by succession. [R. C. 1905, § 5113; Civ. C. 1877, § 710; R. C. 1899, § 3668.]

§ 5670. Incumbrance not a revocation. A charge or incumbrance upon any estate for the purpose of securing the payment of money or the performance of any covenant or agreement is not a revocation of any will relating to the same estate which was previously executed; but the devise and legacies therein contained must pass subject to such charge or incumbrance. [R. C. 1905, § 5114; Civ. C. 1877, § 711; R. C. 1899, § 3669.]

§ 5671. Partial disposal not revocation. A conveyance, settlement or other act of a testator by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not a revocation, but the will passes the property which would otherwise devolve by succession. [R. C. 1905, § 5115; Civ. C. 1877, § 712; R. C. 1899, § 3670.]

§ 5672. When instrument expresses intent it is a revocation. If the instrument by which an alteration is made in the testator's interest in a thing previously disposed of by his will expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency by reason of which they do not take effect. [R. C. 1905, § 5116; Civ. C. 1877, § 713; R. C. 1899, § 3671.]

§ 5673. Revocation revokes codicils. The revocation of a will revokes all its codicils. [R. C. 1905, § 5117; Civ. C. 1877, § 714; R. C. 1899, § 3672.]

§ 5674. Child unprovided for succeeds as in intestacy. Whenever a testator has a child born after the making of his will, either in his lifetime or after his death and dies leaving such child unprovided for by any settlement and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's real and personal property that he would have succeeded to if the testator had died intestate. [R. C. 1905, § 5118; Civ. C. 1877, § 715; R. C. 1899, § 3673.]

When children entitled to inherit notwithstanding will. 12 Am. St. Rep. 97.

Admissibility of extrinsic circumstances in ascertaining intention of testator in respect to disinheriting an after-born child. 13 L.R.A.(N.S.) 781.

Capacity of child en ventre sa mere to take under devise or bequest to "children," etc. 1 B. R. C. 582.

As to similar provision in Cal. Civ. Code, § 1306, see *Re Wardell*, 57 Cal. 484; *Smith v. Olmstead*, 88 Cal. 582, 12 L.R.A. 46, 22 Am. St. Rep. 336, 26 Pac. 521; *Painter v. Painter*, 113 Cal. 371, 45 Pac. 689; *Re Smith*, 145 Cal. 118, 78 Pac. 369.

§ 5675. Children omitted succeed as in intestacy. When any testator omits to provide in his will for any of his children or for the issue of any deceased child, unless it appears that such omission was intentional, such child or the issue of such child must have the same share in the estate of the testator, as if he had died intestate, and succeeds thereto as provided in the preceding section. [R. C. 1905, § 5119; Civ. C. 1877, § 715; R. C. 1899, § 3674.]

As to omission to provide for children in will. *Hedderich v. Hedderich*, 18 N. D. 488, 123 N. W. 276.

Unexplained omission of children in will does not necessarily invalidate instrument, even though such will may be ineffectual as to such persons, and distribution to such children will be made uninfluenced by will. *Lowery v. Hawker*, 22 N. D. 318, 37 L.R.A.(N.S.) 1143, 133 N. W. 918.

Parol testimony is admissible to establish fact that child omitted from will was intentionally omitted. *Re Schultz*, 19 N. D. 688, 125 N. W. 555.

When child deemed intentionally omitted from. 39 Am. Dec. 740.

As to similar provision in Cal. Civ. Code, § 1307, see *Re Wardell*, 57 Cal. 484; *Re Grider*, 81 Cal. 571, 22 Pac. 908; *Re Stevens*, 83 Cal. 322, 17 Am. St. Rep. 252, 23 Pac. 379; *Re Barter*, 86 Cal. 441, 25 Pac. 15; *Smith v. Olmstead*, 88 Cal. 583, 12 L.R.A.

46, 22 Am. St. Rep. 336, 26 Pac. 521; *Rhoton v. Blevin*, 99 Cal. 645, 34 Pac. 513; *Re Salmon*, 107 Cal. 614, 48 Am. St. Rep. 164, 40 Pac. 1030; *Re Callaghan*, 119 Cal. 571, 39 L.R.A. 689, 51 Pac. 860; *Re Ross*, 140 Cal. 282, 73 Pac. 976; *Wardell's Estate*, *Myrick*, Prob. Ct. Rep. (Cal.) 224.

§ 5676. Rules governing assignments of shares in such cases. When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in a will as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will if any; if that is not sufficient, so much as may be necessary must be taken from all the devisees or legatees in proportion to the value they may respectively receive under the will unless the obvious intention of the testator in relation to some specific devise or bequest or other provision in the will would thereby be defeated; in such case such specific devise, legacy or provision may be exempted from such apportionment and a different apportionment, consistent with the intention of the testator, may be adopted. [R. C. 1905, § 5120; Civ. C. 1877, § 715; R. C. 1899, § 3675.]

As to similar provision in Cal. Civ. Code, § 1308, see *Re Ross*, 140 Cal. 282, 73 Pac. 976; *Re Smith*, 145 Cal. 118, 78 Pac. 369.

§ 5677. Take nothing under three last sections, when. If such children or their descendants so unprovided for had an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they take nothing by virtue of the provisions of the three preceding sections. [R. C. 1905, § 5121; Civ. C. 1877, § 715; R. C. 1899, § 3676.]

§ 5678. What devise of land conveys. Every devise of land in any will conveys all the estate of the devisor therein, which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate. [R. C. 1905, § 5122; Civ. C. 1877, § 715; R. C. 1899, § 3677.]

What is appurtenant to land for the purposes of wills. 15 L.R.A. 654.

Devise or bequest of property as passing good will of business conducted in connection with such property. 16 L.R.A.(N.S.) 240.

Devise as carrying visible easement. 38 L.R.A.(N.S.) 882.

Will real estate pass under the word "effects" in a will. 12 L.R.A.(N.S.) 661.

Right to proceeds of land under a devise. 58 L.R.A. 719.

Necessity of word "heirs" in devise in trust to pass fee to trustee. 2 L.R.A.(N.S.) 172.

Right of husband under a devise and bequest to others subject to the "legal rights" of the husband. 2 L.R.A.(N.S.) 1193.

Expression of intent to make provision for family as affecting estate taken by beneficiaries of trust in absence of any express definition thereof. 17 L.R.A.(N.S.) 1215.

Effect of reference to extrinsic document to control or modify the character of the estate that would otherwise pass under instrument. 8 L.R.A.(N.S.) 1038.

§ 5679. Devisee's descendants take. When any estate is devised to any child or other relation of the testator and the devisee dies before the testator leaving lineal descendants, such descendants take the estate so given by the will in the same manner as the devisee would have done had he survived the testator. [R. C. 1905, § 5123; Civ. C. 1877, § 716; R. C. 1899, § 3678.]

Effect of death of beneficiary before testator. 94 Am. Dec. 156.

As to similar provision in Cal. Civ. Code, § 1310, see *Re Sutro*, 139 Cal. 87, 72 Pac. 827; *Re Ross*, 140 Cal. 282, 73 Pac. 976.

§ 5680. When gift to witness void. All beneficial devises, legacies or gifts whatever made or given in any will to a subscribing witness thereto are void, unless there are two other competent subscribing witnesses to the same; but a mere charge on the estate of the testator for the payment of debts does not prevent his creditors from being competent witnesses to the will. [R. C. 1905, § 5124; Civ. C. 1877, § 717; R. C. 1899, § 3679.]

§ 5681. Witness takes if entitled to share in estate. If a witness to whom any beneficial devise, legacy or gift, void by the preceding section, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the devise or bequest made to him in the will, and he may recover the same of the other devisees or legatees

named in the will in proportion to and out of the parts devised or bequeathed to them. [R. C. 1905, § 5125; Civ. C. 1877, § 718; R. C. 1899, § 3680.]

§ 5682. Subsequent incompetency of witness does not avoid will. If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved. [R. C. 1905, § 5126; Civ. C. 1877, § 718; R. C. 1899, § 3681.]

§ 5683. Feloniously causing death of another, bar to taking under his will. No person who has been finally convicted of feloniously causing the death of another shall take or receive any property or benefit by succession, will or otherwise, directly or indirectly, by reason of the death of such person, but all property of the deceased and all rights conditioned upon his death shall vest and be determined the same as if the person convicted was dead. [R. C. 1905, § 5127; R. C. 1895, § 3682.]

Homicide as affecting devolution of property. 3 L.R.A.(N.S.) 726; 39 L.R.A.(N.S.) 1088.

Effect on right to probate will of fact that legatee is murderer of testator. 34 L.R.A.(N.S.) 967.

§ 5684. After-acquired property passes by will. Any estate, right or interest in lands acquired by the testator after the making of his will, passes thereby and in like manner as if title thereto was vested in him at the time of making the will, unless the contrary manifestly appears by the will to have been the intention of the testator. Every will made in express terms, devising or in any other terms, denoting the intent of the testator to devise, all the real estate of such testator passes all the real estate which such testator was entitled to devise at the time of his decease. [R. C. 1905, § 5128; Civ. C. 1877, § 719; R. C. 1899, § 3683.]

Whether and when after-acquired property passes by will. 135 Am. St. Rep. 794.

ARTICLE 2.—INTERPRETATION OF WILLS AND EFFECT OF VARIOUS PROVISIONS.

§ 5685. Intention of testator governs. A will is to be construed according to the intention of the testator. When his intention cannot have effect to its full extent it must have effect as far as possible. [R. C. 1905, § 5129; Civ. C. 1877, § 720; R. C. 1899, § 3684.]

Jurisdiction of equity to construe will. 129 Am. St. Rep. 78.

As to similar provision in Cal. Civ. Code, § 1317, see *Re Willey*, 128 Cal. 1, 56 Pac. 550, 60 Pac. 471; *Re Fair*, 132 Cal. 523, 84 Am. St. Rep. 70, 60 Pac. 442, 64 Pac. 1000; *Re Fair*, 136 Cal. 79, 68 Pac. 306.

§ 5686. Will excludes oral declarations. In case of uncertainty arising upon the face of a will, as to the application of any of its provisions the testator's intention is to be ascertained from the words of the will taking into view the circumstances under which it was made, exclusive of his oral declarations. [R. C. 1905, § 5130; Civ. C. 1877, § 721; R. C. 1899, § 3685.]

In construction of ambiguous expressions situation of parties may be taken into view. *Rock v. Zimmermann*, 25 S. D. 237, 126 N. W. 265.

Admissibility of declarations of testators in controversies respecting wills. 3 Am. Dec. 395; 107 Am. St. Rep. 459.

Competency of scrivener or draftsman to testify to his own or the testator's intention. 38 L.R.A.(N.S.) 91.

Parol or extrinsic evidence as to intention to incorporate extrinsic document into will. 68 L.R.A. 384.

—of testator's intent to adeem legacy or devise. 40 L.R.A.(N.S.) 551, 558.

—as to testator's intent to adeem general legacy by gift. 38 L.R.A.(N.S.) 592.

—for the purpose of charging property with payment of legacies or debts where the will is silent on that point. 19 L.R.A.(N.S.) 457.

—to ascertain testator's intention as to disinherit after-born child. 13 L.R.A.(N.S.) 781.

—to show that instrument, on its face a will, was not intended as such. 28 L.R.A.(N.S.) 417.

—to show that instrument not on its face of a testamentary character was intended to be such, so as to take effect as a will. 13 L.R.A.(N.S.) 1203.

As to similar provision in Cal. Civ. Code, § 1318, see *Re Young*, 123 Cal. 337, 55 Pac. 1011.

§ 5687. **Rules of interpretation.** In interpreting a will, subject to the laws of this state the rules prescribed by the following sections of this chapter are to be observed, unless an intention to the contrary clearly appears. [R. C. 1905, § 5131; Civ. C. 1877, § 722; R. C. 1899, § 3686.]

§ 5688. **Construed together, if several.** Several testamentary instruments executed by the same testator are to be taken and construed together as one instrument. [R. C. 1905, § 5132; Civ. C. 1877, § 723; R. C. 1899, § 3687.]

§ 5689. **Parts construed together. If irreconcilable, latter prevails.** All parts of a will are to be construed in relation to each other, and so as if possible to form one consistent whole, but when several parts are absolutely irreconcilable the latter must prevail. [R. C. 1905, § 5133; Civ. C. 1877, § 724; R. C. 1899, § 3688.]

§ 5690. **Distinct devise not affected by words less clear.** A clear and distinct devise or bequest cannot be affected by any reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of or reference to its contents in another part of the will. [R. C. 1905, § 5134; Civ. C. 1877, § 725; R. C. 1899, § 3689.]

As to similar provision in Cal. Civ. Code, § 1322, see *Re Marti*, 132 Cal. 666, 61 Pac. 964, 64 Pac. 1071.

§ 5691. **Ambiguities explained by reference to other parts.** When the meaning of any part of a will is ambiguous or doubtful it may be explained by any reference thereto or recital thereof in another part of the will. [R. C. 1905, § 5135; Civ. C. 1877, § 726; R. C. 1899, § 3690.]

§ 5692. **Words taken in ordinary sense.** The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected and that other can be ascertained. [R. C. 1905, § 5136; Civ. C. 1877, § 727; R. C. 1899, § 3691.]

Construction of "and" for "or" and vice versa. 48 Am. Dec. 565.

What property passes by term "goods." 1 Am. Dec. 294.

As to similar provision in Cal. Civ. Code, § 1324, see *Re Marti*, 132 Cal. 666, 61 Pac. 964, 64 Pac. 1071.

§ 5693. **Give every expression effect.** The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render some of the expressions inoperative. [R. C. 1905, § 5137; Civ. C. 1877, § 728; R. C. 1899, § 3692.]

§ 5694. **So as to prevent intestacy.** Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy. [R. C. 1905, § 5138; Civ. C. 1877, § 729; R. C. 1899, § 3693.]

§ 5695. **Technical words.** Technical words in a will are to be taken in their technical sense unless the context clearly indicates a contrary intention. [R. C. 1905, § 5139; Civ. C. 1877, § 730; R. C. 1899, § 3694.]

§ 5696. **Same. Unnecessary.** Technical words are not necessary to give effect to any species of disposition by will [R. C. 1905, § 5140; Civ. C. 1877, § 731; R. C. 1899, § 3695.]

Liberal construction of charitable trust in will should be adopted, in order to render trust effective. *Hagen v. Sacrison*, 19 N. D. 160, 26 L.R.A.(N.S.) 724, 123 N. W. 518.

§ 5697. **Term "heirs" not requisite to devise fee.** The term "heirs" or other words of inheritance are not requisite to devise a fee and a devise of real property passes all the estate of the testator unless otherwise limited. [R. C. 1905, § 5141; Civ. C. 1877, § 732; R. C. 1899, § 3696.]

§ 5698. **Property embraced in power passes by will.** Real or personal property embraced in a power to devise passes by a will purporting to devise all the real or personal property of a testator. [R. C. 1905, § 5142; Civ. C. 1877, § 733; R. C. 1899, § 3697.]

Devise including absolute power of disposition necessarily vests an estate in fee. 28 Am. Rep. 4.

Devise or bequest for life with power of disposal. 139 Am. St. Rep. 82.

As to similar provision in Cal. Civ. Code, § 1330, see *Re Fair*, 132 Cal. 523, 84 Am. St. Rep. 70, 60 Pac. 442, 64 Pac. 1000.

§ 5699. When all property passes. A devise or bequest of all the testator's real or personal property in express terms or in any other terms denoting his intent to dispose of all his real or personal property, passes all the real or personal property which he was entitled to dispose of by will at the time of his death. [R. C. 1905, § 5143; Civ. C. 1877, § 734; R. C. 1899, § 3698.]

Clause in will by which rest, residue and remainder of his real property is devised, but provided that such devise should not affect land specifically devised, meant that testator intended by such clause to devise all land not specifically devised, whether he had more or less than he could remember when he gave description. *Rock v. Zimmermann*, 25 S. D. 237, 126 N. W. 265.

§ 5700. Devise of residue passes what. A devise of the residue of the testator's real property passes all the real property which he was entitled to devise at the time of his death, not otherwise effectually devised by his will. [R. C. 1905, § 5144; Civ. C. 1877, § 735; R. C. 1899, § 3699.]

Devolution of lapsed legacy or devise where will contains residuary clause. 44 L.R.A.(N.S.) 789.

As to similar provision in Cal. Civ. Code, § 1332, see *Re Upham*, 127 Cal. 90, 59 Pac. 315.

§ 5701. Bequest of residue passes what. A bequest of the residue of the testator's personal property passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will. [R. C. 1905, § 5145; Civ. C. 1877, § 736; R. C. 1899, § 3700.]

As to similar provision in Cal. Civ. Code, § 1333, see *Re Upham*, 127 Cal. 90, 59 Pac. 315.

§ 5702. When passes to those entitled to succeed. A testamentary disposition to "heirs," "relations," "nearest relations," "representatives," "legal representative," or "personal representative," or "family," "issue," "descendants," "nearest," or "next of kin" of any person without other words of qualification and when the terms are used as words of donation and not of limitation vests the property in those who would be entitled to succeed to the property of such person according to the provisions of the chapter on succession in this code. [R. C. 1905, § 5146; Civ. C. 1877, § 737; R. C. 1899, § 3701.]

What words in will pass real estate. 14 Am. Dec. 576.

Meaning of "next of kin." 15 L.R.A. 300.

Right of persons claiming through deceased relative to participate with those standing in equal degree of relationship with such relative, in provision for "next of kin," etc. 28 L.R.A.(N.S.) 479.

Do terms "child," "children," "issue," etc., in a will, include adopted children. 27 L.R.A.(N.S.) 1158.

Who takes under gift to "husband," "wife" or "widow." 33 L.R.A.(N.S.) 816.

Who are relatives or relations. 13 L.R.A. 37; 14 L.R.A. 342.

§ 5703. When words of donation and not limitation. The terms mentioned in the last section are used as words of donation and not limitation when the property is given to the person so designated directly and not as a qualification of an estate given to the ancestor of such person. [R. C. 1905, § 5147; Civ. C. 1877, § 738; R. C. 1899, § 3702.]

§ 5704. Postponed possession. Words in a will referring to death or survivorship simply, relate to the time of the testator's death, unless possession is actually postponed when they must be referred to the time of possession. [R. C. 1905, § 5148; Civ. C. 1877, § 739; R. C. 1899, § 3703.]

As to similar provision in Cal. Civ. Code, § 1336, see *Re Winter*, 114 Cal. 186, 45 Pac. 1063.

§ 5705. Class includes all. A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period it includes also all persons coming within the description before the time to which possession is postponed. [R. C. 1905, § 5149; Civ. C. 1877, § 740; R. C. 1899, § 3704.]

To justify operation of rule laid down in this section there must at least be delivery of deed, which implies intent that it shall become at once operative, either absolutely or conditionally. *Koester v. Northwestern Port Huron Co.*, 24 S. D. 546, 124 N. W. 740.

Who entitled to take under bequests and devises to class. 73 Am. St. Rep. 413.

Devises and bequests to children as a class. 46 Am. Dec. 666.

Time for ascertaining members of class described as testator's "heirs," "next of kin," "relations," etc., to whom an estate in real or personal property is limited by way of remainder or executory gift. 33 L.R.A.(N.S.) 1.

§ 5706. When realty deemed personalty. When a will directs the conversion of real property into money such property and all its proceeds must be deemed personal property from the time of the testator's death. [R. C. 1905, § 5150; Civ. C. 1877, § 741; R. C. 1899, § 3705.]

Real property converted into personalty by will is governed by laws of jurisdiction in which testator was domiciled at time of death. *Penfield v. Tower*, 1 N. D. 216, 46 N. W. 413.

Conflict of laws as to equitable conversion. 2 L.R.A.(N.S.) 457.

When is there such a failure of testator's purpose or object as to preclude the application of the doctrine of equitable conversion. 20 L.R.A.(N.S.) 117.

Conversion by directing sale after devising land. 39 L.R.A.(N.S.) 817.

As of what time conversion takes place under direction to sell real property which postpones sale to definitely ascertainable time subsequent to testator's death. 20 L.R.A.(N.S.) 65.

As to similar provision in Cal. Civ. Code, § 1338, see *Bank of Ukiah v. Rice*, 143 Cal. 265, 101 Am. St. Rep. 118, 76 Pac. 1020; *Re Pforr*, 144 Cal. 121, 77 Pac. 825.

§ 5707. Unborn child included in class. A child conceived before, but not born until after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class. [R. C. 1905, § 5151; Civ. C. 1877, § 742; R. C. 1899, § 3706.]

Devise or bequest to "children" or grandchildren. 1 B. R. C. 583.

Admissibility of extrinsic circumstances in ascertaining intention of testator in respect to disinheriting an after-born child. 13 L.R.A.(N.S.) 780.

§ 5708. How imperfect description corrected. When applying a will, it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will or from extrinsic evidence; but evidence of the declarations of the testator as to his intention cannot be received. [R. C. 1905, § 5152; Civ. C. 1877, § 743; R. C. 1899, § 3707.]

Extrinsic evidence to aid the interpretation or application of will. 46 Am. Rep. 72; 58 Am. Rep. 74; 50 Am. St. Rep. 279.

Correction of misdescription of land in will. 16 L.R.A. 321; 6 L.R.A.(N.S.) 943.

Parol evidence to correct description of property. 8 Am. Rep. 669.

Parol evidence to show a mistake in drafting will. 8 Am. Rep. 669.

Reforming and correcting will in equity. 66 Am. Dec. 633.

As to similar provision in Cal. Civ. Code, § 1340, see *Re Callaghan*, 119 Cal. 571, 39 L.R.A. 689, 51 Pac. 860.

§ 5709. Testamentary dispositions vest at death. Testamentary dispositions, including devises and bequests to a person on attaining majority, are presumed to vest at the testator's death. [R. C. 1905, § 5153; Civ. C. 1877, § 744; R. C. 1899, § 3708.]

Legacies, when vested and when contingent. 10 Am. St. Rep. 471.

As to similar provision in Cal. Civ. Code, § 1341, see *Re Fair*, 132 Cal. 523, 84 Am. St. Rep. 70, 60 Pac. 442, 64 Pac. 1000.

§ 5710. Divested only by precise contingency. A testamentary disposition when vested cannot be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose. [R. C. 1905, § 5154; Civ. C. 1877, § 745; R. C. 1899, § 3709.]

§ 5711. When disposition fails on death of devisee. If a devisee or legatee dies during the lifetime of the testator the testamentary disposition to him fails, unless an intention appears to substitute some other in his place except as provided in section 5679. [R. C. 1905, § 5155; Civ. C. 1877, § 746; R. C. 1899, § 3710.]

As to similar provision in Cal. Civ. Code, § 1343, see *Re Bennett*, 134 Cal. 320, 66 Pac. 370; *Re Sutro*, 139 Cal. 87, 72 Pac. 827.

§ 5712. Interests in remainder unaffected. The death of a devisee or legatee of a limited interest before the testator's death does not defeat the interests of persons in remainder who survive the testator. [R. C. 1905, § 5156; Civ. C. 1877, § 747; R. C. 1899, § 3711.]

§ 5713. Conditional disposition defined. A conditional disposition is one which depends upon the occurrence of some uncertain event by which it is either to take effect or be defeated. [R. C. 1905, § 5157; Civ. C. 1877, § 748; R. C. 1899, § 3712.]

Effect of provision in will that any beneficiary who contests the instrument shall forfeit his interest. 68 L.R.A. 447.

Will court determine whether condition in devise or bequest as to good conduct or character of beneficiary has been satisfied, where that duty has been imposed on no one else. 25 L.R.A.(N.S.) 424.

Effect of fact that breach of condition in devise or legacy relating to conduct of legatee or devisee is involuntary on latter's part. 27 L.R.A.(N.S.) 684.

Equitable relief against forfeiture of devise on condition of support. 69 L.R.A. 841.

Equitable relief against forfeiture of devise on condition of payment of money. 69 L.R.A. 842.

Character of estate created by grant, lease or devise of property to person so long as he shall desire to live upon it, or devote it to a particular use. 21 L.R.A.(N.S.) 575.

Validity of bequest to individual on condition of adhering to, or renouncing, particular religious belief. 5 L.R.A.(N.S.) 804.

Validity of provision that money shall be payable to obligee only and not to his estate. 17 L.R.A.(N.S.) 1239.

To what time is the contingency of death of a legatee or devisee without child or issue, upon which a gift is conditioned, referable. 25 L.R.A.(N.S.) 1045.

§ 5714. Condition precedent. A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect. [R. C. 1905, § 5158; Civ. C. 1877, § 749; R. C. 1899, § 3713.]

What are conditions precedent in will. 102 Am. St. Rep. 366.

§ 5715. When disposition on condition vests. When a testamentary disposition is made upon a condition precedent nothing vests until the condition is fulfilled, except when such fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof and the impossibility was unknown to the testator or arose from an unavoidable event subsequent to the execution of the will. [R. C. 1905, § 5159; Civ. C. 1877, § 750; R. C. 1899, § 3714.]

§ 5716. When condition deemed performed. A condition precedent in a will is to be deemed performed when the testator's intention has been substantially though not literally complied with. [R. C. 1905, § 5160; Civ. C. 1877, § 751; R. C. 1899, § 3715.]

§ 5717. Condition subsequent. A condition subsequent is where an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event. [R. C. 1905, § 5161; Civ. C. 1877, § 752; R. C. 1899, § 3716.]

Will directing that testatrix's land be equally divided between her four children except that specified son should have privilege of buying "homestead" did not create condition subsequent upon devise of homestead so as to make devise subject to be divested by son's election to purchase. Re Sjurson, 29 S. D. 566, 137 N. W. 341.

Effect upon remainder of forfeiture of life estate for breach of condition subsequent. 21 L.R.A.(N.S.) 605.

Effect of specifying use of real estate in devise to religious society. 11 L.R.A.(N.S.) 509.

§ 5718. Owners in common. A devise or legacy given to more than one person vests in them as owners in common. [R. C. 1905, § 5162; Civ. C. 1877, § 753; R. C. 1899, § 3717.]

As to similar provision in Cal. Civ. Code, § 1350, see Re Hittell, 141 Cal. 432, 75 Pac. 53.

§ 5719. Advancement not ademption of legacy. Advancements or gifts are not to be taken as ademptions of general legacies, unless such intention is expressed by the testator in writing. [R. C. 1905, § 5163; Civ. C. 1877, § 754; R. C. 1899, § 3718.]

Ademption of legacies. 37 Am. Dec. 667; 95 Am. St. Rep. 342.

Disposal, loss or destruction of subject-matter, or payment of debt, as ademption of specific legacy or devise. 40 L.R.A.(N.S.) 542.

Change in subject-matter or substitution of other property as ademption of a specific legacy or devise. 40 L.R.A.(N.S.) 553.

Collection of insurance policy during lifetime of testator as ademption of specific legacy thereof. 40 L.R.A.(N.S.) 561.

Gift by testator as ademption of general legacy to donee. 38 L.R.A.(N.S.) 589.

Gift to one spouse by parent of the other as ademption. 26 L.R.A.(N.S.) 1050.

ARTICLE 3.—GENERAL PROVISIONS.

§ 5720. Legacies classified. Legacies are distinguished and designated according to their nature as follows:

1. A legacy of a particular thing specified and distinguished from all others of the same kind belonging to the testator is specific; if such legacy fails resort cannot be had to the other property of the testator.

2. A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if such fund or property fails in whole or in part resort may be had to the general assets as in case of a general legacy.

3. An annuity is a bequest of certain specified sums periodically; if the fund or property out of which it is payable fails, resort may be had to the general assets as in case of a general legacy.

4. A residuary legacy embraces only that which remains after all the bequests of the will are discharged.

5. All other legacies are general legacies. [R. C. 1905, § 5164; Civ. C. 1877, § 755; R. C. 1899, § 3719.]

As to specific legacy. *Adair v. Adair*, 11 N. D. 175, 90 N. W. 804.

Demonstrative, general and specific legacies. 11 Am. Dec. 468; 8 Am. St. Rep. 721.

Specific, demonstrative and general bequests defined and distinguished. 140 Am. St. Rep. 577.

Right of devisee or legatee to attack conveyance or transfer by testator. 30 L.R.A.(N.S.) 194.

Bequest of policy of insurance, or proceeds thereof, as specific legacy. 7 L.R.A.(N.S.) 592.

Is bequest of stocks, bonds or notes general or specific. 11 L.R.A.(N.S.) 49.

As to similar provision in Cal. Civ. Code, § 1357, see *Apple's Estate*, 66 Cal. 432, 6 Pac. 7; *Re Mackay*, 107 Cal. 303, 40 Pac. 558; *Re Williams*, 112 Cal. 521, 53 Am. St. Rep. 224, 44 Pac. 808.

§ 5721. Property chargeable with payment of debts. When a person dies intestate all his property, real and personal, without any distinction between them, is chargeable with the payment of his debts, except as otherwise provided in this code and the probate code. [R. C. 1905, § 5165; Civ. C. 1877, § 756; R. C. 1895, § 3720.]

§ 5722. Order of resort for payment of debts. The property of a testator, except as otherwise specifically provided in this code and the probate code, must be resorted to for the payment of debts in the following order:

1. The property which is expressly appropriated by the will for the payment of the debts.

2. Property not disposed of by the will.

3. Property which is devised or bequeathed to a residuary legatee.

4. Property which is not specifically devised or bequeathed; and,

5. All other property ratably.

Before any debts are paid the expenses of the administration and the allowance to the family must be paid or provided for. [R. C. 1905, § 5166; Civ. C. 1877, § 757; R. C. 1895, § 3721.]

Executor of insured may claim proceeds of life policy as against special legatee and proceeds are burdened with payment of decedent's debts. *Meyer v. Meyer*, 25 S. D. 596, 127 N. W. 595.

Contribution as between specific legatees and specific devisees to pay testator's debts. 1 L.R.A.(N.S.) 461.

Order of abatement to pay debts as between demonstrative legacies and specific legacies. 4 L.R.A.(N.S.) 922.

Subrogation of specific legatees to rights of creditors. 16 Am. Dec. 105.

§ 5723. Same for payment of legacies. The property of a testator, except as otherwise specifically provided in this code and the probate code, must be resorted to for the payment of legacies in the following order:

1. The property which is expressly appropriated by the will for the payment of the legacies.

2. Property not disposed of by the will.

3. Property which is devised or bequeathed to a residuary legatee.

4. Property which is specifically devised or bequeathed. [R. C. 1905, § 5167; Civ. C. 1877, § 758; R. C. 1895, § 3722.]

Is a legacy given to a creditor in satisfaction of his debt entitled to priority over other legacies of same class. 2 B. R. C. 509.

Right of devisee to completion of improvements at the expense of the estate. 36 L.R.A.(N.S.) 303.

Right of devisee of incumbered property to exoneration at expense of legatee. 3 L.R.A.(N.S.) 898.

Remedies for enforcement of legacy when charged upon devise. 30 L.R.A.(N.S.) 815.

Admissibility of extrinsic evidence for purpose of charging property with payment of legacies or debts where the will is silent on that point. 19 L.R.A.(N.S.) 457.

As to similar provision in Cal. Civ. Code, § 1360, see *Re Neistrath*, 66 Cal. 330, 5 Pac. 507.

§ 5724. Preferred legacies. Legacies to husband, widow or kindred of any class are chargeable only after legacies to persons not related to the testator. [R. C. 1905, § 5168; Civ. C. 1877, § 759; R. C. 1899, § 3723.]

As to similar provision in Cal. Civ. Code, § 1361, see *Apple's Estate*, 66 Cal. 432, 6 Pac. 7.

§ 5725. Rules governing abatement. Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will. [R. C. 1905, § 5169; Civ. C. 1877, § 760; R. C. 1899, § 3724.]

Abatement of legacies in case of deficiency of assets. 8 Am. St. Rep. 720.

As to similar provision in Cal. Civ. Code, § 1362, see *Re Neistrath*, 66 Cal. 330, 5 Pac. 507.

§ 5726. Sale of property. In a specific devise or legacy the title passes by the will, but possession can only be obtained from the personal representative; and he may be authorized by the county court to sell the property devised or bequeathed in the cases herein provided. [R. C. 1905, § 5170; Civ. C. 1877, § 761; R. C. 1899, § 3725.]

§ 5727. When rights of purchaser not impaired by devise. The rights of a purchaser or incumbrancer of real property in good faith and for value derived from any person claiming the same by succession are not impaired by any devise made by the decedent from whom succession is claimed, unless the instrument containing such devise is duly proved as a will, and recorded in the office of the county court having jurisdiction thereof, or unless written notice of such devise is filed with the county judge of the county where the real property is situated within four years after the deviser's death. [R. C. 1905, § 5171; Civ. C. 1877, § 762; R. C. 1899, § 3726.]

§ 5728. Duty of legatees for life. When specific legacies are for life only the first legatee must sign and deliver to the second legatee, or, if there is none, to the personal representative, an inventory of the property expressing that the same is in his custody for life only, and that on his decease, it is to be delivered and to remain to the use and for the benefit of the second legatee or to the personal representative, as the case may be. [R. C. 1905, § 5172; Civ. C. 1877, § 763; R. C. 1899, § 3727.]

Right of estate of one entitled by will or statute to an allowance for support and maintenance to accumulations undrawn and unexpended at time of her death. 9 L.R.A.(N.S.) 997.

§ 5729. Income after death. In case of a bequest of the interest or income of a certain sum or fund the income accrues from the testator's death. [R. C. 1905, § 5173; Civ. C. 1877, § 764; R. C. 1899, § 3728.]

As to similar provision in Cal. Civ. Code, § 1366, see *Re Brown*, 143 Cal. 450, 77 Pac. 160.

§ 5730. Legacy in fear of death satisfied before death. A legacy or a gift in contemplation, fear or peril of death may be satisfied before death. [R. C. 1905, § 5174; Civ. C. 1877, § 765; R. C. 1899, § 3729.]

§ 5731. When legacies and annuities due. Legacies are due and deliverable at the expiration of one year after the testator's decease. Annuities commence at the testator's decease. [R. C. 1905, § 5175; Civ. C. 1877, § 766; R. C. 1899, § 3730.]

As to similar provision in Cal. Civ. Code, § 1368, see *Re Brown*, 143 Cal. 450, 77 Pac. 160.

§ 5732. Interest after due. Legacies bear interest from the time when they are due and payable, except that legacies for maintenance or to the testator's widow bear interest from the testator's decease. [R. C. 1905, § 5176; Civ. C. 1877, § 767; R. C. 1899, § 3731.]

Personal liability of executor or administrator to distributees for interest during litigation involving construction and interpretation of will. 31 L.R.A.(N.S.) 357.

Conflict of laws as to interest on legacy. 2 L.R.A.(N.S.) 468.

As to similar provision in Cal. Civ. Code, § 1369, see *Dunne v. Mastick*, 50 Cal. 244; *Mackay v. Mackay*, 107 Cal. 303, 40 Pac. 558; *Re Williams*, 112 Cal. 521, 53 Am. St. Rep. 224, 44 Pac. 808; *Re Blake*, 137 Cal. 429, 70 Pac. 303; *Re Brown*, 143 Cal. 450, 77 Pac. 160.

§ 5733. Intention controls. The four preceding sections are in all cases to be controlled by a testator's express intention. [R. C. 1905, § 5177; Civ. C. 1877, § 768; R. C. 1899, § 3732.]

As to similar provision in Cal. Civ. Code, § 1370, see *Re Williams*, 112 Cal. 521, 53 Am. St. Rep. 224, 44 Pac. 808.

§ 5734. Who entitled to letters testamentary. When it appears by the terms of a will that it was the intention of the testator to commit the execution thereof and the administration of his estate to any person as executor, such person, although not named executor, is entitled to letters testamentary in like manner as if he had been named executor. [R. C. 1905, § 5178; Civ. C. 1877, § 769; R. C. 1899, § 3733.]

As to similar provision in Cal. Civ. Code, § 1371, see *Re Ogier*, 101 Cal. 381, 40 Am. St. Rep. 61, 35 Pac. 900.

§ 5735. Authority to executor to appoint, void. An authority to an executor to appoint an executor is void. [R. C. 1905, § 5179; Civ. C. 1877, § 770; R. C. 1899, § 3734.]

§ 5736. Executor has no power before qualifying. Exception. No person has any power as an executor until he qualifies except that before letters have been issued he may pay funeral charges and take necessary measures for the preservation of the estate. [R. C. 1905, § 5180; Civ. C. 1877, § 771; R. C. 1899, § 3735.]

§ 5737. Executor of executor. No executor of an executor, as such, has any power over the estate of the first testator. [R. C. 1905, § 5181; Civ. C. 1877, § 772; R. C. 1899, § 3736.]

§ 5738. Will includes codicil. The term "will" as used in this code includes all codicils as well as wills. [R. C. 1905, § 5182; Civ. C. 1877, § 773; R. C. 1899, § 3737.]

§ 5739. What law governs. Except as otherwise provided the validity and interpretation of wills is governed, when relating to real property within this state, by the law of this state; when relating to personal property, by the law of the testator's domicile. [R. C. 1905, § 5183; Civ. C. 1877, § 774; R. C. 1899, § 3738.]

Provisions of will relating to personal property situate in this state must be construed according to law of testator's domicile at time of death. *Crandell v. Barker*, 8 N. D. 263, 78 N. W. 347; *Penfield v. Tower*, 1 N. D. 216, 46 N. W. 413; *Knox v. Barker*, 8 N. D. 272, 78 N. W. 352.

Law governing construction of will. 2 L.R.A.(N.S.) 443.

By what law members of class to whom testamentary gift is made are to be ascertained. 2 B. R. C. 557.

§ 5740. Liability of devisees and legatees. Those to whom property is given by will are liable for the obligations of the testator in the cases and to the extent prescribed by the probate code. [R. C. 1905, § 5184; Civ. C. 1877, § 775; R. C. 1895, § 3739.]

CHAPTER 53.

SUCCESSION.

§ 5741. Succession defined. Succession is the coming in of another to take the property of one who dies without disposing of it by will. [R. C. 1905, § 5185; Civ. C. 1877, § 776; R. C. 1899, § 3740.]

As to inheritance by illegitimate child. *Moen v. Moen*, 16 S. D. 210, 92 N. W. 13.
Is the right to take property by inheritance a natural or statutory right. 9 L.R.A.(N.S.) 121.

As to similar provision in Cal. Civ. Code, § 1383, see *Re Burdick*, 112 Cal. 387, 44 Pac. 734.

§ 5742. Property passes to heirs. The property, both real and personal, of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the county court and to the possession of any administrator appointed by that court for the purpose of administration. [R. C. 1905, § 5186; Civ. C. 1877, § 777; R. C. 1899, § 3741.]

Realty passes at once to heirs without appointment of administrator. *Elder v. Horseshoe Min. Co.*, 9 S. D. 636, 70 N. W. 1060, 62 Am. St. Rep. 895.

Administrator may reduce real estate to actual possession, but is not required to do so. *Territory v. Bramble*, 2 D. 189, 5 N. W. 945.

On death of wife, husband and children become tenants in common of her property.

Johnson v. Brauch, 9 S. D. 116, 68 N. W. 173, 62 Am. St. Rep. 857.

As to descent of property not disposed of by will. *Friese v. Friese*, 12 N. D. 82, 95 N. W. 446.

As to title to liquors passing to heirs on death of liquor dealer pending action against him. *State ex rel. Kelly v. McMaster*, 13 N. D. 58, 99 N. W. 58.

Rights of heirs in partnership real estate. 27 L.R.A. 348.

Right to rents on lease of intestate's property. 40 L.R.A. 321.

Homicide as affecting devolution of property. 3 L.R.A.(N.S.) 726; 39 L.R.A.(N.S.) 1088.

Does grantor's right to rescind for breach of condition as to support descend to his heirs or representatives. 23 L.R.A.(N.S.) 232.

Rights of heirs in personal property of ancestor. 112 Am. St. Rep. 727.

Who entitled to succeed to estates of intestates. 12 Am. St. Rep. 82.

Liability of heirs for obligations of ancestor. 21 L.R.A. 89.

Upon whom does the liability of an heir or devisee for his decedent's debts devolve at his own death. 39 L.R.A.(N.S.) 689.

Levy on interest of heir in ancestor's land. 23 L.R.A. 643.

As to similar provision in Cal. Civ. Code, § 1384, see *Watson v. Sutro*, 86 Cal. 500, 24 Pac. 172, 25 Pac. 64; *Smith v. Olmstead*, 88 Cal. 582, 13 L.R.A. 46, 23 Am. St. Rep. 336, 26 Pac. 521; *Phelan v. Smith*, 100 Cal. 158, 34 Pac. 667; *Bates v. Howard*, 105 Cal. 173, 38 Pac. 715.

§ 5743. Order of succession. When any person having title to any estate, not otherwise limited by marriage contract, expressly dies without disposing of the estate by will, it is succeeded to and must be distributed, unless otherwise provided in this code, and the probate code, subject to the payment of his debts, in the following manner:

1. If the decedent leaves a surviving husband or wife and only one child, or the lawful issue of one child in equal shares to the surviving husband or wife, and child, or issue of such child. If the decedent leaves a surviving husband or wife, and more than one child living, or one child living and the lawful issue of one or more deceased children, one-third to the surviving husband or wife and the remainder in equal shares to his children and to the lawful issue of any deceased child by right of representation; but if there is no child of the decedent living at the time of his death, the remainder goes to all of his lineal descendants, and if all the descendants are in the same degree of kindred to the decedent, they share equally; otherwise they take according to the right of representation. If the decedent leaves no surviving husband or wife, but leaves issue the whole estate goes to such issue, and if such issue consists of more than one child living or one child living and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the children living and the

issue of the deceased child or children by right of representation, but if the decedent's child or children be dead, leaving issue, all the estate goes to such issue by right of representation.

2. If the decedent leaves no issue and the estate does not exceed in value the sum of ten thousand dollars, all the estate goes to the surviving husband or wife, and all property in excess of ten thousand dollars in value, one-half thereof goes to the surviving husband or wife and the other half goes to decedent's father and mother in equal shares, and if either is dead to the survivor, and if both father and mother are dead, and decedent leaves brothers or sisters or children of a deceased brother or sister, then in equal shares to the brothers and sisters of decedent and to the children of any deceased brother or sister by right of representation. If the decedent leaves no issue, nor husband nor wife, the estate must go to the father and mother in equal shares, and if either is dead, to the survivor. If the decedent leaves a surviving husband or wife and no issue and no father nor mother, nor brother, nor sister, nor children of a deceased brother or sister, then the whole estate goes to the surviving husband or wife.

3. If there is no issue, nor husband nor wife, nor father, nor mother, then in equal shares to the brothers and sisters of the decedent and to the children of any deceased brother or sister by right of representation.

4. If the decedent leaves no issue, nor husband, nor wife, and no father, nor mother, nor brother, nor sister, then the estate must go to the next of kin in equal degree, excepting that when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors must be preferred to those claiming through an ancestor more remote. However, if the decedent leaves several children, or one child and the issue of one or more children, and any such surviving child dies under age and not having married, all the estate that came to the deceased child by inheritance from such decedent, descends in equal shares to the other children of the same parent, and to the issue of any such other children who are dead, by right of representation.

5. If at the death of such child, who dies under age, not having been married, all the other children of the parents are also dead and any of them have left issue, the estate that came to such child by inheritance from his parents descends to the issue of all other children of the same parents; and if all issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation.

6. If the decedent leaves no husband, wife or kindred, the estate escheats to the state for the support of the common schools.

7. If the decedent be an infant, and leave no parents, nor brother nor sister, but leaving any person of kin, acting in the capacity of a foster parent, who may have assumed or have had imposed upon him, the duty or obligation of the personal care, custody, support or maintenance of such infant after the decease of its natural parents, and until its decease, but where such relationship was not created by a guardianship of the estate of such infant, then the estate of such infant shall descend to such foster parent or such person acting in such capacity. [1911, ch. 223; R. C. 1905, § 5187; Civ. C. 1877, § 778; 1893, ch. 50, § 1; R. C. 1899, § 3742; 1903, ch. 94.]

As to descent of property. *Dalrymple v. Security Improv. Co.*, 11 N. D. 65, 88 N. W. 1033.

An illegitimate child of one acknowledging the child in writing in the presence of witnesses is an heir to his realty, where the statute took effect before the father's death. *Moen v. Moen*, 16 S. D. 210, 92 N. W. 13.

Right of persons claiming through deceased relative to participate with those standing in equal degree of relationship with such relative, in provision for "next of kin" etc. 28 L.R.A.(N.S.) 479.

Alimony as wife's distributive share. 2 L.R.A.(N.S.) 239.

Widow's right to proceeds of insurance on deceased husband's life, payable to himself or his executors or administrators. 35 L.R.A.(N.S.) 964.

As to similar provision in Cal. Civ. Code, § 1886, see *Re Magee*, 63 Cal. 414; *Re Ingram*, 78 Cal. 586, 12 Am. St. Rep. 80, 21 Pac. 435; *Re Jessup*, 81 Cal. 408, 6 L.R.A. 594, 21 Pac. 976, 22 Pac. 742, 1028; *O'Callaghan v. Bode*, 84 Cal. 489, 24 Pac. 269; *Smith v. Olmstead*, 88 Cal. 582, 12 L.R.A. 46, 22 Am. St. Rep. 336, 26 Pac. 521; *Re Carmody*, 88 Cal. 616, 26 Pac. 373; *Re Parsons*, 110 Cal. 524, 42 Pac. 960; *Re Eggers*, 114 Cal. 464, 46 Pac. 380; *Re Wilmerding*, 117 Cal. 281, 49 Pac. 181; *Knott v. McGilvray*, 124 Cal. 128, 56 Pac. 789, 6 Am. Neg. Rep. 7; *Re Smith*, 131 Cal. 433, 82 Am. St. Rep. 358, 63 Pac. 729; *Re McCauley*, 138 Cal. 546, 71 Pac. 458; *Re Miner*, 143 Cal. 194, 76 Pac. 968.

§ 5744. **Dower and curtesy abolished.** Dower and curtesy are abolished. [R. C. 1905, § 5188; Civ. C. 1877, § 779; 1893, ch. 52, § 1; R. C. 1899, § 3743.] Power of legislature to change or destroy estates by dower or curtesy. 19 L.R.A. 256.

—to increase dower right. 17 L.R.A. (N.S.) 319.

§ 5745. **Inheritance by illegitimate child.** Every illegitimate child is an heir of the person who in writing signed in the presence of a competent witness acknowledges himself to be the father of such child; and in all cases is an heir of his mother and inherits his or her estate in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock; but he does not represent his father or mother by inheriting any part of the estate of his or her kindred either lineal or collateral, unless before his death his parents shall have intermarried and his father after such marriage acknowledges him as his child or adopts him into his family, in which case such child and all the legitimate children are considered brothers and sisters and on the death of either of them intestate and without issue the others inherit his estate and are heirs, as hereinbefore provided, in like manner as if all the children had been legitimate, saving to the father and mother respectively their rights in the estates of all the children in like manner as if all had been legitimate. The issue of all marriages null in law or dissolved by divorce are legitimate. [R. C. 1905, § 5189; Civ. C. 1877, § 780; R. C. 1899, § 3744.]

If adopted under section 4450 is clothed with full rights of inheritance of legitimate child. *Eddie v. Eddie*, 8 N. D. 376, 79 N. W. 856.

Illegitimate child may inherit from father who has acknowledged him by instrument in writing properly witnessed, but not from lineal or collateral kindred. *Eddie v. Eddie*, 8 N. D. 376, 79 N. W. 856, 73 Am. St. Rep. 765.

An illegitimate child of one acknowledging the child in writing in the presence of witnesses is an heir to his realty, where the statute took effect before the father's death. *Moen v. Moen*, 16 S. D. 210, 92 N. W. 13.

Inheritance by illegitimates. 23 L.R.A. 754.

Illegitimates as next of kin. 15 L.R.A. 301.

Conflict of laws as to legitimacy of distributee. 65 L.R.A. 178.

As to similar provision in Cal. Civ. Code, § 1387, see *Re Magee*, 63 Cal. 414; *Re Jessup*, 81 Cal. 406, 6 L.R.A. 594, 21 Pac. 976, 22 Pac. 742, 1028; *Blythe v. Ayres*, 96 Cal. 532, 19 L.R.A. 40, 31 Pac. 915; *Blythe v. Ayres*, 102 Cal. 254, 36 Pac. 522; *Re Blythe*, 112 Cal. 689, 45 Pac. 6.

§ 5746. **Inheritance from illegitimate child.** If an illegitimate child who has not been acknowledged or adopted by his father dies intestate without lawful issue, his estate goes to his mother, or in case of her decease, to her heirs at law. [R. C. 1905, § 5190; Civ. C. 1877, § 781; R. C. 1899, § 3745.]

Inheritance through or from illegitimate. 23 L.R.A. 753; 27 L.R.A. (N.S.) 220.

§ 5747. **How degree of kindred established.** The degree of kindred is established by the number of generations and each generation is called a degree. [R. C. 1905, § 5191; Civ. C. 1877, § 782; R. C. 1899, § 3746.]

§ 5748. **Lineal and collateral.** The series of degrees form the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity. [R. C. 1905, § 5192; Civ. C. 1877, § 783; R. C. 1899, § 3747.]

§ 5749. **Ascending and descending.** The direct line is divided into a direct line descending and a direct line ascending. The first is that which connects the ancestor with those who descend from him. The second is that

which connects a person with those from whom he descends. [R. C. 1905, § 5193; Civ. C. 1877, § 784; R. C. 1899, § 3748.]

§ 5750. Degrees in direct line. In the direct line there are as many degrees as there are generations. Thus the son is with regard to the father in the first degree, the grandson in the second; and vice versa with regard to the father and grandfather toward the sons and grandsons. [R. C. 1905, § 5194; Civ. C. 1877, § 785; R. C. 1899, § 3749.]

How degrees of consanguinity and affinity are computed for the purposes of descent and distribution. 56 Am. Dec. 293.

§ 5751. Computation of degrees in collateral line. In the collateral line the degrees are counted by generations from one of the relations up to the common ancestor and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included and the ancestor counted but once. Thus brothers are related in the second degree, uncle and nephew in the third degree, cousins-german in the fourth degree and so on. [R. C. 1905, § 5195; Civ. C. 1877, § 786; R. C. 1899, § 3750.]

As to similar provision in Cal. Civ. Code, § 1393, see *Robinson v. Southern P. Co.*, 105 Cal. 526, 28 L.R.A. 773, 38 Pac. 94, 722.

§ 5752. Kindred of half blood inherit. Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance comes to the intestate by descent, devise or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors must be excluded from such inheritance. [R. C. 1905, § 5196; Civ. C. 1877, § 787; R. C. 1899, § 3751.]

Descent and distribution among kindred of the half blood. 29 L.R.A. 541; 26 L.R.A.(N.S.) 603; 61 Am. Dec. 665.

As to similar provision in Cal. Civ. Code, § 1394, see *Re Pearsons*, 110 Cal. 524, 42 Pac. 960; *Re Smith*, 131 Cal. 433, 82 Am. St. Rep. 358, 63 Pac. 729.

§ 5753. Advancements deducted from share. Any estate, real or personal, given by the decedent in his lifetime as an advancement to any child or other lineal descendant is a part of the estate of the decedent for the purposes of division and distribution thereof among his issue and must be taken by such child or other lineal descendant toward his share of the estate of the decedent. [R. C. 1905, § 5197; Civ. C. 1877, § 788; R. C. 1899, § 3752.]

Amount of advancement must equal or exceed share to which the heir would otherwise be entitled to exclude him from a distribution. *Aspey v. Barry*, 13 S. D. 220, 83 N. W. 91.

Interest on or to equalize advancement. 14 L.R.A. 716.

Right of one receiving advancement and executing release of interest in estate to share in after-acquired property. 65 L.R.A. 578.

§ 5754. Excess not refunded. If the amount of such advancement exceeds the share of the heir receiving the same he must be excluded from any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so received is less than his share he is entitled to so much more as will give him his full share of the estate of the decedent. [R. C. 1905, § 5198; Civ. C. 1877, § 789; R. C. 1899, § 3753.]

§ 5755. Advancements defined. All gifts and grants are made as advancements, if expressed in the gift or grant to be so made, or if charged in writing by the decedent as an advancement or acknowledged as such by the child, or other successor or heir. [R. C. 1905, § 5199; Civ. C. 1877, § 790; R. C. 1899, § 3754.]

What constitute advancements. 80 Am. Dec. 559.

Support of adult child as an advancement. 22 L.R.A.(N.S.) 1165.

Gift to one spouse by parent of the other as advancement or ademption. 26 L.R.A.(N.S.) 1050.

Grantee's oral promise to grantor to hold in trust as giving rise to constructive trust where conveyance was by way of advancement to child. 39 L.R.A.(N.S.) 920.

Admissibility of books of account to prove advancement. 52 L.R.A. 707.

Admissibility of parol evidence to show an advancement as consideration for a deed. 20 L.R.A. 108.

Parol evidence to show that deed was intended as an advancement. 25 L.R.A.(N.S.) 1205.

§ 5756. Expressed value governs. If the value of the estate so advanced is expressed in the conveyance or in the charge thereof made by the decedent or in the acknowledgment of the party receiving it, it must be held as of that value in the division and distribution of the estate; otherwise it must be estimated according to its value when given as nearly as the same can be ascertained. [R. C. 1905, § 5200; Civ. C. 1877, § 791; R. C. 1899, § 3755.]

§ 5757. Deducted from issue of person to whom made. If any child or other lineal descendant receiving advancement dies before the decedent, leaving issue, the advancement must be taken into consideration in the division and distribution of the estate and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement in like manner as if the advancement had been made directly to them. [R. C. 1905, § 5201; Civ. C. 1877, § 792; R. C. 1899, § 3756.]

§ 5758. Inheritance by representation. Inheritance or succession by right of representation takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents. [R. C. 1905, § 5202; Civ. C. 1877, § 793; R. C. 1899, § 3757.]

§ 5759. Aliens may take. Aliens may take in all cases by succession as well as citizens; and no person, capable of succeeding under the provisions of this chapter, is precluded from such succession by reason of the alienage of any relative. [R. C. 1905, § 5203; Civ. C. 1877, § 794; R. C. 1899, § 3758.]

Inheritance by, through or from alien. 31 L.R.A. 177; 37 L.R.A.(N.S.) 108.

—effect of state constitutions and statutes. 31 L.R.A. 85.

—effect of treaties. 32 L.R.A. 177.

§ 5760. If there are no heirs, escheats to the state. If there is no one capable of succeeding under the preceding sections and the title fails from a defect of heirs the property of a decedent devolves and escheats to the state and an action for the recovery of such property and to reduce it into the possession of the state or for its sale and conveyance may be brought by the state's attorney in the district court of the county or judicial subdivision in which the property is situated. [R. C. 1905, § 5204; Civ. C. 1877, § 795; R. C. 1899, § 3759.]

As to giving state's attorney notice of proceedings as to appointment of administrator. *Re McClellan*, 20 S. D. 498, 107 N. W. 681.

As to similar provision in Cal. Civ. Code, §§ 1405, 1406, see *People ex rel. Atty.-Gen. v. Roach*, 76 Cal. 298, 18 Pac. 407.

§ 5761. Subject to charges and trusts. Real property passing to the state under the preceding section, whether held by the state or its grantees, is subject to the same charges and trusts to which it would have been subject if it had passed by succession. [R. C. 1905, § 5205; Civ. C. 1877, § 796; R. C. 1899, § 3760.]

Right of state to escheat property of person dying without heirs is right which accrues only after administration and payment of debts, charges and expenses. *Re McClellan*, 27 S. D. 109, 129 N. W. 1037, Ann. Cas. 1913C, 1029.

As to similar provision in Cal. Civ. Code, § 1407, see *People ex rel. Atty.-Gen. v. Roach*, 76 Cal. 299, 18 Pac. 407.

§ 5762. Liability of those who succeed. Those who succeed to the property of a decedent are liable for his obligations in the cases and to the extent prescribed by the probate code. [R. C. 1905, § 5206; Civ. C. 1877, § 797; R. C. 1899, § 3761.]

Liability of heirs for obligations of ancestor. 21 L.R.A. 89.

Upon whom does the liability of an heir or devisee for his decedent's debts devolve at his own death. 39 L.R.A.(N.S.) 689.

Liability of heirs or devisee for legacy charged on devise. 30 L.R.A.(N.S.) 818.

CHAPTER 54.

OBLIGATIONS.

- ARTICLE 1. DEFINITION OF OBLIGATIONS, §§ 5763, 5764.
 2. INTERPRETATION OF OBLIGATIONS, §§ 5765-5781.
 3. TRANSFER OF OBLIGATIONS, §§ 5782-5792.
 4. EXTINCTION OF OBLIGATIONS, §§ 5793-5820.
 5. PERFORMANCE OF OBLIGATIONS OR OFFER, §§ 5821-5824.
 6. ACCORD AND SATISFACTION OF OBLIGATIONS, §§ 5825-5828.
 7. NOVATION, §§ 5829-5832.
 8. RELEASE, §§ 5833-5835.

ARTICLE 1.— DEFINITION OF OBLIGATIONS.

§ 5763. **Obligation defined.** An obligation is a legal duty by which a person is bound to do or not to do a certain thing. [R. C. 1905, § 5207; Civ. C. 1877, § 798; R. C. 1899, § 3762.]

As to similar provisions in Cal. Civ. Code, § 1427, see *Wood v. Franks*, 56 Cal. 217.

§ 5764. **Origin and enforcement.** An obligation arises either from:

1. The contract of the parties; or,
2. The operation of law.

An obligation arising from operation of law may be enforced in the manner provided by law or by civil action or proceeding. [R. C. 1905, § 5208; Civ. C. 1877, § 799; R. C. 1899, § 3763.]

As to similar provision in Cal. Civ. Code, § 1428, see *Wood v. Franks*, 56 Cal. 217.

ARTICLE 2.— INTERPRETATION OF OBLIGATIONS.

§ 5765. **Rules of interpretation.** The rules which govern the interpretation of contracts are prescribed by article 7 of chapter 55. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted. [R. C. 1905, § 5209; Civ. C. 1877, § 800; R. C. 1899, § 3764.]

§ 5766. **Obligations classified.** An obligation imposed upon several persons, or a right created in favor of several persons, may be:

1. Joint.
2. Several; or,
3. Joint and several. [R. C. 1905, § 5210; Civ. C. 1877, § 801; R. C. 1899, § 3765.]

As to similar provision in Cal. Civ. Code, § 1430, see *Farmers' Exch. Bank v. Morse*, 129 Cal. 239, 61 Pac. 1088.

§ 5767. **When presumed joint.** An obligation imposed upon several persons or a right created in favor of several persons is presumed to be joint and not several, except in the special cases mentioned in the article on the interpretation of contracts. This presumption in the case of a right can be overcome only by express words to the contrary. [R. C. 1905, § 5211; Civ. C. 1877, § 802; R. C. 1899, § 3766.]

Principal and surety; right of offset by surety. *Clark v. Sullivan*, 2 N. D. 103, 49 N. W. 416, 13 L.R.A. 233.

Negotiable instruments; payment by one joint debtor. *Grovenor v. Signor*, 10 N. D. 503, 88 N. W. 278.

Obligations imposed upon several as joint obligations. *Clements v. Miller*, 13 N. D. 176, 100 N. W. 239.

Presumption that obligation is joint does not depend on particular language in bail bond, but on particular obligation imposed on persons therein named as bail. *State v. Western Surety Co.*, 26 S. D. 170, 128 N. W. 173.

As to similar provision in Cal. Civ. Code, § 1431, see *Leonard v. Leonard*, 7 Cal. Unrep. 99, 70 Pac. 1071.

§ 5768. **Contribution.** A party to a joint, or joint and several obligation who satisfies more than his share of the claim against all may require a

proportionate contribution from all the parties joined with him. [R. C. 1905, § 5212; Civ. C. 1877, § 803; R. C. 1899, § 3767.]

Contribution, actions for, not founded on an express promise. 98 Am. St. Rep. 31.
—against a co-obligor who by the statute of limitations was protected from suit by the original obligee. 60 Am. St. Rep. 201.

—among joint principals, one being insolvent. 20 Am. Dec. 559.

—among persons holding lands affected by a mortgage. 16 Am. Dec. 141.

—as between legatees and devisees to pay testator's debts. 1 L.R.A.(N.S.) 461.

—as between accommodation parties. 28 L.R.A.(N.S.) 1039.

—between stockholders of foreign corporation. 34 L.R.A. 763.

—among cotenants. 35 Am. St. Rep. 416.

—, —liability of cotenants for improvements and repairs. 29 L.R.A. 449.

—, —liability of cotenants to account for use and occupation and rents and profit. 28 L.R.A. 829.

—right of sureties to, and remedies for its enforcement. 10 Am. St. Rep. 639; 70 Am. St. Rep. 444.

—between persons liable for negligence. 16 Am. St. Rep. 254.

Right of action of one legally responsible for another's death against a third person whose negligence caused the death. 36 L.R.A.(N.S.) 60.

Right of one constructively liable for a tort, to contribution from one actually responsible for its commission. 40 L.R.A.(N.S.) 1147.

Rule denying contribution between joint tortfeasors as affected by question of proximate cause. 36 L.R.A.(N.S.) 583.

Conclusiveness of judgment against a constructive tortfeasor in a subsequent action for contribution. 40 L.R.A.(N.S.) 1172.

Right of one stockholder to sue another for contribution outside state of incorporation. 33 L.R.A.(N.S.) 909.

Revival of partnership debt by contribution between partners. 15 L.R.A. 660.

As to similar provision in Cal. Civ. Code, § 1432, see *Tulare County v. Kings County*, 117 Cal. 195, 49 Pac. 8.

§ 5769. Conditional defined. An obligation is conditional when the rights or duties of any party thereto depend upon the occurrence of an uncertain event. [R. C. 1905, § 5213; Civ. C. 1877, § 804; R. C. 1899, § 3768.]

§ 5770. Conditions classified. Conditions may be precedent, concurrent or subsequent [R. C. 1905, § 5214; Civ. C. 1877, § 805; R. C. 1899, § 3769.]

§ 5771. Condition precedent. A condition precedent is one which is to be performed before some right dependent thereon accrues or some act dependent thereon is performed. [R. C. 1905, § 5215; Civ. C. 1877, § 806; R. C. 1899, § 3770.]

Condition precedent must be performed before other party can be called upon to perform his part. *Johnson v. Schar*, 9 S. D. 536, 70 N. W. 838.

What are conditions precedent in deeds. 102 Am. St. Rep. 366.

Sale with particular description as to kind or quality as a condition precedent or a warranty. 35 L.R.A.(N.S.) 265.

Condition in fire policy as to keeping, producing and preserving books as a condition precedent. 51 L.R.A. 699, 702, 710.

Execution of contract on condition that others shall sign. 45 L.R.A. 321.

—condition against taking effect of deed until signed by others. 45 L.R.A. 341.

§ 5772. Concurrent. Conditions concurrent are those which are mutually dependent and are to be performed at the same time. [R. C. 1905, § 5216; Civ. C. 1877, § 807; R. C. 1899, § 3771.]

§ 5773. Subsequent. A condition subsequent is one referring to a future event, upon the happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the conditions. [R. C. 1905, § 5217; Civ. C. 1877, § 808; R. C. 1899, § 3772.]

Conditions subsequent in deed. 57 Am. Rep. 63; 31 Am. St. Rep. 46; 79 Am. St. Rep. 747.

Effect on a condition subsequent of a succeeding law or act of God preventing its performance. 21 L.R.A. 58.

Effect of license to commit a breach of a condition subsequent, or waiver of a past breach thereof, to extinguish the condition. 11 L.R.A.(N.S.) 398.

§ 5774. Prerequisites to enforcement of obligation. Before any party to an obligation can require another party to perform any act under it he must fulfill all conditions precedent thereto imposed upon himself; and must be able and offer to fulfill all conditions concurrent, so imposed upon him, on

the like fulfillment by the other party, except as provided by the next section. [R. C. 1905, § 5218; Civ. C. 1877, § 809; R. C. 1899, § 3773.]

Contemporaneous agreements constituting condition of delivery of note. 43 L.R.A. 480.

Admissibility of parol evidence to show that bill or note was delivered upon condition. 18 L.R.A.(N.S.) 288.

Admissibility of parol evidence that written instrument for payment of money was executed in reliance upon parol promise that payment was subject to a condition not incorporated therein. 18 L.R.A.(N.S.) 434.

Extrinsic evidence to show who is liable as maker of note where signature is conditional. 20 L.R.A. 713.

As to similar provision in Cal. Civ. Code, § 1439, see *Hanson v. Slaven*, 98 Cal. 377, 33 Pac. 266.

§ 5775. Enforcement without performance, when performance waived. If a party to an obligation gives notice to another before the latter is in default that he will not perform the same upon his part and does not retract such notice before the time at which performance upon his part is due, such other party is entitled to enforce the obligation, without previously performing or offering to perform any conditions upon his part in favor of the former party. [R. C. 1905, § 5219; Civ. C. 1877, § 810; R. C. 1899, § 3774.]

Refusal to perform contract at time for performance, or before, and not withdrawn, is equivalent to offer to perform by other party, followed by refusal to accept. *Stanford v. McGill*, 6 N. D. 536, 72 N. W. 938, 38 L.R.A. 760.

Unwithdrawn notice of refusal to perform a contract relieves the other party from making further offer of performance. *Gleckler v. Slavens*, 5 S. D. 364, 59 N. W. 323; *McPherson v. Fargo*, 10 S. D. 611, 74 N. W. 1057, 65 Am. St. Rep. 723.

Purchaser of land who was not bound to make second payment before accepting deed, was not in default before deed was tendered, so as to require him to tender second payment upon vendor's default. *Sullivan v. Bromley*, 26 S. D. 147, 128 N. W. 586.

What excuses nonperformance. 18 Am. Dec. 453.

§ 5776. Impossible or unlawful conditions are void. A condition in a contract, the fulfillment of which is impossible or unlawful within the meaning of the article on the subject of contracts or which is repugnant to the nature of the interest created by the contract is void. [R. C. 1905, § 5220; Civ. C. 1877, § 811; R. C. 1899, § 3775.]

§ 5777. Forfeiture strictly interpreted against party benefited. A condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created. [R. C. 1905, § 5221; Civ. C. 1877, § 812; R. C. 1899, § 3776.]

Forfeitures are not favored, must always rest upon substantial grounds. *Enos v. Ins. Co.*, 4 S. D. 639, 57 N. W. 919, 46 Am. St. Rep. 796.

Failure for three months to declare a forfeiture of a contract of sale of land waives the forfeiture. *Pier v. Lee*, 14 S. D. 600, 80 N. W. 642.

Equitable relief against forfeiture of estate for breach of condition. 69 L.R.A. 836, 841, 842.

Suit for damages as waiver of right to forfeit deed for breach of condition. 5 L.R.A.(N.S.) 603.

Forfeiture for breach of conditional pardon. 14 L.R.A. 288.

Municipal declaration of forfeiture of street franchise or privilege for breach of conditions as a judicial determination. 4 L.R.A.(N.S.) 321.

Effect of provision for forfeiture of sums paid or retained under executory contract to prevent recovery of any other damages after breach of contract. 4 L.R.A.(N.S.) 755.

What amounts to a contest within forfeiture clause in a will. 21 L.R.A.(N.S.) 953.

As to similar provision in Cal. Civ. Code, § 1442, see *Sauer v. Meyer*, 87 Cal. 34, 25 Pac. 153.

§ 5778. Option to perform alternative obligations. If an obligation requires the performance of one of two acts in the alternative the party required to perform has the right of selection, unless it is otherwise provided by the terms of the obligation. [R. C. 1905, § 5222; Civ. C. 1877, § 813; R. C. 1899, § 3777.]

§ 5779. Option passes when not exercised within time. If the party having the right of selection between alternative acts does not give notice of his selection to the other party within the time, if any, fixed by the obligation for that purpose or, if none is so fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party. [R. C. 1905, § 5223; Civ. C. 1877, § 814; R. C. 1899, § 3778.]

§ 5780. **Must select one in its entirety.** The party having the right of selection between alternative acts must select one of them in its entirety and cannot select part of one and part of another without the consent of the other party. [R. C. 1905, § 5224; Civ. C. 1877, § 815; R. C. 1899, § 3779.]

§ 5781. **Valid one prevails.** If one of the alternative acts required by an obligation is such as the law will not enforce, or becomes unlawful or impossible of performance the obligation is to be interpreted as though the other stood alone. [R. C. 1905, § 5225; Civ. C. 1877, § 816; R. C. 1899, § 3780.]

ARTICLE 3.—TRANSFER OF OBLIGATIONS.

§ 5782. **Burden transferred with beneficiary's consent.** The burden of an obligation may be transferred with the consent of the party entitled to its benefit, but not otherwise, except as provided by section 5791. [R. C. 1905, § 5226; Civ. C. 1877, § 817; R. C. 1899, § 3781.]

As to similar provision in Cal. Civ. Code, § 1457, see *La Rue v. Groezinger*, 84 Cal. 281, 18 Am. St. Rep. 179, 24 Pac. 42; *Cutting Packing Co. v. Packers' Exchange*, 86 Cal. 574, 10 L.R.A. 369, 21 Am. St. Rep. 63, 25 Pac. 52; *Anderson v. De Urioste*, 96 Cal. 404, 31 Pac. 266; *Royal v. Dennison*, 4 Cal. Unrep. 851, 38 Pac. 39; *Odd Fellows' Sav. Bank v. Brander*, 124 Cal. 255, 56 Pac. 1109.

§ 5783. **Right arising out of, may be transferred.** A right arising out of an obligation is the property of the person to whom it is due and may be transferred as such. [R. C. 1905, § 5227; Civ. C. 1877, § 818; R. C. 1899, § 3782.]

As to similar provision in Cal. Civ. Code, § 1458, see *La Rue v. Groezinger*, 84 Cal. 281, 18 Am. St. Rep. 179, 24 Pac. 42.

§ 5784. **Nonnegotiable contract transferred by indorsement.** A non-negotiable written contract for the payment of money or personal property may be transferred by indorsement in like manner with negotiable instruments. Such indorsement shall transfer all the rights of the assignor under the instrument to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the indorsement. [R. C. 1905, § 5228; Civ. C. 1877, § 819; R. C. 1899, § 3783.]

Transfer on nonnegotiable contract without indorsement. *Kirby v. Jameson*, 9 S. D. 8, 67 N. W. 854.

Cause of action arising after transfer by indorsement of nonnegotiable note cannot be set up as defense. *State Bank v. Hayes*, 16 S. D. 365, 92 N. W. 1068.

As to "assigns" not applying to indorsee of note. *National Bank of Commerce v. Pick*, 13 N. D. 74, 99 N. W. 63.

Right of action accruing to maker of nonnegotiable note three years after transfer does not attach to note. *State Bank v. Hayes*, 16 S. D. 365, 92 N. W. 1068.

As to similar provision in Cal. Civ. Code, § 1459, see *Cutting Packing Co. v. Packers' Exchange*, 86 Cal. 574, 10 L.R.A. 369, 21 Am. St. Rep. 63, 25 Pac. 52; *First Nat. Bank v. Falkenhan*, 94 Cal. 141, 29 Pac. 866; *St. Louis Nat. Bank v. Gay*, 101 Cal. 286, 35 Pac. 376; *First Nat. Bank v. Perris Irrig. Dist.*, 107 Cal. 55, 40 Pac. 45.

§ 5785. **Certain covenants run with land.** Certain covenants contained in grants of estates in real property are appurtenant to such estates and pass with them so as to bind the assigns of the covenantor and to vest in the assigns of the covenantee in the same manner as if they had personally entered into them. Such covenants are said to run with the land. [R. C. 1905, § 5229; Civ. C. 1877, § 819; R. C. 1899, § 3784.]

Covenants which do not run with land are covenants of seisin of right to convey and covenants against incumbrances. *Gale v. Frazer*, 4 D. 196, 30 N. W. 138.

Covenants running with land not confined to those specifically named, but include those implied. *N. P. Ry. Co. v. McClure*, 9 N. D. 73, 81 N. W. 52, 47 L.R.A. 149.

Covenants of seisin do not run with land. *Bowne v. Wolcott*, 1 N. D. 497, 48 N. W. 426.

As defining what covenants run with the land. *Bull v. Beiseker*, 16 N. D. 290, 14 L.R.A.(N.S.) 514, 113 N. W. 870.

What covenants run with the land. 56 Am. Rep. 151; 82 Am. St. Rep. 664.

Danger of litigation to enforce or restrain violation of covenants running with the land as affecting marketability of title. 38 L.R.A.(N.S.) 16.

§ 5786. What so run. The only covenants which run with the land are those specified in this article and those which are incidental thereto. [R. C. 1905, § 5230; Civ. C. 1877, § 820; R. C. 1899, § 3785.]

§ 5787. Made for benefit of property, runs. Every covenant contained in a grant of an estate in real property which is made for the direct benefit of the property or some part of it then in existence runs with the land. [R. C. 1905, § 5231; Civ. C. 1877, § 821; R. C. 1899, § 3786.]

Necessity of use of word "assigns" in order to make covenant as to a thing not in esse run with the land. 14 L.R.A.(N.S.) 185.

May covenant running with the land be created by acceptance of deed poll with stipulations purporting to bind grantee. 6 L.R.A.(N.S.) 436.

As to similar provision in Cal. Civ. Code, § 1462, see *Fresno Canal & Irrig. Co. v. Rowell*, 80 Cal. 114, 13 Am. St. Rep. 112, 22 Pac. 53; *Fresno Canal & Irrig. Co. v. Dunbar*, 80 Cal. 530, 22 Pac. 275; *Lyford v. North Pacific Coast R. Co.*, 92 Cal. 93, 28 Pac. 103; *Los Angeles Terminal Land Co. v. Muir*, 136 Cal. 36, 68 Pac. 308.

§ 5788. What last section includes. The last section includes covenants of warranty, for quiet enjoyment or for further assurance on the part of a grantor and covenants for the payment of rent, or of taxes or assessments upon the land on the part of a grantee. [R. C. 1905, § 5232; Civ. C. 1877, § 822; R. C. 1899, § 3787.]

Covenants for quiet enjoyment. 53 Am. St. Rep. 113.

Does action for damages to real property run with land. 2 L.R.A.(N.S.) 819.

Covenant to contribute to cost of party wall as one running with the land. 66 L.R.A. 673.

Covenant in grant of water power as one running with the land. 67 L.R.A. 402.

Covenant of lessor to pay for repairs or improvements as one running with the land. 4 L.R.A.(N.S.) 466.

Parol agreement as to fences as a covenant running with the land. 27 L.R.A.(N.S.) 229.

Right of remote grantee to sue for breach of covenant when covenantor had neither title nor possession. 14 L.R.A.(N.S.) 514.

§ 5789. Covenants limited to certain assigns. A covenant for the addition of some new thing to real property, or for the direct benefit of some part of the property not then in existence or annexed thereto, when contained in a grant of an estate in such property and made by the covenantor expressly for his assigns or to the assigns of the covenantee runs with the land so far only as the assigns thus mentioned are concerned. [R. C. 1905, § 5233; Civ. C. 1877, § 823; R. C. 1899, § 3788.]

As to similar provision in Cal. Civ. Code, § 1464, see *Bailey v. Richardson*, 66 Cal. 416, 5 Pac. 910.

§ 5790. Binds only owner of whole estate. A covenant running with the land binds those only who acquire the whole estate of the covenantor in some part of the property. [R. C. 1905, § 5234; Civ. C. 1877, § 824; R. C. 1899, § 3789.]

§ 5791. Liable while holding only. No one merely by reason of having acquired an estate subject to a covenant running with the land is liable for breach of the covenant before he acquired the estate, or after he has parted with it or ceased to enjoy its benefits. [R. C. 1905, § 5235; Civ. C. 1877, § 825; R. C. 1899, § 3790.]

When grantees become liable upon covenants in deed. 47 Am. Rep. 473.

As to similar provision in Cal. Civ. Code, § 1466, see *Gardner v. Samuels*, 116 Cal. 84, 58 Am. St. Rep. 135, 47 Pac. 935.

§ 5792. Burden of benefit apportioned. When several persons, holding by several titles, are subject to the burden or entitled to the benefit of a covenant running with the land, it must be apportioned among them according to the value of the property subject to it held by them respectively, if such value can be ascertained, and if not, then according to their respective interests in point of quantity. [R. C. 1905, § 5236; Civ. C. 1877, § 826; R. C. 1899, § 3791.]

ARTICLE 4.—EXTINCTION OF OBLIGATIONS.

§ 5793. Full performance extinguishes. Full performance of an obligation by the party whose duty it is to perform it or by any other person on his

behalf and with his assent, if accepted by the creditor, extinguishes it. [R. C. 1905, § 5237; Civ. C. 1877, § 827; R. C. 1899, § 3792.]

As to similar provision in Cal. Civ. Code, § 1473, see *Wright v. Mix*, 76 Cal. 465, 18 Pac. 645; *Yule v. Bishop*, 133 Cal. 574, 65 Pac. 1094.

§ 5794. Performance by one extinguishes liability of all. Performance of an obligation by one of several persons who are jointly liable under it extinguishes the liability of all. [R. C. 1905, § 5238; Civ. C. 1877, § 828; R. C. 1899, § 3793.]

§ 5795. Performance to one extinguishes. Exception. An obligation in favor of several persons is extinguished by performance rendered to any of them, except in the case of a deposit made by owners in common or in joint ownership which is regulated by the chapter on deposit. [R. C. 1905, § 5239; Civ. C. 1877, § 829; R. C. 1899, § 3794.]

§ 5796. Performance as directed extinguishes. If a creditor or any one of two or more joint creditors at any time directs the debtor to perform his obligation in a particular manner, the obligation is extinguished by performance in that manner, even though the creditor does not receive the benefit of such performance. [R. C. 1905, § 5240; Civ. C. 1877, § 830; R. C. 1899, § 3795.]

§ 5797. When partial performance extinguishes pro tanto. A partial performance of an indivisible obligation extinguishes a corresponding proportion thereof, if the benefit of such performance is voluntarily retained by the creditor, but not otherwise. If such partial performance is of such a nature that the creditor cannot avoid retaining it without injuring his own property, his retention thereof is not presumed to be voluntary. [R. C. 1905, § 5241; Civ. C. 1877, § 831; R. C. 1899, § 3796.]

Part payment of obligation does not prevent recovery of balance due. *Anderson v. Bank*, 4 N. D. 182, 59 N. W. 1029.

The law under general collateral agreement makes application of payment and discharges debt pro tanto. *Styles v. Dickey*, 22 N. D. 515, 134 N. W. 702.

§ 5798. Payment defined. Performance of an obligation for the delivery of money only is called payment. [R. C. 1905, § 5242; Civ. C. 1877, § 832; R. C. 1899, § 3797.]

Plea of payment may be sustained by proof of accord and satisfaction. *Green v. Hughitt Township*, 5 S. D. 452, 59 N. W. 224.

Taking collateral security is not payment. *Star Wagon Co. v. Matthiessen*, 3 D. 233, 14 N. W. 107.

Payment in bills of an insolvent bank. 27 Am. Dec. 188.

What amounts to cash payment. 54 Am. Rep. 781.

When checks constitute payment. 69 Am. St. Rep. 346.

§ 5799. Performance, how applied when there are several obligations. When a debtor under several obligations to another does an act by way of performance in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

1. If at the time of the performance the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation is manifested to the creditor, it must be so applied.

2. If no such application is then made the creditor within a reasonable time after such performance may apply it toward the extinction of any obligation, performance of which was due to him from the debtor at the time of such performance; except that if similar obligations were due to him, both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion; and an application once made by the creditor cannot be rescinded without the consent of the debtor.

3. If neither party makes such application within the time prescribed herein the performance must be applied to the extinction of obligations in the following order and if there is more than one obligation of a particular class, to the extinction of all in that class ratably:

(a) Of interest due at the time of the performance.

- (b) Of principal due at that time.
- (c) Of the obligation earliest in date of maturity.
- (d) Of an obligation not secured by a lien or collateral undertaking.
- (e) Of an obligation secured by a lien or collateral undertaking. [R. C. 1905, § 5243; Civ. C. 1877, § 833; R. C. 1899, § 3798.]

Direction as to application of payment made some time prior thereto, but not changed at or before such payment, is sufficient. *First Nat. Bank v. Roberts*, 2 N. D. 195, 49 N. W. 722.

As to right of creditor to apply payments where debtor does not direct application. *Foster County State Bank v. Hester*, 18 N. D. 135, 119 N. W. 1044.

Consistency of rule as to payments of interest. *Northwestern Mortg. Trust Co. v. Ellis*, 20 S. D. 543, 108 N. W. 22.

Application of payment must be made as directed. *Stebbins v. Lardner*, 2 S. D. 127, 48 N. W. 847.

Unless requested to make particular application, creditor may apply payment upon any debt. *Fargo v. Jennings*, 8 S. D. 99, 65 N. W. 432.

The law under general collateral agreement makes application of payment and discharges debt pro tanto. *Styles v. Dickey*, 22 N. D. 515, 134 N. W. 702.

Payment by continuing partner, assuming firm debts, made immediately after demand by firm creditor with suggestion that it be applied on firm debt, must be so applied. *Paxton & G. Co. v. Starkweather*, 26 S. D. 99, 128 N. W. 479.

Application of payments. 13 Am. Dec. 505; 14 Am. Dec. 694; 96 Am. St. Rep. 44.

Application as between principal and interest when payment made before due. 15 L.R.A. 169.

Application by bank of individual partner's deposit on firm debt. 23 L.R.A. 111.

Forger's application of proceeds of check to an indebtedness to depositor as affecting bank's right to charge same against depositor's account. 25 L.R.A.(N.S.) 996.

Application of doctrine of appropriation of payments to effect on surety or indorser of bank's failure to apply principal's deposit account on note. 8 L.R.A.(N.S.) 944.

Effect of specific application of payment to last item of open account on statute of limitations. 19 L.R.A.(N.S.) 126.

Duty of mortgagee to hold proceeds of insurance and apply them on indebtedness as it falls due. 10 L.R.A.(N.S.) 1166.

Right to apply payments made on stock in building and loan association upon mortgage given for a loan by the same member. 29 L.R.A. 120.

As to similar provision in Cal. Civ. Code, § 1479, see *Murdock v. Clarke*, 88 Cal. 384, 26 Pac. 601; *Hanson v. Cordano*, 96 Cal. 441, 31 Pac. 457.

§ 5800. Obligation extinguished by offer. An obligation is extinguished by an offer of performance made in conformity to the rules herein prescribed and with intent to extinguish the obligation. [R. C. 1905, § 5244; Civ. C. 1877, § 834; R. C. 1899, § 3799.]

Where the covenants of the contract are mutual and dependent, vendee can place vendor in default by an offer to perform; if no offer made vendee cannot rescind or recover payments made. *Arnett v. Smith*, 11 N. D. 55, 88 N. W. 1037.

Offer of performance pursuant to contract with present ability to perform, is sufficient without actual production. *Foster Implement Co. v. Smith*, 17 N. D. 178, 115 N. W. 663.

Vendee, sending notice to vendor without the state and depositing money for conveyance after vendor's prior refusal to convey, may sue for specific performance. *Herman v. Winter*, 20 S. D. 196, 105 N. W. 457.

Effect of unaccepted tender on lien of mortgage. 33 L.R.A. 231; 23 L.R.A.(N.S.) 403.

Effect of unaccepted tender on lien of pledge. 33 L.R.A. 231.

§ 5801. Not by offer of partial performance. An offer of partial performance is of no effect. [R. C. 1905, § 5245; Civ. C. 1877, § 835; R. C. 1899, § 3800.]

§ 5802. Must be made by or with assent of debtor. An offer of performance must be made by the debtor or by some person on his behalf and with his assent. [R. C. 1905, § 5246; Civ. C. 1877, § 836; R. C. 1899, § 3801.]

§ 5803. To creditor or one authorized by him. An offer of performance must be made to the creditors, or to any one or two or more joint creditors or to a person authorized by one or more of them to receive or collect what is due under the obligation if such creditor or authorized person is present at the place where the offer may be made; and if not, wherever the creditor may be found. [R. C. 1905, § 5247; Civ. C. 1877, § 837; R. C. 1899, § 3802.]

§ 5804. Where may be made. In the absence of an express provision to the contrary an offer of performance may be made at the option of the debtor:

1. At any place appointed by the creditor; or,

2. Wherever the person to whom the offer ought to be made can be found; or,

3. If such person cannot with reasonable diligence be found within this state and within a reasonable distance from his residence or place of business, or if he evades the debtor, then at his residence or place of business, if the same can with reasonable diligence be found within the state; or,

4. If this cannot be done, then at any place within this state. [R. C. 1905, § 5248; Civ. C. 1877, § 838; R. C. 1899, § 3803.]

Place and requisites of tender of interest which will prevent acceleration of maturity of mortgage under interest clause. 36 L.R.A.(N.S.) 308.

§ 5805. **Must be made at the time fixed.** When an obligation fixes a time for its performance an offer of performance must be made at that time within reasonable hours and not before nor afterwards. [R. C. 1905, § 5249; Civ. C. 1877, § 839; R. C. 1899, § 3804.]

Effect of tender by vendee of purchase price before due, to put other party in default. 20 L.R.A.(N.S.) 338.

§ 5806. **When time not fixed.** When an obligation does not fix a time for its performance, an offer of performance may be made at any time before the debtor upon a reasonable demand has refused to perform. [R. C. 1905, § 5250; Civ. C. 1877, § 840; R. C. 1899, § 3805.]

§ 5807. **When may be made after due.** When delay in performance is capable of exact and entire compensation and time has not been expressly declared to be of the essence of the obligation, an offer of performance, accompanied with an offer of such compensation, may be made at any time after it is due, but without prejudice to any rights acquired by the creditor or by any other person in the meantime. [R. C. 1905, § 5251; Civ. C. 1877, § 841; R. C. 1899, § 3806.]

When time is of essence of contract, failure to perform at time named debars person in default from claiming any rights thereunder. *Fergusson v. Talcott*, 7 N. D. 183, 73 N. W. 207.

Vendor may not refuse to accept payments after there has been delay, unless time is of essence of contract and delay is incapable of compensation by payment of interest. *J. I. Case Threshing Mach. Co. v. Farnsworth*, 28 S. D. 432, 134 N. W. 819.

As to similar provision in Cal. Civ. Code, § 1492, see *Loughborough v. McNevin*, 74 Cal. 250, 5 Am. St. Rep. 435, 14 Pac. 369, 15 Pac. 773; *Bennett v. Hyde*, 92 Cal. 131, 28 Pac. 104; *Seventy-Six Land & Water Co. v. Superior Ct.*, 93 Cal. 139; 28 Pac. 813; *Miller v. Cox*, 96 Cal. 339, 31 Pac. 161; *Glock v. Howard & W. Colony Co.*, 123 Cal. 1, 43 L.R.A. 199, 69 Am. St. Rep. 17, 55 Pac. 713.

§ 5808. **Must be in good faith.** An offer of performance must be made in good faith and in such manner as is most likely under the circumstances to benefit the creditor. [R. C. 1905, § 5252; Civ. C. 1877, § 842; R. C. 1899, § 3807.]

§ 5809. **Free from condition.** An offer of performance must be free from any conditions which the creditor is not bound on his part to perform. [R. C. 1905, § 5253; Civ. C. 1877, § 843; R. C. 1899, § 3808.]

Tender of deed from third party, owner of land agreed to be conveyed, is not compliance with contract calling for deed from vendor. *McVeety v. Harvey Mercantile Co.*, 24 N. D. 245, 139 N. W. 586.

As to similar provision in Cal. Civ. Code, § 1494, see *Royal v. Dennison*, 4 Cal. Unrep. 851; 38 Pac. 39; *Ferrea v. Tubbs*, 125 Cal. 687, 58 Pac. 308.

§ 5810. **Must be able and willing.** An offer of performance is of no effect if the person making it is not able and willing to perform according to the offer. [R. C. 1905, § 5254; Civ. C. 1877, § 844; R. C. 1899, § 3809.]

§ 5811. **Production unnecessary, if offer refused.** The thing to be delivered, if any, need not in any case be actually produced upon an offer of performance unless the offer is accepted. [R. C. 1905, § 5255; Civ. C. 1877, § 845; R. C. 1899, § 3810.]

Debtor must either produce the money or have it in his possession. *Stakke v. Chapman*, 13 S. D. 269, 83 N. W. 261.

Tender not necessary after unrecalled refusal to accept. *McPherson v. Fargo*, 10 S. D. 611, 74 N. W. 1057, 65 Am. St. Rep. 723.

As to similar provision in Cal. Civ. Code, § 1496, see *Peckham v. Stewart*, 97 Cal. 147, 31 Pac. 928.

§ 5812. Unmixed with other things. A thing, when offered by way of performance, must not be mixed with other things from which it cannot be separated immediately and without difficulty. [R. C. 1905, § 5256; Civ. C. 1877, § 846; R. C. 1899, § 3811.]

Where defendant contracted to buy a machine of plaintiff, to be consigned to the care of plaintiff's agent, it was necessary, to constitute a valid offer of delivery to defendant, that the machine be separated and set part from other machinery with which it was mixed on arrival. *International Harvester Co. v. Hayworth*, 23 S. D. 514, 122 N. W. 412. Tender of a sum in excess of that due with demand for change. 13 L.R.A.(N.S.) 624. Necessity that tender, as a condition of rescission for breach of warranty, shall cover all the property sold. 8 L.R.A.(N.S.) 727.

§ 5813. Contingent offer. When a debtor is entitled to the performance of a condition precedent to or concurrent with performance on his part, he may make his offer to depend upon the due performance of such condition. [R. C. 1905, § 5257; Civ. C. 1877, § 847; R. C. 1899, § 3812.]

As to similar provision in Cal. Civ. Code, § 1498, see *Loughborough v. McNevin*, 74 Cal. 250, 5 Am. St. Rep. 435, 14 Pac. 369, 15 Pac. 773.

§ 5814. Receipt obligatory. A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligation. [R. C. 1905, § 5258; Civ. C. 1877, § 848; R. C. 1899, § 3813.]

Tender by owner to subcontractor, conditioned that subcontractor give satisfaction in full, was bad where amount due was disputed. *Pittsburg Plate Glass Co. v. Leary*, 25 S. D. 256, 31 L.R.A.(N.S.) 746, 126 N. W. 271, Ann. Cas. 1912B, 928.

As to similar provision in Cal. Civ. Code, § 1499, see *Ferre v. Tubbs*, 125 Cal. 687, 58 Pac. 308.

§ 5815. Obligation for payment extinguished by deposit. An obligation for the payment of money is extinguished by a due offer of payment, if the amount is immediately deposited in the name of the creditor with some bank of deposit within this state of good repute and notice thereof is given to the creditor. [R. C. 1905, § 5259; Civ. C. 1877, § 849; R. C. 1899, § 3814.]

Tender must be kept good in manner provided by statute to defeat accumulation of interest. *Brakhage v. Tracy*, 13 S. D. 343, 83 N. W. 363.

Compliance with this section renders mortgagee liable for penalty under section 6749. *Kronebusch v. Raumin*, 6 D. 243, 42 N. W. 656.

Deposit must be made in name of creditor; mere direction for bank to pay not sufficient. *Stakke v. Chapman*, 13 S. D. 269, 83 N. W. 261.

Offer of payment of proper amount of taxes due operates to stop running of interest. *Dakota Loan & Trust Co. v. Codington County*, 9 S. D. 159, 68 N. W. 314.

Necessity of keeping tender of amount required to redeem from foreclosure good by deposit. *Brown v. Smith*, 13 N. D. 580, 102 N. W. 171.

It is unnecessary for owner to extinguish obligation resting upon contractor to pay subcontractor, before lien, as cloud on title, could be removed. *Pittsburg Plate Glass Co. v. Leary*, 25 S. D. 256, 31 L.R.A.(N.S.) 746, 126 N. W. 271, Ann. Cas. 1912B, 928.

Notice of tender and deposit need not state that bank in which deposit was made was of good repute. *Ugland v. Farmers' & M. State Bank*, 23 N. D. 536, 137 N. W. 572.

Effect of tender on deposit of money on right to interest on damages allowed in eminent domain. 28 L.R.A.(N.S.) 63.

As to similar provision in Cal. Civ. Code, § 1500, see *Randol v. Tatum*, 98 Cal. 390, 33 Pac. 433; *O'Connor v. Morse*, 112 Cal. 31, 53 Am. St. Rep. 155, 44 Pac. 305; *Sayward v. Houghton*, 119 Cal. 545, 51 Pac. 853, 52 Pac. 44; *William Wolff & Co. v. Canadian P. R. Co.*, 123 Cal. 535, 56 Pac. 453; *Baker v. San Francisco Gas & Electric Co.*, 141 Cal. 710, 75 Pac. 342.

§ 5816. Objections waived. All objections to the mode of an offer of performance, which the creditor has an opportunity to state at the time to the person making the offer and which could be then obviated by him, are waived by the creditor, if not then stated. [R. C. 1905, § 5260; Civ. C. 1877, § 850; R. C. 1899, § 3815.]

Tender of cashier's check instead of currency is waived unless objections are made on that ground. *Ugland v. Farmers' & M. State Bank*, 23 N. D. 536, 137 N. W. 572.

Vendor in land contract waived unauthorized condition in tender by assignee of vendee, by failing to object to tender made on trial in action for specific performance. *J. I. Case Threshing Mach. Co. v. Farnsworth*, 28 S. D. 432, 134 N. W. 819.

As to similar provision in Cal. Civ. Code, § 1501, see *Kofoed v. Gordon*, 122 Cal. 314, 54 Pac. 1115.

§ 5817. When title to thing offered passes. The title to a thing duly offered in performance of an obligation passes to the creditor if the debtor at the

time signifies his intention to that effect. [R. C. 1905, § 5261; Civ. C. 1877, § 851; R. C. 1899, § 3816.]

§ 5818. Deposit of thing offered. The person offering a thing, other than money, by way of performance must, if he means to treat it as belonging to the creditor, retain it as a depositary for hire until the creditor accepts it, or until he has given reasonable notice to the creditor that he will retain it no longer and if with reasonable diligence he can find a suitable depositary therefor, until he has deposited it with such person. [R. C. 1905, § 5262; Civ. C. 1877, § 852; R. C. 1899, § 3817.]

Vendor can only sue for damages for breach of contract on vendee's failure to accept where title remained in vendor until payment. *International Harvester Co. v. Hayworth*, 23 S. D. 514, 122 N. W. 412.

§ 5819. Obligation extinguished by offer and deposit. An obligation for the delivery of money, property or a conveyance of property is not discharged by an offer of performance nor any of its incidents affected, unless the thing offered, if money, is deposited as provided in section 5815, or, if other than money, is deposited for the creditor with some depositary of good repute at the place of performance and notice of such deposit in either case given to the creditor. After such deposit and notice the thing deposited shall be at the risk and expense of the creditor. [R. C. 1905, § 5263; Civ. C. 1877, § 853; R. C. 1895, § 3818.]

§ 5820. Creditor gratuitous depositary. If anything is given to a creditor by way of performance which he refuses to accept as such, he is not bound to return it without demand; but if he retains it he is a gratuitous depositary thereof. [R. C. 1905, § 5264; Civ. C. 1877, § 854; R. C. 1899, § 3819.]

ARTICLE 5.—PERFORMANCE OF OBLIGATIONS OR OFFER.

§ 5821. When want of performance or offer excused. The want of performance of an obligation or of an offer of performance in whole or in part or any delay therein is excused by the following causes to the extent to which they operate:

1. When such performance or offer is prevented or delayed by the act of the creditor or by the operation of law, even though there may have been a stipulation that this shall not be an excuse.

2. When it is prevented or delayed by an irresistible superhuman cause or by the act of public enemies of this state or of the United States, unless the parties have expressly agreed to the contrary; or,

3. When the debtor is induced not to make it by any act of the creditor intended or naturally tending to have that effect done at or before the time at which such performance or offer may be made and not rescinded before that time. [R. C. 1905, § 5265; Civ. C. 1877, § 855; R. C. 1899, § 3820.]

Right to rescind or abandon contract for other party's default. 30 L.R.A. 33.

Right of grantor to rescind deed executed in consideration of future support where performance by grantee is, without fault on his part, prevented by grantor. 25 L.R.A. (N.S.) 932.

Effect of preventing performance on right to recover for profits lost by breach of contract. 53 L.R.A. 59.

Right to rescind or abandon contract because of failure or inability of other party to perform within time designated, where time is not of the essence of the contract. 21 L.R.A. (N.S.) 691.

As to similar provision in Cal. Civ. Code, § 1511, see *Klauber v. San Diego Street Car Co.*, 95 Cal. 353, 30 Pac. 555; *Ryan v. Rogers*, 96 Cal. 349, 31 Pac. 244; *Remy v. Olds*, 4 Cal. Unrep. 240, 34 Pac. 216; *Herzog v. Purdy*, 119 Cal. 99, 51 Pac. 27; *Sample v. Fresno Flume & Irrig. Co.*, 129 Cal. 222, 61 Pac. 1085.

§ 5822. Debtor entitled to benefits. If the performance of an obligation is prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties. [R. C. 1905, § 5266; Civ. C. 1877, § 856; R. C. 1899, § 3821.]

Party preventing performance of contract can derive no benefit from failure of other party to perform. *Shelly v. Mikkelsen*, 5 N. D. 22, 63 N. W. 210.

As to similar provision in Cal. Civ. Code, § 1512, see *Mattingly v. Pennie*, 105 Cal. 514, 45 Am. St. Rep. 87, 39 Pac. 200.

§ 5823. Ratable proportion of consideration. If performance of an obligation is prevented by any cause excusing performance other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance according to the benefit which the creditor receives from the actual performance. [R. C. 1905, § 5267; Civ. C. 1877, § 857; R. C. 1899, § 3822.]

§ 5824. What equivalent to offer and refusal. A refusal by a creditor to accept performance made before an offer thereof is equivalent to an offer and refusal, unless before performance is actually due he gives notice to the debtor of his willingness to accept it. [R. C. 1905, § 5268; Civ. C. 1877, § 858; R. C. 1899, § 3823.]

Vendee need not tender performance in order to recover part payment, where vendor has refused to be bound by contract. *Hogan v. Bechtel*, 27 S. D. 98, 129 N. W. 914.

ARTICLE 6.—ACCORD AND SATISFACTION OF OBLIGATIONS.

§ 5825. Accord defined. An accord is an agreement to accept in extinction of an obligation something different from or less than that to which the person agreeing to accept is entitled. [R. C. 1905, § 5269; Civ. C. 1877, § 859; R. C. 1899, § 3824.]

Accord and satisfaction is not shown by statement that there was computation of amounts mutually due between parties, and that it was agreed that accounts should offset each other, although one was less than the other. *Webster v. McLaren*, 19 N. D. 751, 123 N. W. 395.

Accord does not distinguish obligation until it is fully executed. *Troy Min. Co. v. Thomas*, 15 S. D. 238, 88 N. W. 106.

Allegation that agreement for accord was executed by acceptance of consideration therefor is sufficient. *Troy Min. Co. v. White*, 10 S. D. 475, 74 N. W. 236, 42 L.R.A. 549.

There must not only be an agreement to accept less than amount due, but an actual acceptance. *Carpenter v. C. M. & St. P. Ry. Co.*, 7 S. D. 584, 64 N. W. 1120.

Accord and satisfaction; how pleaded. *Green v. Hughitt Township*, 5 S. D. 452, 59 N. W. 224.

Agreement to accept less sum in satisfaction of debt is not defense to action for balance. *Egglund v. South*, 22 S. D. 467, 118 N. W. 719.

Agreement to receive less sum without payment does not constitute accord and satisfaction. *Egglund v. South*, 22 S. D. 467, 118 N. W. 719.

Acceptance of warrant for claim against county is presumed to be in full payment of claims presented. *Paulson v. Ward County*, 23 N. D. 601, 42 L.R.A.(N.S.) 111, 137 N. W. 486.

Law of accord and satisfaction. 100 Am. St. Rep. 390.

When payment of a less sum than due enforceable as accord and satisfaction. 64 Am. Dec. 138; 28 Am. Rep. 293.

Distinction between novation and accord executory. 12 L.R.A.(N.S.) 1134.

Accord and satisfaction of pastor's claim for salary. 38 L.R.A. 689.

—of partly performed contract for services. 24 L.R.A. 233.

Acceptance of principal sum as affecting right to interest. 40 L.R.A.(N.S.) 588.

§ 5826. Full execution only extinguishes. Though the parties to an accord are bound to execute it, yet it does not extinguish the obligation until it is fully executed. [R. C. 1905, § 5270; Civ. C. 1877, § 860; R. C. 1899, § 3825.]

§ 5827. Acceptance is satisfaction. Acceptance by the creditor of the consideration of an accord extinguishes the obligation and is called satisfaction. [R. C. 1905, § 5271; Civ. C. 1877, § 861; R. C. 1899, § 3826.]

Accord and satisfaction with one joint tortfeasor, effect on liability of other. 58 L.R.A. 300.

Effect of payment of debt by a volunteer or stranger to the original undertaking. 23 L.R.A. 120.

§ 5828. Part performance accepted extinguishes. Part performance of an obligation either before or after a breach thereof, when expressly accepted by the creditor in writing in satisfaction, or rendered in pursuance of an agreement in writing for that purpose, though without any new consideration,

extinguishes the obligation. [R. C. 1905, § 5272; Civ. C. 1877, § 862; R. C. 1899, § 3827.]

Part performance does not extinguish an obligation, unless accepted as such. *Anderson v. Bank*, 4 N. D. 182, 59 N. W. 1029.

Acceptance of amount to which party is clearly entitled does not constitute accord and satisfaction where there is no claim of facts showing satisfaction. *Chrystal v. Gerlach*, 25 S. D. 128, 125 N. W. 633.

Creditor, who receives in payment check for less sum than is claimed to be due, and who indorses check, which does not purport to be in full payment, cannot be held to have it received in full settlement. *Hagen v. Townsend*, 27 S. D. 457, 131 N. W. 512.

Accord and satisfaction by part payment. 20 L.R.A. 785.

Payment of part of liquidated and undisputed debt as consideration for discharge of whole. 11 L.R.A.(N.S.) 1018; 21 L.R.A.(N.S.) 1005.

Acceptance of remittance of part of the amount of an unliquidated or disputed claim, accompanied with the statement that it is "in full," or words of similar import, as assent to its receipt in full payment. 14 L.R.A.(N.S.) 443; 27 L.R.A.(N.S.) 439.

Right of town, county or municipality to surrender valid claim on partial payment thereof. 19 L.R.A.(N.S.) 320.

Acceptance of partial allowance of claim by public body as an accord and satisfaction. 42 L.R.A.(N.S.) 112.

ARTICLE 7.—NOVATION.

§ 5829. Defined. Novation is the substitution of a new obligation for an existing one. [R. C. 1905, § 5273; Civ. C. 1877, § 863; R. C. 1899, § 3828.]

On burden of proof of payment of debt where debtor sends check which was not paid by bank. *Schafer v. Olson*, 24 N. D. 542, 43 L.R.A.(N.S.) 762, 139 N. W. 383.

Distinction between novation and accord executory. 12 L.R.A.(N.S.) 1134.

Novation, action by a third person on a promise made for his benefit. 39 Am. St. Rep. 531.

§ 5830. How made. Novation is made:

1. By the substitution of a new obligation between the same parties with intent to extinguish the old obligation.

2. By the substitution of a new debtor in the place of the old one with intent to release the latter; or,

3. By the substitution of a new creditor in place of the old one with intent to transfer the rights of the latter to the former. [R. C. 1905, § 5274; Civ. C. 1877, § 864; R. C. 1899, § 3829.]

Effect of judgment against garnishee to merge or satisfy liability of principal debtor. 47 L.R.A. 131.

As to similar provision in Cal. Civ. Code, § 1531, see *Re Sullenberger*, 72 Cal. 549, 14 Pac. 513; *Carpv v. Dowdell*, 131 Cal. 495, 63 Pac. 778; *Talcott v. Hurlbert*, 143 Cal. 4, 76 Pac. 647.

1. Payment by commercial paper. 35 L.R.A.(N.S.) 1.

New obligation given by debtor to creditor to secure the release of a lien as a novation of the original obligation. 36 L.R.A.(N.S.) 464.

§ 5831. Made by contract. Novation is made by contract and is subject to all the rules concerning contracts in general. [R. C. 1905, § 5275; Civ. C. 1877, § 865; R. C. 1899, § 3830.]

§ 5832. Rescinding acceptance. When the obligation of a third person or an order upon such person is accepted in satisfaction, the creditor may rescind such acceptance if the debtor prevents such person from complying with the order or from fulfilling the obligation; or if at the time the obligation or order is received, such person is insolvent and this fact is unknown to the creditor; or if before the creditor can with reasonable diligence present the order to the person upon whom it is given, he becomes insolvent. [R. C. 1905, § 5276; Civ. C. 1877, § 866; R. C. 1895, § 3831.]

ARTICLE 8.—RELEASE.

§ 5833. Extinguishes obligation. An obligation is extinguished by a release therefrom given to the debtor by the creditor upon a new consideration,

or in writing, with or without new consideration. [R. C. 1905, § 5277; Civ. C. 1877, § 867; R. C. 1899, § 3832.]

Right to show that note given by one of two joint makers of an old note for one-half amount was received in full satisfaction of debt. *Nat. Bank v. Guthrie*, 11 S. D. 517, 78 N. W. 995.

Release of expectancy by prospective heir to ancestor. 25 L.R.A.(N.S.) 439.

—of drawer or indorser by certification of check. 9 L.R.A.(N.S.) 698; 29 L.R.A.(N.S.) 205.

—of one partner by other partner's assumption of debts on dissolution of partnership. 9 L.R.A.(N.S.) 90.

—of interest in estate by one receiving advancement; effect on right to share in after-acquired property. 65 L.R.A. 578.

—by personal representatives of claim due estate. 14 L.R.A. 414.

—as affecting right of action for death. 34 L.R.A. 790.

Stipulation making execution of release from liability for damages a condition precedent to payment of benefits out of relief fund. 11 L.R.A.(N.S.) 194.

Formal release under seal or in writing on payment of part of liquidated and undisputed debt. 11 L.R.A.(N.S.) 1026.

Law governing release of claim for damages for death or bodily injury. 56 L.R.A. 223.

Admissibility of parol evidence that release was delivered on condition. 36 L.R.A.(N.S.) 1147.

Right in action at law to attack release for fraud. 20 L.R.A.(N.S.) 915.

Effect of misrepresentations or undue influence by physician to avoid release. 5 L.R.A.(N.S.) 663.

Return or tender of consideration for release of claim for personal injuries set aside on ground of fraud. 35 L.R.A.(N.S.) 660.

As to similar provision in Cal. Civ. Code, § 1541, see *Upper San Joaquin Irrig. Canal Co. v. Roach*, 78 Cal. 552, 21 Pac. 304; *Rogers v. Kimball*, 5 Cal. Unrep. 725, 49 Pac. 719; *Rogers v. Kimball*, 121 Cal. 247, 53 Pac. 648.

§ 5834. Extends only to known claims. A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him, must have materially affected his settlement with the debtor. [R. C. 1905, § 5278; Civ. C. 1877, § 868; R. C. 1899, § 3833.]

Does release of damages for construction of railroad in highway include damages from elevation of grade. 10 L.R.A.(N.S.) 1202.

Effect of specification of particular claim to limit import of general release. 8 L.R.A.(N.S.) 1034.

Scope of release under policy indemnifying insured against loss of time by sickness or accident. 24 L.R.A.(N.S.) 211.

Right to reinstatement of mortgage when released by mistake. 58 L.R.A. 788.

As to similar provision in Cal. Civ. Code, § 1542, see *Rued v. Cooper*, 119 Cal. 463, 51 Pac. 704.

§ 5835. Releasing one does not release others. A release of one of two or more joint debtors does not extinguish the obligations of any of the others unless they are mere guarantors; nor does it affect their right to contribution from him. [R. C. 1905, § 5279; Civ. C. 1877, § 869; R. C. 1899, § 3834.]

Release of one joint maker of note does not exonerate others from liability. *Central Banking & T. Co. v. Pusey*, 22 S. D. 223, 116 N. W. 1126.

Effect of release of one joint tortfeasor on liability of the other. 58 L.R.A. 293; 11 Am. St. Rep. 906; 92 Am. St. Rep. 872; 111 Am. St. Rep. 281; 138 Am. St. Rep. 834.

Release of principal after maturity of obligation as affecting guarantor. 38 L.R.A.(N.S.) 875.

Effect on prior surety of release of later surety. 21 L.R.A. 252.

Discharge of one primarily liable for loss of insured property as affecting insured's right of action against insurer. 29 L.R.A.(N.S.) 698.

As to similar provision in Cal. Civ. Code, § 1543, see *Northern Ins. Co. v. Potter*, 63 Cal. 157.

CHAPTER 55.

CONTRACTS.

- ARTICLE 1. DEFINITION, §§ 5836, 5837.
 2. PARTIES, §§ 5838-5841.
 3. CONSENT, §§ 5842-5866.
 4. OBJECT OF A CONTRACT, §§ 5867-5871.
 5. CONSIDERATION, §§ 5872-5882.
 6. MANNER OF CREATING CONTRACTS, §§ 5883-5894.
 7. INTERPRETATION OF CONTRACTS, §§ 5895-5921.
 8. UNLAWFUL CONTRACTS, §§ 5922-5931.
 9. RESCISSION OF CONTRACTS, §§ 5932-5936.
 10. ALTERATION AND CANCELLATION OF CONTRACTS, §§ 5937-5941.

ARTICLE 1.—DEFINITION.

§ 5836. **Defined.** A contract is an agreement to do or not to do a certain thing. [R. C. 1905, § 5280; Civ. C. 1877, § 870; R. C. 1899, § 3835.]

As to similar provision in Cal. Civ. Code, § 1549, see *Breckinridge v. Crocker*, 78 Cal. 529, 21 Pac. 179.

§ 5837. **Requisites of.** It is essential to the existence of a contract that there should be:

1. Parties capable of contracting.
2. Their consent.
3. A lawful object; and,
4. Sufficient cause or consideration. [R. C. 1905, § 5281; Civ. C. 1877, § 871; R. C. 1899, § 3836.]

Consent of parties is essential to acceptance of contract. *Grissel v. Bank*, 12 S. D. 93, 80 N. W. 161.

As to contract induced by deceit being voidable because consent was not free. *Beare v. Wright*, 14 N. D. 26, 69 L.R.A. 409, 103 N. W. 632, 8 A. & E. Ann. Cas. 1037.

As to rescission of agreement to make repayment under mutual mistake as to legal rights of parties. *Arnett v. Smith*, 11 N. D. 55, 88 N. W. 1037.

Contract for extension of time made between mortgagee and one assuming mortgage under mutual mistake in believing that he had acquired title to property, is void. *Iowa Loan & Trust Co. v. Schnose*, 19 S. D. 248, 103 N. W. 22, 8 A. & E. Ann. Cas. 255.

As to similar provision in Cal. Civ. Code, § 1550, see *Harris v. Harris*, 64 Cal. 108, 28 Pac. 63; *Loaiza v. Superior Ct.*, 85 Cal. 11, 9 L.R.A. 376, 20 Am. St. Rep. 197, 24 Pac. 707; *Frick v. Los Angeles*, 115 Cal. 512, 47 Pac. 250; *Nevills v. Moore Min. Co.*, 135 Cal. 561, 67 Pac. 1054; *Kyle v. Hamilton*, 6 Cal. Unrep. 893, 68 Pac. 484; *Jacks v. Estee*, 139 Cal. 507, 73 Pac. 247.

ARTICLE 2.—PARTIES.

§ 5838. **Who may make.** All persons are capable of contracting, except minors, persons of unsound mind and persons deprived of civil rights. [R. C. 1905, § 5282; Civ. C. 1877, § 872; R. C. 1899, § 3837.]

As to similar provision in Cal. Civ. Code, § 1556, see *Butler v. Baber*, 54 Cal. 178.

§ 5839. **Minors, etc.** Minors and persons of unsound mind have only such capacity as is defined by chapter 2 of this code. [R. C. 1905, § 5283; Civ. C. 1877, § 873; R. C. 1899, § 3838.]

§ 5840. **Possible to identify parties.** It is essential to the validity of the contract, not only that the parties should exist, but that it should be possible to identify them. [R. C. 1905, § 5284; Civ. C. 1877, § 874; R. C. 1899, § 3839.]

§ 5841. **Beneficiary may enforce.** A contract made expressly for the benefit of a third person may be enforced by him at any time before the parties thereto rescind it. [R. C. 1905, § 5285; Civ. C. 1877, § 875; R. C. 1899, § 3840.]

Stranger cannot enforce a contract, though he would be benefited. *Parlin v. Hall*, 2 N. D. 473, 52 N. W. 405.

A contract contemplates present consideration passing between the contracting parties. *McArthur v. Dryden*, 6 N. D. 438, 71 N. W. 125.

Third party cannot intervene upon promise of vendor. *Bray v. Booker*, 6 N. D. 526, 72 N. W. 933.

Stranger to promise may not sue thereon where there was no consideration therefor from him, and no duty or obligation to him, outside contract, from promisee. *Fish & H. Co. v. New England Homestake Co.*, 27 S. D. 221, 130 N. W. 841.

Provision in a deed that grantee assume mortgage debt is insufficient as basis of action in absence of evidence of intent to contract for benefit of holder of note and mortgage. *Fry v. Ausman*, 29 S. D. 30, 39 L.R.A.(N.S.) 150, 135 N. W. 708.

Right of a third party to sue upon a contract made for his benefit. 25 L.R.A. 257; 2 L.R.A.(N.S.) 783.

Effect of provision in deed for benefit of stranger thereto. 20 L.R.A.(N.S.) 221.

Right of creditor to enforce promise of one allowed to secure property at judicial sale on faith of his promise to pay owner's debts. 15 L.R.A.(N.S.) 399.

Right of third person to maintain action upon promise of beneficiary to insured to pay all or part of proceeds of policy to such third person. 40 L.R.A.(N.S.) 692.

Will breach of contract with municipality to keep a street or highway in repair sustain an action by a person injured directly against the contractor. 39 L.R.A.(N.S.) 1112.

May one, not a party to an agreement, injured thereby in his business, assail the validity thereof on the ground that it tends to create or promote a monopoly. 26 L.R.A.(N.S.) 148.

Consumer's right to maintain suit to compel water company to furnish water at rates stipulated in contract with municipality. 1 L.R.A.(N.S.) 958.

Right of property owner to maintain action against water company for failure to supply sufficient water for fire purposes, as required by its contract with municipality. 6 L.R.A.(N.S.) 1171; 21 L.R.A.(N.S.) 1021.

Right of subcontractor, materialman or laborer to maintain action on contractor's bond to owner. 27 L.R.A.(N.S.) 573.

The right of addressee of telegram to sue for delay in delivery. 30 L.R.A.(N.S.) 1116.

Right of person not mentioned in the telegram and whose interest is not communicated to the company to recover for mental anguish. 8 L.R.A.(N.S.) 249; 19 L.R.A.(N.S.) 475.

Character of contract as affecting right of undisclosed principal to sue thereon. 29 L.R.A.(N.S.) 472; 39 L.R.A.(N.S.) 324.

Right of consignee to maintain action against carrier. 36 L.R.A.(N.S.) 68

Right of consignee who refuses to accept goods to maintain an action for damages against carrier. 30 L.R.A.(N.S.) 1071.

Right of mortgagee to maintain personal action against grantee who has assumed payment. 25 L.R.A. 275.

Right of mortgagee to enforce purchaser's promise to pay the mortgage where the grantor or promisee was not himself liable. 22 L.R.A.(N.S.) 492; 39 L.R.A.(N.S.) 151.

Right of creditor to enforce promise of one allowed to secure property at judicial sale upon faith of his promise to pay owner's debt. 15 L.R.A.(N.S.) 399.

As to similar provision in Cal. Civ. Code, § 1559, see *Wickersham v. Denman*, 68 Cal. 383, 9 Pac. 723; *Chung Kee v. Davidson*, 73 Cal. 522, 15 Pac. 100; *Thomson v. Bettens*, 94 Cal. 82, 29 Pac. 336; *Tyler v. Mayre*, 95 Cal. 160, 27 Pac. 160, 30 Pac. 196; *Hamilton v. Bates*, 4 Cal. Unrep. 371, 35 Pac. 304; *Alvord v. Spring Valley Gold Co.*, 106 Cal. 547, 40 Pac. 27; *Hopkins v. Warner*, 109 Cal. 133, 41 Pac. 868; *Buckley v. Gray*, 110 Cal. 339, 31 L.R.A. 862, 52 Am. St. Rep. 88, 42 Pac. 900; *Savings Bank v. Thornton*, 112 Cal. 255, 44 Pac. 466; *Lisenby v. Newton*, 120 Cal. 571, 65 Am. St. Rep. 203, 52 Pac. 813; *Washer v. Independent Min. & Development Co.*, 142 Cal. 702, 76 Pac. 654.

ARTICLE 3.—CONSENT.

§ 5842. Requisites of consent. The consent of the parties to a contract must be:

1. Free.
2. Mutual; and,
3. Communicated by each to the other. [R. C. 1905, § 5286; Civ. C. 1877, § 876; R. C. 1899, § 3841.]

As to similar provision in Cal. Civ. Code, § 1565, see *Colton v. Stanford*, 82 Cal. 351, 16 Am. St. Rep. 137, 23 Pac. 16; *Loaiza v. Superior Ct.*, 85 Cal. 11, 9 L.R.A. 376, 20 Am. St. Rep. 197, 24 Pac. 707; *Leszynsky v. Meyer*, 6 Cal. Unrep. 53, 53 Pac. 703; *London & S. F. Bank v. Parrott*, 125 Cal. 472, 73 Am. St. Rep. 64, 58 Pac. 164; *Nevills v. Moore Min. Co.*, 135 Cal. 561, 67 Pac. 1054; *Jacks v. Estee*, 139 Cal. 507, 73 Pac. 247; *Niles v. Hancock*, 140 Cal. 157, 73 Pac. 840.

§ 5843. Rescinded, if not free. A consent which is not free is, nevertheless, not absolutely void, but may be rescinded by the parties in the manner prescribed by the chapter on rescission. [R. C. 1905, § 5287; Civ. C. 1877, § 877; R. C. 1899, § 3842.]

Widow may rescind agreement, made under mistake, to take less portion of husband's estate than she has right to. *Griffing v. Gilason*, 21 S. D. 56, 109 N. W. 646.

As to similar provision in Cal. Civ. Code, § 1566, see *Fish v. Benson*, 71 Cal. 428, 12 Pac. 454; *Colton v. Stanford*, 82 Cal. 351, 16 Am. St. Rep. 137, 23 Pac. 16; *Loaiza v. Superior Ct.*, 85 Cal. 11, 9 L.R.A. 376, 20 Am. St. Rep. 197, 24 Pac. 707; *Bancroft v. Bancroft*, 110 Cal. 374, 42 Pac. 896; *Westerfeld v. New York L. Ins. Co.*, 129 Cal. 68, 58 Pac. 92, 61 Pac. 667; *Kyle v. Hamilton*, 6 Cal. Unrep. 893, 68 Pac. 484.

§ 5844. What renders apparent consent not free. An apparent consent is not real or free when obtained through:

1. Duress.
2. Menace.
3. Fraud.
4. Undue influence; or,
5. Mistake. [R. C. 1905, § 5288; Civ. C. 1877, § 878; R. C. 1899, § 3843.]

Invalidity of contract entered into under mutual mistake of law. *Silander v. Gronna*, 15 N. D. 552, 125 Am. St. Rep. 616, 108 N. W. 544.

Obligee's concealment of facts on obtaining guaranty or surety as fraud. 21 L.R.A. 411.

As to similar provision in Cal. Civ. Code, § 1567, see *Fish v. Benson*, 71 Cal. 428, 12 Pac. 454; *Colton v. Stanford*, 82 Cal. 351, 16 Am. St. Rep. 137, 23 Pac. 16; *Loaiza v. Superior Ct.*, 85 Cal. 11, 9 L.R.A. 376, 20 Am. St. Rep. 197, 24 Pac. 707; *Bancroft v. Bancroft*, 5 Cal. Unrep. 31, 40 Pac. 488; *Westerfeld v. New York L. Ins. Co.*, 129 Cal. 68, 58 Pac. 92, 61 Pac. 667; *Wingert v. San Francisco*, 134 Cal. 547, 86 Am. St. Rep. 294, 66 Pac. 730; *Donnelly v. Rees*, 141 Cal. 56, 74 Pac. 433.

§ 5845. When deemed not free. Consent is deemed to have been obtained through one of the causes mentioned in the last section only when it would not have been given had such cause not existed. [R. C. 1905, § 5289; Civ. C. 1877, § 879; R. C. 1899, § 3844.]

As to similar provision in Cal. Civ. Code, § 1568, see *Colton v. Stanford*, 82 Cal. 351, 16 Am. St. Rep. 137, 23 Pac. 16; *Loaiza v. Superior Ct.*, 85 Cal. 11, 9 L.R.A. 376, 20 Am. St. Rep. 197, 24 Pac. 707; *Woodham v. Allen*, 130 Cal. 194, 62 Pac. 398; *Hartwig v. Clark*, 138 Cal. 668, 72 Pac. 149.

§ 5846. Duress. Duress consists in:

1. Unlawful confinement of the person of the party or of the husband or wife of such party, or of an ancestor, descendant or adopted child of such party, husband or wife.

2. Unlawful detention of the property of any such person; or,

3. Confinement of such person, lawful in form, but fraudulently obtained or fraudulently made unjustly harassing or oppressive. [R. C. 1905, § 5290; Civ. C. 1877, § 880; R. C. 1899, § 3845.]

Payment of illegal tax under protest may be recovered. *Elevator Co. v. Bottineau County*, 9 N. D. 346, 83 N. W. 212.

Payment of a judgment voluntarily made but under coercion or duress imposed by execution of legal process does not bar appeal. *Signor v. Clark*, 13 N. D. 35, 99 N. W. 68.

When defendant seeks to avoid liability on account of duress court should instruct jury what constitutes duress. *McCormick v. Valsack*, 4 S. D. 67, 55 N. W. 145.

Coercion sufficient to avoid a contract, what. *McCormick v. Valsack*, 4 S. D. 67, 55 N. W. 145.

Nature and character of threats or coercion which would avoid contract. *McCormick v. Valsack*, 4 S. D. 67, 55 N. W. 145.

Payment of illegal tax under protest to avoid seizure of property is involuntary, and may be recovered. *St. Anthony Elevator Co. v. Bottineau County*, 9 N. D. 346, 83 N. W. 212, 50 L.R.A. 262.

As to compulsory payments. *C. & J. Michel Brewing Co. v. State*, 19 S. D. 302, 70 L.R.A. 911, 103 S. W. 40.

What is duress sufficient to invalidate contract. 26 Am. Dec. 370.

Contracts procured by threats of prosecution of relative. 26 L.R.A. 48; 20 L.R.A.(N.S.) 484; 37 L.R.A.(N.S.) 539.

Duress as affecting compromise. 25 L.R.A.(N.S.) 308.

Impeachment of certificate of acknowledgment because of duress. 41 L.R.A.(N.S.) 1169.

Duress as ground of injunction against judgment. 30 L.R.A. 802.

Duress which will avoid marriage. 43 L.R.A. 814; 27 L.R.A.(N.S.) 803.

Right to avoid marriage entered into to escape prosecution for seduction, upon ground of duress. 16 L.R.A.(N.S.) 938.

Effect of shipping contract limiting carrier's common law liability signed under compulsion. 28 L.R.A.(N.S.) 637.

Duress by demanding receipt as a condition of payment. 1 L.R.A.(N.S.) 867.

When payment of license fee is made under duress. 22 L.R.A.(N.S.) 873.

Duress by lien on real property. 16 L.R.A. 376.

As to similar provision in Cal. Civ. Code, § 1569, see *Morrill v. Nightingale*, 93 Cal. 452, 27 Am. St. Rep. 207, 28 Pac. 1068; *Stockton Combined Harvester & Agri. Works v. Glens Falls Ins. Co.*, 98 Cal. 557, 33 Pac. 633; *Woodham v. Allen*, 130 Cal. 194, 62 Pac. 398.

§ 5847. Menace. Menace consists in a threat:

1. Of such duress as is specified in the first and third subdivisions of the last section.

2. Of unlawful and violent injury to the person or property of any such person as is specified in the last section; or,

3. Of injury to the character of any such person. [R. C. 1905, § 5291; Civ. C. 1877, § 881; R. C. 1899, § 3846.]

As to similar provision in Cal. Civ. Code, § 1570, see *Morrill v. Nightingale*, 93 Cal. 452, 27 Am. St. Rep. 207, 28 Pac. 1068; *Bancroft v. Bancroft*, 5 Cal. Unrep. 31, 40 Pac. 488; *Woodham v. Allen*, 130 Cal. 194, 62 Pac. 398.

§ 5848. Fraud classified. Fraud is either actual or constructive. [R. C. 1905, § 5292; Civ. C. 1877, § 882; R. C. 1899, § 3847.]

As to similar provision in Cal. Civ. Code, § 1571, see *Colton v. Stanford*, 82 Cal. 351, 16 Am. St. Rep. 137, 23 Pac. 16; *Loaiza v. Superior Ct.*, 85 Cal. 11, 9 L.R.A. 376, 20 Am. St. Rep. 197, 24 Pac. 707.

§ 5849. Actual fraud. Actual fraud within the meaning of this chapter consists in any of the following acts committed by a party to the contract, or with his connivance, with intent to deceive another party thereto or to induce him to enter into the contract:

1. The suggestion as a fact of that which is not true by one who does not believe it to be true.

2. The positive assertion in a manner not warranted by the information of the person making it of that which is not true, though he believes it to be true.

3. The suppression of that which is true by one having knowledge or belief of the fact.

4. A promise made without any intention of performing it; or,

5. Any other act fitted to deceive. [R. C. 1905, § 5293; Civ. C. 1877, § 883; R. C. 1899, § 3848.]

Statement without positive knowledge, with intent to deceive, may be fraud. *Knowlton v. Schultz*, 6 N. D. 417, 71 N. W. 550; *Whitbeck v. Sees*, 10 S. D. 417, 73 N. W. 915.

Promise made without intention of performance is actual fraud. *Grewing v. Min. Thresh. Mach. Co.*, 12 S. D. 127, 80 N. W. 176.

Secret reservation in sale; public policy; effect as to attaching creditors. *Newell v. Wagness*, 1 N. D. 62, 44 N. W. 1014.

Chattel mortgage embodying secret trust. *Red River Valley v. Barnes*, 8 N. D. 432, 79 N. W. 880.

As to measure of damages for deceit. *Beare v. Wright*, 14 N. D. 26, 69 L.R.A. 409, 103 N. W. 632, 8 A. & E. Ann. Cas. 1057.

Promise made with intent to deceive and without intention to fulfill is fraud. *Tamlyn v. Peterson*, 15 N. D. 488, 107 N. W. 1081.

As to fraud in obtaining note. *Rochford v. Barrett*, 22 S. D. 83, 115 N. W. 522.

False representations by seller relied on by buyer are fraudulent, though seller believes them to be true. *McCabe v. Desnoyers*, 20 S. D. 581, 108 N. W. 341.

Failure of owner of stock to disclose to party taking it in exchange for deed, known insolvent condition of corporation, entitles grantor to rescission of deed. *Liland v. Tweto*, 19 N. D. 551, 125 N. W. 1032.

Statements regarding future as a fraud. 35 L.R.A. 420, 437.

Future promise as fraud. 10 L.R.A.(N.S.) 640; 24 L.R.A.(N.S.) 735.

Misstatement as to title to real property. 28 L.R.A.(N.S.) 202; 39 L.R.A.(N.S.) 1142.

False statement as to cost, selling or market price of property, or as to offers therefor. 35 L.R.A.(N.S.) 175.

Expression of opinion as fraud. 35 L.R.A. 417.

Statements as to credit as a fraud. 35 L.R.A. 421.

Right to rely on representations as to credit of third person. 37 L.R.A. 607.

Receiving deposit when bank insolvent, as a fraud. 34 L.R.A. 533.

As to similar provision in Cal. Civ. Code, § 1572, see *Brady v. Bartlett*, 56 Cal. 350;

Roberts v. Haley, 65 Cal. 397, 4 Pac. 385; *Brisson v. Brisson*, 75 Cal. 525, 7 Am. St.

Rep. 189, 17 Pac. 689; *Newman v. Smith*, 77 Cal. 22, 18 Pac. 791; *Lawrence v. Gayetty*,

78 Cal. 126, 12 Am. St. Rep. 29, 20 Pac. 382, 17 Mor. Min. Rep. 169; *Wenzel v. Shulz*,

78 Cal. 221, 20 Pac. 404; *Re Kohler*, 79 Cal. 313, 21 Pac. 758; *Colton v. Stanford*,

82 Cal. 351, 16 Am. St. Rep. 137, 23 Pac. 16; *Mayer v. Salazar*, 84 Cal. 646, 24 Pac. 597; *Klose v. Hillenbrand*, 88 Cal. 473, 26 Pac. 352; *Hays v. Gloster*, 88 Cal. 560, 26 Pac. 367; *Schultz v. McLean*, 93 Cal. 329, 28 Pac. 1053; *Wickersham v. Comerford*, 96 Cal. 433, 31 Pac. 358; *Groppengiesser v. Lake*, 103 Cal. 37, 36 Pac. 1036; *Langley v. Rodriguez*, 122 Cal. 580, 68 Am. St. Rep. 70, 55 Pac. 406; *Benson v. Bunting*, 127 Cal. 532, 78 Am. St. Rep. 81, 59 Pac. 991; *Re Benton*, 131 Cal. 472, 63 Pac. 775; *Smith v. Blandin*, 133 Cal. 441, 65 Pac. 894; *Re Johnson*, 134 Cal. 662, 66 Pac. 847; *People v. Klee*, 6 Cal. Unrep. 956, 69 Pac. 696; *Hartwig v. Clark*, 138 Cal. 668, 72 Pac. 149; *Donnelly v. Rees*, 141 Cal. 56, 74 Pac. 433; *Becker v. Schwerdtle*, 141 Cal. 386, 74 Pac. 1029; *Muller v. Palmer*, 144 Cal. 305, 77 Pac. 954.

2. Statements made without knowledge of falsity as ground for action for fraud. 18 L.R.A.(N.S.) 379.

Effect of representing things sold to be "good." 15 L.R.A. 795.

3. Concealment of material fact as a fraud. 4 L.R.A. 159; 5 L.R.A. 428.

Obligee's concealment of facts on obtaining guaranty or surety. 21 L.R.A. 411.

Landlord's concealment of defects in premises. 34 L.R.A. 827.

4. Whether lack of reasonable expectation of being able to pay is equivalent, as a matter of law, to an intention not to pay. 6 L.R.A.(N.S.) 556.

§ 5850. Constructive fraud. Constructive fraud consists:

1. In any breach of duty which without an actually fraudulent intent gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice or to the prejudice of any one claiming under him; or,

2. In any such act or omission as the law specifically declares to be fraudulent without respect to actual fraud. [R. C. 1905, § 5294; Civ. C. 1877, § 884; R. C. 1899, § 3849.]

Failure of grantee to record his conveyance does not render deed itself void, but only him from claiming his rights under deed, to prejudice of creditors of grantor. *Smith v. Cleaver*, 25 S. D. 351, 126 N. W. 589.

As to similar provision in Cal. Civ. Code, § 1573, see *Brady v. Bartlett*, 56 Cal. 350; *Roberts v. Haley*, 65 Cal. 397, 4 Pac. 385; *Carty v. Connolly*, 91 Cal. 15, 27 Pac. 599; *Re Johnson*, 134 Cal. 662, 66 Pac. 847.

§ 5851. Actual, question of fact. Actual fraud is always a question of fact. [R. C. 1905, § 5295; Civ. C. 1877, § 885; R. C. 1899, § 3850.]

Question of fraud is for jury. *Bank of Spearfish v. Graham*, 16 S. D. 49, 91 N. W. 340.

As to whether purchaser was induced by forged orders and fraudulent representations to execute notes is question for jury. *Bank of Spearfish v. Graham*, 16 S. D. 49, 91 N. W. 340.

Actual fraud as ground for cancelling recorded contract affecting land is question of fact. *Winter v. Johnson*, 27 S. D. 512, 131 N. W. 1020.

As to similar provision in Cal. Civ. Code, § 1574, see *Moore v. Copp*, 119 Cal. 429, 51 Pac. 630.

§ 5852. Undue influence. Undue influence consists:

1. In the use, by one in whom a confidence is reposed by another or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him.

2. In taking an unfair advantage of another's weakness of mind; or,

3. In taking a grossly oppressive and unfair advantage of another's necessities or distress. [R. C. 1905, § 5296; Civ. C. 1877, § 886; R. C. 1899, § 3851.]

Of what undue influence consists. *Ingwaldson v. Skrivseth*, 7 N. D. 388, 75 N. W. 772.

Consent essential to execution of a contract. *Grissel v. Bank*, 12 S. D. 93, 90 N. W. 161.

Complaint for recovery of money paid under duress is sufficient where it alleges that plaintiff having borrowed sum of money from defendant had land deeded to him, and that defendant refused to deed land to purchaser found except on payment of sum as usury, which sum was paid in order to make sale. *Redford v. Weller*, 27 S. D. 334, 131 N. W. 296.

Undue influence as a ground for relief from a voluntary trust. 19 L.R.A. 767.

Effect of undue influence by physician to avoid release. 5 L.R.A.(N.S.) 663.

Undue influence in contract requiring servant to elect between acceptance of benefits out of relief fund and a prosecution of his claims in an action for damages. 11 L.R.A.(N.S.) 192.

Presumption of undue influence when indulged. 21 Am. St. Rep. 94.

Presumption and burden of proof as to undue influence respecting gifts inter vivos from parent to child. 35 L.R.A.(N.S.) 944.

As to similar provision in Cal. Civ. Code, § 1575, see *Moore v. Moore*, 56 Cal. 89; *Re Kohler*, 79 Cal. 313, 21 Pac. 758; *Brison v. Brison*, 90 Cal. 323, 27 Pac. 186; *Dolliver v. Dolliver*, 94 Cal. 642, 30 Pac. 4; *Hayne v. Hermann*, 97 Cal. 259, 32 Pac. 171; *Dimond v. Sanderson*, 103 Cal. 97, 37 Pac. 189; *Stiles v. Cain*, 134 Cal. 170, 66 Pac. 231; *McDougall v. McDougall*, 135 Cal. 316, 67 Pac. 778; *Donnelly v. Rees*, 141 Cal. 56, 74 Pac. 433.

§ 5853. Mistake classified. Mistake may be either of fact or of law. [R. C. 1905, § 5297; Civ. C. 1877, § 887; R. C. 1899, § 3852.]

Contract for extension of time made between mortgagee and one assuming mortgage under mutual mistake in believing that he had acquired title to property, is void. *Iowa Loan & Trust Co. v. Schmose*, 19 S. D. 248, 103 N. W. 22, 9 A. & E. Ann. Cas. 255.

Mistake as to effect of foreclosure proceedings in divestiture of plaintiff's title to land is mistake of law. *Kenny v. McKenzie*, 25 S. D. 485, 49 L.R.A.(N.S.) 775, 127 N. W. 597.

As to similar provision in Cal. Civ. Code, § 1576, see *Douglass v. Todd*, 96 Cal. 655, 31 Am. St. Rep. 247, 31 Pac. 623.

§ 5854. Fact. Mistake of fact is a mistake not caused by the neglect of a legal duty on the part of the person making the mistake and consisting in:

1. An unconscious ignorance or forgetfulness of a fact past or present material to the contract; or,

2. Belief in the present existence of a thing material to the contract which does not exist, or in the past existence of such a thing which has not existed.

[R. C. 1905, § 5298; Civ. C. 1877, § 888; R. C. 1899, § 3853.]

Describing more land in writing than was intended by verbal agreement is a mistake of fact. *Beulah v. Travelers' Ins. Co.*, 14 N. D. 39, 103 N. W. 405.

Mistake of fact. 45 Am. Dec. 631.

Right to reinstatement of mortgage released or discharged by mistake. 58 L.R.A. 788; 26 L.R.A.(N.S.) 816; 28 L.R.A.(N.S.) 825, 904.

Effect of mistake on compromise. 25 L.R.A.(N.S.) 309.

Effect of mistake of servant, as to extent of injuries received by him for which he has given a release. 11 L.R.A.(N.S.) 201.

Mistake as defense against action on assessment by mutual fire insurance companies. 32 L.R.A. 491.

Necessity for reforming insurance policy before recovery in case of mistake. 3 L.R.A.(N.S.) 548.

Reformation of insurance policy for mistake of soliciting agent. 11 L.R.A.(N.S.) 357.

Effect of honest mistake in answer as to health of insured warranted by him to be true. 15 L.R.A.(N.S.) 1277.

Effect of mistake as to price on meeting of minds in contract for sale of personalty. 32 L.R.A.(N.S.) 433.

Seller's mistake as to identity of vendee, as affecting the passing of the title to the goods sold. 13 L.R.A.(N.S.) 413.

Rights and liabilities under contract for sale of personalty as affected by a vendor's mistake in fixing price. 23 L.R.A.(N.S.) 1109.

Relief from purchase at auction on ground of mistake. 34 L.R.A.(N.S.) 927.

Rescission because of mistake as to extent of grantor's title to land. 15 L.R.A.(N.S.) 1039.

Right of grantee in possession to question grantor's right to collect purchase money in case of mistake. 21 L.R.A.(N.S.) 395.

Conclusiveness of stated or settled account containing inaccuracy or error in method of mathematical calculation. 23 L.R.A.(N.S.) 787.

Effect of mistake in name of payee in negotiable instrument. 22 L.R.A.(N.S.) 506.

Mistake as to identity of payee or indorser of bill or note. 17 L.R.A.(N.S.) 514.

Alteration of note by mistake. 35 L.R.A. 467.

Effect of alteration of date of note to correct mistake. 32 L.R.A.(N.S.) 517.

Alteration of instrument to correct mistake in designation of party. 31 L.R.A.(N.S.) 127.

Mistake as affecting question whether commercial paper operates as payment of debt. 35 L.R.A.(N.S.) 75.

Right of bank to recover amount paid on check or other paper drawn upon or payable at it under mistaken belief that there were sufficient funds to meet it. 23 L.R.A.(N.S.) 1092; 33 L.R.A.(N.S.) 1023.

Estoppel to enforce contract of suretyship or guaranty released through mistake. 13 L.R.A.(N.S.) 576.

Mistake in computation by contractor as ground for relief. 10 L.R.A.(N.S.) 114.

Effect of mistake of fact by defendant on right to specific performance of a contract induced thereby. 15 L.R.A.(N.S.) 81.

As to similar provision in Cal. Civ. Code, § 1577, see *Moore v. Copp*, 119 Cal. 429, 51 Pac. 630; *Rued v. Cooper*, 119 Cal. 463, 51 Pac. 704; *Ward v. Yorba*, 6 Cal. Unrep.

101, 54 Pac. 80; *San Diego Land & Town Co. v. La Presa School Dist.*, 122 Cal. 98, 54 Pac. 528; *Hardison v. Davis*, 131 Cal. 635, 63 Pac. 1005; *Palace Hardware Co. v. Smith*, 134 Cal. 381, 66 Pac. 474; *Hartwig v. Clark*, 138 Cal. 668, 72 Pac. 149; *White v. Stevenson*, 144 Cal. 104, 77 Pac. 828.

§ 5855. Law. Mistake of law constitutes a mistake within the meaning of this chapter only when it arises from:

1. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or,

2. A misapprehension of the law by one party of which the others are aware at the time of contracting, but which they do not rectify. [R. C. 1905, § 5299; Civ. C. 1877, § 889; R. C. 1899, § 3854.]

As to rescission of agreement to make repayment under mutual mistake as to legal rights of parties. *Arnett v. Smith*, 11 N. D. 55, 88 N. W. 1037.

Invalidity of contract entered into under mutual mistake of law. *Silander v. Gronna*, 15 N. D. 552, 125 Am. St. Rep. 616, 108 N. W. 544.

Receipt for money paid by mistake of law does not operate as an estoppel. *Gjerstadengen v. Hartzell*, 9 N. D. 268, 83 N. W. 230.

Right to reinstatement of mortgage released or discharged by mistake. 58 L.R.A. 788; 26 L.R.A.(N.S.) 816; 28 L.R.A.(N.S.) 825, 904.

Relief from mistake of law as to effect of instrument. 28 L.R.A.(N.S.) 785.

Servant's misconception as to the legal effect of a release from an injury received by him, the contents of which is known to him. 11 L.R.A.(N.S.) 198.

As to similar provision in Cal. Civ. Code, § 1578, see *Kopp v. Gunther*, 95 Cal. 63, 30 Pac. 301; *Rued v. Cooper*, 119 Cal. 463, 51 Pac. 704; *Benson v. Bunting*, 127 Cal. 532, 78 Am. St. Rep. 81, 59 Pac. 991; *Gregory v. Clabrough*, 129 Cal. 475, 62 Pac. 72; *Ellis v. Jeffers*, 130 Cal. 478, 62 Pac. 734; *Wingert v. San Francisco*, 134 Cal. 547, 86 Am. St. Rep. 294, 66 Pac. 730; *Kyle v. Hamilton*, 6 Cal. Unrep. 893, 68 Pac. 484; *Hartwig v. Clark*, 138 Cal. 668, 72 Pac. 149.

§ 5856. Of foreign laws, fact. Mistake of foreign laws is a mistake of fact. [R. C. 1905, § 5300; Civ. C. 1877, § 890; R. C. 1899, § 3855.]

§ 5857. Mutual consent defined. Consent is not mutual unless the parties all agree upon the same thing in the same sense. But in certain cases defined by the article on interpretation they are to be deemed so to agree without regard to the fact. [R. C. 1905, § 5301; Civ. C. 1877, § 891; R. C. 1899, § 3856.]

As to necessity of minds of parties meeting to form contract. *Kaster v. Mason*, 13 N. D. 107, 99 N. W. 1083.

Necessity of meeting of minds as to price in contract for sale of personalty. 32 L.R.A.(N.S.) 429.

Mutuality of obligation where one party's obligation is not definite and certain. 1 L.R.A.(N.S.) 445.

Validity and effect of stipulation in contract to renew on terms to be agreed upon. 32 L.R.A.(N.S.) 201.

Effect of leaving price indefinite in contract. 53 L.R.A. 289.

As to similar provision in Cal. Civ. Code, § 1580, see *Farmers' Nat. Gold Bank v. Stover*, 60 Cal. 387; *Farmers' & M. Bank v. De Shorb*, 137 Cal. 685, 70 Pac. 771.

§ 5858. How communicated. Consent can be communicated with effect only by some act or omission of the party contracting by which he intends to communicate it or which necessarily tends to such communication. [R. C. 1905, § 5302; Civ. C. 1877, § 892; R. C. 1899, § 3857.]

§ 5859. Acceptance must comply with conditions. If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted. [R. C. 1905, § 5303; Civ. C. 1877, § 893; R. C. 1899, § 3858.]

As to similar provision in Cal. Civ. Code, § 1582, see *Frick v. Los Angeles*, 115 Cal. 512, 47 Pac. 250; *Pacific Pine Lumber Co. v. Western U. Teleg. Co.*, 123 Cal. 428, 56 Pac. 103.

§ 5860. When deemed fully communicated. Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer in conformity to the last section. [R. C. 1905, § 5304; Civ. C. 1877, § 894; R. C. 1899, § 3859.]

Time and place of consummation of contract when offer by letter accepted by telegram, or vice versa. 6 L.R.A.(N.S.) 1016.

As to similar provision in Cal. Civ. Code, § 1583, see *Pacific Pine Lumber Co. v. Western U. Teleg. Co.*, 123 Cal. 428, 56 Pac. 103.

§ 5861. Acts which are an acceptance. Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal. [R. C. 1905, § 5305; Civ. C. 1877, § 895; R. C. 1899, § 3860.]

As to similar provision in Cal. Civ. Code, § 1584, see *Gallagher v. Equitable Gaslight Co.*, 141 Cal. 699, 75 Pac. 329.

§ 5862. Acceptance must be absolute. An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character, which the proposer can separate from the rest and which will include the person accepting. A qualified acceptance is a new proposal. [R. C. 1905, § 5306; Civ. C. 1877, § 896; R. C. 1899, § 3861.]

Counter proposition to offer of dedication to the effect that site would be accepted, provided, that terms of resolution in regard to abstract, etc., was complied with, was not acceptance of offer. *Grow v. Taylor*, 23 N. D. 469, 137 N. W. 451.

Offer and acceptance without execution of contemplated formal instrument. 29 L.R.A. 431.

Illustrations of the distinction between a definite proposal or acceptance and a mere preliminary step in the negotiation of a contract. 4 L.R.A.(N.S.) 177.

Validity of contract of employment indefinite and uncertain as to kind of employment or amount of remuneration. 48 L.R.A.(N.S.) 435.

As to similar provision in Cal. Civ. Code, § 1585, see *Wristen v. Bowles*, 82 Cal. 84, 22 Pac. 1136; *Niles v. Hancock*, 140 Cal. 157, 73 Pac. 840; *Four Oil Co. v. United Oil Producers*, 145 Cal. 623, 68 L.R.A. 226, 79 Pac. 366.

§ 5863. When proposal revoked. A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards. [R. C. 1905, § 5307; Civ. C. 1877, § 897; R. C. 1899, § 3862.]

As to acceptance of contract before revocation. *Reeves v. Bruening*, 13 N. D. 157, 100 N. W. 241.

Order for machinery given to plaintiff's agent providing that it was subject to plaintiff's approval, did not become binding contract until approval and acceptance. *Thomas Mfg. Co. v. Lyons*, 29 S. D. 600, 137 N. W. 340.

In action for price of goods purchased upon order, defendant may show under general denial that order was cancelled before acceptance by seller. *A. A. Cooper Wagon & Buggy Co. v. Stedronsky Bros. Co.*, 24 S. D. 381, 123 N. W. 846.

Right to withdraw order given agent before acceptance by principal. 10 L.R.A.(N.S.) 1138.

As to similar provision in Cal. Civ. Code, § 1586, see *Wristen v. Bowles*, 82 Cal. 84, 22 Pac. 1136.

§ 5864. How proposal revoked. A proposal is revoked:

1. By the communication of notice of revocation by the proposer to the other party in the manner prescribed by sections 5858 and 5860 before his acceptance has been communicated to the former.

2. By the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed the lapse of a reasonable time without communication of the acceptance.

3. By the failure of the acceptor to fulfill a condition precedent to acceptance; or,

4. By the death or insanity of the proposer. [R. C. 1905, § 5308; Civ. C. 1877, § 898; R. C. 1899, § 3863.]

Acceptance of offer, after depositing notice of revocation in post office, ineffectual. *Watters v. Lincoln*, 29 S. D. 98, 135 N. W. 712.

Effect of death of party after the mailing, but before the receipt, of his letter accepting an offer. 12 L.R.A.(N.S.) 439.

§ 5865. Subsequent consent. A contract which is voidable solely for want of due consent may be ratified by a subsequent consent. [R. C. 1905, § 5309; Civ. C. 1877, § 899; R. C. 1899, § 3864.]

As to similar provision in Cal. Civ. Code, § 1588, see *Phillips v. Sanger Lumber Co.*, 130 Cal. 431, 62 Pac. 749.

§ 5866. Acceptance of benefit a consent to obligation. A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the

obligations arising from it so far as the facts are known or ought to be known to the person accepting. [R. C. 1905, § 5310; Civ. C. 1877, § 900; R. C. 1899, § 3865.]

Party accepting benefits of transaction cannot repudiate. *Morris v. Ewing*, 8 N. D. 99, 77 N. W. 1047.

Corporation accepting benefit of contract in its behalf by officer cannot repudiate. *Dedrick v. Land Co.*, 12 S. D. 59, 80 N. W. 153; *Huron P. & B. Co. v. Kittleson*, 4 S. D. 520, 57 N. W. 233.

As to acceptance of novation. *Lemon v. Little*, 21 S. D. 628, 114 N. W. 1001.

No implied contract to pay for services of engineer arose against holder of mining claim, where company to whom he gave option to purchase employed engineer to make survey, so that patent might be obtained. *Fish & H. Co. v. New England Homestake Co.*, 27 S. D. 221, 130 N. W. 841.

Effect of using building by owner as an acceptance of work of construction or repair. 16 L.R.A.(N.S.) 489.

Taking possession of building with knowledge of defects as waiver thereof, as against contractor. 20 L.R.A.(N.S.) 872.

As to similar provision in Cal. Civ. Code, § 1589, see *Cutting Packing Co. v. Packers' Exchange*, 86 Cal. 574, 10 L.R.A. 369, 21 Am. St. Rep. 63, 25 Pac. 52; *Gribble v. Columbus Brewing Co.*, 100 Cal. 67, 34 Pac. 527; *Stone v. Owens*, 105 Cal. 292, 38 Pac. 726; *Blood v. LaSerena Land & Water Co.*, 113 Cal. 221, 41 Pac. 1017, 45 Pac. 252; *Thomasson v. Grace M. E. Church*, 113 Cal. 558, 45 Pac. 838; *Lisenby v. Newton*, 120 Cal. 571, 65 Am. St. Rep. 203, 52 Pac. 813; *Phillips v. Sanger Lumber Co.*, 130 Cal. 431, 62 Pac. 749; *Canale v. Copello*, 137 Cal. 22, 69 Pac. 698; *Gallagher v. Equitable Gaslight Co.*, 141 Cal. 699, 75 Pac. 329; *White v. Stevenson*, 144 Cal. 104, 77 Pac. 828.

ARTICLE 4.—OBJECT OF A CONTRACT.

§ 5867. Object of contract. The object of a contract is the thing which it is agreed on the part of the party receiving the consideration to do or not to do. [R. C. 1905, § 5311; Civ. C. 1877, § 901; R. C. 1899, § 3866.]

As to similar provision in Cal. Civ. Code, § 1595, see *Mackenzie v. Hodgkin*, 126 Cal. 591, 77 Am. St. Rep. 209, 59 Pac. 36.

§ 5868. Requisites of object. The object of a contract must be lawful when the contract is made and possible and ascertainable by the time the contract is to be performed. [R. C. 1905, § 5312; Civ. C. 1877, § 902; R. C. 1899, § 3867.]

§ 5869. Possible defined. Everything is deemed possible except that which is impossible in the nature of things. [R. C. 1905, § 5313; Civ. C. 1877, § 903; R. C. 1899, § 3868.]

As to similar provision in Cal. Civ. Code, § 1597, see *Peterson v. Hubbard*, 2 Cal. Unrep. 607, 9 Pac. 106.

§ 5870. Single unlawful object avoids contract. When a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void. [R. C. 1905, § 5314; Civ. C. 1877, § 904; R. C. 1899, § 3869.]

As to similar provision in Cal. Civ. Code, § 1598, see *Sutliff v. Seidenberg*, 132 Cal. 63, 64 Pac. 131, 469.

§ 5871. Lawful object valid. When a contract has several distinct objects, of which one at least is lawful and one at least is unlawful in whole or in part, the contract is void as to the latter and valid as to the rest. [R. C. 1905, § 5315; Civ. C. 1877, § 905; R. C. 1899, § 3870.]

As to similar provision in Cal. Civ. Code, § 1599, see *Granger v. Original Empire Mill. & Min. Co.*, 59 Cal. 678; *Porter v. Fisher*, 4 Cal. Unrep. 324, 34 Pac. 700; *McVicker v. McKenzie*, 136 Cal. 656, 69 Pac. 495.

ARTICLE 5.—CONSIDERATION.

§ 5872 Good consideration defined. Any benefit conferred or agreed to be conferred upon the promiser by any other person to which the promiser is not lawfully entitled or any prejudice suffered or agreed to be suffered by such person, other than such as he is at the time of consent lawfully bound to

suffer as an inducement to the promiser, is a good consideration for a promise. [R. C. 1905, § 5316; Civ. C. 1877, § 906; R. C. 1899, § 3871.]

Unfounded claim not sufficient to support promise to pay money upon settlement. *McGlynn v. Scott*, 4 N. D. 18, 58 N. W. 460.

Consideration for promise may be some prejudice suffered. *Roberts v. Bank*, 8 N. D. 474, 79 N. W. 993.

Release of vendor from obligations of contract, a sufficient consideration to support the surrender. *Kvello v. Taylor*, 5 N. D. 76, 63 N. W. 889.

Relinquishment of a timber culture entry a good consideration. *Peoples v. Evens*, 8 N. D. 121, 77 N. W. 93.

Inadequacy of consideration as a defense. 56 Am. Rep. 332.

Sufficiency of consideration received upon disposal of municipal property. 43 L.R.A.(N.S.) 1137.

—for assumption of debts on dissolution of partnership. 48 L.R.A.(N.S.) 547.

—for subscription to charity. 48 L.R.A.(N.S.) 785.

—for compromise of void, invalid or unfounded claim. 25 L.R.A.(N.S.) 288.

—for contract requiring servant to elect between acceptance of benefits out of a relief fund and a prosecution of his claims in an action for damages. 11 L.R.A.(N.S.) 187; 48 L.R.A.(N.S.) 442.

Furnishing medical attention as a consideration for release of liability for personal injuries or death. 46 L.R.A.(N.S.) 419.

Cancellation of invalid contract as consideration for bill or note. 5 L.R.A.(N.S.) 725.

Release of promise to marry as consideration for contract. 19 L.R.A.(N.S.) 656.

New promise as consideration when original promise was illegal. 53 L.R.A. 370.

Forbearance to sue as consideration for promise. 60 Am. Dec. 524.

—for promise by a third person to pay an existing obligation. 19 L.R.A.(N.S.) 842.

Cancellation of invalid contract as consideration for a promise. 5 L.R.A.(N.S.) 725.

As to similar provision in Cal. Civ. Code, § 1605, see *Golden State & M. Iron Works v. Angell*, 89 Cal. 643, 27 Pac. 65; *Blyth v. Robinson*, 104 Cal. 239, 37 Pac. 904; *Heim v. Butin*, 5 Cal. Unrep. 19, 40 Pac. 39; *Mackenzie v. Hodgkin*, 126 Cal. 591, 77 Am. St. Rep. 209, 59 Pac. 36; *Kyle v. Hamilton*, 6 Cal. Unrep. 893, 68 Pac. 484; *Aden v. Vallejo*, 139 Cal. 165, 72 Pac. 905; *Kellogg v. Lopez*, 145 Cal. 497, 78 Pac. 1056.

§ 5873. When legal or moral obligation good consideration. An existing legal obligation resting upon the promiser or a moral obligation originating in some benefit conferred upon the promiser, or prejudice suffered by the promisee is also a good consideration for a promise to an extent corresponding with the extent of the obligation, but no further or otherwise. [R. C. 1905, § 5317; Civ. C. 1877, § 907; R. C. 1899, § 3872.]

Extension of time for payment of notes may be sufficient. *First Nat. Bank v. Lamont*, 5 N. D. 393, 67 N. W. 145; *Red River Valley Bank v. Barnes*, 8 N. D. 432, 79 N. W. 880.

Moral obligation as a consideration. *Rankin v. Mitthiesen*, 10 S. D. 628, 75 N. W. 196.

Where person is surety for another's debt to amount of \$800, subsequent signing note of similar tenor needs no other consideration. *Frick Co. v. Hoff*, 26 S. D. 360, 128 N. W. 495.

Pre-existing debt as consideration for bona fide purchase of nonnegotiable property. 36 L.R.A. 161.

Pre-existing debt as consideration for chattel mortgage as against other creditors or equities. 33 L.R.A. 305.

Discharge of antecedent debt as a consideration sustaining one's character as a bona fide purchaser or incumbrancer for value entitled to protection of recording acts. 27 L.R.A.(N.S.) 620.

Payment of existing debt as consideration for contract. 34 L.R.A. 33.

Payment of part of liquidated and undisputed debt as consideration for discharge of whole. 11 L.R.A.(N.S.) 1018; 21 L.R.A.(N.S.) 1005.

Promise of additional compensation for completing an executory contract other than a contract for the payment of money. 11 L.R.A.(N.S.) 789; 28 L.R.A.(N.S.) 450.

Moral obligation as a consideration for a promise. 53 L.R.A. 353; 26 L.R.A.(N.S.) 520; 39 Am. St. Rep. 735.

Does moral obligation arising from relationship afford a sufficient consideration to support a promise to become responsible for another's debt. 3 L.R.A.(N.S.) 436.

Validity of husband's express promise to pay debt contracted by wife. 7 L.R.A.(N.S.) 1048.

Validity of new promise by woman after discovery to pay debt incurred during coverture. 7 L.R.A.(N.S.) 1053; 33 L.R.A.(N.S.) 741.

New promise after bar of limitations or discharge in bankruptcy. 53 L.R.A. 862.

As to similar provision in Cal. Civ. Code, § 1606, see *Bernstein v. Downs*, 112 Cal. 197, 44 Pac. 557.

§ 5874. Consideration must be lawful. The consideration of a contract must be lawful within the meaning of section 5922. [R. C. 1905, § 5318; Civ. C. 1877, § 908; R. C. 1899, § 3873.]

As to similar provision in Cal. Civ. Code, § 1607, see *Sharon v. Sharon*, 68 Cal. 29, 8 Pac. 614; *Connolly v. Hingley*, 82 Cal. 642, 23 Pac. 273; *Graham v. Larimer*, 83 Cal. 173, 23 Pac. 286; *Berka v. Woodward*, 125 Cal. 119, 45 L.R.A. 420, 73 Am. St. Rep. 31, 57 Pac. 777.

§ 5875. Contract void when consideration unlawful. If any part of a single consideration for one or more objects, or of several considerations for a single object is unlawful, the entire contract is void. [R. C. 1905, § 5319; Civ. C. 1877, § 909; R. C. 1899, § 3874.]

Party cannot avoid contract because of his unlawful purpose in making it. *Gage v. Fisher*, 5 N. D. 297, 65 N. W. 809, 31 L.R.A. 557.

Consideration which is partly illegal or has partly failed. 117 Am. St. Rep. 493.

As to similar provision in Cal. Civ. Code, § 1608, see *Sharon v. Sharon*, 68 Cal. 29, 8 Pac. 614; *Connolly v. Hingley*, 82 Cal. 642, 23 Pac. 273; *Graham v. Larimer*, 83 Cal. 173, 23 Pac. 286; *Moffatt v. Bulsom*, 96 Cal. 106, 31 Am. St. Rep. 192, 60 Pac. 1022; *Berka v. Woodward*, 125 Cal. 119, 45 L.R.A. 420, 73 Am. St. Rep. 31, 57 Pac. 777; *Field v. Austin*, 131 Cal. 379, 63 Pac. 692; *Humboldt Co. v. Stern*, 136 Cal. 63, 68 Pac. 324.

§ 5876. Consideration executed or executory. A consideration may be executed or executory in whole or in part. In so far as it is executory it is subject to the provisions of article 4 of this chapter. [R. C. 1905, § 5320; Civ. C. 1877, § 910; R. C. 1899, § 3875.]

§ 5877. How executory consideration determined. When a consideration is executory it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person or regulated by any specified standard. [R. C. 1905, § 5321; Civ. C. 1877, § 911; R. C. 1895, § 3876.]

As to similar provision in Cal. Civ. Code, § 1610, see *California Annual Conference v. Seitz*, 74 Cal. 287, 15 Pac. 839.

§ 5878. Consideration undetermined. Reasonable worth. When a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party the consideration must be so much money as the object of the contract is reasonably worth. [R. C. 1905, § 5322; Civ. C. 1877, § 912; R. C. 1899, § 3877.]

Court may require plaintiff to remit a portion of verdict for money which is unsupported by evidence. *Doyle v. Edwards*, 15 S. D. 648, 91 N. W. 322.

§ 5879. Consideration not ascertainable. Contract void. When a contract provides an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void. [R. C. 1905, § 5323; Civ. C. 1877, § 913; R. C. 1899, § 3878.]

§ 5880. Exclusive method. Consideration not ascertainable. Provision void. When a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face, but in fact is, or becomes impossible of execution, such provision only is void. [R. C. 1905, § 5324; Civ. C. 1877, § 914; R. C. 1899, § 3879.]

Writing "extended to December 1st, 1891" by payee on a promissory note, is a written extension and presumptive evidence of consideration. *Corbett v. Clough*, 8 S. D. 176, 65 N. W. 1074.

A promissory note imports consideration. *McGlynn v. Scott*, 4 N. D. 18, 58 N. W. 460.

Written extension of contract giving option to purchase real estate implies consideration and is valid. *Gira v. Harris*, 14 S. D. 537, 86 N. W. 624.

Chattel mortgage may be admitted in evidence without proof of consideration, unless want of consideration has been shown. *First Nat. Bank v. Bank*, 9 N. D. 319, 63 N. W. 221.

Sufficient consideration will be presumed from written agreement to pay account. *Grimerud Shoe Co. v. Jackson*, 22 S. D. 114, 115 N. W. 656.

All written instruments, sealed or unsealed, upon a parity in respect to consideration. *Heffleman v. Pennington County*, 3 S. D. 162, 52 N. W. 851.

Recitals in deed as to consideration not conclusive. *Fraley v. Bently*, 1 D. 24, 46 N. W. 506.

One claiming to have signed contract only as witness must prove that fact. *Hermiston v. Green*, 11 S. D. 81, 75 N. W. 819.

Telegram containing warranty of goods ordered by addressee is a contract in writing. *Western Twine Co. v. Wright*, 11 S. D. 521, 78 N. W. 942, 44 L.R.A. 438.

Facts constituting a written agreement and delivery of the same must be affirmatively alleged. *Smith v. Gale*, 13 S. D. 162, 82 N. W. 385.

§ 5881. Writing presumes consideration. A written instrument is presumptive evidence of a consideration. [R. C. 1905, § 5325; Civ. C. 1877, § 914; R. C. 1899, § 3880.]

Written instrument is presumptive evidence of consideration and burden of proof to show lack of consideration is upon party seeking to avoid it. *Frick Co. v. Hoff*, 28 S. D. 360, 128 N. W. 495.

Note, containing clause, "less taxes on land for 1906" was presumably based upon consideration. *Kimm v. Wolters*, 28 S. D. 255, 133 N. W. 277.

Written instrument presumes consideration. *First National Bank of Fargo v. Red River Valley National Bank*, 9 N. D. 319, 83 N. W. 221; *McGlynn v. Scott*, 4 N. D. 18, 58 N. W. 460; *Gira v. Harris*, 14 S. D. 537, 86 N. W. 624; *Corbett v. Clough*, 8 S. D. 176, 65 N. W. 1074.

Sealed or unsealed instruments on a parity as to consideration. *Heffleman v. Pennington County*, 3 S. D. 162, 52 N. W. 851.

One signing a contract claiming to have signed as a witness only, the burden is on him to prove such fact. *Hermiston v. Green*, 11 S. D. 81, 75 N. W. 819.

A telegram containing a warranty of goods ordered by the addressee is a contract in writing and presumptive evidence of consideration. *Twine Co. v. Wright*, 11 S. D. 521, 78 N. W. 942.

Complaint should affirmatively show special facts constituting agreement. *Smith v. Gale*, 13 S. D. 162, 82 N. W. 385.

Deed being written instrument, is presumptive evidence of having been executed and delivered for consideration. *Styles v. Dickey*, 22 N. D. 515, 134 N. W. 702.

Deed of land is presumed to have been made for valuable consideration. *Smith v. Gaub*, 19 N. D. 337, 123 N. W. 827.

As to similar provision in Cal. Civ. Code, § 1614, see *Brickell v. Batchelder*, 62 Cal. 623; *Goad v. Moulton*, 67 Cal. 536, 8 Pac. 63; *Peasley v. McFadden*, 68 Cal. 611, 10 Pac. 179; *Martin v. Splivalo*, 69 Cal. 611, 11 Pac. 484; *Metropolitan Loan Asso. v. Esche*, 75 Cal. 513, 17 Pac. 675; *Williams v. Hall*, 79 Cal. 606, 21 Pac. 965; *McLaughlin v. Clausen*, 85 Cal. 322, 24 Pac. 636; *Toomy v. Dunphy*, 86 Cal. 639, 25 Pac. 130; *Poirier v. Gravel*, 88 Cal. 79, 25 Pac. 962; *Henke v. Eureka Endowment Asso.*, 100 Cal. 429, 34 Pac. 1089; *Dimond v. Sanderson*, 103 Cal. 97, 37 Pac. 189; *Giselman v. Starr*, 106 Cal. 651, 40 Pac. 8; *Younglove v. Cunningham*, 5 Cal. Unrep. 281, 43 Pac. 755; *Rogers v. Schulenburg*, 111 Cal. 281, 43 Pac. 899; *Rogers v. Kimball*, 5 Cal. Unrep. 725, 49 Pac. 719; *Van Loben Sels v. Bunnell*, 120 Cal. 680, 53 Pac. 266; *Main Street & Agri. Park R. Co. v. Los Angeles Traction Co.*, 129 Cal. 301, 61 Pac. 937; *Field v. Austin*, 131 Cal. 379, 63 Pac. 692; *Driscoll v. Driscoll*, 143 Cal. 528, 77 Pac. 471.

§ 5882. Burden of proving want of. The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it. [R. C. 1905, § 5326; Civ. C. 1877, § 914; R. C. 1899, § 3881.]

Burden of proof as to consideration for transfer by husband to wife. 56 L.R.A. 828.

As to similar provision in Cal. Civ. Code, § 1615, see *Peasley v. McFadden*, 68 Cal. 611, 10 Pac. 179; *Martin v. Splivalo*, 69 Cal. 611, 11 Pac. 484; *Metropolitan Loan Asso. v. Esche*, 75 Cal. 513, 17 Pac. 675; *Williams v. Hall*, 79 Cal. 606, 21 Pac. 965; *Poirier v. Gravel*, 88 Cal. 79, 25 Pac. 962; *Dimond v. Sanderson*, 103 Cal. 97, 37 Pac. 189; *Rogers v. Schulenburg*, 111 Cal. 281, 43 Pac. 899; *Van Loben Sels v. Bunnell*, 120 Cal. 680, 53 Pac. 266; *Main Street & Agri. Park R. Co. v. Los Angeles Traction Co.*, 129 Cal. 301, 61 Pac. 937; *Field v. Austin*, 131 Cal. 379, 63 Pac. 692; *Shain v. Goodwin*, 46 Fed. 564.

ARTICLE 6.—MANNER OF CREATING CONTRACTS.

§ 5883. Contracts classified. A contract is either express or implied. [R. C. 1905, § 5327; Civ. C. 1877, § 915; R. C. 1899, § 3882.]

§ 5884. Express. An express contract is one the terms of which are stated in words. [R. C. 1905, § 5328; Civ. C. 1877, § 916; R. C. 1899, § 3883.]

Contract to pay board for another person not implied from contract with previous landlord so to do. *Dempsey v. Billingshurst*, 7 S. D. 564, 64 N. W. 1124.

Smallpox patient in pest house; implied contract to pay county physician for attendance. *Ostland v. Porter*, 4 D. 98, 25 N. W. 731.

When oral contract is ambiguous, intention of parties may be gathered from their acts and surrounding circumstances. *Blood v. Fargo Elevator Co.*, 1 S. D. 71, 45 N. W. 200.

Parol contract for sale of realty partly performed may be enforced. *Fideler v. Norton*, 4 D. 258, 30 N. W. 128.

As to similar provision in Cal. Civ. Code, § 1620, see *Nevills v. Moore Min. Co.*, 135 Cal. 561, 67 Pac. 1054.

§ 5885. Implied. An implied contract is one the existence and terms of which are manifested by conduct. [R. C. 1905, § 5329; Civ. C. 1877, § 917; R. C. 1899, § 3884.]

Implied promise to share expense of party wall erected without express contract. 66 L.R.A. 705.

—to compensate one furnishing relief to poor person. 39 L.R.A.(N.S.) 161.

—with intoxicated person. 54 L.R.A. 440.

—for compensation of partner. 17 L.R.A.(N.S.) 412.

—for through carriage by initial or first contracting carrier. 31 L.R.A.(N.S.) 5.

Right of physician to recover for emergency services rendered unconscious person. 12 L.R.A.(N.S.) 1090.

Implied power of attorney to bind client for expenses incidental to trial including associate counsel's office. 23 L.R.A.(N.S.) 702.

Husband's liability under implied contract for wife's purchases on his credit of articles for personal use. 65 L.R.A. 549.

Acceptance of chattel before agreement as to purchase price as assent to seller's price. 11 L.R.A.(N.S.) 254.

Placing one's child in another's custody as implying contract not to reclaim child. 16 L.R.A.(N.S.) 1004.

Employer's duties as to acts of independent contractor arising out of implied contract. 66 L.R.A. 150.

Statute of limitations applicable to action to enforce an implied promise arising from acceptance of devise chargeable with payment of legacy. 8 L.R.A.(N.S.) 393.

Right of third person to sue on implied contract. 25 L.R.A. 263.

Implication of agreement to pay for services rendered by relative or member of household. 11 L.R.A.(N.S.) 873.

Right of child who supports parent at request of other children to recover therefor from the latter. 27 L.R.A.(N.S.) 683.

Implied contract to pay for services to relative not living as part of same family. 1 L.R.A.(N.S.) 819.

Right of husband or wife to compensation for services rendered to other. 15 L.R.A. 215.

Implied contract to pay for household services where parties are living in illicit relations. 29 L.R.A.(N.S.) 787.

Municipal liability on implied contracts. 27 L.R.A.(N.S.) 1117; 39 L.R.A.(N.S.) 72; 41 L.R.A.(N.S.) 473.

As to similar provision in Cal. Civ. Code, § 1621, see *Jennings v. Bank of California*, 79 Cal. 323, 5 L.R.A. 233, 12 Am. St. Rep. 145, 21 Pac. 852.

§ 5886. What contracts may be oral. All contracts may be oral, except such as are specially required by statute to be in writing. [R. C. 1905, § 5330; Civ. C. 1877, § 918; R. C. 1899, § 3885.]

Oral lease of real estate for one year to begin in future is valid. *Paulton v. Kreiser*, 18 S. D. 487, 101 N. W. 46, 5 A. & E. Ann. Cas. 827.

Oral agreement to waive statute of limitations. 63 L.R.A. 195.

As to similar provision in Cal. Civ. Code, § 1622, see *Frick v. Los Angeles*, 115 Cal. 512, 47 Pac. 250; *Converse v. Scott*, 137 Cal. 239, 70 Pac. 13.

§ 5887. When oral contract required to be in writing enforceable. When a contract, which is required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing and acts upon such belief to his prejudice may enforce it against the fraudulent party. [R. C. 1905, § 5331; Civ. C. 1877, § 919; R. C. 1899, § 3886.]

Use of statute of frauds as protection to fraud. 25 L.R.A. 569.

§ 5888. Contracts required to be in writing. The following contracts are invalid, unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged, or by his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof.

2. A special promise to answer for the debt, default or miscarriage of another, except in the cases provided for in section 6655.

3. An agreement made upon consideration of marriage, other than a mutual promise to marry.

4. An agreement for the sale of goods, chattels or things in action at a price not less than fifty dollars, unless the buyer accepts or receives part of such goods and chattels or the evidences, or some of them, of such things in action, or pays at the time some part of the purchase money; but when a sale is made by auction an entry by the auctioneer in his sale book at the time of the sale of the kind of property sold, the terms of sale, the price and the names of the purchaser and person on whose account the sale is made is a sufficient memorandum.

5. An agreement for the leasing for a longer period than one year, or for the sale of real property, or of an interest therein; and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged. [R. C. 1905, § 5332; Civ. C. 1877, § 920; R. C. 1899, § 3887.]

Oral agreement entered into as result of written correspondence relied on as contract is inadmissible. *Phelan v. Neary*, 22 S. D. 265, 117 N. W. 142.

Written contract not invalidated by prior void parol contract. *Larison v. Wilbur*, 1 N. D. 284, 47 N. W. 381.

Indorsement of note; liability as guarantor. *Rankin v. Matthiesen*, 10 S. D. 628, 75 N. W. 196.

That trees had to be dug and packed before delivery by seller did not bring sale within statute. *Jones v. Pettigrew*, 25 S. D. 432, 127 N. W. 538.

When statute of frauds may be relied upon as a defense. 15 Am. Dec. 62.

Persons to whom statute of frauds is available. 127 Am. St. Rep. 756.

When and how must statute be pleaded. 86 Am. Dec. 684; 76 Am. St. Rep. 644.

Whether statute applies to contracts made beyond the state. 93 Am. Dec. 776.

Damages for failure to perform contract not valid under statute of frauds. 6 Am. St. Rep. 495.

Recovery of money paid under a contract invalid under statute of frauds. 105 Am. St. Rep. 793.

What amounts to subscription by the parties. 25 Am. Rep. 543.

Memorandum of auction sales sufficient to satisfy statute of frauds. 13 Am. Dec. 398.

Contracts of indemnity within statute of frauds. 42 Am. St. Rep. 186.

When letters constitute parts of memorandum. 7 Am. Dec. 288; 42 Am. Rep. 347.

What constitute memoranda and by whom must be signed. 47 Am. Rep. 532.

Memorandum may be in any kind of letters and in pencil. 7 Am. Dec. 288.

Telegrams as writings to make a contract within the statute of frauds. 50 L.R.A. 240.

May the statute of frauds be satisfied by a declaration of trust signed by the trustee alone. 38 L.R.A.(N.S.) 646.

Effect of part performance under statute of frauds. 14 L.R.A. 863.

Will as part performance to satisfy statute of frauds. 14 L.R.A. 863.

Part performance of grantee's oral promise to grantor to hold in trust as taking case out of statute of frauds. 39 L.R.A.(N.S.) 928.

Validity of oral insurance contract. 22 L.R.A. 768.

Requisites of present oral contract of insurance. 5 L.R.A.(N.S.) 407.

Validity of parol promise to accept an order or bill of exchange. 26 L.R.A. 620.

Necessity for writing to support failure to give notice of dishonor or subsequent promise by indorser. 29 L.R.A. 315.

As to similar provision in Cal. Civ. Code, § 1624, see *Swain v. Burnette*, 89 Cal. 564, 26 Pac. 1093; *Gorham v. Heiman*, 90 Cal. 346, 27 Pac. 289; *Byers v. Locke*, 93 Cal. 493, 27 Am. St. Rep. 212, 29 Pac. 119; *Platt v. Butcher*, 112 Cal. 634, 44 Pac. 1060; *Kilbride v. Moss*, 113 Cal. 432, 54 Am. St. Rep. 361, 45 Pac. 812; *McKeaney v. Black*, 117 Cal. 587, 49 Pac. 710; *Wickson v. Monarch Cycle Mfg. Co.*, 128 Cal. 156, 79 Am. St. Rep. 36, 60 Pac. 764.

1. Oral contract which can be performed within year is valid, though not actually completed within that time. *Sarles v. Sharlow*, 5 D. 100, 37 N. W. 748.

Agreements not to be performed within a year. 93 Am. Dec. 86; 43 Am. Rep. 42; 138 Am. St. Rep. 590.

Effect of statute of frauds upon contracts for services which may, but are not intended to, be performed within a year. 15 L.R.A.(N.S.) 313.

Right to recover for services rendered beyond statutory period of limitations on breach of parol contract to make provision by will. 6 L.R.A.(N.S.) 703.

Estoppel from pleading statute in actions on contracts not to be performed within one year. 134 Am. St. Rep. 172.

2. Promise to pay the debt of another. 5 Am. Dec. 321; 95 Am. Dec. 251; 46 Am. Rep. 296; 126 Am. St. Rep. 487.

- Promise to pay third person. 25 L.R.A. 264.
 Guaranty of the contract of a person under disability. 33 L.R.A. 359.
 Contracts between sureties to fix their shares of liability. 39 L.R.A. 378.
 Statute of frauds as affecting parol violations of collateral contract. 28 L.R.A.(N.S.) 882.
 Is agreement by vendee to pay incumbrance within statute of frauds as promise to answer for the debt of another. 15 L.R.A.(N.S.) 1087.
 Statute of frauds as affecting right to assume debts on dissolution of partnership. 9 L.R.A.(N.S.) 54.
 Applicability of statute requiring that representations as to another's credit must be in writing in order to sustain an action. 13 L.R.A.(N.S.) 212.
 Contemporary promise of one person to pay where benefit inures to another as a promise to answer for default of another within statute of frauds. 15 L.R.A.(N.S.) 214; 32 L.R.A.(N.S.) 598.
 Is oral promise to pay another's pre-existing debt made in order to secure benefit to promisor without releasing original debtor within statute of frauds. 22 L.R.A.(N.S.) 1077; 40 L.R.A.(N.S.) 242.
 Statute of frauds as affecting accommodation indorser. 28 L.R.A.(N.S.) 1045.
 Subscribing one's name under word "surety" in written contract as satisfying statute of frauds. 23 L.R.A.(N.S.) 1197.
 Oral contract extending initial carrier's undertaking beyond its own line. 31 L.R.A.(N.S.) 32.
 4. Necessity of writing to make binding commission to purchase personal property. 11 L.R.A.(N.S.) 650.
 Who may enforce contract for sale of goods where only one party signed contract. 28 L.R.A.(N.S.) 694.
 When contract for sales of goods is within statute. 9 Am. Dec. 188.
 Contracts for the purchase of property not then in existence. 54 Am. Rep. 164.
 Validity of verbal chattel mortgage. 7 L.R.A.(N.S.) 418.
 Distinction between sales and contracts for work and labor. 14 L.R.A. 230; 30 L.R.A.(N.S.) 319.
 Sale distinguished from contract to manufacture. 14 L.R.A. 230; 30 L.R.A.(N.S.) 319.
 Work in fitting up for delivery as payment of price to take the contract out of the statute of frauds. 15 L.R.A.(N.S.) 654.
 Contract to transfer personal property in consideration of services, as affected by statute of frauds relating to contracts for the sale of goods, etc. 16 L.R.A.(N.S.) 381.
 Acceptance and delivery of goods to satisfy statute of frauds. 49 Am. Dec. 325, 37 Am. Rep. 16; 96 Am. St. Rep. 215; 10 L.R.A.(N.S.) 638.
 Receipt and acceptance to satisfy the statute of frauds, when goods are in possession of purchaser at time of agreement. 11 L.R.A.(N.S.) 1186; 20 L.R.A.(N.S.) 498.
 Symbolic delivery by sample to satisfy statute. 70 L.R.A. 321.
 Delivery to carrier. 35 L.R.A.(N.S.) 1039.
 Enforcement of contracts because of part performance. 32 Am. Dec. 129.
 Acts which may constitute part performance. 53 Am. Dec. 539.
 5. Validity of written contract for sale of real property. *Hughes v. Payne*, 22 S. D. 293, 117 N. W. 363.
 Plaintiff in action for specific performance of contract to convey land must prove valid written contract. *Moody v. Howe*, 17 S. D. 545, 97 N. W. 841.
 Proof of conversations with purchaser relative to defective condition of title to part of property sold, offered for purpose of showing subsequent oral modification of written contract, not admissible. *McCulloch v. Bauer*, 24 N. D. 109, 139 N. W. 318.
 Unexecuted verbal agreement for conveyance of land is invalid. *Cleveland v. Evans*, 5 S. D. 53, 58 N. W. 8.
 Agreement to purchase real estate and share in profits need not be in writing. *Davenport v. Buchanan*, 6 S. D. 376, 61 N. W. 47.
 "Note or memorandum" may be made subsequent to agreement and may be contained in more than one paper. *Townsend v. Kennedy*, 6 S. D. 47, 60 N. W. 164.
 Agreement as to terms on which sheriff's certificate of sale was assigned not required to be in writing. *Whiffen v. Hollister*, 12 S. D. 68, 80 N. W. 156.
 Railway right of way constitutes interest in land under statute of frauds. *Spawn v. South Dakota C. R. Co.*, 26 S. D. 1, 127 N. W. 648, Ann. Cas. 1912D, 979.
 Permission given without consideration by owner for use by township of his land for discharge across his land of surplus water of artesian well is license and need not be in writing, but is revocable. *Butz v. Richland Twp.*, 28 S. D. 442, 134 N. W. 895.
 Oral lease of real estate for one year, to begin in future, is valid. *Paulton v. Kreiser*, 18 S. D. 487, 101 N. W. 46, 5 A. & E. Ann. Cas. 827.
 Parol lease of land for two years is invalid. *Merchants State Bank v. Ruettell*, 12 N. D. 519, 97 N. W. 853.
 Verbal lease for less than one year may be created as part of consideration for deed of land without varying its terms. *Bjornson v. Rostad*, 30 S. D. 40, 137 N. W. 567.

Agent's authority to execute contract for sale of real property must be in writing. *Brandrup v. Britten*, 11 N. D. 376, 92 N. W. 453; *Watters v. Dancey*, 23 S. D. 481, 123 N. W. 430; *Lichty v. Daggett*, 23 S. D. 380, 121 N. W. 862.

Contract of agent for sale of real estate void unless authorized in writing. *Ballow v. Bergvendsen*, 9 N. D. 285, 83 N. W. 10.

Employment of agent to find purchaser for realty need not be in writing. *McLaughlin v. Wheeler*, 1 S. D. 497, 47 N. W. 816.

Sufficiency of letters employing real estate broker to authorize him to enter into written contract. *Purkey v. Harding*, 23 S. D. 632, 123 N. W. 69.

Authority to bind principal for sale of land may be established by letters and telegrams. *Farrell v. Edwards*, 8 S. D. 425, 66 N. W. 812.

Ratification of lease executed by agent without written authority, by owner after parting with title, is ineffectual. *Dobbs v. Atlas Elevator Co.*, 22 S. D. 226, 117 N. W. 128.

What amount to contracts for the sale of land within the meaning of statute of frauds. 102 Am. St. Rep. 230.

Agreement to hold land purchased on execution for defendant. 40 Am. Dec. 207.

Validity of transaction between heir and ancestor relating to expectancy. 32 L.R.A. 597.

Right to compensation for improvements on land made in good faith under oral contract or gift. 53 L.R.A. 337.

Parol agreement to construct private way across railroad. 17 L.R.A.(N.S.) 702; 24 L.R.A.(N.S.) 375.

Right of a purchaser of real estate to rely on the statute of frauds against contract by his vendor with a third person. 40 L.R.A.(N.S.) 883.

Validity of oral agreement to share contract for purchase of land. 3 L.R.A.(N.S.) 147.

Parol agreement to take title to real property, sell the same, and divide the proceeds, as affected by the statute of frauds. 8 L.R.A.(N.S.) 1137; 20 L.R.A.(N.S.) 298; 42 L.R.A.(N.S.) 1160.

Agreement to share real property in payment for services. 41 L.R.A.(N.S.) 184.

Right to recover value of services rendered in consideration of contract to convey or devise property which is void by the statute of frauds. 37 L.R.A.(N.S.) 639.

Effect of statute of frauds upon partnership lands. 27 L.R.A. 477.

Applicability of statute to partnership real estate. 37 L.R.A.(N.S.) 302.

Validity of parol partnership for dealing in lands. 16 L.R.A. 745; 4 L.R.A.(N.S.) 427; 33 L.R.A.(N.S.) 883.

Assignment of lease. 15 L.R.A. 754.

Insurable interest of tenant in leased property under parol agreement. 42 L.R.A.(N.S.) 135.

Validity of oral sale of standing timber. 19 L.R.A. 721; 86 Am. Dec. 182; 17 Am. Rep. 595.

Contract for timber to be sawed as a sale within the statute of frauds. 14 L.R.A. 233; 30 L.R.A.(N.S.) 324.

Purchase of standing timber as a purchase of realty. 13 L.R.A.(N.S.) 278.

Sale or mortgage of crops. 23 L.R.A. 450.

Must a contract for the sale of growing crops or a reservation of the same by the grantor in deed be in writing? 23 L.R.A.(N.S.) 1218.

Oral agreement as to erection or maintenance of fences. 27 L.R.A.(N.S.) 226.

Contract by real estate broker to find purchaser or effect exchange of principal's property. 44 L.R.A. 601.

Necessity that authority of agent to purchase or sell real property be in writing to enable him to recover compensation for his services. 9 L.R.A.(N.S.) 933.

Ratification of agent's unauthorized contract for purchase or sale of real property as affected by statute of frauds. 38 L.R.A.(N.S.) 783.

Written authority to agent to contract for sale of property as dispensing with necessity that contract of sale itself be in writing. 28 L.R.A.(N.S.) 738.

Statute of frauds as affecting legal remedy for breach of contract to purchase land for and in the name of another. 5 L.R.A.(N.S.) 123.

Statute of frauds as affecting right to equitable relief against one who has purchased land in his own name in violation of his agreement to purchase it for and in the name of another. 5 L.R.A.(N.S.) 112.

Validity of oral agreement to assume or assign land contract. 3 L.R.A.(N.S.) 147.

Applicability of statute of frauds to assignment or surrender of purchaser's interest under land contract. 19 L.R.A.(N.S.) 879.

Printed or stamped signature. 37 L.R.A.(N.S.) 352.

Description of property by local appellation. 36 L.R.A.(N.S.) 154.

Sufficiency of description in land contract which gives right to select particular tract to be conveyed. 34 L.R.A.(N.S.) 147.

Undelivered deed as memorandum to satisfy statute of frauds. 22 L.R.A. 273.

May statute of frauds relating to sales of real property be satisfied by a memorandum which discloses that one of the parties acted for an undisclosed principal. 8 L.R.A.(N.S.) 733.

May an extrinsic document, not referred to in a memorandum of sale of real property, be resorted to in aid of a defective description in the memorandum or contract, so as to satisfy the statute of frauds. 18 L.R.A.(N.S.) 616.

Necessity of specifying time of payment of purchase price in contract or memorandum for the sale of real property. 33 L.R.A.(N.S.) 84.

Who must sign note or memorandum of executory contract for the sale of real property. 28 L.R.A.(N.S.) 680.

Effect of performance to take parol assignment of lease out of statute of frauds. 15 L.R.A. 754; 42 L.R.A.(N.S.) 162.

Entry under parol agreement for a lease as part performance. 20 L.R.A. 36.

Nature of tenancy by entry under lease void under statute of frauds. 42 L.R.A.(N.S.) 648.

Effect of making improvements under oral lease for term beyond that permitted by statute, to entitle lessee to hold during term. 3 L.R.A.(N.S.) 852.

Taking possession of real property as part performance. 3 L.R.A.(N.S.) 790.

Sufficiency of possession alone as ground for granting specific performance of parol gift of, or contract to convey, real property. 8 L.R.A.(N.S.) 870.

Measure of damages for breach of oral contract to convey realty. 2 L.R.A.(N.S.) 713.

§ 5889. Written contract supersedes oral negotiations. The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the oral negotiations or stipulations concerning its matter, which preceded or accompanied the execution of the instrument. [R. C. 1905, § 5333; Civ. C. 1877, § 921; R. C. 1899, § 3888.]

Does not preclude proof of existence of any separate oral stipulation as to any matter on which written contract is silent, and which is not inconsistent with its terms, if it appears written document was not intended to be complete. Putnam v. Prouty, 24 N. D. 517, 140 N. W. 93.

Parol evidence to vary indorsement or draft not admissible. Thompson v. McKee, 5 D. 172, 37 N. W. 367; Washabaugh v. Hall, 4 S. D. 168, 56 N. W. 82.

Written contract not changed by parol evidence. Black Hills Bank v. Kellog, 4 S. D. 312, 56 N. W. 1071; Dean v. Bank, 6 D. 222, 50 N. W. 831.

Rule as to written instrument applies only between parties, not to those attacking collaterally. Jewett v. Sundback, 5 S. D. 111, 58 N. W. 20; Roberts v. Bank, 8 N. D. 474, 79 N. W. 993.

Parol evidence not admissible to vary writing. Lewis v. Ry. Co., 5 S. D. 148, 58 N. W. 580; National Bank v. Lang, 2 N. D. 66, 49 N. W. 414; Hutchinson v. Cleary, 3 N. D. 270, 55 N. W. 729; N. W. Fuel Co. v. Bruns, 1 N. D. 137, 45 N. W. 699; Schmitz v. Hawkeye Gold Min. Co., 8 S. D. 544, 67 N. W. 618.

Parol evidence inadmissible to show that parties intend that time should be of essence of written contract. Strunk v. Smith, 8 S. D. 407, 66 N. W. 926; Washabaugh v. Hall, 4 S. D. 168, 56 N. W. 82.

Relation of signers to note may be explained. Aultman & Co. v. Gunderson, 6 S. D. 226, 60 N. W. 859, 55 Am. St. Rep. 837.

Receipt or incomplete contract may be explained. Prairie Township v. Haseleu, 3 N. D. 328, 55 N. W. 938; Nat. Register Co. v. Pfister, 5 S. D. 143, 58 N. W. 270; D. M. Osborne & Co. v. Stringham, 4 S. D. 593, 57 N. W. 776.

Parol evidence admissible when there is doubt as to parties intended. Miller v. Way, 5 S. D. 468, 59 N. W. 467.

Ambiguous or uncertain writings may be explained by oral evidence. Kennedy v. Falde, 4 D. 319, 29 N. W. 667.

Parol evidence admissible to prove that written contract was never accepted. Edwards Lumber Co. v. Baker, 2 N. D. 289, 50 N. W. 718; Lane v. O'Toole, 8 N. D. 210, 78 N. W. 77.

Circumstances under which contract made may be explained. Pearson v. Post, 2 D. 220, 9 N. W. 684.

Contract for sale of land; parol evidence admissible to explain description when indefinite. Farrell v. Edwards, 8 S. D. 425, 66 N. W. 812.

Parol evidence admissible to show noncompliance with written instrument. Manufacturers' Furnishing Co. v. Kremer, 7 S. D. 463, 64 N. W. 528; McCormick Co. v. Faulkner, 7 S. D. 363, 64 N. W. 163, 58 Am. St. Rep. 839.

Independent parol agreement may be proved. Grand Forks Lumb. Co. v. Tourtelot, 7 N. D. 587, 75 N. W. 901; Nat. Refining Co. v. Miller, 1 S. D. 548, 47 N. W. 962.

Parol evidence admissible to explain indorsement on note. Dickinson v. Burke, 8 N. D. 118, 77 N. W. 279.

As to all prior negotiations being deemed to be incorporated in written contract. Reeves v. Bruening, 13 N. D. 157, 100 N. W. 241.

As to inability to change terms of written contract by addition of other warranties. Dowagiac Mfg. Co. v. Mahon, 13 N. D. 516, 101 N. W. 903.

As to written contract superseding prior oral negotiations and stipulations. Alsterberg v. Bennett, 14 N. D. 596, 106 N. W. 49.

Surety on note cannot show that he signed under certain oral agreement. *Anderson v. Matheny*, 17 S. D. 225, 95 N. W. 911.

Parol evidence inadmissible to show that binding insurance receipt was not binding. *Bowen v. Mutual L. Ins. Co.*, 20 S. D. 103, 104 N. W. 1040.

Parol evidence of contemporaneous transaction inadmissible to show party to written contract was agent. *Schriner v. Dickinson*, 20 S. D. 433, 107 N. W. 536.

Parol evidence inadmissible to vary terms of written contract which expresses understanding and intention of parties. *Gardner v. Welch*, 21 S. D. 151, 110 N. W. 110.

Evidence as to agreement between parties made prior to original contract is inadmissible to vary terms of written contract. *Kimm v. Wolters*, 28 S. D. 255, 133 N. W. 277.

Right to show by parol evidence that vendee had agreed to accept warranty deed from vendor with knowledge of existing defects in the title. *McCulloch v. Bauer*, 24 N. D. 109, 139 N. W. 318.

Defendant may show as defense to action for price of drilling artesian well that plaintiff knew purpose and that well was insufficient for that purpose. *DeRue v. McIntosh*, 26 S. D. 42, 127 N. W. 532.

Merger of oral and written contracts limiting initial carrier's undertaking to its own line. 31 L.R.A.(N.S.) 64.

Merger of stipulations as to title in executory contract for the sale of real estate in subsequently executed conveyance. 31 L.R.A.(N.S.) 457.

Admissibility of evidence of conversation expressly referred to in written contract. 32 L.R.A.(N.S.) 383.

Admissibility of evidence of custom to create an exception to written contract. 3 L.R.A.(N.S.) 248.

Extrinsic evidence of custom or usage as to time for delivery of goods where none is specified in written contract. 31 L.R.A.(N.S.) 619.

General rule that parol evidence not admissible to vary, add to or alter a written contract. 17 L.R.A. 270.

Subsequent parol agreement to vary a writing. 56 Am. St. Rep. 659.

Parol evidence rule as to varying or contradicting written contracts as affected by the doctrine of waiver or estoppel as applied to policies of insurance. 16 L.R.A.(N.S.) 1165.

Parol evidence that written instrument for payment of money was executed in reliance on parol promise that payment was subject to a condition not incorporated therein. 18 L.R.A.(N.S.) 434.

Right to show parol warranty in connection with a contract of sale of personalty. 19 L.R.A.(N.S.) 1183.

Admissibility of parol evidence, as between indorser and indorsee, that unrestricted indorsement was made merely to transfer title to the owner. 28 L.R.A.(N.S.) 530.

Parol evidence that written instrument for the payment of money was executed in reliance upon parol promise that payment was subject to a condition not incorporated therein. 18 L.R.A.(N.S.) 434.

Parol evidence to aid in construction of contract. 5 Am. Rep. 241.

— to show intention of party indorsing paper before delivery. 18 L.R.A. 33.

— to show who is liable as maker of note. 20 L.R.A. 705.

— to show that indorsement unrestricted in form was made for purpose of collection only. 17 L.R.A.(N.S.) 838.

— to disclose and charge principal on negotiable paper executed by agent. 21 L.R.A.(N.S.) 1080.

— to vary the liability of an irregular party to a bill or note from that declared by the negotiable instruments act. 19 L.R.A.(N.S.) 136.

— as to liability of accommodation parties inter se. 28 L.R.A.(N.S.) 1045.

— to show that bill or note was delivered upon condition. 18 L.R.A.(N.S.) 288.

— to prove agreement by bank officer that liability of party to commercial paper shall not be enforced. 28 L.R.A.(N.S.) 501.

— as to consideration of deed. 20 L.R.A. 101; 68 L.R.A. 928; 25 L.R.A.(N.S.) 1194.

— to show true nature of transaction where the recited consideration of a deed is shown not to have been paid. 24 L.R.A.(N.S.) 413.

— to explain telegrams. 50 L.R.A. 245.

— to aid in construction of fire insurance policy covering "additions." 33 L.R.A.(N.S.) 161.

— to vary or contradict insurance policy which is ambiguous. 16 L.R.A.(N.S.) 1181.

— to show persons meant by ambiguous designation in policy on property belonging to decedent's estate. 42 L.R.A.(N.S.) 82.

— to show that payment of judgment against, or consideration for release of, alleged joint tortfeasor was not a satisfaction of claim. 14 L.R.A.(N.S.) 329.

— to show that the parties to a written contract which merely names a class or species contemplated a particular quality or kind. 9 L.R.A.(N.S.) 967.

— to show that release was delivered upon condition. 36 L.R.A.(N.S.) 1147.

— to extend scope of mortgage clause. 34 L.R.A.(N.S.) 503.

- as to warehouse receipts. 19 L.R.A. 304.
 - to show nature of partition deed. 57 L.R.A. 341.
 - to show partnership in real estate. 27 L.R.A. 464; 37 L.R.A.(N.S.) 898.
 - to vary contract between heir and ancestor relating to expectancy. 32 L.R.A. 597.
 - as to whether guaranty was a continuing one. 39 L.R.A.(N.S.) 740.
 - in aid of enrolled bill. 40 L.R.A.(N.S.) 35.
 - to impeach enrolled bill. 40 L.R.A.(N.S.) 32.
 - as to time for delivery of goods where none is specified in written contract. 31 L.R.A.(N.S.) 619.
 - as to manner or means of paying written contract not within statute of frauds, purporting to be payable in money. 31 L.R.A.(N.S.) 235.
 - to show reservation of growing crops from deed. 23 L.R.A.(N.S.) 1218.
- As to similar provision in Cal. Civ. Code, § 1625, see *Moffatt v. Bulson*, 96 Cal. 106, 31 Am. St. Rep. 192, 30 Pac. 1022.

§ 5890. Proving written instruments. In proving any written instrument or contract to which there is a subscribing witness, or to which there are two or more subscribing witnesses, it shall not be necessary to call said witness or any one of two or more of said subscribing witnesses, but the instrument or contract may be proved, except for purposes of filing or recording the same, by the same evidence by which an instrument or contract to which there is no subscribing witness may be proved, nor shall it be permissible to prove such instrument or contract in any case by proof of the handwriting of said subscribing witness or witnesses as the case may be, but in all cases such instrument or contract must be proved in the same manner as one having no subscribing witness whatever. [1907, ch. 139, § 2; R. C. 1905, § 5334; 1897, ch. 59; R. C. 1899, § 3888a.]

Proof of a written contract by subscribing witnesses no longer necessary. *McManus v. Commow*, 10 N. D. 340, 87 N. W. 8.

§ 5891. Takes effect on delivery. A contract in writing takes effect upon its delivery to the party in whose favor it is made or to his agent. [R. C. 1905, § 5335; Civ. C. 1877, § 922; R. C. 1899, § 3889.]

Mortgage takes effect on its delivery discharged of any condition on which delivery was made. *Sargent v. Cooley*, 12 N. D. 1, 94 N. W. 576.

Fact that party may have manual possession of contract does not show complete delivery, as question is still open whether other party intended delivery beyond power of recall. *Koester v. Northwestern Port Huron Co.*, 24 S. D. 546, 124 N. W. 740.

§ 5892. Chapter on transfers applies. The provisions of the chapter on transfers in general concerning the delivery of grants, absolute and conditional, apply to all written contracts. [R. C. 1905, § 5336; Civ. C. 1877, § 923; R. C. 1899, § 3890.]

As to similar provision in Cal. Civ. Code, § 1627, see *Harrigan v. Home L. Ins. Co.*, 128 Cal. 531, 58 Pac. 180, 61 Pac. 99.

§ 5893. How seal affixed. A corporate or official seal may be affixed to an instrument by a mere impression upon the paper or other material on which such instrument is written. [R. C. 1905, § 5337; Civ. C. 1877, § 924; R. C. 1899, § 3891.]

§ 5894. Seals abolished. All distinctions between sealed and unsealed instruments are abolished. [R. C. 1905, § 5338; Civ. C. 1877, § 925; R. C. 1899, § 3892.]

Section restricted only by statute limiting period within which action on sealed instrument can be commenced. *Landauer v. Implement Co.*, 10 S. D. 205, 72 N. W. 467.

County warrant is a sealed instrument; action thereon must be brought within twenty years. *Heffleman v. Pennington County*, 3 S. D. 162, 52 N. W. 851.

All distinction between sealed and unsealed instruments abolished. *Pearson v. Post*, 2 D. 220, 9 N. W. 684; *Post v. Pearson*, 108 U. S. 418, 27 L.ed. 774, 2 S. Ct. R. 739.

Deed signed and sealed "Patrick M., Atty. in fact for Amelia B." is deed of Amelia although words "he," "his," etc., are used in deed. *Donovan v. Welch*, 11 N. D. 131, 90 N. W. 262.

Validity of tax deed unaffected by omission of seal therefrom. *Northwestern Mortg. Trust Co. v. Levitzow*, 23 S. D. 562, 122 N. W. 600.

Distinction between sealed and unsealed instruments is abolished except as to statute of limitations. *Gibson v. Allen*, 19 S. D. 617, 104 N. W. 275.

As to similar provision in Cal. Civ. Code, § 1629, see *Tracy v. Alvord*, 118 Cal. 654, 80 Pac. 757.

ARTICLE 7.—INTERPRETATION OF CONTRACTS.

§ 5895. Same rules for public and private. All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code. [R. C. 1905, § 5339; Civ. C. 1877, § 926; R. C. 1899, § 3893.]

§ 5896. Must be interpreted to give effect to mutual intention. A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting so far as the same is ascertainable and lawful. [R. C. 1905, § 5340; Civ. C. 1877, § 927; R. C. 1899, § 3894.]

As to interpretation of contract. *Young v. Metcalf Land Co.*, 18 N. D. 441, 122 N. W. 1101.

Court in construing fire policy must determine intention of parties at time of execution of policy. *Miller v. St. Paul F. & M. Ins. Co.*, 26 S. D. 454, 128 N. W. 609.

Must be reasonable. *Richison v. Mead*, 11 S. D. 639, 80 N. W. 131.

Intention of parties must prevail if ascertainable. *Fletcher v. Arnett*, 4 S. D. 615, 57 N. W. 915; *Frost v. Williams*, 2 S. D. 457, 50 N. W. 964.

Language must be followed when clear and explicit. *Strunk v. Smith*, 8 S. D. 407, 66 N. W. 926; *Washabaugh v. Hall*, 4 S. D. 168, 56 N. W. 82.

Written contract to be interpreted from its own language if possible. *Roberts v. Min. Thresh. Mach. Co.*, 8 S. D. 579, 67 N. W. 607, 59 Am. St. Rep. 777.

If several parts of grant are irreconcilable, the former prevails. *Novotny v. Danforth*, 9 S. D. 301, 68 N. W. 749.

Agreement to accept second-hand safe f. o. b. in part payment for new safe meant that second-hand safe was to be delivered free on board cars, although word cars was not mentioned. *Manganese Steel Safe Co. v. First State Bank*, 25 S. D. 119, 125 N. W. 572.

§ 5897. Rules in this article to be applied. For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied. [R. C. 1905, § 5341; Civ. C. 1877, § 928; R. C. 1899, § 3895.]

§ 5898. Language governs if clear. The language of a contract is to govern its interpretation if the language is clear and explicit and does not involve an absurdity. [R. C. 1905, § 5342; Civ. C. 1877, § 929; R. C. 1899, § 3896.]

Court in determining intention of parties to contract must take into consideration language of contract, and intention must be ascertained from words alone. *Miller v. St. Paul F. & M. Ins. Co.*, 26 S. D. 454, 128 N. W. 609.

§ 5899. Intention ascertained from writing alone, if possible. When a contract is reduced to writing the intention of the parties is to be ascertained from the writing alone if possible, subject, however, to the other provisions of this article. [R. C. 1905, § 5343; Civ. C. 1877, § 930; R. C. 1899, § 3897.]

§ 5900. Real intention to govern in cases of fraud, etc. When through fraud, mistake or accident a written contract fails to express the real intention of the parties, such intention is to be regarded and the erroneous parts of the writing disregarded. [R. C. 1905, § 5344; Civ. C. 1877, § 931; R. C. 1899, § 3898.]

§ 5901. Every part given effect. The whole of a contract is to be taken together so as to give effect to every part, if reasonably practicable, each clause helping to interpret the others. [R. C. 1905, § 5345; Civ. C. 1877, § 932; R. C. 1899, § 3899.]

Words having certain meaning in one part, presumed to mean same whenever subsequently used. *Anderson v. Bank*, 4 N. D. 182, 59 N. W. 1029.

Intention of parties must govern their respective liabilities. *Frost v. Williams*, 2 S. D. 457, 50 N. W. 964.

Instrument conveying described premises with warranties as in warranty deed and also containing provision that first party would convey all lands which were same as those described as soon as patent was received for them, was absolute and executed transaction. *Ford v. Ford*, 24 S. D. 644, 124 N. W. 1108.

Agreement to sell safe for \$825 and purchaser's second-hand safe, and agreement by purchaser to pay \$1,200 for new safe was agreement to pay \$1,200 for safe with deduction of \$375 upon delivery of second-hand safe. *Manganese Steel Safe Co. v. First State Bank*, 25 S. D. 119, 125 N. W. 572.

§ 5902. Several contracts parts of one transaction taken together. Several contracts relating to the same matters between the same parties and made as parts of substantially one transaction are to be taken together. [R. C. 1905, § 5346; Civ. C. 1877, § 933; R. C. 1899, § 3900.]

Section establishes rule of interpretation merely, and does not unite several contracts into one. *First Nat. Bank v. Flath*, 10 N. D. 281, 86 N. W. 867.

Several contracts to be interpreted as one. *Red River Valley Bank v. Barnes*, 8 N. D. 432, 79 N. W. 880; *D. M. Osborne & Co. v. Stringham*, 4 S. D. 593, 57 N. W. 776.

§ 5903. So interpreted as to carry it into effect. A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable and capable of being carried into effect, if it can be done without violating the intention of the parties. [R. C. 1905, § 5347; Civ. C. 1877, § 934; R. C. 1899, § 3901.]

§ 5904. Words to be understood in ordinary sense. The words of a contract are to be understood in their ordinary and popular sense rather than according to their strict legal meaning, unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed. [R. C. 1905, § 5348; Civ. C. 1877, § 935; R. C. 1899, § 3902.]

Evidence to explain words used in written contract. 122 Am. St. Rep. 545.

What conditions or defects are covered by provision in paving contract requiring contractor to keep pavement in repair. 9 L.R.A.(N.S.) 154.

Effect of promise to pay "as soon as promisor can." 27 L.R.A.(N.S.) 300.

What constitutes "satisfactory title" within requirement of land contract or other agreement relating to land. 18 L.R.A.(N.S.) 741.

Will real estate pass under the word "effects" in a written instrument. 12 L.R.A.(N.S.) 661.

Destruction by decay rendering premises untenable as within landlord's covenant to repair. 21 L.R.A.(N.S.) 130.

What constitutes damages "by the elements" within the meaning of contracts with stipulations referring thereto. 53 L.R.A. 673.

§ 5905. Technical words. Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense. [R. C. 1905, § 5349; Civ. C. 1877, § 936; R. C. 1899, § 3903.]

§ 5906. What law governs. A contract is to be interpreted according to the law and usage of the place where it is to be performed, or if it does not indicate a place of performance, according to the law and usage of the place where it is made. [R. C. 1905, § 5350; Civ. C. 1877, § 937; R. C. 1899, § 3904.]

Contracts subject to *lex fori*, including statute of limitations. *Star Wagon Co. v. Matthiessen*, 3 D. 233, 14 N. W. 107.

Contract to ship goods into state interpreted under law where made. *Meuer v. C. M. & St. P. Ry. Co.*, 5 S. D. 568, 59 N. W. 945, 49 Am. St. Rep. 898, 25 L.R.A. 81.

Penal laws have no force beyond boundaries of state. *Jones v. Trust Co.*, 7 S. D. 122, 63 N. W. 553.

Presumed that *lex loci contractus* is same as *lex fori* unless contrary shown. *Thomas v. Pendleton*, 1 S. D. 150, 46 N. W. 180, 36 Am. St. Rep. 726; *Meuer v. C. M. & St. P. Ry. Co.*, 5 S. D. 568, 59 N. W. 945, 49 Am. St. Rep. 898, 25 L.R.A. 81; *Sandmeyer v. Ins. Co.*, 2 S. D. 346, 50 N. W. 353; *Commercial Bank v. Jackson*, 9 S. D. 605, 70 N. W. 846.

Negotiability of note payable in another state is to be determined by law of that state. *Barry v. Storer*, 20 S. D. 459, 129 Am. St. Rep. 941, 107 N. W. 672.

Where stipulated place for performance and the place where contract is made are identical, law of that place must be applied. *Cosgrave v. McAvay*, 24 N. D. 343, 139 N. W. 693.

§ 5907. Explained by reference to circumstances. A contract may be explained by reference to the circumstances under which it was made and the matter to which it relates. [R. C. 1905, § 5351; Civ. C. 1877, § 938; R. C. 1899, § 3905.]

Evidence as to meaning of ambiguous contract is admissible. *Hazelton v. Gas Co.*, 4 N. D. 365, 61 N. W. 151.

Contract to be explained by reference to circumstances under which made. *Harris v. State*, 9 S. D. 453, 69 N. W. 825; *Pearson v. Post*, 2 D. 220, 9 N. W. 684; *Kennedy v. Falde*, 4 D. 319, 29 N. W. 667; *Frost v. Williams*, 2 S. D. 457, 50 N. W. 964.

Parol evidence admissible to explain ambiguities, latent or patent. *Osborne & Co. v. Stringham*, 1 S. D. 406, 47 N. W. 408; *Osborne & Co. v. Stringham*, 4 S. D. 593, 57 N. W. 776; *Miller v. Way*, 5 S. D. 468, 59 N. W. 467; *Stokes v. Green*, 10 S. D. 286, 73 N. W. 100; *Blood v. Fargo Elevator Co.*, 1 S. D. 71, 45 N. W. 200.

As to interpretation of contract. *Young v. Metcalf Land Co.*, 18 N. D. 441, 122 N. W. 1101.

Explanation of contract in action on promise to pay another's account. *Grimsrud Shoe Co. v. Jackson*, 22 S. D. 114, 115 N. W. 656.

Defendant may show as defense to action for price of drilling artesian well, that plaintiff knew purpose and that well was insufficient for that purpose. *DeRue v. McIntosh*, 26 S. D. 42, 127 N. W. 532.

Person who was ignorant of price of property sold and did not understand language, may show misrepresentations in relation to prices and to other terms of contract. *Sioux Remedy Co. v. Lindgren*, 27 S. D. 123, 130 N. W. 49.

Parol evidence admissible to show what intended by phrase "accepted mortgage" in land contract. *Smith v. Johnson*, 30 S. D. 200, 138 N. W. 18.

Clause in note given as part purchase price of land reading "less tax on land for 1906" amounted to agreement on part of vendor to pay taxes referred to. *Kimm v. Wolters*, 28 S. D. 255, 133 N. W. 277.

Oral stipulation may be shown (as to any matter on which written contract is silent and which is not inconsistent with its terms) if it appears written document was not intended to be complete. *Putnam v. Prouty*, 24 N. D. 517, 140 N. W. 93.

Parol evidence that parties to a written contract which merely names a class or species, contemplated a particular quality or kind. 9 L.R.A.(N.S.) 967.

Aiding the interpretation of building contracts by extrinsic documents or examples. 9 L.R.A.(N.S.) 1007.

Assignability of contract to supply such quantity of goods as purchaser may require in his business. 2 B. R. C. 444.

§ 5908. Extends no farther than parties intended to contract. However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract. [R. C. 1905, § 5352; Civ. C. 1877, § 939; R. C. 1899, § 3906.]

Contracts to perform labor are on implied condition that employe shall live to perform. *McClellan v. Harris*, 7 S. D. 447, 64 N. W. 522.

§ 5909. As promiser believed promisee understood it. If the terms of a promise are in any respect ambiguous or uncertain it must be interpreted in the sense in which the promiser believed at the time of making it that the promisee understood it. [R. C. 1905, § 5353; Civ. C. 1877, § 940; R. C. 1899, § 3907.]

Interpretation according to promisee's understanding at the time. *Winn v. Sanborn*, 10 S. D. 642, 75 N. W. 201.

To be read in the light of surrounding circumstances. *Fletcher v. Arnett*, 4 S. D. 615, 57 N. W. 915; *Parlin v. Hall*, 2 N. D. 473, 52 N. W. 405; *Anderson v. Bank*, 4 N. D. 182, 59 N. W. 1029.

Rule that when terms of agreement have been intended in a different sense, that sense is to prevail, against either party, in which he had reason to suppose the other party understood it. 8 L.R.A.(N.S.) 1140.

§ 5910. Clauses subordinate to general intent. Particular clauses of a contract are subordinate to its general intent. [R. C. 1905, § 5354; Civ. C. 1877, § 941; R. C. 1899, § 3908.]

§ 5911. Written and original control printed and copied. When a contract is partly written and partly printed, or when part of it is written or printed under the special directions of the parties and with a special view to their intention and the remainder is copied from a form originally prepared without special reference to the particular parties and particular contract in question, the written parts control the printed parts and the parts which are purely original control those which are copied from a form and if the two are absolutely repugnant the latter must be so far disregarded. [R. C. 1905, § 5355; Civ. C. 1877, § 942; R. C. 1899, § 3909.]

§ 5912. Repugnancies reconciled. Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clause subordinate to the general intent and purposes of the whole contract. [R. C. 1905, § 5356; Civ. C. 1877, § 943; R. C. 1899, § 3910.]

Definite unambiguous promise in written obligation not to be ignored because inconsistent with prior contract by another. *Tolman & Co. v. Bowerman*, 5 S. D. 197, 58 N. W. 568.

Construction of repugnant clauses in contract. 60 Am. St. Rep. 93.

§ 5913. Inconsistent words rejected. Words in a contract which are wholly inconsistent with its nature or with the main intention of the parties are to be rejected. [R. C. 1905, § 5357; Civ. C. 1877, § 944; R. C. 1899, § 3911.]

§ 5914. Uncertainty interpreted against party causing it. Presumption as to cause. In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promiser is presumed to be such party, except in a contract between a public officer or body, as such, and a private party, in which it is presumed that all uncertainty was caused by the private party. [R. C. 1905, § 5358; Civ. C. 1877, § 945; R. C. 1899, § 3912.]

As to similar provision in Cal. Civ. Code, § 1654, see *Cullen v. Sprigg*, 83 Cal. 56, 23 Pac. 222.

§ 5915. Reasonable stipulations implied. Stipulations which are necessary to make a contract reasonable or conformable to usage are implied in respect to matters concerning which the contract manifests no contrary intention. [R. C. 1905, § 5359; Civ. C. 1877, § 946; R. C. 1899, § 3913.]

Incidental stipulations necessary to carry contract into effect, or make it reasonable or conformable to usage, are implied. *Morrow v. Board of Education*, 7 S. D. 553, 64 N. W. 1126.

Stipulations implied when necessary to make a reasonable contract. *Stokes v. Green*, 10 S. D. 286, 73 N. W. 100.

When no time is set, reasonable time for performance is allowed. *Harvester Co. v. Artell*, 5 N. D. 315, 65 N. W. 680; *Braithwaite v. Power*, 1 N. D. 455, 48 N. W. 354.

As to interpretation of contract. *Young v. Metcalf Land Co.*, 18 N. D. 441, 122 N. W. 1101.

§ 5916. Incidents, when and when not implied. All things that in law or usage are considered as incidental to a contract or as necessary to carry it into effect are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded. [R. C. 1905, § 5360; Civ. C. 1877, § 947; R. C. 1899, § 3914.]

In absence of anything to contrary, incidental stipulations necessary to make it reasonably conformable to usage, implied. *Morrow v. Board of Education*, 7 S. D. 553, 64 N. W. 1126; *Stokes v. Green*, 10 S. D. 286, 73 N. W. 100.

§ 5917. Rules governing time of performance when not specified. If no time is specified for the performance of an act required to be performed a reasonable time is allowed. If the act is in its nature capable of being done instantly, as for example, if it consists in the payment of money only, it must be performed immediately upon the thing to be done being exactly ascertained. [R. C. 1905, § 5361; Civ. C. 1877, § 948; R. C. 1899, § 3915.]

Intention of parties to contract to adopt standard instead of sun time. 1 L.R.A.(N.S.) 364; 6 L.R.A.(N.S.) 1046.

Standard or solar time as the criterion in determining questions dependent upon time. 35 L.R.A.(N.S.) 611.

Construction and effect of provision for extension of time for removal of standing timber. 34 L.R.A.(N.S.) 615.

Duration of contract of hiring which fixes no term but specifies compensation at a certain amount per day, week, month or year. 25 L.R.A.(N.S.) 529.

Rent period as criterion of term implied by holding over after expiration of lease for a fixed term. 25 L.R.A.(N.S.) 855.

§ 5918. When time of the essence. Time is never considered as of the essence of a contract unless by its terms expressly so provided. [R. C. 1905, § 5362; Civ. C. 1877, § 949; R. C. 1899, § 3916.]

Time the essence of a contract not to be implied. *Strunk v. Smith*, 8 S. D. 407, 66 N. W. 926; *Washabaugh v. Hall*, 4 S. D. 168, 56 N. W. 82.

As to making time essence of contract by its terms. *Hanschka v. Vodopich*, 20 S. D. 551, 108 N. W. 28.

When time of the essence of contract in contracts for the sale of land. 104 Am. St. Rep. 265.

When stipulations show that time is made the essence of. 50 Am. Dec. 597.

Making time of the essence by demand or notice. 15 L.R.A. 737.

§ 5919. When promise presumed joint and several. When all the parties who unite in a promise receive some benefit from the consideration, whether

past or present, their promise is presumed to be joint and several. [R. C. 1905, § 5363; Civ. C. 1877, § 950; R. C. 1899, § 3917.]

Is a subscription contract joint or several. 22 L.R.A. 80.

§ 5920. Promise in singular by several presumed joint and several. A promise made in the singular number, but executed by several persons is presumed to be joint and several. [R. C. 1905, § 5364; Civ. C. 1877, § 951; R. C. 1899, § 3918.]

§ 5921. Executed contract defined. An executed contract is one, the object of which is fully performed. All others are executory. [R. C. 1905, § 5365; Civ. C. 1877, § 952; R. C. 1899, § 3919.]

Executed contract has qualities of a chose in action, but executory contract is nothing but a chose in action. *Mettel v. Gales*, 12 S. D. 632, 82 N. W. 181.

ARTICLE 8.—UNLAWFUL CONTRACTS.

§ 5922. What is unlawful. That is not lawful which is:

1. Contrary to an express provision of law.
 2. Contrary to the policy of express law, though not expressly prohibited;
- or,
3. Otherwise contrary to good morals. [R. C. 1905, § 5366; Civ. C. 1877, § 953; R. C. 1899, § 3920.]

Failure of land owner to destroy noxious weeds upon his land is not an "unlawful" act. *Langer v. Goode*, 21 N. D. 462, 131 N. W. 258, Ann. Cas. 1913D, 429, 1 N. C. C. A. 772.

Contract whereby mining properties were bought and sold to corporation which paid such party his profit on resale in stock, is valid. *Chambers v. Mittnacht*, 23 S. D. 449, 122 N. W. 434.

Contract to sell property, with agreement to obtain title by foreclosing a mortgage, is void. *Peck v. Levinger*, 6 D. 54, 50 N. W. 481.

New promise as consideration when original promise was illegal. 53 L.R.A. 370.

Validity of new contract based on compromise of illegal contract. 9 L.R.A.(N.S.) 568.

Actions upon illegal contracts. 8 Am. Dec. 691.

Recovery of money paid under illegal contract. 12 Am. Dec. 385.

Rights of parties to illegal contracts. 67 Am. Dec. 153.

Ultra vires contracts of corporations. 70 Am. St. Rep. 156.

Effect of imposition of penalty on validity of contract. 16 L.R.A. 424.

Implication of invalidity of contract from penalty. 12 L.R.A.(N.S.) 586.

As to similar provision in Cal. Civ. Code, § 1667, see *Sharon v. Sharon*, 68 Cal. 29, 8 Pac. 614; *Sharon v. Sharon*, 79 Cal. 633, 22 Pac. 26, 131; *Gardner v. Tatum*, 81 Cal. 370, 22 Pac. 880; *Jones v. Hanna*, 81 Cal. 507, 22 Pac. 883; *Graham v. Larimer*, 83 Cal. 173, 23 Pac. 286; *Mitchell v. Cline*, 84 Cal. 409, 24 Pac. 164; *Benicia Agri. Works v. Estes*, 3 Cal. Unrep. 855, 32 Pac. 938; *Kreamer v. Earl*, 91 Cal. 112, 27 Pac. 735; *Bernstein v. Downs*, 112 Cal. 197, 44 Pac. 557; *People v. Wilson*, 117 Cal. 242, 49 Pac. 135; *Dittrich v. Gobey*, 119 Cal. 599, 51 Pac. 962; *De Jarnatt v. Peake*, 123 Cal. 607, 56 Pac. 467; *Berka v. Woodward*, 125 Cal. 119, 45 L.R.A. 420, 73 Am. St. Rep. 81, 57 Pac. 777; *Demartini v. Anderson*, 127 Cal. 33, 59 Pac. 207; *Flinn v. Mowry*, 131 Cal. 481, 63 Pac. 724, 1006.

1. Limitation of time in action on insurance policy is void under statute. *Johnson v. D. F. & M. Ins. Co.*, 1 N. D. 167, 45 N. W. 799.

Threat of a lawful arrest of person guilty of criminal offense not such duress as will invalidate a deed or contract that has been executed for sufficient consideration. *Gregor v. Hyde*, 62 Fed. 107, 10 C. C. A. 290.

Payments made for Sunday labor not recoverable as void contract. *Calkins v. Mining Co.*, 5 S. D. 299, 58 N. W. 797.

Contract with teacher not having a certificate is void. *Hosmer v. School District*, 4 N. D. 197, 59 N. W. 1035, 50 Am. St. Rep. 639, 25 L.R.A. 383; *Goose River Bank v. Township*, 1 N. D. 26, 44 N. W. 1002, 26 Am. St. Rep. 605; *Hardy v. Purington*, 6 S. D. 382, 61 N. W. 158.

Statutes making illegal pre-existing contracts. 120 Am. St. Rep. 468.

Liability of municipality or other public corporation for benefits received under contract violative of statutory restrictions. 27 L.R.A.(N.S.) 1120.

Municipal liability for labor performed or services accepted by it under contract violating statutory or charter restrictions on power to contract. 27 L.R.A.(N.S.) 1127.

Conflict of laws as to Sunday contract. 34 L.R.A.(N.S.) 67.

Validity of sale partially made on Sunday and perfected on secular day. 4 L.R.A.(N.S.) 1151.

Delivery on week day pursuant to contract made on Sunday. 20 L.R.A.(N.S.) 86.

Signing or delivering replevin bond on Sunday as a defense. 29 L.R.A.(N.S.) 750.

- Procuring subscriptions on Sunday. 14 L.R.A. 194.
 Effect of payment of debt on Sunday. 15 L.R.A.(N.S.) 243.
 Effect, upon validity of contract, of ignorance of one party that it was executed by the other on Sunday. 18 L.R.A.(N.S.) 1176.
 Remedy of party as to rescission of Sunday contract. 17 L.R.A. 779.
 Return of consideration as condition of defense against contract made on Sunday. 5 L.R.A.(N.S.) 295.
 Contract to do acts for the doing of which a penalty is imposed by law. 25 Am. Rep. 674.
 Recovery of purchase price of property sold for unlawful purpose. 15 L.R.A. 834.
 Note given on settlement of illegal business is valid. 30 Am. Rep. 106.
 Effect of landlord's knowledge that tenant intends to use premises in violation of law. 19 L.R.A.(N.S.) 662; 39 L.R.A.(N.S.) 1104.
 Validity of contract as to fees in violation of law. 12 L.R.A.(N.S.) 612.
 Validity of contracts in business which it is a misdemeanor to transact. 12 L.R.A.(N.S.) 575.
 Contract made in business carried on without license, where license is required. 16 L.R.A. 423; 1 L.R.A.(N.S.) 1159.
 Effect of contract by unlicensed teacher. 42 L.R.A.(N.S.) 412.
 Right of unlicensed person to recover for services rendered by licensed person. 2 L.R.A.(N.S.) 392; 21 L.R.A.(N.S.) 176.
 3. Appointment to office as consideration renders void. *Waldron v. Evans*, 1 D. 10, 46 N. W. 607.
 Compounding felony, as consideration, is void. *School Dist. v. Anderson*, 6 D. 145, 41 N. W. 466.
 Money lost in gambling not recoverable; law leaves parties where it finds them. *Dows v. Glaspel*, 4 N. D. 251, 60 N. W. 60.
 Contract to vote stock on promise to secure office in corporation is void. *Gage v. Fisher*, 5 N. D. 297, 65 N. W. 809, 31 L.R.A. 557.
 Unlawful when contrary to law or good morals. *Uhlig v. Garrison*, 2 D. 71, 2 N. W. 253.
 Assignment by public officer of salary before due is against public policy and void. *State v. Barnes*, 10 S. D. 306, 73 N. W. 80.
 Agreement by husband to deed land in return for mutual settlement and bill is not collusive and void. *Burgess v. Burgess*, 17 S. D. 44, 95 N. W. 279.
 Right to recover for household services rendered while parties were living in illicit relations. 29 L.R.A.(N.S.) 787.
 Right to invoke aid of court to determine rights to property accumulated in common by parties living in illicit relations. 36 L.R.A.(N.S.) 838.
 Right of alleged fraudulent grantee to show that judgment against grantor was based on an immoral consideration. 67 L.R.A. 602.
 Validity of claim against state which is contrary to public policy. 42 L.R.A. 33.
 What are unconscionable contracts and whether they may be held void. 33 Am. Rep. 182; 81 Am. St. Rep. 663.
 Unconscionable contract with expectant heirs and others. 41 Am. Rep. 713.
 What contracts of attorneys are void as against public policy. 13 Am. St. Rep. 297.
 Contract with newspapers against public policy, when against. 93 Am. St. Rep. 905.
 Validity of agreement to indemnify bail in a criminal case. 20 L.R.A.(N.S.) 58.
 Validity of agreements to control the voting power of corporate stock. 16 L.R.A.(N.S.) 1136.
 Wagers and their validity. 11 Am. Rep. 58; 37 Am. St. Rep. 697.
 Actions founded upon wagers. 12 Am. Dec. 239.
 When loan for purpose of gaming is not collectible. 1 Am. St. Rep. 302.
 Defenses to notes and other obligations given for gambling debts. 119 Am. St. Rep. 172.
 Contract to deal in futures or margins. 10 Am. St. Rep. 33.
 Right of broker to recover commission or advance in furthering wagering contracts. 11 L.R.A.(N.S.) 575.
 Inference as to character of transaction, arising from fact that it was on margin. 22 L.R.A.(N.S.) 174.
 Effect of transfer of negotiable instruments to secure money for gambling purposes. 22 L.R.A.(N.S.) 627.
 Validity of lobbying. 121 Am. St. Rep. 726.
 Marriage brokerage contracts. 104 Am. St. Rep. 919.
 Contract to pay attending physician percentage of damages recovered for personal injury. 33 L.R.A.(N.S.) 87.
 Contract to furnish a patient medical services for life. 28 L.R.A.(N.S.) 1112.
 Agreement to accept less than amount of appropriation, salary or fee. 36 L.R.A.(N.S.) 244.
 Power of an officer to contract with the public body or municipality which he represents. 15 L.R.A. 520.
 Validity of contract as affected by the fact that its performance may involve the necessity of procuring some action by public officials. 18 L.R.A.(N.S.) 1161.

Validity of agreement by which compensation is dependent on success in procuring contract with public officer or board. 39 L.R.A.(N.S.) 747.

Contract as to location of public buildings. 4 L.R.A.(N.S.) 589.

Municipal liability for labors performed or services accepted by it on contract invalid because made with officer of municipality. 27 L.R.A.(N.S.) 1127.

Obligation of public corporation to pay for services rendered under contract in which officer is personally interested. 34 L.R.A.(N.S.) 129.

Agreement made in consideration of withdrawal of candidacy for office. 37 L.R.A.(N.S.) 289.

Injunction against enforcing contract to obtain office. 48 L.R.A. 842.

Contract for services to procure legislation. 30 L.R.A. 737; 4 L.R.A.(N.S.) 213.

Contracts to procure testimony. 19 L.R.A. 371; 30 L.R.A.(N.S.) 278; 94 Am. Dec. 375; 37 Am. St. Rep. 145.

Validity of agreements concerning state's evidence. 40 Am. St. Rep. 767.

Validity of contract of railroad to establish and maintain station. 15 L.R.A.(N.S.) 594.

Validity, as affected by public policy, of contract by railroad company to maintain private sidings. 17 L.R.A.(N.S.) 130.

Contract by railroad company to maintain special rate to a particular locality. 38 L.R.A.(N.S.) 157.

Validity of contract made to influence location of railroad. 21 L.R.A.(N.S.) 800.

§ 5923. Certain contracts against the policy of the law. All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law. [R. C. 1905, § 5367; Civ. C. 1877, § 954; R. C. 1899, § 3921.]

Railroad company may contract with shipper to limit liability for loss. *Meuer v. C. M. & St. P. Ry. Co.*, 5 S. D. 568, 59 N. W. 945, 49 Am. St. Rep. 898, 35 L.R.A. 81.

Effect of agreement for forbearance to sue. 36 Am. St. Rep. 145.

Contract consideration for which is the stifling of a criminal prosecution. 31 Am. Dec. 600; 22 Am. Rep. 121; 49 Am. Rep. 48.

Contract consideration for which tends to obstruct the administration of justice. 37 Am. Rep. 203.

Contract exempting railroad company from liability for burning building upon its right of way. 44 L.R.A.(N.S.) 1127.

As to similar provision in Cal. Civ. Code, § 1668, see *Morrill v. Nightingale*, 93 Cal. 452, 27 Am. St. Rep. 207, 28 Pac. 1068.

§ 5924. Penalties and penal clauses void. Penalties imposed by contract for any nonperformance thereof are void. But this section does not render void such bonds or obligations, penal in form, as have heretofore been commonly used; it merely rejects and avoids the penal clauses. [R. C. 1905, § 5368; Civ. C. 1877, § 955; R. C. 1899, § 3922.]

Stipulation for payment of attorney's fees is neither penalty nor forfeiture and will be enforced when not contrary to statute. *Danforth v. Charles*, 1 D. 273, 46 N. W. 576; *Farmers' Bank v. Rasmussen*, 1 D. 57, 46 N. W. 574.

Provision making whole amount due with twelve per cent interest on default in payment of installments, will not invalidate contract. *Russell v. Wright*, 23 S. D. 338, 121 N. W. 842.

What agreements provide for liquidated damages. 30 Am. Rep. 28.

Specific performance of land contract as affected by provision for liquidated damages. 2 L.R.A.(N.S.) 210.

Stipulation for damages in building contract as penalty or liquidated damages. 34 L.R.A.(N.S.) 588.

Provision for damages in land contract as penalty or stipulated damages. 34 L.R.A.(N.S.) 4.

Sum deposited to secure performance of a contract as a penalty or liquidated damages. 38 L.R.A.(N.S.) 847.

Amount stipulated to be paid in case of breach of contract for support as a penalty or liquidated damages. 31 L.R.A.(N.S.) 937.

§ 5925. Fixing damages for breach void. Every contract by which the amount of damages to be paid or other compensation to be made for a breach of an obligation is determined in anticipation thereof is to that extent void, except as expressly provided by the next section. [R. C. 1905, § 5369; Civ. C. 1877, § 956; R. C. 1899, § 3923.]

Contract for sale of land permitting grantor to retain all payments made, on failure of grantee to perform not void unless in nature of penalty or forfeiture. *Barnes v. Clement*, 8 S. D. 421, 66 N. W. 810; *Barnes v. Clement*, 12 S. D. 270, 81 N. W. 301.

Forfeiture for failure to complete building at time stipulated is void; measure of damages for delay being reasonable rental value during time. *Seim v. Krause*, 13 S. D. 530, 83 N. W. 583.

Specific performance of land contract as affected by provision for liquidated damages. 2 L.R.A.(N.S.) 210.

Effect of stipulation for liquidated damages in contract not to engage in business, upon equitable jurisdiction to enjoin breach thereof. 10 L.R.A.(N.S.) 204.

Stipulations exempting carrier from liability. 31 Am. Rep. 567.

Risks of negligence assumed by contract with carrier as including gross negligence. 1 L.R.A.(N.S.) 675.

Power of carriers to limit their liability and how may be exercised. 32 Am. Dec. 495.
—to limit liability in the event of loss to a sum less than the injury suffered. 23 Am. St. Rep. 593.

—to limit amount of liability in case of negligence. 14 L.R.A. 433; 1 L.R.A.(N.S.) 985.

Valuation of property for purposes of transportation as affecting carrier's liability where it is converted or embezzled while in its possession. 31 L.R.A.(N.S.) 309.

Stipulation in pass limiting carrier's liability. 37 L.R.A.(N.S.) 235.

Limitation of carrier's liability for passenger's luggage. 8 L.R.A.(N.S.) 199; 19 L.R.A.(N.S.) 1006, 34 L.R.A.(N.S.) 818.

Limitation of carrier's undertaking to its own line. 31 L.R.A.(N.S.) 52.

Validity of limitation of liability of telegraph company for unrepeatd messages. 11 L.R.A.(N.S.) 561; 30 L.R.A.(N.S.) 409.

Validity of contract exonerating master in advance from liability for negligent injuries to servant. 7 L.R.A.(N.S.) 537.

Constitutionality of statutes forbidding avoidance of liability to employe or reduction of his damages by relief or indemnity contract. 33 L.R.A.(N.S.) 706; 38 L.R.A.(N.S.) 867.

As to similar provision in Cal. Civ. Code, § 1670, see *Patent Brick Co. v. Moore*, 75 Cal. 205, 16 Pac. 890; *Eva v. McMahon*, 77 Cal. 467, 19 Pac. 872; *Greenleaf v. Stockton Combined Harvester & Agri. Works*, 78 Cal. 606, 21 Pac. 369; *Drew v. Pedlar*, 87 Cal. 443, 22 Am. St. Rep. 257, 25 Pac. 749; *Pacific Factor Co. v. Adler*, 90 Cal. 110, 25 Am. St. Rep. 102, 27 Pac. 36; *Wilmington Transp. Co. v. O'Neil*, 98 Cal. 1, 32 Pac. 705; *Easton v. Cressey*, 100 Cal. 75, 34 Pac. 622; *Glock v. Howard & W. Colony Co.*, 123 Cal. 1, 43 L.R.A. 199, 69 Am. St. Rep. 17, 55 Pac. 713; *Jack v. Sinsheimer*, 125 Cal. 563, 58 Pac. 130; *Long Beach City School Dist. v. Dodge*, 135 Cal. 401, 67 Pac. 499; *Escondido Oil & Development Co. v. Glaser*, 144 Cal. 494, 77 Pac. 1040.

§ 5926. Exception to last section. The parties to a contract may agree therein upon an amount which shall be presumed to be the amount of damage sustained by a breach thereof, when from the nature of the case it would be impracticable or extremely difficult to fix the actual damage. [R. C. 1905, § 5370; Civ. C. 1877, § 957; R. C. 1899, § 3924.]

Parties to agreement to purchase mining claims may agree on damages that breach would occasion. *Smith v. Detroit & D. Gold Min. Co.*, 17 S. D. 413, 97 N. W. 17.

Upon countermanding order for machinery given to plaintiff agent subject to approval, before approval transaction was terminated and no damages were recoverable. *Thomas Mfg. Co. v. Lyons*, 29 S. D. 600, 137 N. W. 340.

Applicability of provision for stipulated damages or penalty for delay in completion of a contract where the entire contract is abandoned or repudiated. 20 L.R.A.(N.S.) 350.

As to similar provision in Cal. Civ. Code, § 1671, see *Muldoon v. Lynch*, 86 Cal. 536, 6 Pac. 417; *Patent Brick Co. v. Moore*, 75 Cal. 205, 16 Pac. 890; *Eva v. McMahon*, 77 Cal. 467, 19 Pac. 872; *Greenleaf v. Stockton Combined Harvester & Agri. Works*, 78 Cal. 606, 21 Pac. 369; *Drew v. Pedlar*, 87 Cal. 443, 22 Am. St. Rep. 257, 25 Pac. 749; *Rayner v. Jones*, 90 Cal. 78, 27 Pac. 24; *Wilmington Transp. Co. v. O'Neil*, 98 Cal. 1, 32 Pac. 705; *Easton v. Cressey*, 100 Cal. 75, 34 Pac. 622; *Potter v. Ahrens*, 110 Cal. 674, 43 Pac. 388; *Glock v. Howard & W. Colony Co.*, 123 Cal. 1, 43 L.R.A. 199, 69 Am. St. Rep. 17, 55 Pac. 713; *Jack v. Sinsheimer*, 125 Cal. 563, 58 Pac. 130; *Long Beach City School Dist. v. Dodge*, 135 Cal. 401, 67 Pac. 499; *Escondido Oil & Development Co. v. Glaser*, 144 Cal. 494, 77 Pac. 1040.

§ 5927. Restricting enforcement of rights void. Every stipulation or condition in a contract by which any party thereto is restricted from enforcing his rights under the contract by the usual legal proceedings in the ordinary tribunals or which limits the time within which he may thus enforce his rights is void. [R. C. 1905, § 5371; Civ. C. 1877, § 958; R. C. 1899, § 3925.]

Limitation of liability in contract of common carrier. *Kirby v. W. U. Tel. Co.*, 4 S. D. 105, 55 N. W. 759, 46 Am. St. Rep. 765, 30 L.R.A. 621, 624.

Limitation of time to bring action on insurance policy, void. *Johnson v. Dakota Fire & Marine Ins. Co.*, 1 N. D. 167, 49 N. W. 799.

Building contract may provide for determination by architect of cost of alterations. *Seim v. Krause*, 13 S. D. 530, 83 N. W. 583.

Insurance provision requiring action on policy within twelve months after five, is void. *Vesey v. Commercial Union Assur. Co.*, 18 S. D. 632, 101 N. W. 1074; *Phenix Ins. Co. v. Perkins*, 19 S. D. 59, 101 N. W. 1110.

State auditor not authorized to insert stipulations in insurance policy in conflict with existing law. *Vesey v. Commercial Union Assur. Co.*, 18 S. D. 632, 101 N. W. 1074.

Validity of agreement to abide by decision of tribunal of associations or corporations. 49 L.R.A. 372.

Effect on running of limitations of agreement not to plead the statute. 16 L.R.A. (N.S.) 645.

Applicability to existing contracts of statute avoiding contractual stipulations limiting time for action. 38 L.R.A. (N.S.) 1016.

Contract requiring servant to elect between acceptance of benefits out of a relief fund and a prosecution of his claim in an action for damages. 11 L.R.A. (N.S.) 182.

Validity of provision in contract of railroad relief department for forfeiture of benefits in case of suit against company for damages. 10 L.R.A. (N.S.) 198.

Reasonableness of the time fixed in a contract of shipment of live stock for presentation of claim for damages. 7 L.R.A. (N.S.) 1041.

Validity of stipulation in carrier's contract requiring notice of loss within a specified time, as applied to loss due to carrier's negligence. 17 L.R.A. (N.S.) 628.

Validity of contract limiting time for bringing action, or for presentation of claims, for damages, where statute or constitution prohibits carrier from limiting its common-law liability. 13 L.R.A. (N.S.) 753.

Conflict of laws as to contract fixing period for bringing action against carrier. 18 L.R.A. (N.S.) 893.

§ 5928. In restraint of business void. Every contract by which any one is restrained from exercising a lawful profession, trade or business of any kind, otherwise than as provided by the next two sections, is to that extent void. [R. C. 1905, § 5372; Civ. C. 1877, § 959; R. C. 1899, § 3926.]

Sale of good will of firm must be with authority or ratification of all members. *Griffing v. Dunn*, 23 S. D. 141, 120 N. W. 890.

As to what constitutes breach of contract to refrain from certain business on sale of good will. *Brown v. Edsall*, 23 S. D. 610, 122 N. W. 658.

Agreement not to engage in certain business made by former partner some time after dissolution, without sale of good will, void. *Prescott v. Bidwell*, 18 S. D. 64, 99 N. W. 93.

Agreement to refrain from doing business without sale of good will is void. *Mapes v. Metcalf*, 10 N. D. 601, 88 N. W. 713.

As to what constitutes breach of contract and sale of good will made on dissolution of partnership. *Siegel v. Marcus*, 18 N. D. 214, 20 L.R.A. (N.S.) 769, 119 N. W. 358.

Contracts in restraint of trade. 7 Am. Dec. 743; 92 Am. Dec. 751; 35 Am. Rep. 269; 74 Am. St. Rep. 235.

Validity of contracts in restraint of trade without limitation of place. 22 L.R.A. 673.

Contract by selling shareholder not to engage in business in competition with corporation. 23 L.R.A. (N.S.) 506.

Validity of contract giving one an exclusive right to handle goods in a given locality. 9 L.R.A. (N.S.) 501.

Validity of agreement to patronize particular concern exclusively. 42 L.R.A. (N.S.) 843.

Validity of stipulation to discontinue, or not to engage in, a particular business, when not ancillary to a lawful contract. 6 L.R.A. (N.S.) 847.

Effect of incorporation of business by persons contracting not to engage in certain business. 9 L.R.A. (N.S.) 979.

Validity and effect of agreement among banks to prevent competition for deposits of public money. 14 L.R.A. (N.S.) 1052.

Validity of contract to employ union labor only. 2 L.R.A. (N.S.) 292.

Validity of agreement by employe not to engage in business in competition with employer. 6 L.R.A. (N.S.) 892.

Validity of contract restraining practice of one's profession after expiration of term of service with another. 26 L.R.A. (N.S.) 961.

Validity of agreement in restraint of trade or profession as affected by its territorial scope. 24 L.R.A. (N.S.) 913.

As to similar provision in Cal. Civ. Code, § 1673, see *Prior v. Diggs*, 3 Cal. Unrep. 565, 31 Pac. 155; *Vulcan Powder Co. v. Hercules Powder Co.*, 96 Cal. 510, 31 Am. St. Rep. 242, 31 Pac. 581; *Brown v. Kling*, 101 Cal. 295, 35 Pac. 995; *City Carpet Beating Works v. Jones*, 102 Cal. 506, 36 Pac. 841; *Gregory v. Spieker*, 110 Cal. 150, 52 Am. St. Rep. 70, 42 Pac. 576; *Smith v. San Francisco & N. P. R. Co.*, 115 Cal. 584, 35 L.R.A. 309, 56 Am. St. Rep. 119, 47 Pac. 582; *Meyers v. Merillion*, 118 Cal. 352, 50 Pac. 662; *Merchants' Ad-Sign Co. v. Sterling*, 124 Cal. 429, 46 L.R.A. 142, 71 Am. St. Rep. 94, 57 Pac. 468; *Franz v. Bieler*, 126 Cal. 176, 56 Pac. 249, 58 Pac. 466; *Dodge Stationery Co. v. Dodge*, 145 Cal. 380, 78 Pac. 879.

§ 5929. Good will excepted. One who sells the good will of a business may agree with the buyer to refrain from carrying on a similar business within a specified county, city or a part thereof, so long as the buyer or any person deriving title to the good will from him carries on a like business therein. [R. C. 1905, § 5373; Civ. C. 1877, § 960; R. C. 1899, § 3927.]

As to similar provision in Cal. Civ. Code, § 1674, see *Vulcan Powder Co. v. Hercules Powder Co.*, 96 Cal. 510, 31 Am. St. Rep. 242, 31 Pac. 581; *Brown v. Kling*, 101 Cal. 295, 35 Pac. 995; *City Carpet Beating, etc., Works v. Jones*, 102 Cal. 506, 36 Pac. 841; *Ragsdale v. Nagle*, 106 Cal. 332, 39 Pac. 628; *Gregory v. Spieker*, 110 Cal. 150, 52 Am. St. Rep. 70, 42 Pac. 576; *Meyers v. Merillion*, 118 Cal. 352, 50 Pac. 662; *Merchants' Ad-Sign Co. v. Sterling*, 124 Cal. 429, 46 L.R.A. 142, 71 Am. St. Rep. 94, 57 Pac. 468; *Dodge Stationery Co. v. Dodge*, 145 Cal. 380, 78 Pac. 879.

§ 5930. Partners excepted. Partners may upon or in anticipation of a dissolution of the partnership agree that none of them will carry on a similar business within the same city or town where the partnership business has been transacted, or within a specified part thereof. [R. C. 1905, § 5374; Civ. C. 1877, § 961; R. C. 1899, § 3928.]

As to similar provision in Cal. Civ. Code, § 1675, see *City Carpet Beating, etc., Works v. Jones*, 102 Cal. 506, 36 Pac. 841; *Meyers v. Merillion*, 118 Cal. 352, 50 Pac. 662.

§ 5931. In restraint of marriage void. Every contract in restraint of the marriage of any person, other than a minor, is void. [R. C. 1905, § 5375; Civ. C. 1877, § 962; R. C. 1899, § 3929.]

Contracts in restraint of marriage. 49 L.R.A.(N.S.) 633.

ARTICLE 9.—RESCISSION OF CONTRACTS.

§ 5932. How extinguished. A contract may be extinguished in like manner with any other obligation and also in the manner prescribed by this article. [R. C. 1905, § 5376; Civ. C. 1877, § 963; R. C. 1899, § 3930.]

Written contract for sale and purchase of realty may be waived, annulled and extinguished by parol. *Mohon v. Leech*, 11 N. D. 181, 90 N. W. 807; *Wadge v. Kittleson*, 12 N. D. 452, 97 N. W. 856.

A written contract for sale of real estate may be annulled by parol or abandoned by the parties thereto. *Haugan v. Skjervheim*, 13 N. D. 616, 102 N. W. 311.

As to similar provision in Cal. Civ. Code, § 1682, see *Griswold v. Pieratt*, 110 Cal. 259, 42 Pac. 820.

§ 5933. Extinguished by rescission. A contract is extinguished by its rescission. [R. C. 1905, § 5377; Civ. C. 1877, § 964; R. C. 1899, § 3931.]

Rescission of contracts and cancellation of deed is left to court of equity. *Thompson v. Hardy*, 19 S. D. 91, 102 N. W. 299.

As to similar provision in Cal. Civ. Code, § 1688, see *Schroeder v. Wittram*, 66 Cal. 636, 6 Pac. 737; *Wilcox v. Lattin*, 93 Cal. 588, 29 Pac. 226.

§ 5934. When rescission permitted. A party to a contract may rescind the same in the following cases only:

1. If the consent of the party rescinding, or of any party jointly contracting with him was given by mistake or obtained through duress, menace, fraud or undue influence exercised by or with the connivance of the party as to whom he rescinds or of any other party to the contract jointly interested with such party.

2. If through the fault of the party as to whom he rescinds the consideration for his obligation fails in whole or in part.

3. If such consideration becomes entirely void from any cause.

4. If such consideration before it is rendered to him fails in a material respect from any cause; or,

5. By consent of all of the other parties. [R. C. 1905, § 5378; Civ. C. 1877, § 965; R. C. 1899, § 3932.]

As to when party may rescind contract by his own act. *Miller v. Shelburn*, 15 N. D. 182, 107 N. W. 51.

Written lease is rescinded by lessee's written notice and lessor's acceptance of its termination. *Stott v. Chamberlain*, 21 S. D. 520, 114 N. W. 683.

Action to rescind may be brought at any time when offer to rescind has been made with reasonable promptness. *Hilton v. Advance Thresher Co.*, 8 S. D. 412, 66 N. W. 816.

Rescission of contract for erection of building by owner; contractor's remedy for. *Davis v. Bronson*, 2 N. D. 300, 50 N. W. 836, 33 Am. St. Rep. 783, 16 L.R.A. 655.

Buyer repudiating without cause a contract of purchase before delivery is liable for full contract price, if goods are offered. *Dowagiac Mfg. Co. v. Higinbotham*, 15 S. D. 547, 91 N. W. 330.

Right of rescission of contract which is void because made on Sunday. 17 L.R.A. 779. Rescinding in equity where there is no actual fraud, accident or mistake. 15 Am. Dec. 572.

When, how and by whom may rescission be made. 50 Am. Dec. 673; 74 Am. Dec. 657. As to similar provision in Cal. Civ. Code, § 1689, see *Hallidie v. Sutter Street R. Co.*, 63 Cal. 575; *Schroeder v. Wittram*, 66 Cal. 636, 6 Pac. 737; *Burkle v. Levy*, 70 Cal. 250, 11 Pac. 643; *Fish v. Benson*, 71 Cal. 428, 12 Pac. 454; *Lawrence v. Gayetty*, 78 Cal. 126, 12 Am. St. Rep. 29, 20 Pac. 382, 17 Mor. Min. Rep. 169; *Colton v. Stanford*, 82 Cal. 351, 16 Am. St. Rep. 137, 23 Pac. 16; *Wilcox v. Lattin*, 93 Cal. 588, 29 Pac. 226; *Loaiza v. Superior Ct.*, 85 Cal. 11, 9 L.R.A. 376, 20 Am. St. Rep. 197, 24 Pac. 707; *Joshua Hendy Mach. Works v. American Steam Boiler Ins. Co.*, 86 Cal. 248, 21 Am. St. Rep. 33, 24 Pac. 1018; *Dobinson v. McDonald*, 92 Cal. 33, 27 Pac. 1098; *Steinhart v. National Bank*, 94 Cal. 362, 28 Am. St. Rep. 132, 29 Pac. 717; *Dolliver v. Dolliver*, 94 Cal. 642, 30 Pac. 4; *Toby v. Oregon P. R. Co.*, 98 Cal. 490, 33 Pac. 550; *Jurgens v. New York L. Ins. Co.*, 114 Cal. 161, 45 Pac. 1054, 46 Pac. 386; *Westerfeld v. New York L. Ins. Co.*, 129 Cal. 68, 58 Pac. 92, 61 Pac. 667; *Richter v. Union Land & Stock Co.*, 129 Cal. 367, 62 Pac. 39; *Schweikert v. Seavey*, 6 Cal. Unrep. 554, 62 Pac. 600; *Owen v. Pomona Land & Water Co.*, 131 Cal. 530, 63 Pac. 850, 64 Pac. 253; *Smith v. Blandin*, 133 Cal. 441, 65 Pac. 894; *Wingerter v. San Francisco*, 134 Cal. 547, 86 Am. St. Rep. 294, 66 Pac. 730; *Kimball v. Tripp*, 136 Cal. 631, 69 Pac. 428; *Latimer v. Capay Valley Land Co.*, 137 Cal. 286, 70 Pac. 82.

1. Fraudulent representations to stranger not ground for rescission, unless brought to knowledge of party seeking to rescind. *Tootle v. Petrie*, 8 S. D. 19, 65 N. W. 43.

One receiving policy of hail insurance, after retaining it for full season covered by its terms, cannot rescind for fraud. *N. W. Hall Ins. Co. v. Fleming*, 12 S. D. 36, 80 N. W. 147.

Rescission of contract for sale of land on ground of fraud. *Rasmussen v. Reedy*, 14 S. D. 15, 84 N. W. 205.

Vendor fraudulently representing property to be his when he knows it belongs to stranger may rescind. *Hull v. Caldwell*, 3 S. D. 451, 54 N. W. 100.

Party may rescind contract procured from him by fraud. *Nat. Bank v. Taylor*, 5 S. D. 99, 58 N. W. 297.

Widow may rescind agreement made under mistake to take less portion of husband's estate than she had right to. *Griffing v. Gilason*, 21 S. D. 56, 109 N. W. 646.

Reformation or rescission of contract because of mistake of law as to its effect. 28 L.R.A.(N.S.) 900.

Rescission for fraud of compromise of void, invalid or unfounded claim. 25 L.R.A.(N.S.) 308.

Ignorance or carelessness as affecting the right to equitable relief from a contract by which one had been overreached. 5 L.R.A.(N.S.) 799.

Relief in equity against contract procured by threat to prosecute relative. 26 L.R.A. 52; 20 L.R.A.(N.S.) 489; 37 L.R.A.(N.S.) 539.

Jurisdiction of equity to relieve from fraud affecting real property in another state or country. 69 L.R.A. 686.

Relief in equity against bona fide holder of note obtained by fraud. 36 L.R.A. 465.

False statements as to use to which property is to be put as ground for rescission of deed. 32 L.R.A.(N.S.) 127.

Right, as against subsequent bona fide purchaser, to avoid deed because of false impression, induced by fraud, as to contents or character of paper signed. 36 L.R.A.(N.S.) 537.

Expression of opinion as ground for rescission. 35 L.R.A. 434.

Rescission for fraud and misrepresentation in procuring subscription to stock. 33 L.R.A. 721.

Fraud as a ground of relief from subscription to stock after insolvency of corporation. 31 L.R.A.(N.S.) 900.

Right of seller to reclaim goods as against assignee for creditors or trustee in bankruptcy of buyer, who procured them by false representations. 17 L.R.A.(N.S.) 1032.

What misrepresentations will afford ground for rescinding a sale of books. 22 L.R.A.(N.S.) 1210.

2. Breach of warranty as entitling buyer to rescind agreement for sale. *Poirier Mfg. Co. v. Kitts*, 18 N. D. 556, 120 N. W. 558.

Vendee rescinding for breach of warranty may sue for amount of unpaid negotiable note given for purchase price. *Canham v. Plano Mfg. Co.*, 3 N. D. 229, 55 N. W. 583.

Right to rescind or abandon contract because of default or inability of other party to perform. 30 L.R.A. 33.

Conditions precedent to rescission of contract for other party's default. 30 L.R.A. 36.

Right to rescind for failure or inability of other party to perform within time designated, where time is not of the essence of the contract. 21 L.R.A.(N.S.) 691.

Right to rescind contract because of anticipated inability of other party to complete the same within the time limit. 41 L.R.A.(N.S.) 60.

Right of purchaser to reject goods for breach of warranty. 27 L.R.A.(N.S.) 914.

Right of purchaser of goods deliverable in installments to rescind the contract for breach of warranty as to quality. 38 L.R.A.(N.S.) 539.

Acceptance of portion of installment, as affecting right to rescind continuing contract for failure to deliver whole. 21 L.R.A.(N.S.) 864.

Waiver by use of right to rescind for breach of warranty or noncompliance with contract. 36 L.R.A.(N.S.) 468.

3. Total failure of consideration as entitling party to rescind contract. Block v. Donovan, 13 N. D. 1, 99 N. W. 72.

Right to rescind the taking of worthless paper. 10 L.R.A.(N.S.) 552.

4. Rescission may be had on failure of material part of consideration. Fletcher v. Arnett, 4 S. D. 615, 57 N. W. 915.

Failure of consideration as a defense. 13 Am. Dec. 378.

Implied power of agent to assent to rescission of contract. 37 L.R.A.(N.S.) 91.

§ 5935. When permitted notwithstanding stipulation for compensation. A stipulation that errors of description shall not avoid a contract or shall be the subject of compensation, or both, does not take away the right of rescission for fraud, nor for mistake, when such mistake is in a matter essential to the inducement of the contract and is not capable of exact and entire compensation. [R. C. 1905, § 5379; Civ. C. 1877, § 966; R. C. 1899, § 3933.]

§ 5936. Rules governing. Rescission when not affected by consent can be accomplished only by the use, on the part of the party rescinding, of reasonable diligence to comply with the following rules:

1. He must rescind promptly upon discovering the facts which entitle him to rescind, if he is free from duress, menace, undue influence or disability and is aware of his right to rescind; and,

2. He must restore to the other party everything of value which he has received from him under the contract; or must offer to restore the same upon condition that such party shall do likewise, unless the latter is unable or positively refuses to do so. [R. C. 1905, § 5380; Civ. C. 1877, § 967; R. C. 1899, § 3934.]

Retention of note given by administrator to claimant against estate of decedent does not operate as waiver of rights under decree of distribution awarding claimant amount of note. Sjoli v. Hogenson, 19 N. D. 82, 122 N. W. 1008.

Payments made prior to discovery of fraud do not prevent rescission. Grewing v. Minn. Machine Co., 12 S. D. 127, 80 N. W. 176.

Upon rescission before commencement of performance, other party can only sue for damages; cannot complete contract and sue for whole amount. Davis v. Bronson, 2 N. D. 300, 50 N. W. 836, 33 Am. St. Rep. 783, 16 L.R.A. 655.

Purchaser must fully perform before recovery on rescission; payment of note not necessary when in hands of innocent purchaser. Fahey v. Esterly Co., 3 N. D. 220, 55 N. W. 580, 44 Am. St. Rep. 554.

Rescission of purchase of bank stock for fraudulent representation at time of purchase. Nat. Bank v. Taylor, 5 S. D. 99, 58 N. W. 297.

Fraud must not only have been believed, but acted upon, to rescind. Sioux Bank v. Kendall, 6 S. D. 543, 62 N. W. 377.

Affirmance in part on discovery of deceit as validating entire contract. Beare v. Wright, 14 N. D. 26, 69 L.R.A. 409, 103 N. W. 632, 8 A. & E. Ann. Cas. 1057.

As to similar provision in Cal. Civ. Code, § 1691, see Marston v. Simpson, 54 Cal. 189, 13 Mor. Min. Rep. 36; Burkle v. Levy, 70 Cal. 250, 11 Pac. 643; Wilson v. Sturgis, 71 Cal. 226, 16 Pac. 772; Bailey v. Fox, 78 Cal. 389, 20 Pac. 868; Loaliza v. Superior Ct., 85 Cal. 11, 9 L.R.A. 376, 20 Am. St. Rep. 197, 24 Pac. 707; More v. Calkins, 85 Cal. 177, 24 Pac. 729; Hammond v. Wallace, 85 Cal. 522, 20 Am. St. Rep. 239, 24 Pac. 837; Stratton v. California Land & Timber Co., 86 Cal. 353, 24 Pac. 1065; Benson v. Shotwell, 87 Cal. 49, 25 Pac. 249; Dobinson v. McDonald, 92 Cal. 33, 27 Pac. 1098; Delano v. Jacoby, 96 Cal. 275, 31 Am. St. Rep. 201, 31 Pac. 290; Toby v. Oregon P. R. Co., 98 Cal. 490, 33 Pac. 550; Gamble v. Tripp, 99 Cal. 223, 33 Pac. 851; Marten v. Paul O. Burns Water Co., 99 Cal. 358, 33 Pac. 1107; Merrill v. Merrill, 103 Cal. 287, 35 Pac. 768, 37 Pac. 392; Maddock v. Russell, 109 Cal. 417, 42 Pac. 139; Bancroft v. Bancroft, 110 Cal. 374, 42 Pac. 896; Rohrbacher v. Kleebauer, 119 Cal. 260, 51 Pac. 341; Wilder v. Beede, 119 Cal. 646, 51 Pac. 1083; Glock v. Howard & W. Colony Co., 123 Cal. 1, 43 L.R.A. 199, 69 Am. St. Rep. 17, 55 Pac. 713; Whyte v. Rosencrantz, 123 Cal. 634, 69 Am. St. Rep. 90, 56 Pac. 436; Wolfe v. Titus, 124 Cal. 264, 56 Pac. 1042; Harrington v. Paterson, 124 Cal. 542, 57 Pac. 476; Westerfeld v. New York L. Ins. Co., 129 Cal. 68, 58 Pac. 92, 61 Pac. 667; Schweikert v. Seavey, 6 Cal. Unrep. 554, 62 Pac.

600; *Phillips v. Sanger Lumber Co.*, 130 Cal. 431, 62 Pac. 749; *Southern P. R. Co. v. Choate*, 132 Cal. 278, 64 Pac. 292; *Wills v. Porter*, 132 Cal. 516, 64 Pac. 896.

1. Necessity of contract being rescinded "promptly." *Raymond v. Edelbrock*, 15 N. D. 231, 107 N. W. 194.

Right to rescind waived by inexcusable failure to act for fifteen months. *Smith v. Detroit & D. Gold Min. Co.*, 17 S. D. 413, 97 N. W. 7.

2. Offer to return property before rescission. *McMahon v. Plummer*, 6 D. 42, 50 N. W. 480.

Must restore, or offer to restore, everything of value received. *Johnson v. Burnside*, 3 S. D. 230, 52 N. W. 1057; *Stackpole v. Dakota Loan & Trust Co.*, 10 S. D. 389, 73 N. W. 258; *Lovell v. McCaughey*, 8 S. D. 471, 66 N. W. 1085.

Necessity of restoring benefits received under sale contract on rescission thereof. *Moline Plow Co. v. Bostwick*, 15 N. D. 658, 109 N. W. 923.

Party rescinding must offer to other party any proceeds or fruits of transaction in his possession. *Anderson v. Bank*, 4 N. D. 182, 59 N. W. 1029; *N. W. Hail Ins. Co. v. Fleming*, 12 S. D. 36, 80 N. W. 147.

If vendor's consent to contract was obtained through fraud, he could rescind only by restoring to purchaser everything he received under contract. *Sullivan v. Bromley*, 26 S. D. 147, 128 N. W. 586.

Complaint alleging purchase by plaintiff of stock through false representations made by defendant, and that plaintiff tendered back the stock and demanded consideration, but that defendant refused to return same, and tendering back stock, states cause of action. *Sweeney v. United Underwriters Co.*, 25 S. D. 1, 124 N. W. 1107.

Maker can defend against note without rescinding or offering to return worthless property for which note was given. *National Bank v. Sherman*, 23 S. D. 8, 119 N. W. 1010.

Duty to place other party in statu quo. 30 L.R.A. 44.

—on rescission of contract for sale of land. 30 L.R.A. 66.

Necessity for returning consideration in order to disaffirm infant's contract. 26 L.R.A. 177.

Duty to restore or tender back what has been received. 1 L.R.A.(N.S.) 379.

Return or tender of consideration for release of claim for personal injuries set aside on ground of fraud. 35 L.R.A.(N.S.) 660.

Return of consideration as condition of defending against contract because made on Sunday. 5 L.R.A.(N.S.) 295.

Necessity of returning in specie all, or part of, product received from land under a contract in relation thereto as a condition of rescinding contract. 25 L.R.A.(N.S.) 1302.

Effect of inability to restore to statu quo on right to rescind stock subscription for fraud. 33 L.R.A. 725.

ARTICLE 10.—ALTERATION AND CANCELLATION OF CONTRACTS.

§ 5937. How oral contract altered. A contract not in writing may be altered in any respect by consent of the parties in writing without a new consideration and is extinguished thereby to the extent of the alteration. [R. C. 1905, § 5381; Civ. C. 1877, § 968; R. C. 1899, § 3935.]

§ 5938. How written contract altered. A contract in writing may be altered by a contract in writing or by an executed oral agreement and not otherwise. [R. C. 1905, § 5382; Civ. C. 1877, § 969; R. C. 1899, § 3936.]

On right to modify contract in writing by subsequent contract. *Manganese Steel Safe Co. v. First State Bank*, 28 S. D. 426, 134 N. W. 886.

Modification of contract in writing for sale of land is not deemed binding unless modification is also in writing. *Minder & J. Land Co. v. Brustuen*, 24 S. D. 537, 124 N. W. 723.

Does not prevent admission of oral evidence to show that contract is invalid because of usury. *Fellows v. Christensen*, 28 S. D. 353, 133 N. W. 814.

Oral modification of written contract employing broker to sell land is not executed so as to be binding until payment has been made under oral modification. *Share v. Coats*, 29 S. D. 603, 137 N. W. 402.

Evidence of oral conversations between parties relative to defective condition of plaintiff's title was inadmissible for purpose of showing modification of written contract to sell land. *McCulloch v. Bauer*, 24 N. D. 109, 139 N. W. 318.

In action on written contract, action by defendant for directed verdict on ground that modification of agreement relied on by plaintiff was not in writing, was insufficient to preserve objection under this section. *Woods v. Stacy*, 28 S. D. 214, 132 N. W. 1007.

Written agreement may be abrogated by subsequent oral agreement fully executed. *Fletcher v. Nelson*, 6 N. D. 94, 69 N. W. 53.

Time of payment in written agreement may be enlarged or suspended by executed oral contract, but not by one entirely promissory. *Foster v. Furlong*, 8 N. D. 282, 79 N. W. 986.

Contract is executed when object is performed. *Mettel v. Gales*, 12 S. D. 632, 82 N. W. 181.

Where note given to bank cashier and transferred to bank is renewed by makers in name of bank, such renewal note is subject to any defense against original note. *Black Hills Nat. Bank v. Kellogg*, 4 S. D. 312, 56 N. W. 1071.

Unexecuted agreement to take mortgage as security for identical debt will not defeat mechanic's lien. *Barnard & Leas Mfg. Co. v. Galloway*, 5 S. D. 205, 58 N. W. 565.

Parol modification of written contract must be clear and satisfactory. *Buttz v. Colton*, 6 D. 306, 43 N. W. 717.

As to when oral proof of modified contract is admissible in action to recover purchase price. *Reeves v. Bruening*, 13 N. D. 157.

Written lease is rescinded by lessee's written notice and lessor's acceptance of its termination. *Stott v. Chamberlain*, 21 S. D. 520, 114 N. W. 683.

Written contract for sale of real estate cannot be modified by unexecuted oral agreement as to performance. *Cughan v. Larson*, 13 N. D. 373, 100 N. W. 1088.

As to written contract being altered by executed parol agreement. *Beuash v. Travelers' Ins. Co.*, 14 N. D. 39, 103 N. W. 405.

Necessity of oral modification of written contract being executed. *Annis v. Burnham*, 15 N. D. 577, 108 N. W. 549.

Executed oral agreement by mortgagee to take other chattels in place of mortgaged chattels prevents conversion on refusal to deliver on demand. *Catlett v. Stokes*, 21 S. D. 108, 110 N. W. 84.

Note given in part purchase price of land, containing clause reading "less tax on land for 1906" was binding upon vendor as modification of land contract, when he accepted it, and bound him to pay taxes. *Kimm v. Wolters*, 28 S. D. 255, 133 N. W. 277.

As to similar provision in Cal. Civ. Code, § 1698, see *Erenberg v. Peters*, 66 Cal. 114, 4 Pac. 1091; *Taylor v. Soldati*, 68 Cal. 27, 8 Pac. 518; *Tapia v. Demartini*, 77 Cal. 383, 11 Am. St. Rep. 288, 19 Pac. 641; *Smith v. Taylor*, 82 Cal. 533, 23 Pac. 217; *Guidery v. Green*, 95 Cal. 630, 30 Pac. 786; *Benson v. Shotwell*, 103 Cal. 163, 37 Pac. 147; *Thompson v. Gerner*, 104 Cal. 168, 43 Am. St. Rep. 81, 37 Pac. 900; *Heim v. Butin*, 5 Cal. Unrep. 19, 40 Pac. 39; *Dunn v. Price*, 112 Cal. 46, 44 Pac. 354; *Platt v. Butcher*, 112 Cal. 634, 44 Pac. 1060; *Bradford Invest. Co. v. Joost*, 117 Cal. 204, 48 Pac. 1083; *Anderson v. Johnston*, 120 Cal. 657, 53 Pac. 264; *Stockton Combined Harvester & Agri. Works v. Glens Falls Ins. Co.*, 121 Cal. 167, 53 Pac. 565; *Hochstein v. Berghauser*, 123 Cal. 681, 56 Pac. 547; *Mackenzie v. Hodgkin*, 126 Cal. 591, 77 Am. St. Rep. 209, 59 Pac. 36; *Henehan v. Hart*, 127 Cal. 656, 60 Pac. 426; *Main Street & Agri. Park R. Co. v. Los Angeles Traction Co.*, 129 Cal. 301, 61 Pac. 937; *Harloe v. Lambie*, 132 Cal. 133, 64 Pac. 88.

§ 5939. Destruction by consent extinguishes as to all consenting. The destruction or cancellation of a written contract or of the signature of the parties liable thereon with intent to extinguish the obligation thereof, extinguishes it as to all of the parties consenting to the act. [R. C. 1905, § 5383; Civ. C. 1877, § 970; R. C. 1899, § 3937.]

As to similar provision in Cal. Civ. Code, § 1699, see *Brook v. Pearson*, 87 Cal. 581, 25 Pac. 963.

§ 5940. Extinguished as to one and not all. The intentional destruction, cancellation or material alteration of a written contract by a party entitled to any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor against parties who do not consent to the act. [R. C. 1905, § 5384; Civ. C. 1877, § 971; R. C. 1899, § 3938.]

Burden is on party claiming alteration in instrument to show that it is material and subsequent to execution and delivery. *Foly-Wadsworth Co. v. Solomon*, 9 S. D. 511, 70 N. W. 639.

Note fraudulently altered after delivery, null and void as to maker. *First Nat. Bank v. Laughlin*, 4 N. D. 391, 61 N. W. 473.

Insertion of place of payment by clerk not a void note. *Port Huron Engine Co. v. Sherman*, 14 S. D. 461, 85 N. W. 1008.

Adding \$60 to a \$1,000 note is a material alteration. *Wyckoff v. Johnson*, 2 S. D. 91, 48 N. W. 837.

Alteration made by stranger without consent of holder. *Landauer v. Sioux Falls Imp. Co.*, 10 S. D. 205, 72 N. W. 467.

Unauthorized change in note of place of payment by payee's clerk subsequently erased not prevent recovery. *Acme Harv. Co. v. Butterfield*, 12 S. D. 91, 80 N. W. 170.

§ 5941. Destruction of one duplicate not within last section. When a contract is executed in duplicate an alteration or destruction of one copy while the other exists is not within the provisions of the last section. [R. C. 1905, § 5385; Civ. C. 1877, § 972; R. C. 1899, § 3939.]

CHAPTER 56.

OBLIGATIONS IMPOSED BY LAW.

§ 5942. To abstain from injuring another's person or property. Every person is bound without contract to abstain from injuring the person or property of another or infringing upon any of his rights. [R. C. 1905, § 5386; Civ. C. 1877, § 973; R. C. 1899, § 3940.]

As to debt and obligation not being synonymous. *Sonnesyn v. Akin*, 12 N. D. 227, 97 N. W. 557.

§ 5943. Damages for deceit. One who willfully deceives another with intent to induce him to alter his position to his injury or risk is liable for any damage which he thereby suffers. [R. C. 1905, § 5387; Civ. C. 1877, § 974; R. C. 1899, § 3941.]

Vendor liable for willful deception in sale of county warrant. *Parker v. Ausland*, 13 S. D. 169, 82 N. W. 402.

School officer fraudulently issuing school warrant liable to an innocent purchaser. *Whitbeck v. Sees*, 10 S. D. 417, 73 N. W. 915.

As to measure of damages for deceit. *Beare v. Wright*, 14 N. D. 26, 69 L.R.A. 409, 103 N. W. 632, 8 A. & E. Ann. Cas. 1057.

Fraud must not only have been believed, but have been acted upon to entitle recovery of damages. *First Nat. Bank v. North*, 2 S. D. 480, 51 N. W. 96; *Sioux Bank v. Kendall*, 6 S. D. 543, 62 N. W. 377.

Actions for false representations. 20 Am. Dec. 626, 18 Am. St. Rep. 555.

Recovery for injuries suffered from acting upon false representations. 88 Am. Dec. 442.

False representations in the sale of real estate. 2 Am. Dec. 77.

Measure of damages for misrepresentations in the sale of real property. 123 Am. St. Rep. 776.

Right to interest on damages for fraud and deceit. 28 L.R.A.(N.S.) 50.

Right to interest on damages from fraud in sale of personalty. 28 L.R.A.(N.S.) 49.

Damages recoverable for fraud and deceit in selling diseased animals. 34 L.R.A.(N.S.) 697.

Measure of damages for false representations in sale of real estate. 8 L.R.A.(N.S.) 804; 16 L.R.A.(N.S.) 818.

Measure of damages for fraud in the exchange of property. 38 L.R.A.(N.S.) 465.

As to similar provision in Cal. Civ. Code, § 1709, see *Daley v. Quick*, 99 Cal. 179, 33 Pac. 859.

§ 5944. Deceit defined. A deceit within the meaning of the last section is either:

1. The suggestion as a fact of that which is not true by one who does not believe it to be true.

2. The assertion as a fact of that which is not true by one who has no reasonable ground for believing it to be true.

3. The suppression of a fact by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or,

4. A promise made without any intention of performing. [R. C. 1905, § 5388; Civ. C. 1877, § 975; R. C. 1899, § 3942.]

1. False statement as to cost, selling or market price of property, or as to offers therefor as fraud. 35 L.R.A.(N.S.) 175.

2. Statements made without knowledge of falsity as ground for action for fraud. 18 L.R.A.(N.S.) 379.

Misstatement as to title to real property as fraud. 28 L.R.A.(N.S.) 202; 39 L.R.A.(N.S.) 1142.

Expression of opinion as fraud. 35 L.R.A. 417.

3. Landlord's concealment of defects in premises as fraud. 34 L.R.A. 827.

Concealment of defects in title to real property. 28 L.R.A.(N.S.) 207.

Obligee's concealment of facts on obtaining guaranty or surety. 21 L.R.A. 411.

Concealment of facts by insured in case of Lloyd's policies. 55 L.R.A. 202.

4. Whether lack of reasonable expectation of being able to pay is equivalent, as a matter of law, to an intention not to pay. 6 L.R.A.(N.S.) 556.

§ 5945. When intent to defraud every one misled presumed. One who practices a deceit with intent to defraud the public or a particular class of per-

sons is deemed to have intended to defraud every individual in that class who is actually misled by the deceit. [R. C. 1905, § 5389; Civ. C. 1877, § 976; R. C. 1899, § 3943.]

§ 5946. When thing obtained without consent must be restored. One who obtains a thing without consent of its owner or by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse must restore it to the person from whom it was thus obtained, unless he has acquired a title thereto superior to that of such other person, or unless the transaction was corrupt and unlawful on both sides. [R. C. 1905, § 5390; Civ. C. 1877, § 977; R. C. 1899, § 3944.]

§ 5947. Without demand. Exception. The restoration required by the last section must be made without demand; except when a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake. [R. C. 1905, § 5391; Civ. C. 1877, § 978; R. C. 1899, § 3945.]

§ 5948. Liability for willful act of negligence. Every one is responsible not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has willfully or by want of ordinary care brought the injury upon himself. The extent of the liability in such cases is defined by articles 1 and 2 of chapter 110 on compensatory relief. [R. C. 1905, § 5392; Civ. C. 1877, § 979; R. C. 1899, § 3946.]

Negligence a question for both court and jury. *Alt v. Ry. Co.*, 5 S. D. 20, 57 N. W. 1126.

Question of negligence for jury when reasonable men might draw different conclusions from facts. *Heckman v. Evenson*, 7 N. D. 173, 73 N. W. 427.

Presumptive negligence under statute. *Johnson v. Ry. Co.*, 1 N. D. 354, 48 N. W. 227; *Kelsey v. Ry. Co.*, 1 S. D. 80, 45 N. W. 204.

Statutory presumption as to negligence of trainmen; when overcome. *Keilbach v. Ry. Co.*, 11 S. D. 468, 78 N. W. 951.

Presumptive negligence, when overcome, warrants direction of verdict. *Hebron v. Ry. Co.*, 4 S. D. 538, 57 N. W. 494; *Harrison v. Ry. Co.*, 6 S. D. 100, 60 N. W. 405; *Lewis v. Ry. Co.*, 7 S. D. 183, 63 N. W. 781.

Measure of damages for loss by negligence. *Johnson v. Ry. Co.*, 1 N. D. 354, 48 N. W. 227.

Recovery of money paid by mistake, diligence must be shown. *Fegan v. Great Nor. Ry. Co.*, 9 N. D. 30, 81 N. W. 39.

Negligence in employment of counsel; default will not be set aside and new trial granted. *Minnehaha Nat. Bank v. Hurley*, 13 S. D. 18, 82 N. W. 87.

Owner of building failing to exercise proper care in ascertaining condition responsible for injury caused by its fall. *Patterson v. Schlitz Brewing Co.*, 16 S. D. 33, 91 N. W. 336; *Waterhouse v. Brewing Co.*, 12 S. D. 397, 81 N. W. 725, 48 L.R.A. 157.

Loss by fire, proximate or remote cause. *Gram v. Ry. Co.*, 1 N. D. 252, 46 N. W. 972; *Pielke v. Ry. Co.*, 5 D. 444, 41 N. W. 669; *Johnson v. Ry. Co.*, 1 N. D. 354, 48 N. W. 227.

Spreading of fire set on one's own land to land of another not evidence of negligence. *Mattoon v. Ry. Co.*, 6 S. D. 196, 60 N. W. 740.

Rule that negligence is presumed from fact that engine sets a fire is a rule of evidence and unaffected by allegations in complaints. *Mathews v. Gt. Nor. Ry. Co.*, 7 N. D. 81, 72 N. W. 1085.

Contributory negligence not imputed to one damaged by prairie fire merely because person familiar with locality might have escaped damage. *McTavish v. Great Nor. Ry. Co.*, 8 N. D. 333, 79 N. W. 443.

Suit to recover for grain destroyed by fire in elevator,—burden on elevator company to show that the grain was in elevator at time of loss. *Marshall v. Andrews*, 8 N. D. 364, 79 N. W. 851.

City liable for negligent construction of sewers and drains. *Dell Rapids Mer. Co. v. Cy. of Dell Rapids*, 11 S. D. 116, 75 N. W. 898, 74 Am. St. Rep. 783.

Negligence of city in repair of sidewalks. *Chacey v. City of Fargo*, 5 N. D. 173, 64 N. W. 932.

City liable for negligence of officers in failing to repair sidewalks. *Coleman v. City of Fargo*, 8 N. D. 69, 76 N. W. 1051.

City liable for negligence of officers in allowing snow and ice to accumulate upon sidewalks. *Trost v. City of Casselton*, 8 N. D. 534, 79 N. W. 1071.

Excavation near highway; injury to trespasser. *Sanders v. Reister*, 1 D. 151, 46 N. W. 680.

Negligence of third person driving horse not imputable to plaintiff. *Ouverson v. City*, 5 N. D. 281, 65 N. W. 676.

Cattle at large on owner's responsibility. *Williams v. Ry. Co.*, 3 D. 168, 14 N. W. 97.

Negligence of bank or collector in making collection. *Plymouth Co. Bank v. Gilman*, 3 S. D. 170, 52 N. W. 869, 44 Am. St. Rep. 782.

Father purchasing gun for son, with knowledge of son's recklessness is liable for damage caused thereby. *Johnson v. Glidden*, 11 S. D. 237, 76 N. W. 933, 74 Am. St. Rep. 795.

Injury by railway to passenger. *Saunders v. Ry. Co.*, 6 S. D. 40, 60 N. W. 148.

Railroad company liable for death of intoxicated passenger, carried by his station to the next, where he was put off and left out in the cold. *Haug v. Great Northern Ry. Co.*, 8 N. D. 23, 77 N. W. 97, 73 Am. St. Rep. 727, 42 L.R.A. 664.

Ejectment of passenger from train; right to ride by certain route. *Church v. Ry. Co.*, 6 S. D. 235, 60 N. W. 854, 26 L.R.A. 616.

Contributory negligence of shipper riding in car with his property. *Heumphreus v. Ry. Co.*, 8 S. D. 103, 65 N. W. 466.

Railway company responsible for negligence on its tracks regardless of title to right of way. *Gram v. Ry. Co.*, 1 N. D. 252, 46 N. W. 972.

Railway train to use care in approaching crossing. *Bishop v. Ry. Co.*, 4 N. D. 536, 62 N. W. 605.

Contributory negligence to turn horse loose beside railway track without fence, short time before regular train time. *Sinkling v. Ill. Cent. Ry. Co.*, 10 S. D. 560, 74 N. W. 1029.

Employers must furnish employes with reasonably safe and adequate machinery. *Cameron v. Great Nor. Ry. Co.*, 8 N. D. 124, 77 N. W. 1016; *Olson v. Ry. Co.*, 12 S. D. 326, 81 N. W. 634.

Injury to switchman; question for jury. *Bennett v. N. P. Ry. Co.*, 2 N. D. 112, 49 N. W. 408, 13 L.R.A. 465; *Boss v. N. P. Ry. Co.*, 2 N. D. 128, 49 N. W. 655, 33 Am. St. Rep. 756; *Bennett v. Ry. Co.*, 3 N. D. 91, 54 N. W. 314.

Master not liable for injury which servant could have avoided by reasonable care. *Carlson v. Water Co.*, 8 S. D. 47, 65 N. W. 419.

Conductor receiving a train in an improper condition, known to him, is guilty of contributory negligence. *Cameron v. Great Nor. Ry. Co.*, 8 N. D. 618, 80 N. W. 885.

Negligence of fellow servants. *Ell v. Ry. Co.*, 1 N. D. 336, 48 N. W. 222, 12 L.R.A. 97, 26 Am. St. Rep. 621.

Negligence in manufacture and storage of gunpowder, nitro-glycerin, dynamite and other explosives. 29 L.R.A. 718.

Violation of statute or ordinance relating to explosives as negligence per se giving right of private action. 48 L.R.A.(N.S.) 879.

Liability of manufacturer, packer or vendor to persons not in privity of contract, for injury from defects in article sold. 19 L.R.A.(N.S.) 923; 48 L.R.A.(N.S.) 213.

—for injury caused by escape of dangerous substances stored on one's premises. 15 L.R.A.(N.S.) 535.

—for dangerous condition of private grounds lying open beside highway or frequented path. 26 L.R.A. 687.

—for killing or injuring trespassers by means of spring guns, traps and other dangerous instruments. 29 L.R.A. 154; 24 L.R.A.(N.S.) 369.

Duty of property owner to trespassing child. 32 L.R.A.(N.S.) 559.

Doctrine of attractive nuisances. 19 L.R.A.(N.S.) 1094.

Liability of owner for trespass of cattle. 22 L.R.A. 55.

—for injury done by animals *feræ naturæ*. 11 L.R.A.(N.S.) 758; 16 L.R.A.(N.S.) 445.

—for injuries done by bees. 62 L.R.A. 132.

—for injuries inflicted by domestic animals other than dogs. 2 L.R.A.(N.S.) 1188.

—of keeper of animal known to be dangerous as affected by absence of negligence on his part. 6 L.R.A.(N.S.) 1164; 2 B. R. C. 14.

—of one maintaining place of amusement for injury by animals. 42 L.R.A.(N.S.) 1072.

Scienter as condition of liability for damages by a trespassing dog. 25 L.R.A.(N.S.) 691.

What scienter is necessary to charge owner with liability for injury inflicted by dog to person or property of another. 24 L.R.A.(N.S.) 458.

Measure of damages for personal injury by dog. 37 L.R.A.(N.S.) 865.

Liability for setting fires which spread to property of others. 21 L.R.A. 255; 36 L.R.A.(N.S.) 194.

Duty of one not responsible for kindling of fire to prevent its spread from his premises. 6 L.R.A.(N.S.) 882.

Negligence with respect to spark arresters on threshing machine or similar stationary engines. 1 L.R.A.(N.S.) 530.

Liability of municipal corporation for fire set by sparks from steam roller engaged in repairing a street. 6 L.R.A.(N.S.) 1094; 20 L.R.A.(N.S.) 654.

Negligence as to electric wires on or in buildings. 32 L.R.A. 400.

Duty of company maintaining electric wire over or across private property. 34 L.R.A.(N.S.) 1089.

Duty of electric light company with respect to wiring or fixtures installed in private property. 13 L.R.A.(N.S.) 226; 20 L.R.A. 816.

Liability for death of, or injury to traveler coming in contact with electric wire in highway. 31 L.R.A. 566; 22 L.R.A.(N.S.) 1169.

Knowledge as element of master's liability for injury to employee. 41 L.R.A. 33.

Injury to servant received in obeying a direct command. 48 L.R.A. 753.

Master's liability for injury by defect in common tools. 13 L.R.A.(N.S.) 668; 40 L.R.A.(N.S.) 832.

Master's duty of active inspection of instrumentalities when first used. 41 L.R.A. 70.

Servant's assumption of risk of master's breach of statutory duty. 6 L.R.A.(N.S.) 981; 19 L.R.A.(N.S.) 646; 22 L.R.A.(N.S.) 634; 33 L.R.A.(N.S.) 647.

Employee's right of action for employer's violation of statute not expressly conferring right. 9 L.R.A.(N.S.) 376.

As to similar provision in Cal. Civ. Code, § 1714, see *Smith v. Whittier*, 95 Cal. 279, 30 Pac. 529.

§ 5949. Other obligations. Other obligations are prescribed by the first forty-three chapters of this code. [R. C. 1905, § 5393; Civ. C. 1877, § 980; R. C. 1899, § 3947.]

This section is R. C. 1905, § 5393, without change. But the interpolation of new chapters in the present compilation requires that the words "first forty-three chapters" must now be read, "chapters 1-4, inclusive; 6-12, inclusive; 14, 17, 18 and 20; 22-24, inclusive; 26-28, inclusive; 31; 33-53, inclusive."

CHAPTER 57.

SALE.

- ARTICLE 1. GENERAL PROVISIONS, §§ 5950, 5951.
2. AGREEMENTS FOR SALE, §§ 5952-5960.
 3. FORM OF THE CONTRACT, §§ 5961-5964.
 4. RIGHTS AND OBLIGATIONS OF THE SELLER. RIGHTS AND DUTIES BEFORE DELIVERING, §§ 5965, 5966.
 5. DELIVERY OF PERSONAL PROPERTY, §§ 5967-5972.
 6. WARRANTY OF PERSONAL PROPERTY, §§ 5973-5988.
 7. RIGHTS AND OBLIGATIONS OF THE BUYER, §§ 5989-5994.
 8. SALE BY AUCTION, §§ 5995-6001.
 9. WAIVER OF CAUSE OF ACTION, § 6002.

ARTICLE 1.—GENERAL PROVISIONS.

§ 5950. Sale defined. Sale is a contract by which for a pecuniary consideration called a price one transfers to another an interest in property. [R. C. 1905, § 5394; Civ. C. 1877, § 981; R. C. 1899, § 3948.]

Party has no right to rescind executed sale. *Hull v. Caldwell*, 3 S. D. 451, 54 N. W. 100.

Corporate club exchanging liquor with its member for checks bought of club is chargeable with selling liquor without license. *State v. Mudie*, 22 S. D. 41, 115 N. W. 107.

Purchaser of school land, receiving contract of sale on making first payment, has interest therein subject to sale on execution. *Brooke v. Eastman*, 17 S. D. 339, 96 N. W. 699.

Bill of sale to son without consideration, for purpose of paying father's creditors, is not a sale. *Hall v. Feeney*, 32 S. D. 541, 21 L.R.A.(N.S.) 513, 18 N. W. 1038.

A contract whereby machinery is "ordered, purchased and sold," and guaranteed, with title and right to possession retained by vendor, is agreement for sale. *Baskerville v. Johnson*, 20 S. D. 88, 104 N. W. 913.

What constitutes a sale. 94 Am. St. Rep. 209.

Differences between sales and bailments. 2 Am. St. Rep. 711.

What constitutes a sale of intoxicating liquors. 8 L.R.A.(N.S.) 937; 11 L.R.A.(N.S.) 872; 21 L.R.A.(N.S.) 1008; 22 L.R.A.(N.S.) 560; 24 L.R.A.(N.S.) 268; 25 L.R.A.(N.S.) 943; 28 L.R.A.(N.S.) 334; 31 L.R.A.(N.S.) 417.

What amounts to retail sale of liquor as distinguished from wholesale. 32 L.R.A.(N.S.) 622.

As to similar provision in Cal. Civ. Code, § 1721, see *Borland v. Nevada Bank*, 99 Cal. 89, 37 Am. St. Rep. 32, 33 Pac. 737.

§ 5951. Subject of sale. The subject of sale must be property the title to which can be immediately transferred from the seller to the buyer. [R. C. 1905, § 5395; Civ. C. 1877, § 982; R. C. 1899, § 3949.]

Sale of property not in existence. 4 Am. Dec. 560; 81 Am. St. Rep. 42.

—of chattels by sample. 7 Am. Dec. 125.

When title to vessel or article to be built or manufactured passes by sale. 62 Am. Dec. 65.

When title of articles to be manufactured does not pass though payment has been made. 40 Am. Rep. 173.

As to similar provision in Cal. Civ. Code, § 1722, see *Woolley v. Wickerd*, 97 Cal. 70, 31 Pac. 733.

ARTICLE 2.—AGREEMENTS FOR SALE.

§ 5952. Classified. An agreement for sale is either:

1. An agreement to sell.
2. An agreement to buy; or,
3. A mutual agreement to sell and buy. [R. C. 1905, § 5396; Civ. C. 1877, § 983; R. C. 1899, § 3950.]

A contract whereby machinery is "ordered, purchased and sold," and guaranteed, with title and right to possession retained by vendor, is agreement for sale. *Baskerville v. Johnson*, 20 S. D. 88, 104 N. W. 913.

§ 5953. Agreement to sell defined. An agreement to sell is a contract by which one engages for a price to transfer to another the title to a certain thing. [R. C. 1905, § 5397; Civ. C. 1877, § 984; R. C. 1899, § 3951.]

As to similar provision in Cal. Civ. Code, § 1727, see *Hanson v. Slaven*, 98 Cal. 377, 33 Pac. 266.

§ 5954. Agreement to buy. An agreement to buy is a contract by which one engages to accept from another and pay a price for the title to a certain thing. [R. C. 1905, § 5398; Civ. C. 1877, § 985; R. C. 1899, § 3952.]

§ 5955. To sell and buy. An agreement to sell and buy is a contract by which one engages to transfer the title to a certain thing to another who engages to accept the same from him and to pay a price therefor. [R. C. 1905, § 5399; Civ. C. 1877, § 986; R. C. 1899, § 3953.]

As to similar provision in Cal. Civ. Code, § 1729, see *Berry v. Kowalsky*, 95 Cal. 134, 29 Am. St. Rep. 101, 30 Pac. 202.

§ 5956. What may be sold. Any property which if in existence might be the subject of sale may be the subject of an agreement for a sale whether in existence or not. [R. C. 1905, § 5400; Civ. C. 1877, § 987; R. C. 1899, § 3954.]

§ 5957. Duty of seller of realty. An agreement to sell real property binds the seller to execute a conveyance in form sufficient to pass the title to the property. [R. C. 1905, § 5401; Civ. C. 1877, § 988; R. C. 1899, § 3955.]

Tender of deed from third party, owner of land agreed to be conveyed, is not compliance with contract calling for deed from vendor. *McVeety v. Harvey Mercantile Co.*, 24 N. D. 245, 139 N. W. 586.

As to similar provision in Cal. Civ. Code, § 1731, see *Royal v. Dennison*, 109 Cal. 558, 42 Pac. 39.

§ 5958. Duty on agreement to give usual covenants. An agreement on the part of a seller of real property to give the usual covenants binds him to insert in the grant covenants of seizin, quiet enjoyment, further assurance, general warranty and against incumbrances. [R. C. 1905, § 5402; Civ. C. 1877, § 989; R. C. 1899, § 3956.]

§ 5959. Form of covenants. The covenants mentioned in the last section must be in substance as follows:

The party of the first part covenants with the party of the second part that the former is now seized in fee simple of the property granted; that the latter shall enjoy the same without any lawful disturbance; that the same is free from all incumbrances; that the party of the first part and all persons acquiring any interest in the same through or for him will on demand execute

and deliver to the party of the second part, at the expense of the latter, any further assurance of the same that may be reasonably required; and that the party of the first part will warrant to the party of the second part all the said property against every person lawfully claiming the same. [R. C. 1905, § 5403; Civ. C. 1877, § 990; R. C. 1899, § 3957.]

Assumption of mortgage by grantee is original undertaking and distinct from contract of purchase. *Moore v. Booker*, 4 N. D. 543, 62 N. W. 607.

§ 5960. Highways, railways, right of ways. No covenants of warranty shall be considered as broken by the existence of a highway or railway, or a right of way for either, upon the land conveyed by any instrument of conveyance, unless otherwise particularly specified in the deed, and whenever in any instrument of conveyance delivered, filed and recorded prior to the first day of January, 1896, the grantor has conveyed real property in this state, but has reserved or sought to reserve a right of way over or across the same for the future construction of any railroad or highway without specifically locating or describing therein by metes and bounds such right of way, or proposed right of way, or by reference to permanent marks or monuments, such reservation shall be void in all things, and such conveyance shall have the same effect as if no such reservation had been made or attempted to have been made therein, unless at the time of the taking effect of this act the grantor or his or its successor in interest shall be in actual possession of, or shall have located and permanently marked said right of way, or shall have filed or caused to be filed within one year after the taking effect of this act, in the office of the register of deeds of the county wherein the land is situated, a plat describing such selection and such right of way, properly acknowledged so as to entitle the same to be recorded, and so as to readily distinguish and designate such right of way from the entire premises described in the conveyance from which it was attempted to be reserved, or shall have begun within one year after the taking effect of this act, an action in a court of competent jurisdiction for the purpose of definitely determining and locating such right of way, and establishing his or its right thereto, and in such case shall have filed and recorded a proper notice of lis pendens in the office of the register of deeds of the county in which such land is located. [1907, ch. 251; R. C. 1905, § 5404; 1901, ch. 64.]

ARTICLE 3.—FORM OF THE CONTRACT.

§ 5961. Statute of frauds. Personal property. No sale of personal property or agreement to buy or sell it for a price of fifty dollars or more is valid unless:

1. The agreement or some note or memorandum thereof is in writing and subscribed by the party to be charged or by his agent; or,
2. The buyer accepts and receives part of the things sold or when it consists of a thing in action, part of the evidences thereof, or some of them; or,
3. The buyer at the time of the sale pays a part of the price. [R. C. 1905, § 5405; Civ. C. 1877, § 991; R. C. 1899, § 3958.]

When contracts for sales of goods are within statute of frauds. 9 Am. Dec. 188.

Contract to transfer personal property in consideration of services, as affected by statute of frauds relating to contracts for the sale of goods, etc. 16 L.R.A.(N.S.) 381.

As to similar provision in Cal. Civ. Code, § 1739, see *Jamison v. Simon*, 68 Cal. 17, 8 Pac. 502; *Terney v. Doten*, 70 Cal. 399, 11 Pac. 743; *Flynn v. Dougherty*, 91 Cal. 669, 14 L.R.A. 230, 27 Pac. 1080.

2. Oral agreement to purchase goods for more than \$50 not valid until voluntary receipt and acceptance of goods by buyer. *Dinnie v. Johnson*, 8 N. D. 153, 77 N. W. 612.

Delivery of part of property to buyer at time of contract to sell renders contract valid. *Talbot v. Boyd*, 11 N. D. 81, 88 N. W. 1026.

Symbolic delivery by sample to satisfy statute of frauds. 70 L.R.A. 321.

Acceptance and delivery of goods to satisfy statute of frauds. 49 Am. Dec. 325, 37 Am. Rep. 16; 96 Am. St. Rep. 215; 10 L.R.A.(N.S.) 638.

Receipt and acceptance to satisfy the statute of frauds when goods are in possession of purchaser at time of agreement. 11 L.R.A.(N.S.) 1186; 20 L.R.A.(N.S.) 498.

3. Work in fitting up for delivery as payment of price to take the contract out of the statute of frauds. 15 L.R.A.(N.S.) 654.

§ 5962. Agreement to manufacture not within last section. An agreement to manufacture a thing from materials furnished by the manufacturer or by another person is not within the provisions of the last section. [R. C. 1905, § 5406; Civ. C. 1877, § 992; R. C. 1899, § 3959.]

That trees had to be dug and packed before delivery by seller did not bring sale within this section. *Jones v. Pettigrew*, 25 S. D. 432, 127 N. W. 538.

Distinction between sales and contracts for work and labor. 14 L.R.A. 230, 30 L.R.A.(N.S.) 319.

As to similar provision in Cal. Civ. Code, § 1740, see *Flynn v. Dougherty*, 91 Cal. 669, 14 L.R.A. 230, 27 Pac. 1080.

§ 5963. Agreement for sale of realty invalid unless in writing. No agreement for the sale of real property, or of an interest therein, is valid unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged, or his agent thereunto authorized in writing; but this does not abridge the power of any court to compel the specific performance of any agreement for the sale of real property in case of part performance thereof. [R. C. 1905, § 5407; Civ. C. 1877, § 993; R. C. 1899, § 3960.]

Unexecuted verbal agreement for conveyance of land is invalid. *Cleveland v. Evans*, 5 S. D. 53, 58 N. W. 8.

Employment of agent to find purchaser for realty need not be in writing. *McLaughlin v. Wheeler*, 1 S. D. 497, 47 N. W. 816.

Agreement to purchase real estate and share in profits need not be written. *Davenport v. Buchanan*, 6 S. D. 376, 61 N. W. 47.

Agent's authority to sell land established by letters and telegrams. *Farrell v. Edwards*, 8 S. D. 425, 66 N. W. 812.

Note or memorandum may be made subsequent to agreement, and may be contained in more than one paper. *Townsend v. Kennedy*, 6 S. D. 47, 60 N. W. 164.

Agreement as to assignment of sheriff's certificate of sale need not be written. *Whiffen v. Hollister*, 12 S. D. 68, 80 N. W. 156.

Contract of agent for sale of realty void unless authorized in writing. *Ballou v. Bergvendsen*, 9 N. D. 285, 83 N. W. 10.

As to when contract is not within statute of frauds. *Schmidt v. Beiseker*, 14 N. D. 587, 5 L.R.A.(N.S.) 123, 116 Am. St. Rep. 706, 105 N. W. 1102.

Agent's authority to execute contract for sale of real property must be in writing. *Brandrup v. Britten*, 11 N. D. 376, 92 N. W. 453; *Lichty v. Daggett*, 23 S. D. 380, 121 N. W. 862.

Inapplicable to oral advancement of purchase price by one taking title. *Phillips v. Swenson*, 16 S. D. 357, 92 N. W. 1065.

Specific performance of oral contract to convey land will be decreed where shade trees have been set out and earnest money paid. *Stewart v. Tomlinson*, 21 S. D. 337, 112 N. W. 849.

Oral agreement entered into as result of written correspondence relied on as contract, is inadmissible. *Phelan v. Neary*, 22 S. D. 265, 117 N. W. 142.

Validity of written contract for sale of real property. *Hughes v. Payne*, 22 S. D. 293, 117 N. W. 363.

Oral lease to vendor for less than year does not constitute part performance by vendee under oral contract for purchase of land to take it out of statute. *Muir v. Chandler*, 16 N. D. 551, 113 N. W. 1038.

Oral contract for sale of land accompanied by part performance is enforceable. *Stenson v. Elfman*, 26 S. D. 134, 128 N. W. 588; *Steensland v. Noel*, 28 S. D. 522, 134 N. W. 207.

Contract for sale of land may be specifically enforced although requirements of statute of frauds are not complied with where vendee is placed in possession and makes improvements. *Mitchell v. Knudtson Land Co.*, 19 N. D. 736, 124 N. W. 946.

No writing is admissible, for purpose of evidencing contract for sale of land, unless it conforms to statute. *Shumway v. Kitzman*, 28 S. D. 577, 134 N. W. 335.

Under oral contract to build canal and give specified amount of water as consideration for deed to strip of land across plaintiff's farm, delivery of deed, construction of canal and change of possession to defendant and conveyance of water therein, was such part performance as to justify specific performance of contract to furnish water. *Dorsett v. Black Hills Traction Co.*, 30 S. D. 420, 138 N. W. 808.

What amount to contracts for the sale of land within meaning of statute of frauds. 102 Am. St. Rep. 230.

Agreement to hold land purchased on execution for defendant. 40 Am. Dec. 207.

Parol agreement to take title to real property, sell the same and divide the proceeds, as affected by the statute of frauds. 8 L.R.A.(N.S.) 1137; 20 L.R.A.(N.S.) 298; 42 L.R.A.(N.S.) 1160.

Right of a purchaser of real estate to rely on the statute of frauds against contract by his vendor with a third person. 40 L.R.A.(N.S.) 883.

Purchase of standing timber as a purchase of realty. 13 L.R.A.(N.S.) 278.

Parol agreement to construct private way across railroad. 17 L.R.A.(N.S.) 702; 24 L.R.A.(N.S.) 375.

Agreement to share real property in payment for services. 41 L.R.A.(N.S.) 184.

Insurable interest of tenant in leased property under parol agreement. 42 L.R.A.(N.S.) 135.

Parol assignment of lease. 15 L.R.A. 754.

Effect of performance to take parol assignment of lease out of statute of frauds. 42 L.R.A.(N.S.) 162.

Entry under parol agreement for a lease as part performance. 20 L.R.A. 36.

Effect of making improvements under oral lease for term beyond that permitted by statute, to entitle lessee to hold during term. 3 L.R.A.(N.S.) 852.

Taking possession of real property as part performance to satisfy statute of frauds. 3 L.R.A.(N.S.) 790.

As to similar provision in Cal. Civ. Code, § 1741, see *Breckinridge v. Crocker*, 78 Cal. 529, 21 Pac. 179; *Benson v. Shotwell*, 87 Cal. 49, 25 Pac. 249; *Byers v. Locke*, 93 Cal. 493, 27 Am. St. Rep. 212, 29 Pac. 119.

§ 5964. **Form of transfer.** The form of a transfer of real property is described by the chapter on such transfers. [R. C. 1905, § 5408; Civ. C. 1877, § 994; R. C. 1899, § 3961.]

ARTICLE 4.—RIGHTS AND OBLIGATIONS OF THE SELLER. RIGHTS AND DUTIES BEFORE DELIVERING.

§ 5965. **Seller acts as depositary.** After personal property has been sold, and until the delivery is completed the seller has the rights and obligations of a depositary for hire, except that he must keep the property without charge until the buyer has had a reasonable opportunity to remove it. [R. C. 1905, § 5409; Civ. C. 1877, § 995; R. C. 1899, § 3962.]

§ 5966. **Seller may rescind.** If a buyer of personal property does not pay for it according to contract and it remains in the possession of the seller after payment is due, the seller may rescind the sale, or may enforce his lien for the price in the manner prescribed by chapter 99 on liens. [R. C. 1905, § 5410; Civ. C. 1877, § 996; R. C. 1899, § 3963.]

Rescission by vendor for fraud in obtaining credit. 14 L.R.A. 264.

Election of remedy in case of fraudulent purchase. 15 L.R.A. 89.

Lack of reasonable expectation of ability to pay as equivalent to intention not to pay. 6 L.R.A.(N.S.) 556.

Necessity of returning amount paid on fraudulent purchase in action of replevin. 21 L.R.A. 206; 1 L.R.A.(N.S.) 474.

As to similar provision in Cal. Civ. Code, § 1749, see *Rayfield v. Van Meter*, 120 Cal. 416, 52 Pac. 666.

ARTICLE 5.—DELIVERY OF PERSONAL PROPERTY.

§ 5967. **Delivered reasonable time after demand.** One who sells personal property whether it was in his possession at the time of sale or not, must put it into a condition fit for delivery and deliver it to the buyer within a reasonable time after demand unless he has a lien thereon. [R. C. 1905, § 5411; Civ. C. 1877, § 997; R. C. 1899, § 3964.]

Effect of acceptance of goods as a waiver of damages for delay in delivery. 54 L.R.A. 718; 7 L.R.A.(N.S.) 1114.

Admissibility of extrinsic evidence as to time for delivery of goods where none is specified in written contract. 31 L.R.A.(N.S.) 619.

§ 5968. **Where deliverable.** Personal property sold is deliverable at the place where it is at the time of the sale or agreement to sell or if it is not then in existence, it is deliverable at the place where it is produced. [R. C. 1905, § 5412; Civ. C. 1877, § 998; R. C. 1899, § 3965.]

As to sale contemplating delivery at place where goods are located. *P. J. Bowlin Liquor Co. v. Beaudoin*, 15 N. D. 557, 108 N. W. 545.

§ 5969. Where brought for acceptance. Risk of transportation. One who sells personal property must bring it to his own door or other convenient place for its acceptance by the buyer, but further transportation is at the risk and expense of the buyer. [R. C. 1905, § 5413; Civ. C. 1877, § 999; R. C. 1899, § 3966.]

Who must bear loss during transit. 26 Am. St. Rep. 451.

When consignment of property for sale vests title. 45 Am. St. Rep. 203.

§ 5970. Notice of option. When either party to a contract of sale has an option as to the time, place or manner of delivery, he must give the other party reasonable notice of his choice; and if he does not give such notice within a reasonable time his right of option is waived. [R. C. 1905, § 5414; Civ. C. 1877, § 1000; R. C. 1899, § 3967.]

§ 5971. Buyer's directions govern sending. If a seller agrees to send the thing sold to the buyer he must follow the directions of the latter as to the manner of sending, or it will be at his own risk during its transportation. If he follows such directions or if in the absence of special directions he uses ordinary care in forwarding the thing it is at the risk of the buyer. [R. C. 1905, § 5415; Civ. C. 1877, § 1001; R. C. 1899, § 3968.]

Delivery to carrier as passing title to buyer of goods. *P. J. Bowlin Liquor Co. v. Beaudoin*, 15 N. D. 557, 108 N. W. 545.

§ 5972. Delivery within reasonable hours. The delivery of a thing sold can be offered or demanded only within reasonable hours of the day. [R. C. 1905, § 5416; Civ. C. 1877, § 1002; R. C. 1899, § 3969.]

ARTICLE 6.—WARRANTY OF PERSONAL PROPERTY.

§ 5973. Defined. A warranty is an engagement by which a seller assures to a buyer the existence of some fact affecting the transaction, whether past, present or future. [R. C. 1905, § 5417; Civ. C. 1877, § 1003; R. C. 1899, § 3970.]

Law governing warranty in contract of sale. 64 L.R.A. 825.

Does warranty extend to obvious defects in animal or slave. 12 L.R.A.(N.S.) 82.

Distinction between warranty of identity and warranty of quality. 35 L.R.A.(N.S.) 265.

Effect of representing things sold to be "good." 15 L.R.A. 795.

What amounts to a breach of warranty of soundness of a horse. 32 L.R.A.(N.S.) 182.

May words in an executory contract, from which the law implies a warranty as to quality, be relied on as an express warranty. 25 L.R.A.(N.S.) 160.

What amounts to warranty of quality. 1 Am. Dec. 84.

What defects constitute breaches of warranty of soundness. 53 Am. Dec. 173.

Remedies of vendee for breach of warranty of quality. 54 Am. Dec. 146.

Failure of vendee to inspect or test goods as waiver of express warranty. 24 L.R.A.(N.S.) 235.

§ 5974. Not implied from mere sale. Except as prescribed by this article a mere contract of sale or agreement to sell does not imply a warranty. [R. C. 1905, § 5418; Civ. C. 1877, § 1004; R. C. 1899, § 3971.]

Implied warranty; proof of breach. *Davis v. Iverson*, 5 S. D. 295, 58 N. W. 796.

Warranty of quality of things sold—not implied. *McCormick Harv. Mach. Co. v. Watson*, 5 S. D. 9, 57 N. W. 945.

Mere contract of sale does not imply warranty except as prescribed by statute.

Christiernson v. Hendrie & B. Mfg. & Supply Co., 26 S. D. 519, 128 N. W. 603.

Implied warranties on a sale of chattels. 6 Am. Dec. 113; 24 Am. Rep. 181.

When warranty of quality is implied. 2 Am. Dec. 220.

Implied warranty of quality in sales by description. 14 L.R.A. 492.

Express warranty as to quality excluding implied warranty. 33 L.R.A.(N.S.) 502.

Implied warranty of fitness of property bought for special purpose. 22 L.R.A. 187; 15 L.R.A.(N.S.) 868; 31 L.R.A.(N.S.) 763; 34 L.R.A.(N.S.) 737.

§ 5975. Sale of personalty warrants title. One who sells or agrees to sell personal property as his own thereby warrants that he has a good and unincumbered title thereto. [R. C. 1905, § 5419; Civ. C. 1877, § 1005; R. C. 1899, § 3972.]

Warranty of title implied on the sale of personal property. 62 Am. Dec. 460.

Does implied covenant of title on sale of chattels protect against outstanding liens or incumbrances. 16 L.R.A.(N.S.) 410.

As to similar provision in Cal. Civ. Code, § 1765, see *Jeffers v. Easton E. & Co.*, 113 Cal. 345, 45 Pac. 680.

§ 5976. Bulk equal to sample. One who sells or agrees to sell goods by sample thereby warrants the bulk to be equal to the sample. [R. C. 1905, § 5420; Civ. C. 1877, § 1006; R. C. 1899, § 3973.]

Sale by sample—damages for breach of warranty. *James v. Bekkedal*, 10 N. D. 120, 86 N. W. 226.

Warranty on sale of goods by sample. 70 L.R.A. 653.

Does sale by sample exclude implied warranty other than that goods shall conform to sample. 29 L.R.A.(N.S.) 139.

§ 5977. Knows nothing to destroy inducement to buy. One who sells or agrees to sell personal property, knowing that the buyer relies upon his advice or judgment, thereby warrants to the buyer that neither the seller, nor any agent employed by him in the transaction, knows the existence of any fact concerning the thing sold which would to his knowledge destroy the buyer's inducement to buy. [R. C. 1905, § 5421; Civ. C. 1877, § 1007; R. C. 1899, § 3974.]

Statement by seller of horse that "For all I know, she is just as sound as the other" does not constitute warranty, although "other" horse referred to was sound. *Stockman v. Keim*, 19 N. D. 317, 124 N. W. 64.

§ 5978. Not in existence, sound and merchantable. One who agrees to sell merchandise not then in existence thereby warrants that it shall be sound and merchantable at the place of production contemplated by the parties and as nearly so at the place of delivery as can be secured by reasonable care. [R. C. 1905, § 5422; Civ. C. 1877, § 1008; R. C. 1899, § 3975.]

Does express warranty as to quality exclude implied warranty in case of articles to be manufactured. 33 L.R.A.(N.S.) 508.

As to similar provision in Cal. Civ. Code, § 1768, see *Blackwood v. Cutting Packing Co.*, 76 Cal. 212, 9 Am. St. Rep. 199, 18 Pac. 248; *Shoemaker v. Acker*, 116 Cal. 239, 48 Pac. 62.

§ 5979. Free from latent defects. One who sells or agrees to sell an article of his own manufacture thereby warrants it to be free from any latent defect not disclosed to the buyer, arising from the process of manufacture, and also that neither he nor his agent in such manufacture has knowingly used improper materials therein. [R. C. 1905, § 5423; Civ. C. 1877, § 1009; R. C. 1899, § 3976.]

Implied warranties under statute operate solely by operation of law. *Hooven & A. Co. v. Wirtz*, 15 N. D. 477, 107 N. W. 1078.

Warranty implied upon sale of an article by the manufacturer. 24 Am. Rep. 104.

When warranty of soundness is implied. 43 Am. Dec. 680.

Warranty on sale by manufacturer of goods by sample. 70 L.R.A. 665.

Express warranty as to quality of article to be manufactured as excluding implied warranty. 33 L.R.A.(N.S.) 508.

Sale of manufactures by sample as excluding implied warranty other than that goods shall conform to sample. 29 L.R.A.(N.S.) 139.

Latent defects in both sample and bulk of goods sold by manufacturer. 70 L.R.A. 665.

Right of purchaser to reject goods for breach of warranty relating to goods to be manufactured. 27 L.R.A.(N.S.) 924.

As to similar provision in Cal. Civ. Code, § 1769, see *Hoult v. Baldwin*, 67 Cal. 610, 8 Pac. 440.

§ 5980. Fit for purpose. One who manufactures an article under an order for a particular purpose warrants by the sale that it is reasonably fit for that purpose. [R. C. 1905, § 5424; Civ. C. 1877, § 1010; R. C. 1899, § 3977.]

Implied warranty of fitness of property bought for special purpose. 22 L.R.A. 187; 15 L.R.A.(N.S.) 868; 31 L.R.A.(N.S.) 783; 34 L.R.A.(N.S.) 737.

—articles purchased from manufacturer. 22 L.R.A. 189; 15 L.R.A.(N.S.) 855.

—by manufacturer of machinery or apparatus not in itself defective, of fitness for use under existing conditions. 6 L.R.A.(N.S.) 180.

Effect of inspection on implied warranty of fitness of property bought for special purpose. 22 L.R.A. 194.

As to similar provision in Cal. Civ. Code, § 1770, see *Hallidie v. Sutter Street R. Co.*, 63 Cal. 575; *Correio v. Lynch*, 65 Cal. 273, 3 Pac. 889; *Hoult v. Baldwin*, 67 Cal. 610, 8 Pac. 440; *Blackwood v. Cutting Packing Co.*, 76 Cal. 212, 9 Am. St. Rep. 199, 18 Pac. 248; *Bancroft v. San Francisco Tool Co.*, 120 Cal. 228, 52 Pac. 496.

§ 5981. Inaccessible, warranted sound and merchantable. One who sells or agrees to sell merchandise inaccessible to the examination of the buyer

thereby warrants that it is sound and merchantable. [R. C. 1905, § 5425; Civ. C. 1877, § 1011; R. C. 1899, § 3978.]

Implied warranties under statute operate solely by operation of law. *Hooven & A. Co. v. Wirtz*, 15 N. D. 477, 107 N. W. 1078.

As to similar provision in Cal. Civ. Code, § 1771, see *Correio v. Lynch*, 65 Cal. 273, 3 Pac. 889; *Browning v. McNear*, 145 Cal. 272, 78 Pac. 722.

§ 5982. Trade-mark genuine. One who sells or agrees to sell any article to which there is affixed or attached a trade-mark thereby warrants that mark to be genuine and lawfully used. [R. C. 1905, § 5426; Civ. C. 1877, § 1012; R. C. 1899, § 3979.]

§ 5983. Truth of marks of quantity or quality. One who sells or agrees to sell any article to which there is affixed or attached a statement or mark to express the quantity or quality thereof or the place where it was in whole or in part produced, manufactured or prepared, thereby warrants the truth thereof. [R. C. 1905, § 5427; Civ. C. 1877, § 1013; R. C. 1899, § 3980.]

Manufacturer selling binding twine to which it attached tag reciting "every ball guaranteed of superior quality" warrants it fit for purpose indicated. *Standard Rope & Twine Co. v. Olmen*, 13 S. D. 296, 83 N. W. 271.

Implied warranty of quality in sales by description. 14 L.R.A. 492.

§ 5984. Validity of instrument. One who sells or agrees to sell an instrument purporting to bind any one to the performance of an act thereby warrants the instrument to be what it purports to be and to be binding according to its purport upon all parties thereto; and also warrants that he has no knowledge of any facts which tend to prove it worthless, such as the insolvency of any of the parties thereto, when that is material, the extinction of its obligations, or its invalidity for any cause. [R. C. 1905, § 5428; Civ. C. 1877, § 1014; R. C. 1899, § 3981.]

Warranty of seller under this section is not warranty of indorser, but warranty to vendee merely, which does not run with paper. *McAdam v. Grand Forks Mercantile Co.*, 24 N. D. 645, 47 L.R.A.(N.S.) 246, 140 N. W. 725.

Implied warranty on sale of corporate stock. 53 L.R.A. 153.

Implied warranty of genuineness upon sale of negotiable paper. 36 L.R.A. 92; 10 L.R.A.(N.S.) 542.

Guaranty by surety of other signatures to bill or note. 49 L.R.A. 315.

As to similar provision in Cal. Civ. Code, § 1774, see *James v. Yaeger*, 86 Cal. 184, 24 Pac. 1005; *Sutro v. Rhodes*, 92 Cal. 117, 28 Pac. 98; *Harvey v. Dale*, 96 Cal. 160, 31 Pac. 14; *Crocker-Woolworth Nat. Bank v. Nevada Bank*, 139 Cal. 564, 63 L.R.A. 245, 96 Am. St. Rep. 169, 73 Pac. 456.

§ 5985. Provisions sound and wholesome. One who makes a business of selling provisions for domestic use warrants by a sale thereof to one who buys for actual consumption, and not for the purpose of sale, that they are sound and wholesome. [R. C. 1905, § 5429; Civ. C. 1877, § 1015; R. C. 1899, § 3982.]

§ 5986. Good will. One who sells the good will of a business thereby warrants that he will not endeavor to draw off any of the customers. [R. C. 1905, § 5430; Civ. C. 1877, § 1016; R. C. 1899, § 3983.]

Contract to refrain from certain business implies sale of good will. *Mapes v. Metcalf*, 10 N. D. 601, 88 N. W. 713.

Sale of good will as a limitation upon vendor's right to engage in competing business. 19 L.R.A.(N.S.) 762.

Effect on right of individual partners of sale by firm of good will of business with or without an agreement not to engage in the same business. 19 L.R.A.(N.S.) 769.

As to similar provision in Cal. Civ. Code, § 1776, see *Snow v. Holmes*, 71 Cal. 142, 11 Pac. 856.

§ 5987. Judicial sale. Upon a judicial sale the only warranty implied is that the seller does not know that the sale will not pass a good title to the property. [R. C. 1905, § 5431; Civ. C. 1877, § 1017; R. C. 1899, § 3984.]

§ 5988. Scope of general warranty. A general warranty does not extend to defects inconsistent therewith of which the buyer was then aware or which were then easily discernible by him without the exercise of peculiar skill, but it extends to all other defects. [R. C. 1905, § 5432; Civ. C. 1877, § 1018; R. C. 1899, § 3985.]

ARTICLE 7.—RIGHTS AND OBLIGATIONS OF THE BUYER.

§ 5989. To pay and remove in reasonable time. A buyer must pay the price of the thing sold on its delivery and must take it away within a reasonable time after the seller offers to deliver it. [R. C. 1905, § 5433; Civ. C. 1877, § 1019; R. C. 1899, § 3986.]

As to similar provision in Cal. Civ. Code, § 1784, see *Schurtz v. Romer*, 82 Cal. 474, 23 Pac. 118.

§ 5990. Right to inspect. On an agreement for sale with warranty the buyer has a right to inspect the thing sold at a reasonable time before accepting it and may rescind the contract if the seller refuses to permit him to do so. [R. C. 1905, § 5434; Civ. C. 1877, § 1020; R. C. 1899, § 3987.]

Effect of delivery of goods f. o. b. on place of inspection. 62 L.R.A. 804.

§ 5991. Written warranty. Reasonable time to discover defects or breaches. Any person, firm or corporation purchasing personal property under a written warranty shall have a reasonable time after such purchase and the delivery thereof in which to ascertain whether or not the property so sold complies with the warranty, and whether or not there are any defects or breaches of warranty, and the question of what is a reasonable time shall in all cases be a question of fact for the jury. [1913, ch. 218, § 1.]

§ 5992. Notice of breach of warranty, how and to whom given. Notice of any breach of warranty or defects in personal property, sold as aforesaid, for any breach of warranty in connection with said personal property, may be given either in writing or orally to the person, firm or corporation or to their agent in this state, who negotiated the sale or who made the delivery of such personal property or his successor. [1913, ch. 218, § 2.]

§ 5993 Provisions contrary to preceding sections void. Any provisions in any written order or contract of sale or other contract, which is contrary to any of the provisions of this act [sections 5991-5993] shall be void. [1913, ch. 218, § 3.]

§ 5994. Rescission for breach of warranty. The breach of a warranty entitles the buyer to rescind an agreement for sale, but not an executed sale, unless the warranty was intended by the parties to operate as a condition. [R. C. 1905, § 5435; Civ. C. 1877, § 1021; R. C. 1899, § 3988.]

Under contract of sale by terms of which title to property does not pass, buyer of machinery may rescind contract for breach of warranty. *Westby v. J. I. Case Threshing Mach. Co.*, 21 N. D. 575, 132 N. W. 137.

On refusal to sign notes for threshing machine as agreed, title does not pass. *J. I. Case Thresh. Mach. Co. v. Eichinger*, 15 S. D. 530, 91 N. W. 82.

A contract whereby machinery is "ordered, purchased and sold and guaranteed, with title and right to possession retained by vendor, is agreement for sale. *Baskerville v. Johnson*, 20 S. D. 88, 104 N. W. 913.

Vendee on executed sale of personalty, in absence of fraud, cannot rescind such sale for breach of implied warranty of title. *Hull v. Caldwell*, 3 S. D. 451, 54 N. W. 100.

Right of rescission on breach of warranty by vendor of seeds. 37 L.R.A.(N.S.) 85. Construction of provisions for return of property, in event of rescission for breach of warranty. 32 L.R.A.(N.S.) 212.

Right of purchaser to reject goods for breach of warranty. 27 L.R.A.(N.S.) 914.

Right of purchaser of goods deliverable in installments to rescind the contract or refuse further deliveries for breach as to quality. 38 L.R.A.(N.S.) 539.

Purchaser's right to reject goods for breach of warranty on inspection where no opportunity for inspection was given until after delivery. 27 L.R.A.(N.S.) 315.

Use as waiver of right to rescind for breach of warranty. 36 L.R.A.(N.S.) 467.

ARTICLE 8.—SALE BY AUCTION.

§ 5995. Defined. A sale by auction is a sale by public outcry to the highest bidder on the spot. [R. C. 1905, § 5436; Civ. C. 1877, § 1022; R. C. 1899, § 3989.]

Sales at auction and their effect. 96 Am. Dec. 264.

Relief from purchase at auction on ground of mistake. 34 L.R.A.(N.S.) 927.

Effect of preventing or checking bids upon the validity of sales at auction. 20 L.R.A. 545.

Suppression of competition at judicial sale. 42 L.R.A.(N.S.) 1198.

Validity of agreement to purchase property at judicial sale for joint benefit. 38 L.R.A.(N.S.) 719.

§ 5996. When complete. A sale by auction is complete when the auctioneer publicly announces by the fall of his hammer or in any other customary manner that the thing is sold. [R. C. 1905, § 5437; Civ. C. 1877, § 1023; R. C. 1899, § 3990.]

§ 5997. Withdrawal of bid. Until the announcement mentioned in the last section has been made any bidder may withdraw his bid, if he does so in a manner reasonably sufficient to bring it to the notice of the auctioneer. [R. C. 1905, § 5438; Civ. C. 1877, § 1024; R. C. 1899, § 3991.]

§ 5998. Printed conditions govern. When a sale by auction is made upon written or printed conditions, such conditions cannot be modified by any oral declaration of the auctioneer, except so far as they are for his own benefit. [R. C. 1905, § 5439; Civ. C. 1877, § 1025; R. C. 1899, § 2992.]

Binding effect of conditions announced by auctioneer. 24 L.R.A.(N.S.) 488.

§ 5999. Sale without reserve. Rights of bidder. If at a sale by auction, the auctioneer having authority to do so, publicly announces that the sale will be without reserve or makes any announcement equivalent thereto the highest bidder in good faith has an absolute right to the completion of the sale to him and upon such a sale bids by the seller or any agents for him are void. [R. C. 1905, § 5440; Civ. C. 1877, § 1026; R. C. 1899, § 3993.]

Right to resell property after it has been struck off to a bidder. 36 L.R.A.(N.S.) 927.

Right to withdraw property from an auction sale after it has been offered. 57 L.R.A. 784; 20 L.R.A.(N.S.) 1133.

§ 6000. Employment of bidder in a fraud. The employment by a seller at a sale at auction without the knowledge of the buyer of any person to bid at the sale, without an intention on the part of the bidder to buy and on the part of the seller to enforce his bid, is a fraud upon the buyer which entitles him to rescind his purchase. [R. C. 1905, § 5441; Civ. C. 1877, § 1027; R. C. 1899, § 3994.]

Right of auctioneer or officer conducting a sale to make bids. 20 L.R.A. 503.

§ 6001. Auctioneer's entry binding. When property is sold by auction an entry made by the auctioneer in his sale book at the time of the sale specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale and the name of the buyer binds both parties in the same manner as if made by themselves. [R. C. 1905, § 5442; Civ. C. 1877, § 1028; R. C. 1899, § 3995.]

ARTICLE 9.—WAIVER OF CAUSE OF ACTION.

§ 6002. Waiver of respective right of action invalid. A cause of action or a right of action arising out of the sale of personal property cannot be waived, released or barred before such cause of action has actually accrued, any terms or provisions of any contract or other written instrument to the contrary notwithstanding. [1913, ch. 219.]

CHAPTER 58.

EXCHANGE.

§ 6003. Defined. Exchange is a contract by which the parties mutually give or agree to give one thing for another, neither thing or both things being money only. [R. C. 1905, § 5443; Civ. C. 1877, § 1029; R. C. 1899, § 3996.]

Difference between exchange of property and a sale. 94 Am. St. Rep. 227.

Measure of damages for fraud in exchange of property. 38 L.R.A.(N.S.) 465.

Power to sell personal property in agent's possession as implying power to exchange. 10 L.R.A.(N.S.) 1118.

As to similar provision in Cal. Civ. Code, § 1804, see *Gilbert v. Sleeper*, 71 Cal. 290, 12 Pac. 172.

§ 6004. Governed by section 5961. The provisions of section 5961 apply to all exchanges in which the value of the thing to be given by either party

is fifty dollars or more. [R. C. 1905, § 5444; Civ. C. 1877, § 1030; R. C. 1899, § 3997.]

Statute of frauds rules apply to contracts for exchange same as contracts to sell personal property. *Talbot v. Boyd*, 11 N. D. 81, 88 N. W. 1026.

Effect of taking possession on exchange of lands without writing to satisfy statute of frauds. 3 L.R.A.(N.S.) 804.

§ 6005. Governed by chapter on sale. The provisions of the chapter on sale apply to exchanges. Each party has the rights and obligations of a seller as to the thing which he gives and of a buyer as to that which he takes. [R. C. 1905, § 5445; Civ. C. 1877, § 1031; R. C. 1899, § 3998.]

As to who are buyer and seller on exchange of personal property. *Talbot v. Boyd*, 11 N. D. 81, 88 N. W. 1026.

As to right to rescission not existing under executed sales for breach of warranty. *Simonson v. Jensen*, 14 N. D. 417, 104 N. W. 513.

As to similar provision in Cal. Civ. Code, § 1806, see *Gilbert v. Sleeper*, 71 Cal. 290, 12 Pac. 172.

§ 6006. Money warranted genuine. On an exchange of money each party thereby warrants the genuineness of the money given by him. [R. C. 1905, § 5446; Civ. C. 1877, § 1032; R. C. 1899, § 3999.]

CHAPTER 59.

DEPOSIT.

- ARTICLE 1. DEPOSIT IN GENERAL, §§ 6007-6012.**
2. OBLIGATIONS OF THE DEPOSITARY, §§ 6013-6018.
3. DEPOSIT FOR KEEPING, §§ 6019-6026.
4. GRATUITOUS DEPOSIT, §§ 6027-6030.
5. STORAGE, §§ 6031-6035.
6. INNKEEPER, §§ 6036-6039.
7. FINDING, §§ 6040-6048.
8. DEPOSIT FOR EXCHANGE, § 6049.

ARTICLE 1.—DEPOSIT IN GENERAL.

§ 6007. Deposit classified. A deposit may be voluntary or involuntary; and for safe keeping or for exchange. [R. C. 1905, § 5447; Civ. C. 1877, § 1033; R. C. 1899, § 4000.]

§ 6008. Voluntary. A voluntary deposit is made by one giving to another with his consent the possession of personal property to keep for the benefit of the former or of a third party. The person giving is called the depositor and the person receiving the depositary. [R. C. 1905, § 5448; Civ. C. 1877, § 1034; R. C. 1899, § 4001.]

A general deposit subject to check by county treasurer of county funds, not a loan. *Allibone v. Ames*, 9 S. D. 74, 68 N. W. 165, 33 L.R.A. 585.

This section is general and covers all kinds of deposits. *Hawkins v. Hubbard*, 2 S. D. 631, 51 N. W. 774.

Public officer depositing funds in bank which fails as bailee. 36 L.R.A.(N.S.) 290.

§ 6009. Involuntary. An involuntary deposit is made:

1. By the accidental leaving or placing of personal property in the possession of any person without negligence on the part of its owner; or,
2. In cases of fire, shipwreck, inundation, insurrection, riot or like extraordinary emergencies by the owner of personal property committing it out of necessity to the care of any person. [R. C. 1905, § 5449; Civ. C. 1877, § 1035; R. C. 1899, § 4002.]

§ 6010. Duty of depositary under last section. The person with whom a thing is deposited in the manner described in the last section is bound to take charge of it if able to do so. [R. C. 1905, § 5450; Civ. C. 1877, § 1036; R. C. 1899, § 4003.]

§ 6011. For keeping. A deposit for keeping is one in which the depositary is bound to return the identical things deposited. [R. C. 1905, § 5451; Civ. C. 1877, § 1037; R. C. 1899, § 4004.]

§ 6012. For exchange. A deposit for exchange is one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited. [R. C. 1905, § 5452; Civ. C. 1877, § 1038; R. C. 1899, § 4005.]

ARTICLE 2.—OBLIGATIONS OF THE DEPOSITARY.

§ 6013. Delivery on demand. Exceptions. A depositary must deliver the thing to the person for whose benefit it was deposited on demand, whether the deposit was made for a specified time or not, unless he has a lien upon the thing deposited, or has been forbidden or prevented from doing so by the real owner thereof, or by the act of the law and has given the notice required by section 6016. [R. C. 1905, § 5453; Civ. C. 1877, § 1039; R. C. 1899, § 4006.]

When replevin will not lie against depositary. What constitutes an escrow. *Nichols & Shepard Co. v. Bank*, 6 N. D. 404, 71 N. W. 135.

Liability of safety deposit companies. 72 Am. St. Rep. 206.

Duty of bank as to payment of money held as bailee. 21 L.R.A.(N.S.) 816.

Right of bailee to assert against his bailor the hostile, adverse, paramount title of a third person. 33 L.R.A.(N.S.) 681.

Conversion of coin by bailee, payment for in coin. 29 L.R.A. 522.

Duty of carrier to recognize demands of stranger on property delivered to it for transportation. 12 L.R.A.(N.S.) 254.

§ 6014. Demand prerequisite to delivery. A depositary is not bound to deliver a thing deposited without demand even when the deposit is made for a specified time. [R. C. 1905, § 5454; Civ. C. 1877, § 1040; R. C. 1899, § 4007.]

§ 6015. Place of delivery. A depositary must deliver the thing deposited at his residence or place of business as may be most convenient for him. [R. C. 1905, § 5455; Civ. C. 1877, § 1041; R. C. 1899, § 4008.]

§ 6016. Prompt notice of adverse claim. A depositary must give prompt notice to the person for whose benefit the deposit was made of any proceedings taken adversely to his interest in the thing deposited, which may tend to excuse the depositary from delivering the same to him. [R. C. 1905, § 5456; Civ. C. 1877, § 1042; R. C. 1899, § 4009.]

§ 6017. Notice of wrongful detention. A depositary who believes that a thing deposited with him is wrongfully detained from its true owner may give him notice of the deposit; and if within a reasonable time afterwards he does not claim it and sufficiently establish his right thereto and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom he gave the notice upon returning the thing to the depositor, or assuming in good faith a new obligation changing his position in respect to the thing to his prejudice. [R. C. 1905, § 5457; Civ. C. 1877, § 1043; R. C. 1899, § 4010.]

§ 6018. Delivery to disagreeing owners. If a thing deposited is owned jointly or in common by persons who cannot agree upon the manner of its delivery, the depositary may deliver to each his proper share thereof, if it can be done without injury to the thing. [R. C. 1905, § 5458; Civ. C. 1877, § 1044; R. C. 1899, § 4011.]

ARTICLE 3.—DEPOSIT FOR KEEPING.

§ 6019. Indemnity to depositary for damages. A depositor must indemnify the depositary:

1. For all damage caused to him by the defects or vices of the thing deposited; and,

2. For all expenses necessarily incurred by him about the thing other than such as are involved in the nature of the undertaking. [R. C. 1905, § 5459; Civ. C. 1877, § 1045; R. C. 1899, § 4012.]

1. Duty to inform bailee as to character of horse. 12 L.R.A. 397.
 Liability to servants of bailee for injuries caused by condition of thing bailed. 46 L.R.A. 115.

Responsibility of lender of chattel for injuries to the borrower or a third person due to its unsafe condition. 12 L.R.A.(N.S.) 632.

Imputing bailee's negligence to bailor in action by latter against third person for destruction of property. 17 L.R.A.(N.S.) 925; 27 L.R.A.(N.S.) 690.

Person in charge of a vehicle under a contract purporting to be a bailment or lease, as a servant of the owner as to third persons injured by the vehicle. 6 L.R.A.(N.S.) 544.

2. Improvement of personal property at request of bailee as creating liability against the bailor or the property. 38 L.R.A.(N.S.) 97.

§ 6020. Care of animals. A depositary of living animals must provide them with suitable food and shelter and treat them kindly. [R. C. 1905, § 5460; Civ. C. 1877, § 1046; R. C. 1899, § 4013.]

Care required of keeper of boarding stable. 23 L.R.A.(N.S.) 188.

Presumption and burden of proof as to negligence of agister in case of loss or injury. 43 L.R.A.(N.S.) 1186.

§ 6021. May not use deposit. A depositary may not use the thing deposited or permit it to be used for any purpose without the consent of the depositor. He may not, if it is purposely fastened by the depositor, open it without the consent of the latter except in case of necessity. [R. C. 1905, § 5461; Civ. C. 1877, § 1047; R. C. 1899, § 4014.]

A pledgee cannot use pledged property either as compensation for its keeping or otherwise, unless with pledgor's consent. *Hawkins v. Hubbard*, 2 S. D. 631, 51 N. W. 774.

Liability of bailee for misuser. 12 Am. Dec. 619.

§ 6022. Damages for wrongful use. A depositary is liable for any damage happening to the thing deposited during his wrongful use thereof, unless such damage must inevitably have happened though the property had not been thus used. [R. C. 1905, § 5462; Civ. C. 1877, § 1048; R. C. 1899, § 4015.]

§ 6023. Sale if perishing. If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor. [R. C. 1905, § 5463; Civ. C. 1877, § 1049; R. C. 1899, § 4016.]

§ 6024. When willfulness or gross negligence presumed. If a thing is lost or injured during its deposit and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred so far as he has information concerning them, or willfully misrepresents the circumstances to him, the depositary is presumed to have willfully or by gross negligence permitted the loss or injury to occur. [R. C. 1905, § 5464; Civ. C. 1877, § 1050; R. C. 1899, § 4017.]

As to similar provision in Cal. Civ. Code, § 1838, see *Wilson v. Southern P. R. Co.*, 53 Cal. 735.

§ 6025. Rules governing services by depositary. So far as any service is rendered by a depositary or required from him his duties and liabilities are prescribed by chapters 62, 63 and 64. [R. C. 1905, § 5465; Civ. C. 1877, § 1051; R. C. 1899, § 4018.]

§ 6026. Measure of liability. The liability of a depositary for negligence cannot exceed the amount which he is informed by the depositor or has reason to suppose the thing deposited to be worth. [R. C. 1905, § 5466; Civ. C. 1877, § 1052; R. C. 1899, § 4019.]

Liability of bailee for interest. 28 L.R.A.(N.S.) 6.

Liability of a bailee under a contract requiring him to return or pay for the subject of the bailment, in case of its loss or destruction without fault on his part. 14 L.R.A.(N.S.) 1090.

Liability of bailee of bicycle. 47 L.R.A. 305.

Liability of bailee for wrongful appropriation by his servant of thing bailed. 29 L.R.A. 92.

Liability of infant bailee for negligence or wilful injury. 57 L.R.A. 680.

As to similar provision in Cal. Civ. Code, § 1840, see *Cussen v. Southern California Sav. Bank*, 133 Cal. 534, 85 Am. St. Rep. 221, 65 Pac. 1099.

ARTICLE 4.—GRATUITOUS DEPOSIT.

§ 6027. **Defined.** Gratuitous deposit is a deposit for which the depositary receives no consideration beyond the mere possession of the thing deposited. [R. C. 1905, § 5467; Civ. C. 1877, § 1053; R. C. 1899, § 4020.]

§ 6028. **Involuntary, gratuitous.** An involuntary deposit is gratuitous, the depositary being entitled to no reward. [R. C. 1905, § 5468; Civ. C. 1877, § 1054; R. C. 1899, § 4021.]

§ 6029. **Use slight care.** A gratuitous depositary must use at least slight care for the preservation of the thing deposited. [R. C. 1905, § 5469; Civ. C. 1877, § 1055; R. C. 1899, § 4022.]

Liability of gratuitous bailees. 38 Am. St. Rep. 779.

—for nonfeasance. 23 Am. Dec. 322.

Right of action for negligent breach of gratuitous undertaking. 12 L.R.A.(N.S.) 929, 931.

Liability of storekeeper for property stolen from customer. 10 L.R.A.(N.S.) 314.

§ 6030. **When duties cease.** The duties of a gratuitous depositary cease:

1. Upon his restoring the thing deposited to its owner; or,
2. Upon his giving reasonable notice to the owner to remove it, the owner failing to do so within a reasonable time. But an involuntary depositary under subdivision 2 of section 6009 cannot give such notice until the emergency that gave rise to the deposit is passed. [R. C. 1905, § 5470; Civ. C. 1877, § 1056; R. C. 1899, § 4023.]

As to what constitutes ordinary care in care of live stock. *McBride v. Wallace*, 17 N. D. 495, 117 N. W. 857.

ARTICLE 5.—STORAGE.

§ 6031. **Defined.** A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire. [R. C. 1905, § 5471; Civ. C. 1877, § 1057; R. C. 1899, § 4024.]

§ 6032. **Must use ordinary care.** A depositary for hire must use at least ordinary care for the preservation of the thing deposited. [R. C. 1905, § 5472; Civ. C. 1877, § 1058; R. C. 1899, § 4025.]

Liability of bailee for damages to goods received for cold storage. 52 L.R.A. 106; 38 L.R.A.(N.S.) 994.

—of carrier for lost property in check room. 29 L.R.A.(N.S.) 834.

—of livery stable keeper for loss of property of patron. 3 L.R.A.(N.S.) 348.

—of keeper of bath house for loss of guest's valuables. 6 L.R.A.(N.S.) 828.

§ 6033. **Right to compensation.** In the absence of a different agreement or usage a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week and to half a month's hire for the storage of any other property during any fraction of a half month. [R. C. 1905, § 5473; Civ. C. 1877, § 1059; R. C. 1899, § 4026.]

§ 6034. **Termination of deposit.** In the absence of an agreement as to the length of time during which a deposit is to continue it may be terminated by the depositor at any time and by the depositary upon reasonable notice. [R. C. 1905, § 5474; Civ. C. 1877, § 1060; R. C. 1899, § 4027.]

§ 6035. **Same.** Payment for full time. Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing. [R. C. 1905, § 5475; Civ. C. 1877, § 1061; R. C. 1899, § 4028.]

ARTICLE 6.—INNKEEPER.

§ 6036. **Liability for the loss of property. Special arrangements.** No innkeeper or hotel keeper, whether individual, partnership or corporation, who constantly has in his inn or hotel a metal safe or suitable vault in good order and fit for the custody of money, bank notes, jewelry, articles of gold and silver manufacture, precious stones, personal ornaments, railroad mile-

age books or tickets, negotiable or valuable papers and bullion, and who keeps on the doors of the sleeping rooms used by guests suitable locks or bolts, and on the transoms and windows of said rooms suitable fastenings, and who keeps a copy of this section printed in distinct type constantly posted in not less than ten conspicuous places in all in said hotel or inn, shall be liable for the loss or injury suffered by any guest, unless such guest has offered to deliver the same to such innkeeper or hotel keeper for custody in such metal safe or vault, and such innkeeper or hotel keeper has omitted or refused to take it and deposit it in such safe or vault for custody and to give such guest a receipt therefor. Provided, however, that the keeper of any inn or hotel shall not be obliged to receive from any one guest for deposit in such safe or vault any property hereinbefore described exceeding the total value of three hundred dollars and shall not be liable for any excess for such property, whether received or not. [1913, ch. 183, § 1; R. C. 1905, § 5477; Civ. C. 1887, § 1063; R. C. 1899, § 4030.]

This is section 1 of *Laws 1913*, ch. 183, which, in section 11 thereof, expressly repeals R. C. 1905, §§ 5476, 5477.

Liability of innkeeper, and lien on baggage of guest. *McClain v. Williams*, 11 S. D. 227, 76 N. W. 930, 49 L.R.A. 610, 74 Am. St. Rep. 791.

Landlord liable for injury to goods in sample room resulting from want of ordinary care. *Scheffer v. Corson*, 5 S. D. 233, 58 N. W. 555.

Liability of innkeeper for goods of their guests. 18 Am. Rep. 130; 99 Am. St. Rep. 577.

For what goods of guests liable. 69 Am. Dec. 221.

Effect of statute limiting innkeeper's liability for goods not delivered into his custody. 22 L.R.A.(N.S.) 577.

Presumption of negligence of innkeeper from injury to property of guest. 20 L.R.A.(N.S.) 1027.

Liability for loss or destruction of commercial traveler's samples. 35 L.R.A.(N.S.) 350.

Duty of innkeeper as to effects of one who has left without intention of returning as guest. 28 L.R.A.(N.S.) 495.

Effect of guest's noncompliance with regulations. 6 L.R.A. 486.

When contributory negligence of guests relieves from liability. 41 Am. Rep. 777.

§ 6037. Special arrangements. But such innkeeper or hotel keeper may by special arrangement with a guest receive for deposit in such safe or vault any property upon such terms as they may agree to in writing, but every innkeeper or hotel keeper shall be liable for any loss of the above enumerated articles of a guest in his inn or hotel after said articles have been accepted for deposit if caused by the theft or negligence of the innkeeper, hotel keeper or any of his servants. [1913, ch. 183, § 2.]

§ 6038. Duties of guests and innkeepers. It shall be the duty of every guest and of every one intending to be a guest of any hotel in this state, upon delivering to the proprietor of such hotel, or to his servants, any baggage or other articles of property of such guest for safe keeping (elsewhere than to the room assigned to such guest), demand, and of such hotel proprietor to give, a check or receipt therefor in such case, to evidence the fact of such delivery; and no hotel proprietor shall be liable for the loss of or injury to such baggage or other article of property of this guest, unless the same shall have been actually delivered by such guest to such hotel proprietor or to his servants for safe keeping, or unless such loss or injury shall have occurred through the negligence of such hotel proprietor or by his servants or employes in such hotel. [1913, ch. 183, § 3.]

§ 6039. Character of liability as to such property; limitations. The liability of the keeper of any inn or hotel, whether individual, partnership or corporation, for the loss of or injury to personal property placed by his guests under his care, other than that described in the preceding sections, shall be that of a depository for hire, except in case of such loss or injury is caused by fire not intentionally produced by the innkeeper, or his servants, such innkeeper shall not be liable. Provided, however, that in no case shall such liability exceed the sum of one hundred and fifty dollars for each trunk

and its contents, and ten dollars for each box, bundle or package and contents so placed under his care, and all other miscellaneous effects, including wearing apparel and personal belongings, fifty dollars, unless he shall have consented in writing with such guest to assume a greater liability.

And provided, further, whenever any person shall suffer his baggage or property to remain in any inn or hotel, after leaving the same as a guest, and after the relation of innkeeper and guest between such guest and the proprietors of such inn or hotel has ceased, or shall forward the same to such inn or hotel, before becoming a guest thereof, and the same shall be received into such inn or hotel, such innkeeper may, at his option, hold such baggage or property at the risk of such owner. [1913, ch. 183, § 4; R. C. 1905, § 5476; Civ. C. 1877, § 1062; R. C. 1895, § 4029.]

See note to section 6036.

ARTICLE 7.—FINDING.

§ 6040. Finder, depositary for hire. One who finds a thing lost is not bound to take charge of it; but if he does so, he is thenceforward a depositary for the owner with the rights and obligations of a depositary for hire. [R. C. 1905, § 5478; Civ. C. 1877, § 1064; R. C. 1899, § 4031.]

Rights and liabilities of finder of property. 37 L.R.A. 116; 1 L.R.A. (N.S.) 477; 8 L.R.A. (N.S.) 95; 35 L.R.A. (N.S.) 979.

Rights inter se of joint finders of lost property. 19 L.R.A. (N.S.) 1201.

Trover in favor of finder. 18 Am. Dec. 55.

What constitutes finding and the remedies of the finder against third persons. 30 Am. Rep. 180.

§ 6041. Must notify owner. If the finder of a thing knows or suspects who is the owner, he must with reasonable diligence give him notice of the finding; and if he fails to do so, he is liable in damages to the owner and has no claim to any reward offered by him for the recovery of the thing or to any compensation for his trouble or expenses. [R. C. 1905, § 5479; Civ. C. 1877, § 1065; R. C. 1899, § 4032.]

§ 6042. May require proof of ownership. The finder of a thing may in good faith before giving it up require reasonable proof of ownership from any person claiming it. [R. C. 1905, § 5480; Civ. C. 1877, § 1066; R. C. 1899, § 4033.]

§ 6043. Compensation and reward. The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation and for any other services necessarily performed by him about it and to a reasonable reward for keeping it. [R. C. 1905, § 5481; Civ. C. 1877, § 1067; R. C. 1899, § 4034.]

§ 6044. Storing releases from liability. The finder of a thing may exonerate himself from liability at any time by placing it on storage with any responsible person of good character at a reasonable expense. [R. C. 1905, § 5482; Civ. C. 1877, § 1068; R. C. 1899, § 4035.]

§ 6045. When finder may sell. The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner cannot with reasonable diligence be found; or, being found, refuses upon demand to pay the lawful charges of the finder in the following cases:

1. When the thing is in danger of perishing or of losing the greater part of its value; or,

2. When the lawful charges of the finder amount to two-thirds of its value. [R. C. 1905, § 5483; Civ. C. 1877, § 1069; R. C. 1899, § 4036.]

§ 6046. Manner of sale. A sale under the provisions of the last section must be made in the same manner as the sale of a thing pledged. [R. C. 1905, § 5484; Civ. C. 1877, § 1070; R. C. 1899, § 4037.]

§ 6047. Claim exonerated by surrender. The owner of a thing found may exonerate himself from the claims of the finder by surrendering it to him in satisfaction thereof. [R. C. 1905, § 5485; Civ. C. 1877, § 1071; R. C. 1899, § 4038.]

§ 6048. **No application to things abandoned.** The provisions of this article have no application to things which have been intentionally abandoned by their owners. [R. C. 1905, § 5486; Civ. C. 1877, § 1072; R. C. 1899, § 4039.]

ARTICLE 8.—DEPOSIT FOR EXCHANGE.

§ 6049. **Title transferred by.** A deposit for exchange transfers to the depositary the title to the thing deposited and creates between him and the depositor the relation of debtor and creditor merely. [R. C. 1905, § 5487; Civ. C. 1877, § 1073; R. C. 1899, § 4040.]

Every general deposit not a loan. *Allibone v. Ames*, 9 S. D. 74, 68 N. W. 165, 33 L.R.A. 585.

CHAPTER 60.

LOANS.

- ARTICLE 1. LOAN FOR USE, §§ 6050-6061.
2. LOAN FOR EXCHANGE, §§ 6062-6066.
3. LOAN OF MONEY, §§ 6067-6078.

ARTICLE 1.—LOAN FOR USE.

§ 6050. **Defined.** A loan for use is a contract by which one gives to another the temporary possession and use of personal property and the latter agrees to return the same thing to him at a future time without reward for its use. [R. C. 1905, § 5488; Civ. C. 1877, § 1074; R. C. 1899, § 4041.]

Loan of intoxicating liquors as a sale. 8 L.R.A.(N.S.) 937; 31 L.R.A.(N.S.) 517.

Husband's liability for money loaned wife to purchase necessities. 65 L.R.A. 550.

§ 6051. **Title and increase belong to lender.** A loan for use does not transfer the title to the thing; and all its increase during the period of the loan belongs to the lender. [R. C. 1905, § 5489; Civ. C. 1877, § 1075; R. C. 1899, § 4042.]

Right of one loaning his property to another to claim title against the latter's vendees or creditors. 25 L.R.A.(N.S.) 778.

§ 6052. **Must use great care.** A borrower for use must use great care for the preservation in safety and in good condition of the thing lent. [R. C. 1905, § 5490; Civ. C. 1877, § 1076; R. C. 1895, § 4043.]

§ 6053. **Treat animal with great kindness.** One who borrows a living animal for use must treat it with great kindness and provide everything necessary and suitable for it. [R. C. 1905, § 5491; Civ. C. 1877, § 1077; R. C. 1899, § 4044.]

§ 6054. **Degree of skill.** A borrower for use is bound to have and to exercise such skill in the care of the thing lent as he causes the lender to believe him to possess. [R. C. 1905, § 5492; Civ. C. 1877, § 1078; R. C. 1899, § 4045.]

§ 6055. **Repair injuries.** A borrower for use must repair all deteriorations or injuries to the thing lent which are occasioned by his negligence however slight. [R. C. 1905, § 5493; Civ. C. 1877, § 1079; R. C. 1899, § 4046.]

§ 6056. **Use only for anticipated purposes.** The borrower of a thing for use may use it for such purposes only as the lender might reasonably anticipate at the time of lending. [R. C. 1905, § 5494; R. C. 1877, § 1080; R. C. 1899, § 4047.]

§ 6057. **Must not lend without consent.** The borrower of a thing for use must not part with it to a third person without the consent of the lender. [R. C. 1905, § 5495; Civ. C. 1877, § 1081; R. C. 1899, § 4048.]

§ 6058. **Expenses during loan.** The borrower of a thing for use must bear all its expenses during the loan, except such as are necessarily incurred

by him to preserve it from unexpected and unusual injury. For such expense he is entitled to compensation from the lender who may, however, exonerate himself by surrendering the thing to the borrower. [R. C. 1905, § 5496; Civ. C. 1877, § 1082; R. C. 1899, § 4049.]

§ 6059. **Indemnity to borrower for defects.** The lender of a thing for use must indemnify the borrower for damages caused by defects or vices in it which he knew at the time of lending and concealed from the borrower. [R. C. 1905, § 5497; Civ. C. 1877, § 1083; R. C. 1899, § 4050.]

§ 6060. **Return may be required at any time.** The lender of a thing for use may at any time require its return, even though he lent it for a specified time or purpose. But if on the faith of such an agreement the borrower has made such arrangements that a return of the thing before the period agreed upon would cause him loss, exceeding the benefit derived by him from the loan, the lender must indemnify him for such loss, if he compels such return, the borrower not having in any manner violated his duty. [R. C. 1905, § 5498; Civ. C. 1877, § 1084; R. C. 1899, § 4051.]

§ 6061. **When to be returned.** If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand as soon as the time has expired or the purpose has been accomplished. In other cases it need not be returned until demanded. The borrower of a thing for use must return it to the lender at the place contemplated by the parties at the time of the lending; or if no particular place was so contemplated by them, then at the place where it was at that time. [R. C. 1905, § 5499; Civ. C. 1877, §§ 1085, 1086; R. C. 1899, § 4052.]

ARTICLE 2.—LOAN FOR EXCHANGE.

§ 6062. **Defined.** A loan for exchange is a contract by which one delivers personal property to another and the latter agrees to return to the lender a similar thing at a future time without reward for its use. [R. C. 1905, § 5500; Civ. C. 1877, § 1087; R. C. 1899, § 4053.]

§ 6063. **Same.** A loan which the borrower is allowed by the lender to treat as a loan for use or for exchange at his option is subject to all the provisions of this article. [R. C. 1905, § 5501; Civ. C. 1877, § 1088; R. C. 1899, § 4054.]

§ 6064. **Transfers title.** By a loan for exchange the title to the thing lent is transferred to the borrower and he must bear all its expenses and is entitled to all its increase. [R. C. 1905, § 5502; Civ. C. 1877, § 1089; R. C. 1899, § 4055.]

§ 6065. **Cannot require different performance.** A lender for exchange cannot require the borrower to fulfill his obligations at a time or in a manner different from that which was originally agreed upon. [R. C. 1905, § 5503; Civ. C. 1877, § 1090; R. C. 1899, § 4056.]

§ 6066. **Sections applicable.** Sections 6058 and 6060 apply to a loan for exchange. [R. C. 1905, § 5504; Civ. C. 1877, § 1091; R. C. 1899, § 4057.]

ARTICLE 3.—LOAN OF MONEY.

§ 6067. **Defined.** A loan of money is a contract by which one delivers a sum of money to another and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by the article on loan for use. [R. C. 1905, § 5505; Civ. C. 1877, § 1092; R. C. 1899, § 4058.]

Bank deposit not a loan. *Allibone v. Ames*, 9 S. D. 74, 68 N. W. 165, 33 L.R.A. 585.

Loan of public money to citizens. 14 L.R.A. 475.

Damages recoverable for breach of contract to lend money. 37 L.R.A. 233; 29 L.R.A. (N.S.) 194.

Right of one loaning money for purchase price of property to be subrogated to vendor's lien. 37 L.R.A. (N.S.) 1203.

Is money loaned to improve land part of the purchase price within the rule that a purchase money lien takes priority over homestead rights. 41 L.R.A. (N.S.) 89.

Liability of corporation directors for loss by making loans. 55 L.R.A. 762.

Liability of bank directors in case of bad loans. 55 L.R.A. 751; 39 L.R.A. (N.S.) 173.

Creation of partnership by sharing in profits of making loans. 18 L.R.A. (N.S.) 1055.

Admissibility of books of account to prove loan. 52 L.R.A. 703.

Validity of loan when made in violation of law. 12 L.R.A. (N.S.) 603.

§ 6068. Repayment in current funds. A borrower of money must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent. [R. C. 1905, § 5506; Civ. C. 1877, § 1093; R. C. 1899, § 4059.]

§ 6069. Loan presumes interest. Whenever a loan of money is made it is presumed to be made upon interest, unless it is otherwise expressly stipulated at the time in writing. [R. C. 1905, § 5507; Civ. C. 1877, § 1094; R. C. 1899, § 4060.]

§ 6070. Interest defined. Interest is the compensation allowed for the use, or forbearance, or detention of money, or its equivalent. [R. C. 1905, § 5508; Civ. C. 1877, § 1095; R. C. 1899, § 4061.]

Special assessments bear interest at 7 per cent per annum from time of delinquency. Hackney v. Elliott, 23 N. D. 373, 137 N. W. 433.

As to similar provision in Cal. Civ. Code, § 1915, see People ex rel. Warfield v. Sutter Street R. Co., 129 Cal. 545, 79 Am. St. Rep. 137, 62 Pac. 104; Savings & L. Soc. v. San Francisco, 131 Cal. 356, 63 Pac. 665.

§ 6071. Rate deemed annual. When a rate of interest is prescribed by law or contract without specifying the period of time by which such rate is to be calculated it is to be deemed an annual rate. [R. C. 1905, § 5509; Civ. C. 1877, § 1096; R. C. 1899, § 4062.]

As to similar provision in Cal. Civ. Code, § 1916, see Rogers v. Jones, 92 Cal. 80, 28 Pac. 97.

§ 6072. Legal rate seven per cent. Interest for any legal indebtedness shall be at the rate of seven per cent per annum, unless a different rate is contracted for in writing and all contracts shall bear the same rate of interest after they become due as before, unless it clearly appears therefrom that such was not the intention of the parties. [R. C. 1905, § 5510; 1890, ch. 184, § 1; 1893, ch. 131, § 1; R. C. 1899, § 4063.]

As to mortgage given for usurious rate of interest not being void. Grove v. Great Northern Loan Co., 17 N. D. 352, 116 N. W. 345.

As to similar provision in Cal. Civ. Code, § 1917, see Marshall v. Levy, 66 Cal. 236, 5 Pac. 155; Gafney v. San Francisco, 72 Cal. 146, 13 Pac. 467; Heald v. Hendy, 89 Cal. 632, 27 Pac. 67; Los Angeles v. City Bank, 100 Cal. 18, 34 Pac. 510; Sawyer v. Colgan, 102 Cal. 283, 36 Pac. 580, 834; Hopkins v. Contra Costa County, 106 Cal. 566, 39 Pac. 933; Molineux v. State, 109 Cal. 378, 50 Am. St. Rep. 49, 42 Pac. 34; Easterbrook v. Farquharson, 110 Cal. 311, 42 Pac. 811; Yndart v. Den, 116 Cal. 533, 58 Am. St. Rep. 200, 48 Pac. 618; Savings & L. Soc. v. San Francisco, 131 Cal. 356, 63 Pac. 665; National Bank v. Greenlaw, 134 Cal. 673, 66 Pac. 963.

§ 6073. Usury defined. No person, firm, company or corporation shall directly or indirectly take, or receive, or agree to take or receive in money, goods or things in action or in any other way any greater sum or any greater value for the loan or forbearance of money, goods or things in action than twelve per cent per annum; and in the computation of interest the same shall not be compounded. Any violation of this section shall be deemed usury; provided, that any contract to pay interest not usurious on interest overdue shall not be deemed usury. [R. C. 1905, § 5511; 1890, ch. 184, § 2; 1893, ch. 131, § 2; R. C. 1899, § 4064.]

Action to recover usury. Hanson v. Bank, 6 N. D. 212, 69 N. W. 202.

Counterclaim cannot be maintained to recover whole interest. Wood v. Cuthbertson, 3 D. 328, 21 N. W. 3.

Usurious contract; compensation for procuring loan. Vermont Loan & Trust Co. v. Whitehead, 2 N. D. 82, 49 N. W. 318.

Effect of a new statute upon acts performed under a former statute. *Folsom v. Kilbourne*, 5 N. D. 402, 67 N. W. 291; *Nat. Bank v. Lemke*, 3 N. D. 154, 54 N. W. 919.

Applies only to unliquidated claims, and not to interest on accounts stated monthly and assented to by debtor. *McCuish v. Smail*, 13 S. D. 397, 83 N. W. 426.

City warrants draw interest after presentation and refusal of payment for want of funds. *Freeman v. City of Huron*, 10 S. D. 368, 73 N. W. 260.

Contract to pay more than 7 per cent must be in writing signed by parties or their duly authorized agent. *Tucker v. Randall*, 10 S. D. 581, 74 N. W. 1036.

Notes bearing 6 per cent interest continue to bear such interest after maturity where after due rate is not mentioned. *Hinrichs v. Brady*, 23 S. D. 250, 121 N. W. 777.

Usury in exacting payment of interest for full term upon payment of debt before maturity. 28 L.R.A.(N.S.) 113.

Usury as affected by question whether transaction is purchase or discount of note or bill. 16 L.R.A. 224.

Issuance of corporate bonds at less than par as usury. 35 L.R.A.(N.S.) 1106.

Applicability of usury law to loans other than of money. 29 L.R.A.(N.S.) 620.

Computation of interest on the basis of thirty days for a month, or three hundred and sixty days for a year, as usury. 5 L.R.A.(N.S.) 592.

Commissions charged borrower by lender's agent as usury. 19 L.R.A.(N.S.) 391.

Usury by fixed premium of association. 35 L.R.A. 244.

Fines in building and loan associations. 35 L.R.A. 215.

Agreement for interest after maturity. 49 L.R.A. 550.

Usury in deferred payments of purchase money. 27 L.R.A. 565; 28 L.R.A.(N.S.) 102.

Right, in case of renewal of loan, to compute interest on basis of including accumulated interest as part of principal of renewal. 6 L.R.A.(N.S.) 612.

Validity of agreement, made before interest becomes due, to pay interest on interest. 33 L.R.A.(N.S.) 296.

§ 6074. Legalizing interest over seven per cent on written evidence of indebtedness. All notes and other written evidences of indebtedness made prior to the taking effect of this act, and providing for interest at a rate not exceeding twelve per cent per annum are hereby declared to be legal and valid for all purposes in so far as the rate of interest is concerned. [1911, ch. 311, § 1.]

§ 6075. Interest taken in advance. The interest which would become due at the end of the term for which a loan is made, not exceeding ninety days' interest in all, may be deducted from the loan in advance if the parties thus agree. [R. C. 1905, § 5512; Civ. C. 1877, § 1099; R. C. 1895, § 4065.]

Lawfulness of taking interest in advance. 29 L.R.A. 761.

§ 6076. Penalty for usury. The taking, receiving, reserving or charging a rate of interest greater than is allowed by sections 6073 and 6075 when knowingly done, shall be deemed a forfeiture of the entire interest which the note, bill or other evidence of debt carries with it or which has been agreed to be paid thereon. In case the greater rate of interest has been paid, the person by whom it has been paid, or his legal representatives, may recover back in an action for that purpose twice the amount of interest thus paid from the person taking or receiving the same; provided, that such action is commenced within two years from the time the usurious transaction occurred. [1913, ch. 311, § 2; R. C. 1905, § 5513; Civ. C. 1877, § 1100; 1887, ch. 207, § 1; 1893, ch. 131, § 3; R. C. 1895, § 4066.]

Sale of land under mortgage foreclosure cannot be set aside because contract was usurious. *Robinson v. McKinney*, 4 D. 290, 29 N. W. 658.

Does not apply to payments of legal interest made more than three years, prior to commencement of action on principal debt. *Wilson v. Selby*, 7 S. D. 494, 64 N. W. 537.

When contract is usurious. *Hogdon v. Davis*, 6 D. 21, 50 N. W. 478.

Plea of usury cannot be urged in foreclosure proceeding by one who buys merely equity of redemption. *Hill v. Building Co.*, 6 S. D. 160, 60 N. W. 752, 55 Am. St. Rep. 819.

Repeal of usury statute does not affect prior transactions. *Nat. Bank v. Lemke*, 3 N. D. 154, 54 N. W. 919.

Recovery of usurious interest. *Wood v. Cuthbertson*, 3 D. 328, 21 N. W. 3.

None but party to usurious contract or his heirs, devisees or personal representatives, can avoid it. *Cahn v. Bank*, 1 S. D. 237, 46 N. W. 185; *Lealos v. Bank*, 9 N. D. 60, 81 N. W. 56.

Commission for making loan; effect as recovery for usury. *Vermont L. & T. Co. v. Whitehed*, 2 N. D. 82, 49 N. W. 318.

That rate of interest in mortgage is not separately stated will not make usury. *Folsom v. Kilbourne*, 5 N. D. 402, 67 N. W. 291.

No recovery unless interest has been paid. *Davey v. Bank*, 8 S. D. 214, 66 N. W. 122.

National banks may charge rates allowed by state. *Guild v. Bank*, 4 S. D. 566, 57 N. W. 499.

Interest upon interest is not usury. *Hovey v. Edmison*, 3 D. 449, 22 N. W. 594.

Without specific plea of usury, mortgagor must pay agreed bonus in addition to principal and interest. *Yankton Building Ass. v. Dowling*, 10 S. D. 535, 74 N. W. 436.

Foreclosure proceedings cannot be attacked for usury. *N. W. Trust Co. v. Bradley*, 9 S. D. 495, 70 N. W. 648.

Double amount of all usurious interest payments made may be recovered. *Waldmer v. Bowden State Bank*, 13 N. D. 604, 102 N. W. 169, 3 A. & E. Ann. Cas. 847.

Judgment non obstante veredicto in favor of defendant should be entered where plaintiff on cross-examination admits facts establishing defense. *Miller v. Bank of Harvey*, 22 N. D. 538, 134 N. W. 745.

Usury by national bank. 56 L.R.A. 673.

Penalty against national bank for taking illegal interest. 56 L.R.A. 673.

Recovery of penalty for usury on transfer of property in satisfaction of usurious debt. 36 L.R.A.(N.S.) 135.

Right of bank acquiring paper void for usury as between prior parties, under statute prescribing special and exclusive penalties against bank which takes usury. 16 L.R.A.(N.S.) 626.

Usury as affecting receipt of commercial paper as payment. 35 L.R.A.(N.S.) 72.

Effect as between the parties of transfer of property in satisfaction of usurious debt. 36 L.R.A.(N.S.) 134.

Suit to set aside judgment for usury; who may maintain. 54 L.R.A. 765.

Usury as ground for injunction against judgment. 31 L.R.A. 761.

By confession. 30 L.R.A. 239.

Enforceability of judgment containing usury. 3 L.R.A.(N.S.) 715.

Right of alleged fraudulent grantee to show that judgment against grantor was based on usurious transaction. 67 L.R.A. 601.

Right to open judgment to let in defense of usury. 12 L.R.A.(N.S.) 659.

Defense of usury as against holder of negotiable paper transferred after maturity. 46 L.R.A. 767.

Usury in renewal contract as affecting original agreement. 33 L.R.A. 633.

Injunction against sale under power in mortgage because of usury. 35 L.R.A.(N.S.) 911.

Conclusiveness of stated or settled account containing usurious interest. 23 L.R.A.(N.S.) 790.

Effect of usury on right of accommodation party who has been obliged to pay bill or note to recover from accommodated party. 37 L.R.A.(N.S.) 784.

Effect of payment of usury. 53 L.R.A. 316.

Right of transferee of mortgaged property to set up usury in the mortgage. 10 L.R.A.(N.S.) 857.

The right of a vendee of real estate which is subject to a lien, to raise the question of usury. 8 L.R.A.(N.S.) 814.

Set-off as to usury on foreclosure. 21 L.R.A. 323.

§ 6077. Judgments bear seven per cent. Interest is payable on judgments recovered in the courts of this state at the rate of seven per cent per annum, and no greater rate, but such interest must not be compounded in any manner or form. [R. C. 1905, § 5514; Civ. C. 1877, § 1101; R. C. 1899, § 4067.]

As to similar provision in Cal. Civ. Code, § 1920, see *People ex rel. Warfield v. Sutter Street R. Co.*, 129 Cal. 545, 79 Am. St. Rep. 137, 62 Pac. 104; *Columbia Sav. Bank v. Los Angeles County*, 137 Cal. 467, 70 Pac. 308.

§ 6078. Same rate before and after breach. Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a verdict or other new obligation. [R. C. 1905, § 5515; Civ. C. 1877, § 1102; R. C. 1899, § 4068.]

As to note bearing same rate after as before maturity. *Colonial & U. S. Mortg. Co. v. Flemington*, 14 N. D. 181, 116 Am. St. Rep. 670, 103 N. W. 929.

As to interest on annual instalments of interest being 7 per cent. *Hinrichs v. Brady*, 23 S. D. 250, 121 N. W. 777.

CHAPTER 61.

HIRING.

- ARTICLE 1. HIRING IN GENERAL, §§ 6079-6089.**
 2. **HIRING OF REAL PROPERTY, §§ 6090-6099.**
 3. **HIRING OF PERSONAL PROPERTY, §§ 6100-6104.**

ARTICLE 1.—HIRING IN GENERAL.

§ 6079. Defined. Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward and the latter agrees to return the same to the former at a future time. [R. C. 1905, § 5516; Civ. C. 1877, § 1103; R. C. 1899, § 4069.]

Contract to farm land on shares not one of hire, but nature of adventure. *Bowers v. Graves & Vinton Co.*, 8 S. D. 385, 66 N. W. 931.

Contract for use of horses and for their return to owner is one of hiring and not for transportation. *Schlusser v. Great Northern R. Co.*, 20 N. D. 406, 127 N. W. 502.

§ 6080. Products belong to hirer. The products of a thing hired during the hiring belong to the hirer. [R. C. 1905, § 5517; Civ. C. 1877, § 1104; R. C. 1899, § 4070.]

§ 6081. Quiet possession. An agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring against all persons lawfully claiming the same. [R. C. 1905, § 5518; Civ. C. 1877, § 1105; R. C. 1899, § 4071.]

As to similar provision in Cal. Civ. Code, § 1927, see *Dwyer v. Carroll*, 86 Cal. 298, 24 Pac. 1015; *McDowell v. Hyman*, 117 Cal. 67, 48 Pac. 984.

§ 6082. Ordinary care. The hirer of a thing must use ordinary care for its preservation in safety and in good condition. [R. C. 1905, § 5519; Civ. C. 1877, § 1106; R. C. 1899, § 4072.]

§ 6083. Repair injuries. The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his ordinary negligence. [R. C. 1905, § 5520; Civ. C. 1877, § 1107; R. C. 1899, § 4073.]

§ 6084. Use only for purpose let. When a thing is let for a particular purpose the hirer must not use it for any other purpose; and if he does the letter may hold him responsible for its safety during such use in all events or may treat the contract as thereby rescinded. [R. C. 1905, § 5521; Civ. C. 1877, § 1108; R. C. 1899, § 4074.]

Liability of hirer for driving team to place where it was not hired to go. 26 L.R.A. 366.

Liability of hirer for injury to horse while being used for a purpose other than that for which it was hired. 28 L.R.A. (N.S.) 1106.

§ 6085. When letter may terminate hiring. The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon:

1. When the hirer uses or permits a use of the thing hired in a manner contrary to the agreement of the parties; or,

2. When the hirer does not within a reasonable time after request make such repairs as he is bound to make. [R. C. 1905, § 5522; Civ. C. 1877, § 1109; R. C. 1899, § 4075.]

§ 6086. When hirer may terminate. The hirer of a thing may terminate the hiring before the end of the term agreed upon:

1. When the letter does not within a reasonable time after request fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into a good condition, or repairing; or,

2. When the greater part of the thing hired or that part, which was and which the letter had at the time of the hiring reason to believe was the material inducement to the hirer to enter into the contract, perishes from

any other cause than the ordinary negligence of the hirer. [R. C. 1905, § 5523; Civ. C. 1877, § 1110; R. C. 1899, § 4076.]

Failure of landlord to furnish heat for building according to contract, will be regarded as constructive eviction of tenant. *Russell v. Olson*, 22 N. D. 410, 37 L.R.A.(N.S.) 1217, 133 N. W. 1030.

§ 6087. When hiring terminated. The hiring of a thing terminates:

1. At the end of the term agreed upon.
2. By the mutual consent of the parties.
3. By the hirer acquiring a title to the thing hired superior to that of the letter; or,

4. By the destruction of the thing hired. [R. C. 1905, § 5524; Civ. C. 1877, § 1111; R. C. 1899, § 4077.]

As to similar provision in Cal. Civ. Code, § 1933, see *McKissick v. Ashby*, 98 Cal. 422, 33 Pac. 729.

§ 6088. When terminated by death. If the hiring of a thing is terminable at the pleasure of one of the parties it is terminated by notice to the other of his death or incapacity to contract. In other cases it is not terminated thereby. [R. C. 1905, § 5525; Civ. C. 1877, § 1112; R. C. 1899, § 4078.]

§ 6089. Proportionate hire paid, when. When the hiring of a thing is terminated before the time originally agreed upon the hirer must pay the due proportion of the hire for such use as he has actually made of the thing, unless such use is merely nominal and of no benefit to him. [R. C. 1905, § 5526; Civ. C. 1877, § 1113; R. C. 1899, § 4079.]

ARTICLE 2.—HIRING OF REAL PROPERTY.

§ 6090. Obligations of lessor of dwelling. The lessor of a building intended for the occupation of human beings must in the absence of an agreement to the contrary put it into condition fit for such occupation and repair all subsequent dilapidations thereof, except that the lessee must repair all deteriorations or injuries thereto occasioned by his ordinary negligence. [R. C. 1905, § 5527; Civ. C. 1877, § 1114; R. C. 1899, § 4080.]

Cellar and first story of business block not a building intended for occupation of "human beings." *Edmison v. Asleson*, 4 D. 145, 27 N. W. 82.

As to counterclaiming damages in action for rent. *Torreson v. Walla*, 11 N. D. 481, 92 N. W. 834.

Parol proof admissible to prove notice to owner of condition of building. *Prior v. Sanborn Co.*, 12 S. D. 86, 80 N. W. 169.

Liability of lessor of place of amusement for safety of patrons. 14 L.R.A.(N.S.) 284; 32 L.R.A.(N.S.) 715; 42 L.R.A.(N.S.) 1073.

Tenant's duty to leave premises in good condition. 64 L.R.A. 649.

Duty of landlord to keep plumbing in proper repair for tenant's use. 36 L.R.A.(N.S.) 907.

Duty and liability of landlord as to premises upon which has existed a contagious disease. 6 L.R.A.(N.S.) 977.

Duty and liability of landlord of apartments as to heating. 37 L.R.A.(N.S.) 1213.

Liability of landlord for condition of premises in possession of tenant. 26 L.R.A. 197.

—for defective and dangerous premises. 28 Am. Rep. 32; 66 Am. St. Rep. 785.

—as to part of premises not controlled by tenant. 23 L.R.A. 155; 48 L.R.A.(N.S.) 920.

—for loss of tenant's property by fire. 42 L.R.A.(N.S.) 363.

—for injury to tenant by escape of water. 15 L.R.A.(N.S.) 545.

—for injury to tenant by defects in premises. 34 L.R.A. 824; 34 L.R.A.(N.S.) 798; 48 L.R.A.(N.S.) 917.

—for injury to tenant's guests and servants from defects in premises. 34 L.R.A. 609; 17 L.R.A.(N.S.) 1161.

—for damages to tenant in consequence of acts of third persons affecting the leased property. 42 L.R.A.(N.S.) 774.

—for work of independent contractor which is dangerous to tenants. 65 L.R.A. 855.

—for injuries to third persons. 59 Am. Dec. 733; 92 Am. St. Rep. 499.

—to servants of third person visiting premises on business. 46 L.R.A. 93.

—for injury to adjoining property from cause arising during tenancy. 5 L.R.A.(N.S.) 316.

As to similar provision in Cal. Civ. Code, § 1941, see *Van Every v. Ogg*, 59 Cal. 563; *Sieber v. Blanc*, 76 Cal. 173, 18 Pac. 260; *Willson v. Treadwell*, 81 Cal. 58, 22 Pac. 304; *Tatum v. Thompson*, 86 Cal. 203, 24 Pac. 1009; *Dwyer v. Carroll*, 86 Cal. 298, 24 Pac. 1015; *Green v. Redding*, 92 Cal. 548, 28 Pac. 599; *Angevine v. Knox-Goodrich*, 3

Cal. Unrep. 648, 31 Pac. 529; Callahan v. Loughran, 102 Cal. 476, 36 Pac. 835; Gately v. Campbell, 124 Cal. 520, 57 Pac. 567.

§ 6091. When lessee may repair or vacate. If within a reasonable time after notice to the lessor of dilapidations which he ought to repair he neglects to do so the lessee may repair the same himself and deduct the expense of such repairs from the rent, or otherwise recover it from the lessor; or the lessee may vacate the premises, in which case he shall be discharged from further payment of rent or performance of other conditions. [R. C. 1905, § 5528; Civ. C. 1877, § 1115; R. C. 1899, § 4081.]

Sewer connection not included in "repairs," "dilapidation" or "deterioration" on original improvement. *Torreson v. Walla*, 11 N. D. 481, 92 N. W. 834.

Parol proof of notice of condition of building sufficient. *Prior v. Sanborn Co.*, 12 S. D. 86, 80 N. W. 169.

Landlord's breach of covenant to repair or make improvements as defense to action for rent. 34 L.R.A.(N.S.) 977.

Right to reduction in rent of farm because part of it is not tillable. 36 L.R.A.(N.S.) 555.

Mechanics' liens on buildings erected by lessees upon lessor's land. 62 L.R.A. 375.

Power of lessee to subject owner's interest to mechanics' lien. 23 L.R.A.(N.S.) 601.

As to similar provision in Cal. Civ. Code, § 1942, see *Moroney v. Hellings*, 110 Cal. 219, 42 Pac. 560.

§ 6092. Hiring of realty presumed for one year. A hiring of real property, other than lodgings, in places where there is no usage on the subject is presumed to be for one year from its commencement, unless otherwise expressed in the hiring. [R. C. 1905, § 5529; Civ. C. 1877, § 1116; R. C. 1899, § 4082.]

§ 6093. Of lodgings for rent term. A hiring of lodgings for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a weekly rate of rent is presumed to be for one week. In the absence of any agreement respecting the length of time of the rent the hiring is presumed to be monthly. [R. C. 1905, § 5530; Civ. C. 1877, § 1117; R. C. 1899, § 4083.]

§ 6094. When hiring presumed renewed. If a lessee of real property remains in possession thereof after the expiration of the hiring and the lessor accepts rent from him the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one year. [R. C. 1905, § 5531; Civ. C. 1877, § 1118; R. C. 1899, § 4084.]

Tenant holding over is liable for rent. *Hunter v. Karcher*, 8 S. D. 554, 67 N. W. 621.

Inapplicable to lessee holding over on three year lease with two year option. *Heffron v. Treber*, 21 S. D. 194, 130 Am. St. Rep. 711, 110 N. W. 781.

Demanding rent does not renew lease after service of notice to vacate. *Banbury v. Sherin*, 4 S. D. 88, 55 N. W. 723.

Acceptance of rent after term expires renews lease. *Field v. Mott*, 9 N. D. 621, 84 N. W. 555.

Lease is extended upon same terms for another year where landlord furnished seed and tenant planted crops after expiration of lease. *Wadsworth v. Owens*, 21 N. D. 255, 130 N. W. 932.

Implied renewal and continuance of leases and terms for which deemed renewed. 91 Am. Dec. 563.

As to similar provision in Cal. Civ. Code, § 1945, see *Corson v. Berson*, 86 Cal. 433, 25 Pac. 7.

§ 6095. Same when no term originally specified. A hiring of real property for a term not specified by the parties is deemed to be renewed as stated in the last section at the end of the term implied by law, unless one of the parties gives notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding one month. [R. C. 1905, § 5532; Civ. C. 1877, § 1119; R. C. 1899, § 4085.]

§ 6096. Rents, when payable. When there is no contract or usage to the contrary the rent of agricultural and wild lands is payable yearly at the end of each year. Rents of lodgings are payable monthly at the end of each month. Other rents are payable quarterly at the end of each quarter from the time the hiring takes effect. The rent for a hiring shorter than

the periods herein specified is payable at the termination of the hiring. [R. C. 1905, § 5533; Civ. C. 1877, § 1120; R. C. 1899, § 4086.]

§ 6097. Notice of adverse proceedings. Every tenant who receives notice of any proceeding to recover the real property occupied by him, or the possession thereof, must immediately inform his landlord of the same and also deliver to the landlord the notice, if in writing, and is responsible to the landlord for all damages which he may sustain by reason of any omission to inform him of the notice or to deliver it to him if in writing. The attornment of a tenant to a stranger is void, unless it is made with the consent of the landlord or in consequence of a judgment of a court of competent jurisdiction. [R. C. 1905, § 5534; Civ. C. 1877, § 1121; R. C. 1899, § 4087.]

Attornment by lessee, to avoid eviction, to stranger entitled to immediate possession, as defense in an action for rent. 18 L.R.A.(N.S.) 396.

§ 6098. Double letting of room prohibited. One who hires part of a room for a dwelling is entitled to the whole of the room, notwithstanding any agreement to the contrary; and if a landlord lets a room as a dwelling for more than one family, the person to whom he first lets any part of it is entitled to the possession of the whole room for the term agreed upon and every tenant in the building under the same landlord is relieved from all obligation to pay rent to him while such double letting of any room continues. [R. C. 1905, § 5535; Civ. C. 1877, § 1122; R. C. 1899, § 4088.]

§ 6099. Written notice before removal of property. Any person, firm, association or corporation occupying premises under a written lease, who fraudulently and clandestinely removes his or their goods, chattels or personal property from any leased or demised premises without first giving due notice to the landlord, his agent or duly authorized attorney, shall be deemed guilty of a misdemeanor. Any person, firm, association or corporation found guilty of a misdemeanor as provided in this section shall be punishable by a fine of not less than twenty dollars nor more than two hundred dollars, or by imprisonment in the county jail not less than ten days nor more than ninety days, or by both such fine and imprisonment. [R. C. 1905, § 5536; 1903, ch. 118.]

ARTICLE 3.—HIRING OF PERSONAL PROPERTY.

§ 6100. Obligations of letter of personalty. One who lets personal property must deliver it to the hirer, secure his quiet enjoyment thereof against all lawful claimants, put it into a condition fit for the purpose for which he lets it and repair all deteriorations thereof not occasioned by the fault of the hirer and not the natural result of its use. [R. C. 1905, § 5537; Civ. C. 1877, § 1123; R. C. 1899, § 4089.]

Implied warranty of horse or vehicle. 19 L.R.A. 283.

Duty of livery stable keeper as to character of horse. 25 L.R.A.(N.S.) 372.

Liability of owner for negligence of borrower or hirer of automobile. 33 L.R.A.(N.S.) 81.

Who is responsible for acts of driver furnished with a hired vehicle. 13 L.R.A.(N.S.) 1122; 16 L.R.A.(N.S.) 816; 25 L.R.A.(N.S.) 33; 38 L.R.A.(N.S.) 973.

§ 6101. Hirer bears ordinary expenses. A hirer of personal property must bear all such expenses concerning it as might naturally be foreseen to attend it during its use by him. All other expenses must be borne by the letter. [R. C. 1905, § 5538; Civ. C. 1877, § 1124; R. C. 1899, § 4090.]

§ 6102. Rights when section 6100 not complied with. If a letter fails to fulfill his obligations as prescribed by section 6100, the hirer after giving him notice to do so, if such notice can conveniently be given, may expend any reasonable amount necessary to make good the letter's default and may recover such amount from him. [R. C. 1905, § 5539; Civ. C. 1877, § 1125; R. C. 1899, § 4091.]

§ 6103. Return of thing hired. At the expiration of the term for which personal property is hired the hirer must return it to the letter at the place

contemplated by the parties at the time of hiring, or if no particular place was so contemplated by them, at the place at which it was at that time. [R. C. 1905, § 5540; Civ. C. 1877, § 1126; R. C. 1899, § 4092.]

Contract for use of horses and for their return to owner is one of hiring and not for transportation. *Schlusser v. Great Northern R. Co.*, 20 N. D. 406, 127 N. W. 502.

§ 6104. Charter party. The contract by which a ship is let is termed a charter party. By it the owner may either let the capacity or burden of the ship, continuing the employment of the owner's master, crew and equipments, or may surrender the entire ship to the charterer, who then provides them himself. The master or part owner may be a charterer. [R. C. 1905, § 5541; Civ. C. 1877, § 1127; R. C. 1899, § 4093.]

CHAPTER 62.

SERVICE.

- ARTICLE 1. DEFINITION OF EMPLOYMENT, § 6105.**
2. OBLIGATIONS OF THE EMPLOYER, §§ 6106-6108.
3. OBLIGATIONS OF THE EMPLOYEE, §§ 6109-6126.
4. TERMINATION OF EMPLOYMENT, §§ 6127-6133.

ARTICLE 1.— DEFINITION OF EMPLOYMENT.

§ 6105. Employment defined. The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or a third person. [R. C. 1905, § 5542; Civ. C. 1877, § 1128; R. C. 1899, § 4094.]

Injunction restraining employee from performance will excuse him. *Burkhardt v. Georgia School Twp.*, 9 S. D. 315, 69 N. W. 16.

When relation of master and servant exists. 22 Am. St. Rep. 459.

Payment of wages as test of existence of master and servant. 37 L.R.A. 38.

Which of two or more persons is the master of a third. 37 L.R.A. 33.

ARTICLE 2.— OBLIGATIONS OF THE EMPLOYER.

§ 6106. Indemnity to employee. An employer must indemnify his employee except as prescribed in the next section for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such or of his obedience to the directions of the employer, even though unlawful, unless the employee at the time of obeying such directions believed them to be unlawful. [R. C. 1905, § 5543; Civ. C. 1877, § 1129; R. C. 1899, § 4095.]

§ 6107. Ordinary risks. Coemployees. An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed, nor in consequence of the negligence of another person employed by the same employer in the same general business, unless he has neglected to use ordinary care in the selection of the culpable employee. [R. C. 1905, § 5544; Civ. C. 1877, § 1130; R. C. 1899, § 4096.]

Conductor and brakeman are fellow servants. *N. P. Railway Co. v. Hogan*, 63 Fed. 102, 11 C. C. A. 51.

The conductor of a train and a section foreman are coemployees. *Elliott v. Ry. Co.*, 6 D. 523, 41 N. W. 753, 3 L.R.A. 363.

Employee cannot recover for loss from ordinary risk of business. *McKeever v. Homestake Min. Co.*, 10 S. D. 599, 74 N. W. 1053.

Master must not only provide safe and proper machinery, but must place it in control of competent servants. *Gates v. C. M. & St. P. Ry. Co.*, 2 S. D. 422, 50 N. W. 907; *Gates v. C. M. & St. P. Ry. Co.*, 4 S. D. 433, 57 N. W. 200; *N. P. Ry. Co. v. Herbert*, 116 U. S. 642, 29 L. ed. 755, 6 S. Ct. R. 590.

Servant risks ordinary dangers of employment. *Herbert v. C. M. & St. P. Ry. Co.*, 3 D. 38, 13 N. W. 349.

Relation of fellow servants depends not upon relative ranks, but character of work. *Ell v. N. P. Ry. Co.*, 1 N. D. 336, 48 N. W. 222, 12 L.R.A. 97, 26 Am. St. Rep. 621.

Day laborer working on culvert under boss is fellow servant with engineer and conductor operating passenger train. *N. P. Ry. Co. v. Hambly*, 154 U. S. 349, 38 L. ed. 1009, 14 S. Ct. R. 983.

Employer having knowledge of latent hazard which servant does not know of, must notify servant. *Carlson v. Sioux Falls Water Co.*, 8 S. D. 47, 65 N. W. 419.

Duty of master to servant. 75 Am. St. Rep. 591.

Knowledge as element of employer's liability. 41 L.R.A. 33.

Different forms of statement of the general rule with respect to the master's duty as to places and appliances furnished to servant. 6 L.R.A.(N.S.) 602.

Duty of master to furnish safe means and appliances with which to work. 92 Am. Dec. 213; 21 Am. Rep. 579.

Applicability of rule as to safe place where the conditions of work are changing. 19 L.R.A.(N.S.) 340; 28 L.R.A.(N.S.) 1267.

Master's liability for injuries due to failure to make repairs. 59 Am. Rep. 75.

Liability for injuries to servant by defective machinery. 77 Am. Dec. 218; 34 Am. Rep. 621; 98 Am. St. Rep. 289.

Common practice as the measure of master's duty to guard machinery. 16 L.R.A.(N.S.) 140.

Duty to protect servant whose work requires exposure to cold. 70 L.R.A. 924.

Risks assumed by servant. 52 Am. Rep. 737.

Right of recovery by employes accepting extrahazardous duties. 97 Am. St. Rep. 884.

Injuries to servant in performance of duties outside scope of original employment. 48 L.R.A. 796.

Injuries received by servant in obeying a direct command. 48 L.R.A. 806.

Servant's assumption of risk in using unsafe horse or mule. 18 L.R.A.(N.S.) 695.

Volenti non fit injuria as a defense to actions by injured servants. 47 L.R.A. 162.

Continuing work on master's promise to remove a specific cause of danger; promise to repair. 40 L. R. A. 782.

Master's duty with respect to selection, employment and retention of fellow servants. 48 L.R.A. 369.

Duty of master to provide sufficient help. 48 L.R.A. 392; 17 L.R.A.(N.S.) 773; 40 L.R.A.(N.S.) 913.

Who are fellow servants. 67 Am. Dec. 588; 16 Am. Rep. 495; 53 Am. Rep. 45.

Liability of master for injuries caused by incompetency of fellow servant. 25 L.R.A. 710.

—for injuries due to the negligence or misconduct of a fellow servant. 36 Am. Dec. 279.

—for coservant's negligence in respect to defective machinery. 54 L.R.A. 172, 177.

Master's constructive knowledge as to capacity of servants as element of liability to injured servant. 41 L.R.A. 46, 53.

As to similar provision in Cal. Civ. Code, § 1970, see *McLean v. Blue Point Gravel Min. Co.*, 51 Cal. 255, 10 Mor. Min. Rep. 22; *Beeson v. Green Mountain Gold Min. Co.*, 57 Cal. 20, 13 Am. Neg. Cas. 461; *McKune v. California Southern R. Co.*, 66 Cal. 302, 5 Pac. 482, 13 Am. Neg. Cas. 364; *Kevern v. Providence Gold & S. Min. Co.*, 70 Cal. 392, 11 Pac. 740; *Stephens v. Doe*, 73 Cal. 26, 14 Pac. 378; *Congrave v. Southern P. R. Co.*, 88 Cal. 360, 26 Pac. 175, 13 Am. Neg. Cas. 316; *Daves v. Southern P. Co.*, 98 Cal. 19, 35 Am. St. Rep. 133, 32 Pac. 708, 13 Am. Neg. Cas. 367; *Livingston v. Kodiak Packing Co.*, 103 Cal. 258, 37 Pac. 149; *Gier v. Los Angeles Consol. Electric R. Co.*, 108 Cal. 129, 41 Pac. 22; *Donovan v. Ferris*, 128 Cal. 48, 79 Am. St. Rep. 25, 60 Pac. 519, 7 Am. Neg. Rep. 390.

§ 6108. Employer's negligence. An employer must in all cases indemnify his employe for losses caused by the former's want of ordinary care. [R. C. 1905, § 5545; Civ. C. 1877, § 1131; R. C. 1899, § 4097.]

As to care required of master to keep appliances in repair. *Meehan v. Great Northern R. Co.*, 13 N. D. 432, 101 N. W. 183.

May servant assume the risk of dangers created by the master's negligence. 4 L.R.A.(N.S.) 848; 28 L.R.A.(N.S.) 1215.

Servant's assumption of risk of master's breach of statutory duty. 6 L.R.A.(N.S.) 981; 19 L.R.A.(N.S.) 646; 22 L.R.A.(N.S.) 634; 33 L.R.A.(N.S.) 647.

Employe's right of action for employer's violation of statute not expressly conferring right. 9 L.R.A.(N.S.) 376.

As to similar provision in Cal. Civ. Code, § 1971, see *Gier v. Los Angeles Consol. Electric R. Co.*, 108 Cal. 129, 41 Pac. 22; *Matthews v. Bull*, 5 Cal. Unrep. 592, 47 Pac. 773.

ARTICLE 3.—OBLIGATIONS OF THE EMPLOYE.

§ 6109. Obligations of gratuitous employe. One who without consideration undertakes to do a service for another is not bound to perform the same, but if he actually enters upon its performance he must use at least slight

care and diligence therein. [R. C. 1905, § 5546; Civ. C. 1877, § 1132; R. C. 1899, § 4098.]

Undertaking employment without contract for compensation. *Harris v. State*, 9 S. D. 453, 69 N. W. 825.

§ 6110. **Same.** One who by his own special request induces another to intrust him with the performance of a service must perform the same fully. In other cases one who undertakes a gratuitous service may relinquish it at any time. [R. C. 1905, § 5547; Civ. C. 1877, § 1133; R. C. 1899, § 4099.]

§ 6111. **Same. Power of attorney.** A gratuitous employee who accepts a written power of attorney must act under it so long as it remains in force, or until he gives notice to his employer that he will not do so. [R. C. 1905, § 5548; Civ. C. 1877, § 1134; R. C. 1899, § 4100.]

§ 6112. **Duties of employee for reward.** One who for a good consideration agrees to serve another must perform the service and must use ordinary care and diligence therein so long as he is thus employed. [R. C. 1905, § 5549; Civ. C. 1877, § 1135; R. C. 1899, § 4101.]

Employee bound to use ordinary care and skill. *Morris v. Bank*, 13 S. D. 329, 83 N. W. 252, 50 L.R.A. 182.

§ 6113. **Employee for his own benefit.** One who is employed at his own request to do that which is more for his own advantage than for that of his employer must use great care and diligence therein to protect the interests of the latter. [R. C. 1905, § 5550; Civ. C. 1877, § 1136; R. C. 1899, § 4102.]

§ 6114. **Contract for personal services. Two years.** A contract to render personal service, other than a contract of apprenticeship, as provided in the chapter on master and servant, cannot be enforced against the employee beyond the term of two years from the commencement of service under it, but if the employee voluntarily continues his services under it beyond that time the contract may be referred to as affording a presumptive measure of the compensation. [R. C. 1905, § 5551; Civ. C. 1877, § 1137; R. C. 1899, § 4103.]

As to similar provision in Cal. Civ. Code, § 1980, see *Stone v. Bancroft*, 139 Cal. 78, 70 Pac. 1017, 72 Pac. 717.

§ 6115. **Must obey employer.** An employee must substantially comply with all the directions of his employer concerning the service on which he is engaged, even though contrary to the provisions of this and the two succeeding chapters, except when such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employee, or in case of an emergency, which, according to the best information which the employee can with reasonable diligence obtain, the employer did not contemplate, in which he cannot with reasonable diligence be consulted and in which non-compliance is judged by the employee in good faith and in the exercise of reasonable discretion to be absolutely necessary for the protection of the employer's interest. In all such cases the employee must conform as nearly to the directions of his employer as may be reasonably practicable, and most for the interest of the latter. [R. C. 1905, § 5552; Civ. C. 1877, § 1138; R. C. 1899, § 4104.]

Duty of servant to obey his master's orders. 24 L.R.A.(N.S.) 814.

§ 6116. **Conform to usage.** An employee must perform his service in conformity to the usage of the place of performance, unless otherwise directed by his employer, or unless it is impracticable, or manifestly injurious to his employer to do so. [R. C. 1905, § 5553; Civ. C. 1877, § 1139; R. C. 1899, § 4105.]

§ 6117. **Reasonable skill.** An employee is bound to exercise a reasonable degree of skill, unless his employer has notice before employing him of his want of skill. [R. C. 1905, § 5554; Civ. C. 1877, § 1140; R. C. 1899, § 4106.]

Bank bound to exercise reasonable degree of skill only in protesting note left for collection. *Morris v. Bank*, 13 S. D. 329, 83 N. W. 252, 50 L.R.A. 182.

Servant's liability for his own negligence or nonfeasance. 28 L.R.A. 433; 25 L.R.A.(N.S.) 343.

§ 6118. Use all skill possessed. An employe is bound to use such skill as he possesses so far as the same is required for the service specified. [R. C. 1905, § 5555; Civ. C. 1877, § 1141; R. C. 1899, § 4107.]

§ 6119. What belongs to employer. Everything which an employe acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully or during or after the expiration of the term of his employment. [R. C. 1905, § 5556; Civ. C. 1877, § 1142; R. C. 1899, § 4108.]

Agent employed by principal to effect purchase of land at owner's lowest price for commission of certain sum per acre may not act in employment of owner, and receive compensation therefor. *McGinty v. Reynolds*, 28 S. D. 248, 133 N. W. 281.

Respective rights of master and servant in intellectual work. 51 L.R.A. 359.

—in respect to the results of literary or artistic work performed by the employe. 5 L.R.A.(N.S.) 1187; 1 B. R. C. 324.

—with respect to things produced by the labor of the employe. 5 L.R.A.(N.S.) 1154.

—as to inventions by servant. 52 Am. St. Rep. 820.

§ 6120. Account to employer. An employe must on demand render to his employer just accounts of all his transactions in the course of his services as often as may be reasonable and must without demand give prompt notice to his employer of everything which he receives for his account. [R. C. 1905, § 5557; Civ. C. 1877, § 1143; R. C. 1899, § 4109.]

§ 6121. Not to deliver without demand. An employe, who receives anything on account of his employer in any capacity other than that of a mere servant, is not bound to deliver it to him until demanded, and is not at liberty to send it to him from a distance without demand in any mode involving greater risk than its retention by the employe himself. [R. C. 1905, § 5558; Civ. C. 1877, § 1144; R. C. 1899, § 4110.]

§ 6122. Employer's business to receive preference. An employe who has any business to transact on his own account similar to that intrusted to him by his employer must always give the latter the preference. If intrusted with similar affairs by different employers, he must give them preference according to their relative urgency, or, other things being equal, according to the order in which they were committed to him. [R. C. 1905, § 5559; Civ. C. 1877, § 1145; R. C. 1899, § 4111.]

Agent for collection of claim bound to give such collection preference over his personal claim against debtor. *Commercial Bank v. Bank*, 8 N. D. 382, 79 N. W. 859.

§ 6123. Ordinary care in selecting substitute. An employe who is expressly authorized to employ a substitute is liable to his principal only for want of ordinary care in his selection. The substitute is directly responsible to the principal. [R. C. 1905, § 5560; Civ. C. 1877, § 1146; R. C. 1899, § 4112.]

§ 6124. Liability for culpable negligence. An employe who is guilty of a culpable degree of negligence is liable to his employer for the damage thereby caused to the latter; and the employer is liable to him if the service is not gratuitous for the value of such services only as are properly rendered. [R. C. 1905, § 5561; Civ. C. 1877, § 1147; R. C. 1899, § 4113.]

Personal liability of servant for injury to fellow servant. 28 L.R.A. 440.

§ 6125. When surviving employe to act. When service is to be rendered by two or more persons jointly and one of them dies, the survivor must act alone if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise. [R. C. 1905, § 5562; Civ. C. 1877, § 1148; R. C. 1899, § 4114.]

§ 6126. Confidential employments. The obligations peculiar to confidential employments are defined in chapters 70 and 71. [R. C. 1905, § 5563; Civ. C. 1877, § 1149; R. C. 1899, § 4115.]

ARTICLE 4.—TERMINATION OF EMPLOYMENT.

§ 6127. What terminates employment. Every employment in which the power of the employe is not coupled with an interest in its subject is terminated by notice to him of:

1. The death of the employer; or,
2. His legal incapacity to contract.

Every employment is terminated:

1. By the expiration of its appointed term.
2. By the extinction of its subject.
3. By the death of the employe; or,
4. By his legal incapacity to act as such. [R. C. 1905, § 5564; Civ. C. 1877, § 1150; R. C. 1899, § 4116.]

Termination of contract of employment by the death of one of the parties. 23 L.R.A. 712; 5 L.R.A.(N.S.) 1002; 21 L.R.A.(N.S.) 914; 39 L.R.A.(N.S.) 1187.

Termination of contracts of employment which contain stipulations permitting rescission by the employer if the work is not satisfactorily performed. 12 L.R.A.(N.S.) 403; 23 L.R.A.(N.S.) 1003.

§ 6128. Continuance in certain cases. An employe, unless the term of his service has expired or unless he has a right to discontinue it at any time without notice, must continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employe for such service according to the terms of the contract of employment. [R. C. 1905, § 5565; Civ. C. 1877, § 1151; R. C. 1899, § 4117.]

§ 6129. At will on notice. An employment, having no specified term, may be terminated at the will of either party on notice to the other, except when otherwise provided by this chapter. [R. C. 1905, § 5566; Civ. C. 1877, § 1152; R. C. 1899, § 4118.]

§ 6130. For willful breach of duty or incapacity. An employment, even for a specified term, may be terminated at any time by the employer in case of any willful breach of duty by the employe in the course of his employment or in case of his habitual neglect of his duty or continued incapacity to perform it. [R. C. 1905, § 5567; Civ. C. 1877, § 1153; R. C. 1899, § 4119.]

Breach of duty by servant as good cause for his discharge. 5 L.R.A.(N.S.) 1176.

Disobedience of regulations as. 37 L.R.A.(N.S.) 950.

Intoxication as justification for discharge. 38 L.R.A.(N.S.) 339.

Condonation of servant's breach of duty. 8 L.R.A.(N.S.) 1004.

§ 6131. For breach of employer's obligations. Any employment, even for a specified term, may be terminated by the employe at any time in case of any willful or permanent breach of the obligations of his employer to him as an employe. [R. C. 1905, § 5568; Civ. C. 1877, § 1154; R. C. 1899, § 4120.]

§ 6132. Compensation when dismissed for cause. An employe dismissed by his employer for good cause is not entitled to any compensation for services rendered since the last day upon which a payment became due to him under the contract. [R. C. 1905, § 5569; Civ. C. 1877, § 1155; R. C. 1899, § 4121.]

Rights and remedies of servant discharged for good cause. 5 L.R.A.(N.S.) 524.

Servant's right to compensation in case of incomplete performance of his contract or dismissal by master because of physical disability. 28 L.R.A.(N.S.) 318.

§ 6133. Compensation when employe quits for cause. An employe who quits the service of his employer for good cause is entitled to such proportion of the compensation which would become due in case of full performance, as the services which he has already rendered bear to the services which he was to render as full performance. [R. C. 1905, § 5570; Civ. C. 1877, § 1156; R. C. 1899, § 4122.]

Servant may recover value of services rendered, though term not completed. *Bedow v. Tonkin*, 5 S. D. 432, 59 N. W. 222; *McClellan v. Harris*, 7 S. D. 447, 64 N. W. 522.

Upon employer's termination of special contract, employe can recover value of work and material. *Caldwell v. Myers*, 2 S. D. 506, 51 N. W. 210.

Injunction restraining performance of contract with school board for removal of schoolhouse will excuse from performance. *Burkhardt v. Georgia School Twp.*, 9 S. D. 315, 69 N. W. 16.

Remedies of servant wrongfully discharged. 43 Am. Dec. 205; 58 Am. Rep. 828; 51 Am. St. Rep. 515.

Remedy of wrongfully discharged servant with respect to services actually rendered. 5 L.R.A.(N.S.) 579.

Right of wrongfully discharged servant to recover wages for contract period subsequent to discharge. 5 L.R.A.(N.S.) 439; 28 L.R.A.(N.S.) 577.

Remedy of wrongfully discharged servant by action for damages for breach of contract. 6 L.R.A.(N.S.) 50.

CHAPTER 63.

PARTICULAR EMPLOYMENTS.

ARTICLE 1. MASTER AND SERVANT, §§ 6134-6140.

2. AGENTS, §§ 6141-6144.

3. FACTORS, §§ 6145-6149.

4. SHIPMASTERS, §§ 6150-6160.

5. MATES AND SEAMEN, §§ 6161-6179.

6. SHIP'S MANAGERS, §§ 6180-6182.

ARTICLE 1.—MASTER AND SERVANT.

§ 6134. Servant defined. A servant is one who is employed to render personal service to his employer, otherwise than in pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master. [R. C. 1905, § 5571; Civ. C. 1877, § 1157; R. C. 1899, § 4123.]

On distinction between servants and independent contractors. *Cochran v. Rice*, 26 S. D. 393, 128 N. W. 583, Ann. Cas. 1913B, 570.

Liability of master for servant's tort. *Curtis v. Dineen*, 4 D. 245, 30 N. W. 148.

Allegation of complaint as to manner of employment not denied by answer stands admitted. *Calkins v. Min. Co.*, 5 S. D. 299, 58 N. W. 797.

As to similar provision in Cal. Civ. Code, § 2009, see *White v. Alameda*, 124 Cal. 95, 56 Pac. 795; *Hedge v. Williams*, 131 Cal. 455, 82 Am. St. Rep. 366, 63 Pac. 721, 64 Pac. 106.

§ 6135. Hiring presumed to be for wage-term. A servant is presumed to be hired for such length of time as the parties shall agree upon. A hiring at a monthly rate is to be presumed to be for one month or such number of months as may be agreed upon. A hiring for the season shall be presumed to be from the date of such hiring to November first of the year of such hiring. A hiring at a yearly rate is presumed to be for one year. A hiring at a daily rate shall be presumed to be an entire contract for as many days as the parties agree upon, and such contract shall not be presumed to be for one day. A hiring by piece work, for no specified time. [1907, ch. 173; R. C. 1905, § 5572; Civ. C. 1877, § 1158; R. C. 1899, § 4124.]

§ 6136. Month presumed. In the absence of any agreement or custom as to the rate or value of wages the term of service or the time of payment, a servant is presumed to be hired by the month at a monthly rate of reasonable wages, to be paid when the service is performed. [R. C. 1905, § 5573; Civ. C. 1877, § 1159; R. C. 1899, § 4125.]

As to similar provision in Cal. Civ. Code, § 2011, see *White v. Alameda*, 124 Cal. 95, 56 Pac. 795.

§ 6137. Renewal for same term and wages presumed. When after the expiration of an agreement respecting the wages and the term of service the parties continue the relation of master and servant, they are presumed to

have renewed the agreement for the same wages and term of service. [R. C. 1905, § 5574; Civ. C. 1877, § 1160; R. C. 1899, § 4126.]

§ 6138. Time belongs to whom. The entire time of a domestic servant belongs to the master and the time of other servants, to such extent as is usual in the business in which they serve, not exceeding in any case ten hours in a day. [R. C. 1905, § 5575; Civ. C. 1877, § 1161; R. C. 1899, § 4127.]

Servant's duty to obey master's orders as to hours of labor. 24 L.R.A.(N.S.) 831.
Constitutionality of statute limiting hours of labor. 19 L.R.A. 141; 21 L.R.A. 796; 65 L.R.A. 38; 12 L.R.A.(N.S.) 1130; 26 L.R.A.(N.S.) 242; 35 L.R.A.(N.S.) 628; 40 L.R.A.(N.S.) 893.

§ 6139. Must account to master. A servant must deliver to his master, as soon as with reasonable diligence he can find him, everything that he receives for his account without demand; but he is not bound without orders from his master to send anything to him through another person. [R. C. 1905, § 5576; Civ. C. 1877, § 1162; R. C. 1899, § 4128.]

§ 6140. Causes for discharge. A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

1. If he is guilty of misconduct in the course of his service or of gross immorality, though unconnected with the same; or,

2. If, being employed about the person of the master or in a confidential position, the master discovers that he has been guilty of misconduct before or after the commencement of his service of such a nature that if the master had known or contemplated it, he would not have so employed him. [R. C. 1905, § 5577; Civ. C. 1877, § 1163; R. C. 1899, § 4129.]

Intoxication as justification for discharge of servant. 38 L.R.A.(N.S.) 339.

Discharge because of absence without leave. 55 Am. Rep. 717.

ARTICLE 2.—AGENTS.

§ 6141. Must not exceed authority. An agent must not exceed the limits of his actual authority as defined by the chapters on agency. [R. C. 1905, § 5578; Civ. C. 1877, § 1164; R. C. 1899, § 4130.]

§ 6142. Keep principal informed. An agent must use ordinary diligence to keep his principal informed of his acts in the course of the agency. [R. C. 1905, § 5579; Civ. C. 1877, § 1165; R. C. 1899, § 4131.]

§ 6143. Duty as collector of negotiable instrument. An agent employed to collect a negotiable instrument must collect it promptly and take all measures necessary to charge the parties thereto in case of its dishonor, and, if it is a bill of exchange, must present it for acceptance with reasonable diligence. [R. C. 1905, § 5580; Civ. C. 1877, § 1166; R. C. 1899, § 4132.]

§ 6144. Responsibility of subagent. A mere agent of an agent is not responsible as such to the principal of the latter. [R. C. 1905, § 5581; Civ. C. 1877, § 1167; R. C. 1899, § 4133.]

Subagents and their relation to the principal and to the agent appointing them. 50 Am. St. Rep. 110.

ARTICLE 3.—FACTORS.

§ 6145. Defined. A factor is an agent who in the pursuit of an independent calling is employed by another to sell property for him and is vested by the latter with the possession or control of the property or authorized to receive payment therefor from the purchaser. [R. C. 1905, § 5582; Civ. C. 1877, § 1168; R. C. 1899, § 4134.]

Factor may buy and sell in his own name as well as in name of principal. *Turner v. Crumpton*, 21 N. D. 294, 130 N. W. 937.

Definition and distinctive features of factors. 58 Am. Dec. 158.

When title of goods vested in factor. 45 Am. St. Rep. 203.

Who must bear loss where merchandise broker receives purchase price and fails to pay over same to seller. 8 L.R.A.(N.S.) 474.

Consignments by foreign corporation to factors as doing business within state. 18 L.R.A.(N.S.) 138.

Right of factor to whom goods are consigned to maintain action against carrier. 26 L.R.A.(N.S.) 437; 36 L.R.A.(N.S.) 72.

As to similar provision in Cal. Civ. Code, § 2026, see *Wisp v. Hazard*, 66 Cal. 459, 6 Pac. 91.

§ 6146. **Must obey instructions. Exception.** A factor must obey the instructions of his principal to the same extent as any other employe, notwithstanding any advances he may have made to his principal upon the property consigned to him except that, if the principal forbids him to sell at the market price, he may nevertheless sell for his reimbursement after giving to his principal reasonable notice of his intention to do so and of the time and place of sale and proceeding in all respects as a pledgee. [R. C. 1905, § 5583; Civ. C. 1877, § 1169; R. C. 1899, § 4135.]

§ 6147. **Give usual credit.** A factor may sell property consigned to him on such credit as is usual, but, having once agreed with the purchaser upon the terms of credit, may not extend it. [R. C. 1905, § 5584; Civ. C. 1877, § 1170; R. C. 1899, § 4136.]

To what extent advances by a factor create a debt against the principal. 5 L.R.A.(N.S.) 1147.

§ 6148. **Liability under guarantee commission.** A factor who charges his principal with a guarantee commission upon a sale thereby assumes absolutely to pay the price when it falls due as if it was a debt of his own and not as a mere guarantor for the purchaser; but he does not thereby assume any additional responsibility for the safety of his remittance of the proceeds. [R. C. 1905, § 5585; Civ. C. 1877, § 1171; R. C. 1899, § 4137.]

§ 6149. **How agreement to guarantee released.** A factor who receives property for sale under a general agreement or usage to guarantee the sale or the remittance of the proceeds cannot relieve himself from responsibility therefor without the consent of his principal. [R. C. 1905, § 5586; Civ. C. 1877, § 1172; R. C. 1899, § 4138.]

ARTICLE 4.—SHIPMASTERS.

§ 6150. **Appointed by owner.** The master of a ship is appointed by the owner and holds during his pleasure. The word "ship" as used in this code shall be construed to mean any boat, vessel or structure fitted for navigation. [R. C. 1905, § 5587; Civ. C. 1877, § 1173; R. C. 1899, § 4139.]

§ 6151. **When master to be on board.** The master of a ship is bound to be always on board when entering or leaving port. The word "port" as used in this code shall be construed to mean any place on a navigable river or lake where a vessel lands to receive or put off freight or passengers or for any other purpose and when a vessel has made a landing it is said to be in port. [R. C. 1905, § 5588; Civ. C. 1877, § 1174; R. C. 1899, § 4140.]

§ 6152. **Taking pilot.** Before leaving a port the master of a ship must take a pilot on board and the navigation of the vessel devolves on him. [R. C. 1905, § 5589; Civ. C. 1877, § 1175; R. C. 1899, § 4141.]

Liability of pilot to owner of vessel hiring him, for damage caused by his fault. 14 L.R.A.(N.S.) 1114.

§ 6153. **Power over seamen.** The master of a ship may enforce the obedience of the mate and crew to his lawful commands by confinement and other reasonable corporal punishment not prohibited by law, being responsible for the abuse of his power. [R. C. 1905, § 5590; Civ. C. 1877, § 1176; R. C. 1899, § 4142.]

Seaman's duty of obedience to master. 24 L.R.A.(N.S.) 821.

§ 6154. **Power over passengers.** The master of a ship may confine any person on board during a voyage for willful disobedience to his lawful command. [R. C. 1905, § 5591; Civ. C. 1877, § 1177; R. C. 1899, § 4143.]

§ 6155. **May take private supplies.** If during a voyage the ship's supplies fail the master, with the advice of the officers, may compel persons who have private supplies on board to surrender them for the common want on pay-

ment of their value or giving security therefor. [R. C. 1905, § 5592; Civ. C. 1877, § 1178; R. C. 1899, § 4144.]

§ 6156. When may abandon ship. The master of a ship must not abandon it during the voyage without the advice of the other officers. [R. C. 1905, § 5593; Civ. C. 1877, § 1179; R. C. 1899, § 4145.]

§ 6157. On abandonment must take away valuables. The master of a ship upon abandoning it must carry with him so far as it is in his power the money and the most valuable of the goods on board under penalty of being personally responsible. If the articles thus taken are lost from causes beyond his control he is exonerated from liability. [R. C. 1905, § 5594; Civ. C. 1877, § 1180; R. C. 1899, § 4146.]

§ 6158. Cannot trade on his own account. The master of a ship who engages for a common profit on the cargo must not trade on his own account and if he does he must account to his employer for all profits thus made by him. [R. C. 1905, § 5595; Civ. C. 1877, § 1181; R. C. 1899, § 4147.]

§ 6159. Great care and diligence. The master of a ship must use great care and diligence in the performance of his duties and is responsible for all damage occasioned by his negligence, however slight. [R. C. 1905, § 5596; Civ. C. 1877, § 1182; R. C. 1899, § 4148.]

§ 6160. Chapter 73 applies. The authority and liability of the master of a ship as an agent for the owners of the ship and cargo are regulated by chapter 73. [R. C. 1905, § 5597; Civ. C. 1877, § 1183; R. C. 1899, § 4149.]

ARTICLE 5.—MATES AND SEAMEN.

§ 6161. Mate defined. The mate of a ship is the officer next in command to the master. [R. C. 1905, § 5598; Civ. C. 1877, § 1184; R. C. 1899, § 4150.]

§ 6162. Seamen defined. All persons employed in the navigation of a ship or upon a voyage, other than the master and mate, are to be deemed seamen within the provisions of this code. [R. C. 1905, § 5599; Civ. C. 1877, § 1185; R. C. 1899, § 4151.]

§ 6163. Engaged by master. Cause for discharge. The mate and seamen of a ship are engaged by the master and may be discharged by him at any period of the voyage for willful and persistent disobedience or gross disqualification, but cannot otherwise be discharged before the termination of the voyage. [R. C. 1905, § 5600; Civ. C. 1877, § 1186; R. C. 1899, § 4152.]

§ 6164. Unseaworthy vessel. A mate or seaman is not bound to go on a voyage in a ship that is not seaworthy; and if there is reasonable doubt of its seaworthiness he may refuse to proceed until a proper survey has been had. [R. C. 1905, § 5601; Civ. C. 1877, § 1187; R. C. 1899, § 4153.]

§ 6165. Agreement to abandon wages or lien void. A seaman cannot by reason of any agreement be deprived of his lien upon the ship or of any remedy for the recovery of his wages to which he would otherwise have been entitled. Any stipulation by which he consents to abandon his right to wages in case of the loss of a ship or to abandon any right he may have or obtain in the nature of salvage is void. [R. C. 1905, § 5602; Civ. C. 1877, § 1188; R. C. 1899, § 4154.]

Maritime lien for wages. 70 L.R.A. 364.

Compensation in nature of salvage. 64 L.R.A. 200.

§ 6166. When special agreement of seamen is binding. No special agreement entered into by a seaman can impair any of his rights or add to any of his obligations as defined by law, unless he fully understands the effect of the agreement and receives a fair compensation therefor. [R. C. 1905, § 5603; Civ. C. 1877, § 1189; R. C. 1899, § 4155.]

§ 6167. When wages due. Except as hereinafter provided the wages of seamen are due when and so far only as freightage is earned, unless the loss

of freightage is owing to the fault of the owner or master. [R. C. 1905, § 5604; Civ. C. 1877, § 1190; R. C. 1899, § 4156.]

§ 6168. When wages begin. The right of a mate or seaman to wages and provisions begins either from the time he begins work, or from the time specified in the agreement for his beginning work, or from his presence on board, whichever first happens. [R. C. 1905, § 5605; Civ. C. 1877, § 1191; R. C. 1899, § 4157.]

§ 6169. Wages when voyage broken up. When a voyage is broken up before departure of the ship, the seamen must be paid for the time they have served and may retain for their indemnity such advances as they have received. [R. C. 1905, § 5606; Civ. C. 1877, § 1192; R. C. 1899, § 4158.]

§ 6170. Full wages when wrongfully discharged. When a mate or seaman is wrongfully discharged or is driven to leave the ship by the cruelty of the master on the voyage, it is then ended with respect to him and he may thereupon recover his full wages. [R. C. 1905, § 5607; Civ. C. 1877, § 1193; R. C. 1899, § 4159.]

§ 6171. Wages after loss or wreck. In case of loss or wreck of the ship a seaman is entitled to his wages up to the time of the loss or wreck, whether freightage has been earned or not, if he exerts himself to the utmost to save the ship, cargo and stores. [R. C. 1905, § 5608; Civ. C. 1877, § 1194; 1899, § 4160.]

§ 6172. Certificate of master, evidence. A certificate from the master or chief surviving officer of a ship to the effect that a seaman exerted himself to the utmost to save the ship, cargo and stores is presumptive evidence of the fact. [R. C. 1905, § 5609; Civ. C. 1877, § 1195; R. C. 1899, § 4161.]

§ 6173. Wages when disabled without fault. When a mate or seaman is prevented from rendering service by illness or injury, incurred without his fault, in the discharge of his duty on the voyage or by being wrongfully discharged, or by a capture of the ship he is entitled to wages notwithstanding. [R. C. 1905, § 5610; Civ. C. 1877, § 1196; R. C. 1899, § 4162.]

§ 6174. Expenses of sickness borne by ship. If a mate or seaman becomes sick or disabled during the voyage without his fault, the expenses of furnishing him with suitable medical advice, medicine, attendance and other provisions for his wants must be borne by the ship until the close of the voyage. [R. C. 1905, § 5611; Civ. C. 1877, § 1197; R. C. 1899, § 4163.]

Duty to furnish medical aid to sick or injured seamen. 28 L.R.A. 549; 4 L.R.A.(N.S.) 49.

Duty and obligation of vessel on inland lake or river in respect of sick or injured member of crew. 35 L.R.A.(N.S.) 199.

§ 6175. Wages to time of death. If a mate or seaman dies during the voyage, his personal representatives are entitled to his wages to the time of his death, if he would have been entitled to them had he lived to the end of the voyage. [R. C. 1905, § 5612; Civ. C. 1877, § 1198; R. C. 1899, § 4164.]

§ 6176. Desertion, etc., forfeits wages. Desertion of the ship without cause, or a justifiable discharge by the master during the voyage for misconduct, or a theft of any part of the cargo or appurtenances of the ship, or a willful injury thereto or to the ship forfeits all wages due for the voyage to a mate or seaman thus in fault. [R. C. 1905, § 5613; Civ. C. 1877, § 1199; R. C. 1899, § 4165.]

§ 6177. Cannot ship goods. A mate or seaman may not under any pretext ship goods on his own account without permission from the master. [R. C. 1905, § 5614; Civ. C. 1877, § 1200; R. C. 1899, § 4166.]

§ 6178. Embezzlement or injury made good. If any part of the cargo or appurtenances of a ship is embezzled or injured by the mate or a seaman, the offender, or if it is not known which is the offender, all those of whom negligence or fault may be presumed must make good the loss. [R. C. 1905, § 5615; Civ. C. 1877, § 1201; R. C. 1899, § 4167.]

§ 6179. **Further regulations.** The shipment of officers and seamen and their rights and duties are further regulated by law. [R. C. 1905, § 5616; Civ. C. 1877, § 1202; R. C. 1899, § 4168.]

ARTICLE 6.—SHIP'S MANAGERS.

§ 6180. **Defined.** The general agent for the owners in respect to the care of a ship and freight is called the manager; if he is a part owner he is also called the managing owner. [R. C. 1905, § 5617; Civ. C. 1877, § 1203; R. C. 1899, § 4169.]

§ 6181. **Duties of.** Unless otherwise directed, it is the duty of the manager of a ship to provide for the complete seaworthiness of the ship; to take care of it in port; to see that it is provided with necessary papers, with a proper master, mate and crew and supplies of provisions and stores. [R. C. 1905, § 5618; Civ. C. 1877, § 1204; R. C. 1899, § 4170.]

§ 6182. **Managing owner.** A managing owner is presumed to have no right to compensation for his own services. [R. C. 1905, § 5619; Civ. C. 1877, § 1205; R. C. 1899, § 4171.]

CHAPTER 64.

SERVICE WITHOUT EMPLOYMENT.

§ 6183. **No compensation. Expenses allowed.** One who officiously and without consent of the real or apparent owner of a thing takes it into his possession for the purpose of rendering a service about it must complete such service and use ordinary care, diligence and reasonable skill about the same. He is not entitled to any compensation for his service or expenses, except that he may deduct actual and necessary expenses incurred by him about such service from any profits which his service has caused the thing to acquire for its owner and must account to the owner for the residue. [R. C. 1905, § 5620; Civ. C. 1877, § 1206; R. C. 1899, § 4172.]

§ 6184. **Salvage.** Any person, other than the master, mate or seaman thereof, who rescues a ship, her appurtenances or cargo from danger is entitled to a reasonable compensation therefor, to be paid out of the property saved. He has lien for such claim which is regulated by chapters 86 and 99. [R. C. 1905, § 5621; Civ. C. 1877, § 1207; R. C. 1899, § 4173.]

Rights of seamen as salvors. 64 L.R.A. 193.
Maritime lien for salvage. 70 L.R.A. 368, 376.

CHAPTER 65.

CARRIAGE IN GENERAL.

§ 6185. **Contract for defined.** The contract of carriage is a contract for the conveyance of property, persons or messages from one place to another. [R. C. 1905, § 5622; Civ. C. 1877, § 1208; R. C. 1899, § 4174.]

§ 6186. **Classified.** Carriage is either:

1. Inland; or,

2. Marine. [R. C. 1905, § 5623; Civ. C. 1877, § 1209; R. C. 1899, § 4175.]

§ 6187. **Classes defined.** Carriers upon the ocean, upon arms of the sea, upon the great lakes or such other navigable waters or rivers as are within the admiralty jurisdiction of the United States are marine carriers. All others are inland carriers. [R. C. 1905, § 5624; Civ. C. 1877, § 1210; R. C. 1899, § 4176.]

§ 6188. **Carriers by sea.** Rights and duties peculiar to carriers by sea are defined by acts of congress. [R. C. 1905, § 5625; Civ. C. 1877, § 1211; R. C. 1899, § 4177.]

§ 6189. Carriers without reward. Carriers without reward are subject to the same rules as employes without reward, except so far as is otherwise provided by the following chapters on carriage. [R. C. 1905, § 5626; Civ. C. 1877, § 1212; R. C. 1899, § 4178.]

§ 6190. Same. Must complete carriage. A carrier without reward, who has begun to perform his undertaking, must complete it in like manner as if he had received a reward, unless he restores the person or thing carried to as favorable a position as before he commenced the carriage. [R. C. 1905, § 5627; Civ. C. 1877, § 1213; R. C. 1899, § 4179.]

CHAPTER 66.

CARRIAGE OF PERSONS.

- ARTICLE 1. GRATUITOUS CARRIAGE OF PERSONS, § 6191.
2. CARRIAGE FOR REWARD, §§ 6192-6196.

ARTICLE 1.—GRATUITOUS CARRIAGE OF PERSONS.

§ 6191. Must use ordinary care. A carrier of persons without reward must use ordinary care and diligence for their safe carriage. [R. C. 1905, § 5628; Civ. C. 1877, § 1214; R. C. 1899, § 4180.]

ARTICLE 2.—CARRIAGE FOR REWARD.

§ 6192. Utmost care and diligence. A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose and must exercise to that end a reasonable degree of skill. [R. C. 1905, § 5629; Civ. C. 1877, § 1215; R. C. 1899, § 4181.]

Care and skill which carriers of passengers must exercise with respect to their roads. 37 Am. Rep. 749.

Duty and liability of proprietor of public hack or cab to passengers. 5 L.R.A.(N.S.) 1069.

Liability of proprietor of private railroad for injuries sustained by one other than an employe while being carried thereon. 12 L.R.A.(N.S.) 131; 22 L.R.A.(N.S.) 190.

Liability for injury to passenger by negligent operation of automobile. 21 L.R.A.(N.S.) 81; 35 L.R.A.(N.S.) 658.

Liability of sleeping car company for personal injuries to passengers. 21 L.R.A. 296; 26 Am. St. Rep. 331.

Liability of sleeping-cars, for theft of property of passengers. 56 Am. Rep. 850.

Liability of carrier for personal injury to passenger struck by sparks or cinders escaping from locomotive. 18 L.R.A.(N.S.) 241.

Presumption of negligence from injury to passenger by collision. 13 L.R.A.(N.S.) 608; 29 L.R.A.(N.S.) 812.

As to similar provision in Cal. Civ. Code, § 2100, see *MacDougall v. Central R. Co.*, 63 Cal. 431, 2 Am. Neg. Cas. 173; *Fisher v. Southern P. R. Co.*, 89 Cal. 399, 26 Pac. 894, 9 Am. Neg. Cas. 104; *Osgood v. Los Angeles Traction Co.*, 137 Cal. 280, 92 Am. St. Rep. 171, 70 Pac. 169.

§ 6193. Must use safe vehicles. A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put, and is not excused for default in this respect by any degree of care. [R. C. 1905, § 5630; Civ. C. 1877, § 1216; R. C. 1899, § 4182.]

Liability for injuries to passengers resulting from defects in vehicles and other appliances. 64 Am. Dec. 521.

Duty of railroad carrier in respect to furnishing proper cars for passengers. 31 L.R.A. 313.

Liability for injury to passenger by latent defect in car. 15 L.R.A.(N.S.) 790.

Liability to passenger on account of unsanitary condition of car. 26 L.R.A.(N.S.) 263.

Liability to postal clerk for failure to keep car in proper condition. 3 L.R.A.(N.S.) 218; 26 L.R.A.(N.S.) 1058.

Duty to keep steps of cars free from snow and ice. 15 L.R.A.(N.S.) 523; 35 L.R.A.(N.S.) 592.

Injury to passenger from door of vehicle. 39 L.R.A.(N.S.) 678.

Duty to heat cars. 42 L.R.A. 110.

Duty to protect passenger from cold. 11 L.R.A.(N.S.) 1142.

Duty of steamship company to passengers as to condition of decks. 33 L.R.A.(N.S.) 532.

As to similar provision in Cal. Civ. Code, § 2101, see *Fisher v. Southern P. R. Co.*, 89 Cal. 399, 26 Pac. 894, 9 Am. Neg. Cas. 104.

§ 6194. Must not overload. A carrier of persons for reward must not overcrowd or overload his vehicles. [R. C. 1905, § 5631; Civ. C. 1877, § 1217; R. C. 1899, § 4183.]

Right of passenger to seat. 22 L.R.A. 259; 136 Am. St. Rep. 312.

Liability of steamship company for failure to supply berth. 5 L.R.A.(N.S.) 1012.

Injuries received on crowded railroad trains. 24 L.R.A. 710.

Injuries on crowded street cars. 24 L.R.A. 712.

Duty to passenger on overcrowded street car. 4 L.R.A.(N.S.) 399.

§ 6195. Treatment of passengers. A carrier of persons for reward must give to passengers all such accommodations as are usual and are reasonable, must treat them with civility and give them a reasonable degree of attention. [R. C. 1905, § 5632; Civ. C. 1877, § 1218; R. C. 1899, § 4184.]

Assault on passenger. 28 Am. Rep. 112; 32 Am. St. Rep. 90.

—by employees. 32 L.R.A.(N.S.) 1201; 42 Am. Rep. 36.

Liability for insults, threats and obscene language of employees towards passengers. 14 L.R.A. 739.

—for mental suffering of passenger from mere verbal abuse unaccompanied by other breach of duty. 13 L.R.A.(N.S.) 159.

—for willful torts of servants to passengers. 40 L.R.A.(N.S.) 999.

—for acts of special police officer appointed by public authority. 23 L.R.A.(N.S.) 289; 30 L.R.A.(N.S.) 481; 39 L.R.A.(N.S.) 122.

How far carrier's liability affected by misconduct of passenger. Antecedent violence of passenger. 40 L.R.A.(N.S.) 1070.

Liability of for personal injuries inflicted on passengers by third persons. 6 Am. St. Rep. 734.

Liability of steamship for malicious acts of servants towards passengers. 4 L.R.A.(N.S.) 494.

§ 6196. Must travel at reasonable speed. A carrier of persons for reward must travel at a reasonable rate of speed and without any unreasonable delay or deviation from his proper route. [R. C. 1905, § 5633; Civ. C. 1877, § 1219; R. C. 1899, § 4185.]

CHAPTER 67.

CARRIAGE OF PROPERTY.

ARTICLE 1. GENERAL DEFINITIONS, § 6197.

2. OBLIGATIONS OF THE CARRIER, §§ 6198-6208.

3. BILL OF LADING, §§ 6209-6215.

4. FREIGHTAGE, §§ 6216-6224.

5. GENERAL AVERAGE, §§ 6225-6234.

ARTICLE 1.—GENERAL DEFINITIONS.

§ 6197. Freight, freightage, consignor and consignee defined. Property carried is called freight; the reward, if any, to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor and the person to whom it is to be delivered is called the consignee. [R. C. 1905, § 5634; Civ. C. 1877, § 1220; R. C. 1899, § 4186.]

ARTICLE 2.—OBLIGATIONS OF THE CARRIER.

§ 6198. Ordinary care for reward; without reward slight. A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties. A carrier without reward must use at least slight care and diligence. [R. C. 1905, § 5635; Civ. C. 1877, § 1221; R. C. 1899, § 4187.]

§ 6199. Must comply with directions. A carrier must comply with the directions of the consignor or consignee to the same extent that an employee is bound to comply with those of his employer. [R. C. 1905, § 5636; Civ. C. 1877, § 1222; R. C. 1899, § 4188.]

§ 6200. Conflicting directions. When the directions of a consignor and consignee are conflicting the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with his own. [R. C. 1905, § 5637; Civ. C. 1877, § 1223; R. C. 1899, § 4189.]

§ 6201. Storage by marine carrier. Deviation. A marine carrier must not stow freight upon deck during the voyage, except when it is usual to do so, nor make any improper deviation from or delay in the voyage, nor do any other unnecessary act which would avoid an insurance in the usual form upon the freight. [R. C. 1905, § 5638; Civ. C. 1877, § 1224; R. C. 1899, § 4190.]

Effect of deviation upon rights and liabilities of carriers. 2 B. R. C. 587.

Effect of deviation on carrier's right to avail itself of provisions of special contract of affreightment. 35 L.R.A.(N.S.) 1046.

§ 6202. Manner of delivery. A carrier of property must deliver it to the consignee at the place to which it is addressed in the manner usual at that place. [R. C. 1905, § 5639; Civ. C. 1877, § 1225; R. C. 1899, § 4191.]

Liability of railroad company for malicious refusal of freight agent to deliver freight. 7 L.R.A.(N.S.) 926.

Liability of connecting carrier for detaining freight on account of mistake as to amount due. 32 L.R.A.(N.S.) 189.

Payment or tender of freight charges as a condition precedent to an action of trover against carrier. 21 L.R.A. 117.

Duty of on adverse claim being made to goods. 34 Am. St. Rep. 731.

When delivery of goods excused by their seizure under process. 34 Am. St. Rep. 735.

§ 6203. Place of delivery, when no usage. If there is no usage to the contrary at the place of delivery freight must be delivered as follows:

1. If carried upon a railway owned and managed by the carrier it may be delivered at the station nearest the place to which it is addressed.

2. If carried by sea from a foreign country it may be delivered at the wharf where the ship moors within a reasonable distance from the place of address; or if there is no wharf, on board a lighter alongside the ship; or,

3. In other cases it must be delivered to the consignee or his agent personally, if either can with reasonable diligence be found. [R. C. 1905, § 5640; Civ. C. 1877, § 1226; R. C. 1899, § 4192.]

Right of shipper to demand a redelivery of property at intermediate point. 15 L.R.A.(N.S.) 756.

Duty of carrier to deliver car at consignee's place of business. 41 L.R.A.(N.S.) 678.

To whom delivery of goods by, may be made, and liability for delivery to wrong person. 9 Am. St. Rep. 511.

As to similar provision in Cal. Civ. Code, § 2119, see *Hirshfield v. Central P. R. Co.*, 56 Cal. 484; *Wilson v. California C. R. Co.*, 94 Cal. 166, 17 L.R.A. 685, 29 Pac. 861.

§ 6204. Notice to consignee. When carrier becomes warehouseman. If for any reason a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival and keep the same in safety upon his responsibility as a warehouseman until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee is unknown to the carrier, he may give the notice by letter dropped in the nearest post office. [R. C. 1905, § 5641; Civ. C. 1877, § 1227; R. C. 1899, § 4193.]

Duty of express company with respect to property awaiting delivery at destination. 14 L.R.A.(N.S.) 393.

Necessity of notice of arrival of goods to reduce liability of carrier to that of warehouseman. 18 L.R.A.(N.S.) 427.

Absence of consignee, lack of address or other similar circumstances as excusing performance of carrier's duty to give notice of arrival. 26 L.R.A.(N.S.) 572.

As to similar provision in Cal. Civ. Code, § 2120, see *Hirshfield v. Central P. R. Co.*, 56 Cal. 484; *Wilson v. California C. R. Co.*, 94 Cal. 166, 17 L.R.A. 685, 29 Pac. 861; *Cavallaro v. Texas & P. R. Co.*, 110 Cal. 348, 52 Am. St. Rep. 94, 42 Pac. 918.

§ 6205. Liability terminated. If a consignee does not accept and remove freight within a reasonable time after the carrier has fulfilled his obligation to deliver or duly offered to fulfill the same, the carrier may exonerate himself from further liability by placing the freight in a suitable warehouse on storage on account of the consignee and giving notice thereof to him. [R. C. 1905, § 5642; Civ. C. 1877, § 1228; R. C. 1899, § 4194.]

When liability of carrier terminates. 7 Am. Rep. 591.

When liability of carrier reduced to that of warehouseman. 97 Am. St. Rep. 84.

What is a reasonable time for removal of goods by consignee, after which the liability of the carrier as such terminates. 8 L.R.A.(N.S.) 240; 16 L.R.A.(N.S.) 935; 25 L.R.A.(N.S.) 938.

Termination of carrier's liability as such as affected by its fault preventing removal of goods. 8 L.R.A.(N.S.) 235.

Liability of shipper for demurrage. 30 Am. St. Rep. 635.

§ 6206. When unclaimed property may be sold. Whenever any trunk, carpetbag, valise, bundle, package or article of property transported or coming into the possession of any railroad, or express company or any other common carrier in the course of his or its business as common carrier shall remain unclaimed and the legal charges thereon unpaid during the space of six months after its arrival at the point to which it shall have been directed and the owner or person to whom the same is consigned cannot be found upon diligent inquiry or, being found and notified of the arrival of such article, shall refuse or neglect to receive the same and pay the legal charges thereon for the space of three months, it shall be lawful for such common carrier to sell such article at public auction after giving the owner or consignee fifteen days' notice of the time and place of sale through the post office and by advertising in a newspaper published in the county where such sale is made and out of the proceeds of such sale to pay all legal charges on such article and the amount over, if any, shall be paid to the owner or consignee upon demand. [R. C. 1905, § 5643; 1879, ch. 51, § 1; R. C. 1899, § 4195.]

Duty of carrier to give notice before selling goods or otherwise disposing of them contrary to shipping directions. 45 L.R.A.(N.S.) 18

§ 6207. When perishable property may be sold. Perishable property which has been transported to its destination and the owner or consignee notified of its arrival, or being notified, refuses or neglects to receive the same and pay the legal charges thereon, or if upon diligent inquiry the consignee cannot be found, such carrier may in the exercise of a reasonable discretion sell the same at public or private sale without advertising and the proceeds after deducting the freight and charges and expenses of sale shall be paid to the owner or consignee upon demand. [R. C. 1905, § 5644; 1879, ch. 51, § 2; R. C. 1899, § 4196.]

§ 6208. Applies to hotel keepers. The provisions of the last two sections shall apply to hotel keepers and warehousemen. [R. C. 1905, § 5645; 1879, ch. 51, § 3; R. C. 1899, § 4197.]

ARTICLE 3.—BILL OF LADING.

§ 6209. Defined. A bill of lading is an instrument in writing signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract for carriage and agreeing or directing that the freight be delivered to the order or assigns of a specified person at a specified place. [R. C. 1905, § 5646; Civ. C. 1877, § 1229; R. C. 1899, § 4198.]

As to similar provision in Cal. Civ. Code, § 2126, see *Dodge v. Meyer*, 61 Cal. 405.

§ 6210. Negotiable. All the title to the freight which the first holder of a bill of lading had when he received it passes to every subsequent indorsee

thereof in good faith and for value in the ordinary course of business with like effect and in like manner as in the case of a bill of exchange. [R. C. 1905, § 5647; Civ. C. 1877, § 1230; R. C. 1899, § 4199.]

Possession of an unindorsed bill of lading by a stranger raises no presumption that stranger is agent of consignor. *Stewart v. Gregory et al.*, 9 N. D. 618, 84 N. W. 553.

§ 6211. When delivery transfers. When a bill of lading is made to bearer or in equivalent terms, a simple transfer thereof by delivery conveys the same title as an indorsement. [R. C. 1905, § 5648; Civ. C. 1877, § 1231; R. C. 1899, § 4200.]

As to similar provision in Cal. Civ. Code, § 2128, see *Dodge v. Meyer*, 61 Cal. 405; *Cavallaro v. Texas & P. R. Co.*, 110 Cal. 348, 52 Am. St. Rep. 94, 42 Pac. 918.

§ 6212. Obligations of carrier not altered. A bill of lading does not alter the rights or obligations of the carrier as defined in this chapter unless it is plainly inconsistent therewith. [R. C. 1905, § 5649; Civ. C. 1877, § 1232; R. C. 1899, § 4201.]

§ 6213. Carrier must give sets of bills, on demand. A carrier must subscribe and deliver to the consignor on demand any reasonable number of bills of lading of the same tenor, expressing truly the original contract for carriage; and if he refuses to do so the consignor may take the freight from him and recover from him besides all damages thereby occasioned. [R. C. 1905, § 5650; Civ. C. 1877, § 1233; R. C. 1899, § 4202.]

§ 6214. Carrier exonerated by delivering freight to holder. A carrier is exonerated from liability for freight by delivery thereof in good faith to any holder of a bill of lading therefor, properly indorsed, or made in favor of the bearer. [R. C. 1905, § 5651; Civ. C. 1877, § 1234; R. C. 1899, § 4203.]

To whom delivery may be made under bill of lading. 38 L.R.A. 358.

Effect of bill of lading on delivery to impostor by carrier. 37 L.R.A. 178.

Liability of carrier to bona fide holder upon bill of lading issued by negligence or mistake of agents without delivery of any goods to carrier. 41 L.R.A.(N.S.) 500.

As to similar provision in Cal. Civ. Code, § 2131, see *Dodge v. Meyer*, 61 Cal. 405; *Cavallaro v. Texas & P. R. Co.*, 110 Cal. 348, 52 Am. St. Rep. 94, 42 Pac. 918.

§ 6215. When surrender required. When a carrier has given a bill of lading or other instrument substantially equivalent thereto, he may require its surrender or a reasonable indemnity against claims thereon before delivering the freight. [R. C. 1905, § 5652; Civ. C. 1877, § 1235; R. C. 1899, § 4204.]

ARTICLE 4.—FREIGHTAGE.

§ 6216. In advance. Exception. A carrier may require his freightage to be paid upon his receiving the freight; but if he does not demand it then he cannot until he is ready to deliver the freight to the consignee. [R. C. 1905, § 5653; Civ. C. 1877, § 1236; R. C. 1899, § 4205.]

When right to freight becomes complete. 60 Am. Dec. 149.

Discrimination by requiring prepayment of freight charges. 21 L.R.A.(N.S.) 982.

Payment or tender of freight charges as condition precedent to action of trover against carrier. 21 L.R.A. 117.

When tender of freight money not condition of conversion by carrier's refusal to surrender goods. 6 L.R.A.(N.S.) 1058.

Liability of connecting carrier for detaining freight on account of mistake as to the amount due. 6 L.R.A.(N.S.) 1054; 32 L.R.A.(N.S.) 189.

§ 6217. Consignor liable for freightage. Exception. The consignor of freight is presumed to be liable for the freightage, but if the contract between him and the carrier provides that the consignee shall pay it and the carrier allows the consignee to take the freight he cannot afterwards recover the freightage from the consignor. [R. C. 1905, § 5654; Civ. C. 1877, § 1237; R. C. 1899, § 4206.]

§ 6218. When consignee liable. The consignee of freight is liable for the freightage if he accepts the freight with notice of the intention of the consignor that he should pay it. [R. C. 1905, § 5655; Civ. C. 1877, § 1238; R. C. 1899, § 4207.]

§ 6219. No freightage on increase. No freightage can be charged upon the natural increase of freight. [R. C. 1905, § 5656; Civ. C. 1877, § 1239; R. C. 1899, § 4208.]

§ 6220. Apportioned. Payment accordingly. If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier the carrier is entitled to payment according to the apportionment for so much as he delivers. [R. C. 1905, § 5657; Civ. C. 1877, § 1240; R. C. 1899, § 4209.]

§ 6221. Part accepted. Freightage apportioned. If a part of the freight is accepted by a consignee without a specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract. [R. C. 1905, § 5658; Civ. C. 1877, § 1241; R. C. 1899, § 4210.]

§ 6222. According to distance. At place short of destination. Qualification. If a consignee voluntarily receives freight at a place short of the one appointed for delivery the carrier is entitled to a just proportion of the freightage according to distance. If the carrier, being ready and willing, offers to complete the transit he is entitled to the full freightage. If he does not thus offer completion and the consignee receives the freight only from necessity, the carrier is not entitled to any freightage. [R. C. 1905, § 5659; Civ. C. 1877, § 1242; R. C. 1899, § 4211.]

Part performance of contract for carriage will not entitle carrier to pro rata pay, unless incomplete performance is voluntarily accepted. *Braithwaite v. Power*, 1 N. D. 445, 48 N. W. 354.

§ 6223. No extra freightage for carrying further. If freight is carried further or more expeditiously than was agreed upon by the parties, the carrier is not entitled to additional compensation and cannot refuse to deliver it on the demand of the consignee at the place and time of its arrival. [R. C. 1905, § 5660; Civ. C. 1877, § 1243; R. C. 1899, § 4212.]

Effect of deviation on carrier's right to freight. 2 B. R. C. 611.

§ 6224. Lien for freightage. A carrier has a lien for freightage which is regulated by chapters 86, 98 and 99 of this code. [R. C. 1905, § 5661; Civ. C. 1877, § 1244; R. C. 1899, § 4213.]

ARTICLE 5.—GENERAL AVERAGE.

§ 6225. Jettison and general average. A carrier by water may, when in case of extreme peril it is necessary for the safety of the ship or cargo, throw overboard or otherwise sacrifice any or all of the cargo or appurtenances of the ship. Throwing property overboard for such purpose is called jettison and the loss incurred thereby is called a general average loss. [R. C. 1905, § 5662; Civ. C. 1877, § 1245; R. C. 1899, § 4214.]

General average. 2 Am. Dec. 207.

—voluntary sacrifice essential to. 14 Am. Dec. 613.

§ 6226. Jettison begins with most bulky freight. A jettison must begin with the most bulky and least valuable articles so far as possible. [R. C. 1905, § 5663; Civ. C. 1877, § 1246; R. C. 1899, § 4215.]

§ 6227. Jettison ordered only by master. Exception. A jettison can be made only by authority of the master of a ship, except in case of his disability or of an overruling necessity, when it may be made by any other person. [R. C. 1905, § 5664; Civ. C. 1877, § 1247; R. C. 1899, § 4216.]

§ 6228. How loss by jettison apportioned. The loss incurred by a jettison when lawfully made, must be borne by all that part of the ship, appurtenances, freightage and cargo for the benefit of which the sacrifice is made as well as by the owner of the thing sacrificed. [R. C. 1905, § 5665; Civ. C. 1877, § 1248; R. C. 1899, § 4217.]

§ 6229. Loss by jettison. Adjustment. The proportions in which a general average loss is to be borne must be ascertained by an adjustment in which the owner of each separate interest is to be charged with such proportion of

the value of the thing lost as the value of his part of the property affected bears to the value of the whole. But an adjustment made at the end of a voyage, if valid there, is valid everywhere. [R. C. 1905, § 5666; Civ. C. 1877, § 1249; R. C. 1899, § 4218.]

§ 6230. Values of ship, etc., how estimated. In estimating values for the purpose of a general average the ship and appurtenances must be valued as at the end of the voyage, the freightage at one-half the amount due on delivery and the cargo as at the time and place of its discharge; adding in each case the amount made good by contribution. [R. C. 1905, § 5667; Civ. C. 1877, § 1250; R. C. 1899, § 4219.]

§ 6231. When deck stowage entitled to contribution. The owner of things stowed on deck in case of their jettison is entitled to the benefit of a general average contribution only in case it is usual to stow such things on deck upon such a voyage. [R. C. 1905, § 5668; Civ. C. 1877, § 1251; R. C. 1899, § 4220.]

§ 6232. These rules applicable to every sacrifice. The rules herein stated concerning jettison are equally applicable to every other voluntary sacrifice of property on a ship or expense necessarily incurred for the preservation of the ship and cargo from extraordinary perils. [R. C. 1905, § 5669; Civ. C. 1877, § 1252; R. C. 1899, § 4221.]

CHAPTER 68.

CARRIAGE OF MESSAGES.

§ 6233. Delivery. A carrier of messages for reward must deliver them at the place to which they are addressed or to the persons for whom they are intended. [R. C. 1905, § 5670; Civ. C. 1877, § 1253; R. C. 1899, § 4222.]

As to similar provision in Cal. Civ. Code, § 2161, see *Hart v. Western U. Teleg. Co.*, 66 Cal. 579, 56 Am. Rep. 119, 6 Pac. 637; *Pacific Pine Lumber Co. v. Western U. Teleg. Co.*, 123 Cal. 428, 56 Pac. 103.

§ 6234. Great care. By telegraph, utmost diligence. A carrier of messages for reward must use great care and diligence in the transmission and delivery of messages. A carrier by telegraph must use the utmost diligence therein. [R. C. 1905, § 5671; Civ. C. 1877, § 1254; R. C. 1899, § 4223.]

Criminal liability for agent's failure to transmit telegram. 41 L.R.A. 660.

Duty of telegraph company to deliver message by telephone. 29 L.R.A.(N.S.) 836.

Duty of telegraph company to find person addressed. 15 L.R.A. 129; 27 Am. St. Rep. 923.

Telegraph company's duty as to discovering unknown sendee. 22 L.R.A.(N.S.) 761.

Duty of telegraph company to notify sender of message if it cannot be promptly transmitted or delivered. 67 L.R.A. 153; 16 L.R.A.(N.S.) 870.

Duty and liability for conduct of telegraph messengers furnished. 2 L.R.A.(N.S.) 1091.

Liability of telegraph company for delay in transmitting or delivering message, due to strike of its employees. 22 L.R.A.(N.S.) 1214.

As to similar provision in Cal. Civ. Code, § 2162, see *Hart v. Western U. Teleg. Co.*, 66 Cal. 579, 56 Am. Rep. 119, 6 Pac. 637; *Pacific Pine Lumber Co. v. Western U. Teleg. Co.*, 123 Cal. 428, 56 Pac. 103; *Coit v. Western U. Teleg. Co.*, 130 Cal. 657, 53 L.R.A. 678, 80 Am. St. Rep. 153, 63 Pac. 83.

CHAPTER 69.

COMMON CARRIERS.

- ARTICLE 1. COMMON CARRIERS IN GENERAL, §§ 6235-6242.
 2. COMMON CARRIERS OF PERSONS, §§ 6243-6252.
 3. COMMON CARRIERS OF PROPERTY, §§ 6253-6261.
 4. SHIPMENT OF LIVE STOCK, § 6262.
 5. COMMON CARRIERS OF MESSAGES, §§ 6263-6270.

ARTICLE 1.—COMMON CARRIERS IN GENERAL.

§ 6235. **Defined.** Every one who offers to the public to carry persons, property or messages is a common carrier of whatever he thus offers to carry. [R. C. 1905, § 5672; Civ. C. 1877, § 1255; R. C. 1899, § 4224.]

What constitutes a common carrier. *Meuer v. C. M. & St. P. Ry. Co.*, 5 S. D. 568, 59 N. W. 945, 49 Am. St. Rep. 898, 25 L.R.A. 81.

Telegraph company is a common carrier. *Kirby v. W. U. Tel. Co.*, 7 S. D. 623, 65 N. W. 37, 30 L.R.A. 621; *Kirby v. W. U. Tel. Co.*, 4 S. D. 105, 55 N. W. 759, 46 Am. St. Rep. 765, 30 L.R.A. 621, 624.

Common carrier, baggage transfer company as. 34 L.R.A. 137; 21 L.R.A.(N.S.) 188.

—sleeping car company as. 21 L.R.A. 291.

—ferryman as. 68 L.R.A. 153.

—person maintaining elevator as. 2 L.R.A.(N.S.) 745.

—cartman, etc., as. 21 L.R.A.(N.S.) 188.

Railroad companies as private carriers in drawing special trains or special cars. 30 L.R.A. 161.

Character as common carriers of persons or corporations other than express companies that neither own nor operate transportation routes, but undertake to transport goods. 42 L.R.A.(N.S.) 902.

Is an interurban railroad company controlled by general railroad law in regard to the operation of railroads as carriers of passengers? 67 L.R.A. 637.

Effect of special arrangement with respect to particular class of business upon character of railroad company as. 5 L.R.A.(N.S.) 458.

As to similar provision in Cal. Civ. Code, § 2168, see *Hart v. Western U. Teleg. Co.*, 66 Cal. 579, 56 Am. Rep. 119, 6 Pac. 637.

§ 6236. **Must accept and carry.** A common carrier must, if able to do so, accept and carry whatever is offered to him at a reasonable time and place of a kind that he undertakes or is accustomed to carry. [R. C. 1905, § 5673; Civ. C. 1877, § 1256; R. C. 1899, § 4225.]

Effect of strike on carrier's duty to accept freight. 35 L.R.A. 623.

Right to refuse to receive in afternoon valuables to go on morning train. 15 L.R.A.(N.S.) 558.

—to refuse to transport dangerous articles. 36 L.R.A. 649.

—to discontinue receipt of freight at place other than regular station. 38 L.R.A.(N.S.) 932.

Duty to accept freight originating and terminating within city limits. 33 L.R.A.(N.S.) 443.

—to accept liquor for transportation to points where its sale is prohibited or restricted. 40 L.R.A.(N.S.) 798; 45 L.R.A.(N.S.) 120.

Liability for failure to provide train for crowd. 24 L.R.A. 711.

Duty to give regular train service on Sunday. 30 L.R.A.(N.S.) 401.

—to hold train for passenger seen approaching station. 31 L.R.A.(N.S.) 442.

—to accept as a passenger one physically or mentally disabled. 26 L.R.A.(N.S.) 171.

Right to eject persons having contagious disease. 4 L.R.A.(N.S.) 103.

Compulsory service in case of telephone. 15 L.R.A. 321.

Liability of telephone company for failure to make connections for subscriber. 21 L.R.A.(N.S.) 115; 28 L.R.A.(N.S.) 554; 39 L.R.A.(N.S.) 402.

As to similar provision in Cal. Civ. Code, § 2169, see *Pfister v. Central P. R. Co.*, 70 Cal. 169, 59 Am. Rep. 404, 11 Pac. 686; *Barrett v. Market Street R. Co.*, 81 Cal. 296, 6 L.R.A. 336, 15 Am. St. Rep. 61, 22 Pac. 859.

§ 6237. **Preference to United States and state.** A common carrier must always give a preference in time and may give a preference in price to the United States and to this state. [R. C. 1905, § 5674; Civ. C. 1877, § 1258; R. C. 1899, § 4226.]

§ 6238. Must start when and where. A common carrier must start at such time and place as he announces to the public unless detained by accident or the elements or in order to connect with carriers on other lines of travel. [R. C. 1905, § 5675; Civ. C. 1877, § 1259; R. C. 1899, § 4227.]

Liability to passenger for default or delay in running railroad train. 49 L.R.A.(N.S.) 429.

As to similar provision in Cal. Civ. Code, § 2170, see *Pfister v. Central P. R. Co.*, 70 Cal. 169, 59 Am. Rep. 404, 11 Pac. 686.

§ 6239. Compensation. Payment refused. A common carrier is entitled to a reasonable compensation and no more which he may require to be paid in advance. If payment thereof is refused he may refuse to carry. [R. C. 1905, § 5676; Civ. C. 1877, § 1260; R. C. 1899, § 4228.]

Payment in advance. *Kirby v. W. U. Tel. Co.*, 4 S. D. 463, 57 N. W. 202; *Kirby v. W. U. Tel. Co.*, 7 S. D. 623, 65 N. W. 37, 30 L.R.A. 621.

Discrimination by requiring prepayment of freight charges. 21 L.R.A.(N.S.) 982.

§ 6240. Obligations limited only by contract. The obligations of a common carrier cannot be limited by general notice on his part, but may be limited by special contract. [R. C. 1905, § 5677; Civ. C. 1877, § 1261; R. C. 1899, § 4229.]

As limiting common carriers' liability. *Hanson v. Great Northern R. Co.*, 18 N. D. 324, 121 N. W. 78.

Right to exact special contracts from shippers. 46 Am. St. Rep. 777.

Effect of deviation on rights and obligations arising from special contract limiting carrier's liability. 2 B. R. C. 612.

Effect of limitation in time tables on liability for default or delay in running train. 32 L.R.A. 544.

Limitation of liability by notices or tickets, baggage checks, bills of lading, etc. 15 Am. Rep. 457; 29 Am. Rep. 166; 5 Am. St. Rep. 719.

Limitation of carrier's liability for passenger's luggage. 19 L.R.A.(N.S.) 1006; 34 L.R.A.(N.S.) 818.

Application to hand baggage of limitation of liability for loss of baggage. 5 L.R.A.(N.S.) 650.

Limitation of liability for baggage after reaching destination of passenger. 36 L.R.A. 787.

Validity of stipulation limiting carrier's liability to agreed valuation as affected by the Hepburn act. 28 L.R.A.(N.S.) 293.

Valuation of property for purposes of transportation as affecting carrier's liability where it is converted or embezzled while in its possession. 31 L.R.A.(N.S.) 309.

Limitation of common carrier's duty and liability in case of dangerous articles. 36 L.R.A. 648.

As to similar provision in Cal. Civ. Code, § 2174, see *Pierce v. Southern P. Co.*, 120 Cal. 156, 40 L.R.A. 350, 47 Pac. 874, 52 Pac. 302, 1 Am. Neg. Rep. 211.

§ 6241. Exoneration by agreement limited. A common carrier cannot be exonerated by any agreement made in anticipation thereof from liability for the negligence, fraud or other wrongful act of himself or his servants. [1907, ch. 57; R. C. 1905, § 5678; Civ. C. 1877, § 1262; R. C. 1899, § 4230.]

Common carrier may limit liability by contract signed by parties. *Meuer v. C. M. & St. P. Ry. Co.*, 5 S. D. 568, 59 N. W. 945, 49 Am. St. Rep. 898, 25 L.R.A. 81; *Kirby v. W. U. Tel. Co.*, 7 S. D. 623, 65 N. W. 37, 30 L.R.A. 621.

Bill of lading not special contract unless signed by consignor or consignee. *Hartwell v. Express Co.*, 5 D. 463, 41 N. W. 732, 3 L.R.A. 342.

Carrier may contract that shipper must give notice in writing of any claim for damages before property is removed from place of destination. *Cooke v. Northern P. R. Co.*, 22 N. D. 266, 133 N. W. 303.

Carrier cannot be exonerated by any agreement, made in anticipation thereof, for gross negligence. *Berry v. Chicago, M. & St. P. R. Co.*, 24 S. D. 611, 124 N. W. 859.

Telegraph company cannot, by agreement in anticipation thereof, exonerate itself from liability for gross negligence, fraud or willful wrong. *Lothian v. Western U. Teleg. Co.*, 25 S. D. 319, 126 N. W. 621.

When stipulations exempting from liability are void. 31 Am. Rep. 567.

Power of carrier to limit liability and how it may be exercised. 32 Am. Dec. 495.

—to limit liability in the event of a loss to a sum less than the injury suffered. 23 Am. St. Rep. 593.

—to limit amount of carrier's liability in cases of negligence. 14 L.R.A. 433.

Limiting valuation of property as affecting amount of recovery for loss by negligence. 1 L.R.A.(N.S.) 985.

Validity of provision imposing responsibility of inspecting and selecting cars on shipper. 36 L.R.A.(N.S.) 412.

Right of passenger carrier to stipulate against liability in consideration of reduced fare. 4 L.R.A.(N.S.) 1081.

Validity of stipulation in pass limiting carrier's liability. 37 L.R.A.(N.S.) 235.

Risks of negligence assumed by contract with carrier as including gross negligence. 1 L.R.A.(N.S.) 675.

Contract exempting railroad company from liability for negligent injury to sleeping car employes or others sustaining a similar relation to the company. 11 L.R.A.(N.S.) 482.

Does stipulation exempting carrier from liability for passenger's baggage, or limiting amount thereof, cover losses due to negligence. 8 L.R.A.(N.S.) 199; 34 L.R.A.(N.S.) 826.

As to similar provision in Cal. Civ. Code, § 2175, see *Michalitschke Bros. v. Wells, F. & Co.*, 118 Cal. 683, 50 Pac. 847; *Pierce v. Southern P. Co.*, 120 Cal. 156, 40 L.R.A. 350, 47 Pac. 874, 52 Pac. 302, 1 Am. Neg. Rep. 211; *Merrill v. Pacific Transfer Co.*, 131 Cal. 582, 63 Pac. 915.

§ 6242. Carrier's right to modify obligations restricted. A passenger, consignor or consignee by accepting a ticket, bill of lading or written contract for carriage with a knowledge of its terms assents to the rate of hire, the time, place and manner of delivery therein stated. But his assent to any other modification of the carrier's rights or obligations, contained in such instrument, can only be manifested by his signature to the same. [R. C. 1905, § 5679; Civ. C. 1877, § 1263; R. C. 1899, § 4231.]

Effect of shipping contract limiting carrier's common-law liability, signed under compulsion. 28 L.R.A.(N.S.) 637.

Effect of limitation of carrier's liability in receipt prepared by shipper. 23 L.R.A.(N.S.) 645.

As to similar provision in Cal. Civ. Code, § 2176, see *Schroeder v. Schweizer*, Lloyd Transport Versicherung's Gesellschaft 66 Cal. 294, 44 Am. Rep. 61, 5 Pac. 478; *Palmer v. Atchison, T. & S. F. R. Co.*, 101 Cal. 187, 35 Pac. 630; *California Powder Works v. Atlantic & P. R. Co.*, 113 Cal. 329, 36 L.R.A. 648, 45 Pac. 691; *Michalitschke Bros. v. Wells, F. & Co.*, 118 Cal. 683, 50 Pac. 847; *Merrill v. Pacific Transfer Co.*, 131 Cal. 582, 63 Pac. 915.

ARTICLE 2.—COMMON CARRIERS OF PERSONS.

§ 6243. Carriage of luggage. A common carrier of persons, unless his vehicle is fitted for the reception of passengers exclusively, must receive and carry a reasonable amount of luggage for each passenger without any charge except for an excess of weight over one hundred pounds to a passenger. [R. C. 1905, § 5680; Civ. C. 1877, § 1264; R. C. 1899, § 4232.]

Duty to transport baggage on same train with passenger. 17 L.R.A.(N.S.) 1091.

Right of passenger to carry baggage or packages in street car. 30 L.R.A.(N.S.) 889.

Liability of carrier for injury to passenger from baggage or parcel in aisle of car. 13 L.R.A.(N.S.) 481.

Implied exceptions in statute as to free transportation of baggage. 25 L.R.A. 569.

Rights of one going to station to deposit baggage. 28 L.R.A.(N.S.) 311.

As to similar provision in Cal. Civ. Code, § 2160, see *Pfister v. Central P. R. Co.*, 70 Cal. 169, 59 Am. Rep. 404, 11 Pac. 686.

§ 6244. Luggage. Luggage may consist of any articles intended for the use of a passenger while traveling or for his personal equipment. Bicycles are hereby declared to be, and are deemed luggage for the purposes of this article, and shall be transported as luggage for passengers by railroad corporations, and subject to the same liabilities as other luggage; and no passenger shall be required to crate, cover or otherwise protect any such bicycle; provided, however, that a railroad corporation shall not be required to transport under the provisions of this article more than one bicycle for a single person. [R. C. 1905, § 5681; 1897, ch. 117; R. C. 1899, § 4233.]

What is baggage and liability therefor. 71 Am. Dec. 159; 8 Am. Rep. 302; 99 Am. St. Rep. 343.

Books and manuscript as baggage. 41 L.R.A.(N.S.) 371.

Household goods or supplies as baggage. 39 L.R.A.(N.S.) 634.

Articles intended for gifts as baggage for which carrier is responsible. 21 L.R.A.(N.S.) 850.

§ 6245. Liability for luggage. The liability of a carrier for luggage received by him with a passenger is the same as that of a common carrier of property. [R. C. 1905, § 5682; Civ. C. 1877, § 1266; R. C. 1899, § 4234.]

Liability for baggage not accompanied by a passenger. 55 L.R.A. 650; 43 L.R.A. (N.S.) 806.

Liability of carrier for loss of drummer's baggage. 4 L.R.A. (N.S.) 1035.

Liability of passenger carrier transporting merchandise intrusted to it by passenger. 14 L.R.A. 515.

Recovery by parent for loss of personal effects of infant that pays no fare. 1 L.R.A. (N.S.) 353.

Liability of carrier for loss of property in a check room. 18 L.R.A. (N.S.) 295; 29 L.R.A. (N.S.) 834.

Right of owner of baggage to testify as to its value in action for its loss. 37 L.R.A. (N.S.) 588.

Liability for baggage after reaching destination of passenger. 36 L.R.A. 781; 38 L.R.A. (N.S.) 383.

Duty of sleeping car company as to baggage or personal effects of passengers. 21 L.R.A. 289; 9 L.R.A. (N.S.) 407; 41 L.R.A. (N.S.) 799.

Delivery of baggage check to carrier as delivery of baggage. 14 L.R.A. (N.S.) 859.

How far is carrier bound by act of baggageman in receiving articles as baggage. 10 L.R.A. (N.S.) 1119.

Duty to check baggage to destination. 25 L.R.A. (N.S.) 537.

§ 6246. When luggage delivered. When at passenger's risk. A common carrier must deliver every passenger's luggage whether within the prescribed weight or not, immediately upon the arrival of the passenger at his destination; and, unless the vehicle would be overcrowded or overloaded thereby, must carry it on the same vehicle by which he carries the passenger to whom it belongs; except that when luggage is transported by rail it must be checked and carried in a regular baggage car; and whenever passengers neglect or refuse to have their luggage so checked and transported it is carried at their risk. [R. C. 1905, § 5683; Civ. C. 1877, § 1267; R. C. 1899, § 4235.]

Railroad company bound to take all applying for passage and their baggage. Waldron v. C. & N. W. Ry. Co., 1 D. 336, 46 N. W. 456.

Continuation of relation of passenger while looking after baggage after reaching destination. 2 L.R.A. (N.S.) 876.

Carrier's liability for assault by employe while attending to baggage. 17 L.R.A. (N.S.) 765.

As to similar provision in Cal. Civ. Code, § 2183, see Pfister v. Central P. R. Co., 70 Cal. 169, 59 Am. Rep. 404, 11 Pac. 686.

§ 6247. Must provide vehicles. A common carrier of persons must provide a sufficient number of vehicles to accommodate all the passengers who can be reasonably expected to require carriage at any one time. [R. C. 1905, § 5684; Civ. C. 1877, § 1268; R. C. 1899, § 4236.]

Injuries received on crowded railroad trains. 24 L.R.A. 710.

§ 6248. Must provide seats. A common carrier of persons must provide every passenger with a seat. He must not overload his vehicle by receiving and carrying more passengers than its rated capacity allows. [R. C. 1905, § 5685; Civ. C. 1877, § 1269; R. C. 1899, § 4237.]

Right of passenger to seat. 22 L.R.A. 259; 136 Am. St. Rep. 312.

Liability of street railway company for injury to person waiting for car in consequence of carrying passengers on platform or running board. 45 L.R.A. (N.S.) 269.

§ 6249. May make rules. A common carrier of persons may make rules for the conduct of his business and may require passengers to conform to them if they are lawful, public, uniform in their application and reasonable. [R. C. 1905, § 5686; Civ. C. 1877, § 1270; 1899, § 4238.]

Carrier's regulations as to admission of passenger to train house. 16 L.R.A. 449.

—as affecting passenger's right to stop over. 28 L.R.A. 776.

Passengers riding in baggage or express car in violation of rules as contributory negligence. 16 L.R.A. 631.

As to similar provision in Cal. Civ. Code, § 2186, see Nye v. Marysville & Y. C. Street R. Co., 97 Cal. 461, 32 Pac. 530.

§ 6250. When fare demandable. A common carrier may demand the fare of passengers either at starting or at any subsequent time. [R. C. 1905, § 5687; Civ. C. 1877, § 1271; R. C. 1899, § 4239.]

Validity of extra charge for passenger fare when paid upon train. 20 L.R.A. 483.

Right to require passenger to pay second fare on passing from one car to another on same line. 13 L.R.A. (N.S.) 445.

Duty of passenger to pay fare wrongfully demanded in order to avoid expulsion and lessen damages. 43 L.R.A. 706; 34 L.R.A. (N.S.) 282.

Validity of regulation requiring passenger to pay fare in case of dispute. 2 L.R.A.(N.S.) 695.

Requiring passenger to put coin in box or automatic registering device. 32 L.R.A.(N.S.) 695.

§ 6251. Ejection of passengers, how and where. A passenger who refuses to pay his fare or to conform to any lawful regulation of the carrier may be ejected from the vehicle by the carrier. But this must be done with as little violence as possible and at any usual stopping place or near some dwelling house. After having ejected the passenger a carrier has no right to require the payment of any part of his fare. [R. C. 1905, § 5688; Civ. C. 1877, §§ 1272, 1273; R. C. 1899, § 4240.]

Passenger not entitled to choice of routes when two routes to destination. Church v. Ry. Co., 6 S. D. 235, 60 N. W. 854, 26 L.R.A. 616.

In absence of special regulations legal payment of fare may be made either to conductor personally or to agent of company. Melody v. Great Northern R. Co., 25 S. D. 606, 30 L.R.A.(N.S.) 568, 127 N. W. 543, Ann. Cas. 1912C, 727.

Character or condition of coin or currency that may be tendered in payment of fare. 35 L.R.A.(N.S.) 1030.

Tender of a sum in excess of that due, with demand for change. 13 L.R.A.(N.S.) 624.

What is a reasonable sum out of which a carrier may be required to take fare and return change. 35 L.R.A. 489; 9 L.R.A.(N.S.) 579; 21 L.R.A.(N.S.) 868.

Carrier's liability for wrongful ejection from train by employee. 27 L.R.A. 170.

—where employe acts in violation of instruction. 18 L.R.A.(N.S.) 416.

—for negligence in ejecting trespasser from moving train. 13 L.R.A.(N.S.) 364.

—for turning one other than passenger out of depot. 42 L.R.A.(N.S.) 373.

—for ejecting passenger through mistake as to identity. 2 L.R.A.(N.S.) 472.

Exposure of drunken passenger to danger by ejection from car. 19 L.R.A. 327.

Express authority to certain train employes to eject trespassers as negating implied authority of other employes. 32 L.R.A.(N.S.) 1164.

Right to defend expulsion of passenger upon ground other than that relied upon at the time. 14 L.R.A.(N.S.) 368.

Payment of back fare for distance already ridden as condition of being carried further. 16 L.R.A. 55.

Right of passenger to pay fare after train begins to stop for purpose of ejecting him. 16 L.R.A. 53.

Ejection of custodian for nonpayment of child's fare. 38 L.R.A. 140.

Duty of passenger to pay fare wrongfully demanded in order to avoid expulsion. 43 L.R.A. 706; 34 L.R.A.(N.S.) 282.

Sufficiency of tender of fare to prevent ejection. 31 L.R.A.(N.S.) 992.

Right of passenger to forcibly resist unlawful ejection. 125 Am. St. Rep. 727.

As to similar provision in Cal. Civ. Code, § 2188, see Barrett v. Market Street R. Co., 81 Cal. 296, 6 L.R.A. 336, 15 Am. St. Rep. 61, 22 Pac. 859; Nye v. Marysville & Y. C. Street R. Co., 97 Cal. 461, 32 Pac. 530; Ames v. Southern P. Co., 141 Cal. 728, 99 Am. St. Rep. 98, 75 Pac. 310, 15 Am. Neg. Rep. 484; Elliott v. Southern P. Co., 145 Cal. 441, 68 L.R.A. 393, 79 Pac. 420.

§ 6252. Lien on luggage. A common carrier has a lien upon the luggage of a passenger for the payment of such fare as he is entitled to from him. This lien is regulated by the chapters on liens. [R. C. 1905, § 5689; Civ. C. 1877, § 1274; R. C. 1899, § 4241.]

ARTICLE 3.—COMMON CARRIERS OF PROPERTY.

§ 6253. Inland carrier's liability. Exception. Unless the consignor accompanies the freight and retains exclusive control thereof, an inland common carrier of property is liable from the time that he accepts until he relieves himself from liability pursuant to sections 6202 to 6205, for the loss or injury thereof from any cause whatever, except:

1. An inherent defect, vice or weakness or a spontaneous action of the property itself.

2. The act of a public enemy of the United States or of this state.

3. The act of the law; or,

4. Any irresistible superhuman cause. [R. C. 1905, § 5690; Civ. C. 1877, § 1275; 1897, ch. 118; R. C. 1899, § 4242.]

Railway company not liable for goods delivered and receipted for, though left in warehouse by consent of baggageman. Mulligan v. N. P. Ry. Co., 4 D. 315, 29 N. W. 659.

Limitation of liability by notice. *Hartwell v. Express Co.*, 5 D. 463, 41 N. W. 732, 3 L.R.A. 342.

Liability of carrier where cattle consigned to T., care of P., order of S., are delivered to P. without order of S. *Stone v. Railway Co.*, 8 S. D. 1, 63 N. W. 29.

On proof of delivery to carrier in sound condition, and of failure of carrier to redeliver them, prima facie case for recovery for loss is made. *Taughner v. Northern P. R. Co.*, 21 N. D. 111, 129 N. W. 717.

As to similar provision in Cal. Civ. Code, § 2194, see *Palmer v. Atchison, T. & S. F. R. Co.*, 101 Cal. 187, 35 Pac. 630.

§ 6254. Foregoing exceptions limited. A common carrier is liable even in the cases excepted by the last section, if his ordinary negligence exposes the property to the cause of the loss. [R. C. 1905, § 5691; Civ. C. 1877, § 1276; R. C. 1899, § 4243.]

§ 6255. When liable for delay. A common carrier is liable for delay only when it is caused by his want of ordinary care and diligence. [R. C. 1905, § 5692; Civ. C. 1877, § 1277; R. C. 1899, § 4244.]

Liability of railroad for delay in transportation of freight, due to inadequate facilities. 10 L.R.A.(N.S.) 432; 34 L.R.A.(N.S.) 637.

Liability for delay due to initial carrier's own negligence or breach of contract. 31 L.R.A.(N.S.) 82.

Effect of deviation on rights and obligations arising from stipulation against liability for delay. 8 B. R. C. 616.

Action of public authorities under police power as defense to carrier for delay of freight. 21 L.R.A.(N.S.) 731; 28 L.R.A.(N.S.) 139.

Legislative requirements as defense to carrier for delay in transportation. 31 L.R.A.(N.S.) 1184.

Duty of carrier to take precautions to prevent loss from delay. 39 L.R.A.(N.S.) 640, 642, 644.

Effect of strike on carrier's liability for delay in transportation. 35 L.R.A. 624.

Delay of carrier in transportation of corpse. 38 L.R.A.(N.S.) 433.

Right to interest on damages for delay. 28 L.R.A.(N.S.) 20.

Right of shipper or consignee, as against carrier, to refuse to accept goods delayed while in its hands. 42 L.R.A.(N.S.) 782.

§ 6256. Marine carrier's liability. A marine carrier is liable in like manner as an inland carrier, except for loss or injury caused by the perils of the sea or fire. The liability of a common carrier by sea is further regulated by acts of congress. [R. C. 1905, § 5693; Civ. C. 1877, §§ 1278, 1279; R. C. 1899, § 4245.]

§ 6257. Perils of sea defined. Perils of the sea are from:

1. Storms and waves.
2. Rocks, shoals and rapids.
3. Other obstacles though of human origin.
4. Changes of climate.
5. The confinement necessary at sea.
6. Animals peculiar to the sea; and,
7. All other dangers peculiar to the sea. [R. C. 1905, § 5694; Civ. C. 1877, § 1280; R. C. 1899, § 4246.]

"Perils of the sea." 41 Am. Dec. 281.

As to similar provision in Cal. Civ. Code, § 2199, see *Miller v. California Ins. Co.*, 76 Cal. 145, 9 Am. St. Rep. 184, 18 Pac. 155.

§ 6258. Valuables. Liability limited. Exceptions. A common carrier of gold, silver, platina or precious stones or of imitations thereof in a manufactured or unmanufactured state, of timepieces of any description, of negotiable paper or other valuable writings, of pictures, glass or chinaware, is not liable for more than fifty dollars upon the loss or injury of any one package of such articles, unless he has notice upon his receipt thereof by mark upon the package or otherwise of the nature of the freight. [R. C. 1905, § 5695; Civ. C. 1877, § 1281; R. C. 1899, § 4247.]

As to similar provision in Cal. Civ. Code, § 2200, see *Scammon v. Wells, F. & Co.*, 84 Cal. 311, 24 Pac. 284.

§ 6259. Exonerated by delivery to communicating carrier. If a common carrier accepts freight for a place beyond his usual route. he must, unless he stipulates otherwise, deliver it at the end of his route in that direction to some other competent carrier, carrying to the place of address, or connected

with those who thus carry and his liability ceases upon making such delivery. [R. C. 1905, § 5696; Civ. C. 1877, § 1282; R. C. 1899, § 4248.]

Station agent cannot contract for transportation of freight beyond company's line. *Page v. St. P. Ry. Co.*, 7 S. D. 297, 64 N. W. 137; *Sutton v. Railway Co.*, 14 S. D. 111, 84 N. W. 396; *Coates v. Railway Co.*, 8 S. D. 173, 65 N. W. 1067.

Liability of the receiving carrier beyond his own line. 2 Am. Rep. 141; 42 Am. Rep. 664.

Burden of proof as between connecting carriers to show who is at fault for loss or injury. 101 Am. St. Rep. 392.

Limitation of carrier's liability to its own line. 31 L.R.A.(N.S.) 52.

Effect of deviation on rights and obligations arising from stipulation limiting responsibility to carrier's own line. 2 B. R. C. 616.

As to similar provision in Cal. Civ. Code, § 2201, see *Dresbach v. California P. R. Co.*, 57 Cal. 462; *Colfax Mountain Fruit Co. v. Southern P. Co.*, 5 Cal. Unrep. 527, 46 Pac. 668; *Palmer v. Atchison, T. & S. F. R. Co.*, 101 Cal. 187, 35 Pac. 630; *Colfax Mountain Fruit Co. v. Southern P. Co.*, 118 Cal. 648, 40 L.R.A. 78, 50 Pac. 775.

§ 6260. How first carrier exonerated when freight lost. If freight, addressed to a place beyond the usual route of the common carrier who first received it, is lost or injured, he must, within a reasonable time after demand, give satisfactory proof to the consignor that the loss or injury did not occur while it was in his charge, or he will be himself liable therefor. [R. C. 1905, § 5697; Civ. C. 1877, § 1283; R. C. 1899, § 4249.]

§ 6261. Services other than carriage and delivery. In respect to any service rendered by a common carrier about freight, other than its carriage and delivery, his rights and obligations are defined by the chapters on deposit and service. [R. C. 1905, § 5698; Civ. C. 1877, § 1284; R. C. 1899, § 4250.]

ARTICLE 4.—SHIPMENT OF LIVE STOCK.

§ 6262. Agreement requiring notice of loss within thirty days void. Any provision, stipulation or condition in any shipping contract, bill of lading or other agreement hereafter made or entered into by or between any common carrier and the owner or shipper of any shipment of live stock, providing that written or verbal notice of loss, injury or damage thereto or of claim therefor, shall be made or given to any common carrier or to any agent or officer of any common carrier or to any other person within any period less than thirty days from the date of the occurrence of any such loss, injury or damage, shall be void and of no effect. [1911, ch. 237.]

Reasonableness of time fixed in a contract for shipment of live stock for presentation of claim for damages. 7 L.R.A.(N.S.) 1041.

Removal of live stock from carrier's premises before notice of claim for damages, where such notice is given in time for examination. 24 L.R.A.(N.S.) 866.

ARTICLE 5.—COMMON CARRIERS OF MESSAGES.

§ 6263. Order of transmission of telegraph messages. A carrier of messages by telegraph must, if it is practicable, transmit every such message immediately upon its receipt. But if this is not practicable, and several messages accumulate upon his hands, he must transmit them in the following order:

1. Messages from public agents of the United States, or of this state, on public business.

2. Messages intended in good faith for immediate publication in newspapers, and not for any secret use.

3. Messages giving information relating to the sickness or death of any person.

4. Other messages, in the order in which they were received. [R. C. 1905, § 5699; Civ. C. 1877, § 1285; R. C. 1899, § 4251.]

Unreasonable delay in delivery of telegram casts upon company burden of showing exculpatory facts. *Lothian v. Western U. Teleg. Co.*, 25 S. D. 319, 126 N. W. 621.

Mandamus to compel performance of duties of telegraph company. 38 Am. Rep. 587; 44 Am. Rep. 241.

Right to refuse telegraph message because of its character. 17 L.R.A.(N.S.) 836.

Criminal liability for agent's failure to transmit telegram. 41 L.R.A. 660.

Liability for transmission or delivery of forged message. 65 L.R.A. 806.

Duty of telegraph company to find person addressed. 15 L.R.A. 129.

—to discover unknown sendee. 22 L.R.A.(N.S.) 761.

When telegraph company charged with notice of importance of commercial message. 41 L.R.A.(N.S.) 1188.

§ 6264. Carrier must maintain sufficient equipment. All persons, corporations and companies doing a public telegraph business within the state shall maintain sufficient wires and equipment to give prompt service and dispatch. All messages received in any telegraph office within the state must be delivered promptly if it is within the power of a telegraph company to locate the party to whom the message is addressed. [1907, ch. 246, § 1.]

§ 6265. Messages transmitted promptly. All messages left at the office of any telegraph office or the office of any railroad station where public service is maintained, must be transmitted promptly, providing said message is prepaid by the sender. In no case must a message remain at the telegraph office or station unsent more than thirty minutes, except in case of accident to the lines, such as broken wire or during severe storms. [1907, ch. 246, § 2.]

Duty of telegraph company to notify sender of message if it cannot be promptly transmitted or delivered. 67 L.R.A. 153; 16 L.R.A.(N.S.) 870.

Liability of telegraph company sending message to office after closing hour. 53 L.R.A. 732; 24 L.R.A.(N.S.) 1286.

Right of addressee of telegram to sue for delay in delivery. 30 L.R.A.(N.S.) 1116.

§ 6266. Blanks used to conform to act. All blanks and forms used for the sending of telegrams within the state must comply with the requirements of this act [sections 6264-6266a] and it shall be the duty of any companies doing a telegraph business for a compensation within the state to conduct their business and offices in such a manner that this act [sections 6264-6266a] be not violated. [1907, ch. 246, § 3.]

§ 6266a. Penalty. Any person, company or corporation or any agent of the same who shall violate any of the provisions of this act [sections 6264-6266a] shall be subject to a fine of not less than one hundred dollars nor more than five hundred dollars for each offense, and shall also be liable to the sender or receiver of the message on which violation was made, for all damages resulting from such delay and the criminal procedure is hereby made applicable for collecting fines under [sections 6264-6266a] this act. [1907, ch. 246, § 4.]

What are proper elements of damages in actions for failure to deliver messages. 10 Am. St. Rep. 778; 117 Am. St. Rep. 286.

Right to recover against telegraph company for loss sustained upon a commercial transaction entered into in consequence of a breach of its duty. 4 L.R.A.(N.S.) 262.

Loss of opportunity to respond to a call for professional services as a ground for action against telegraph company. 14 L.R.A.(N.S.) 533.

Damages for nondelivery or mistake in telegram preventing one from being met at railroad station. 35 L.R.A.(N.S.) 930.

—for breach of company's duty as to message asking for, or transmitting, funds. 2 L.R.A.(N.S.) 1073.

—for nondelivery of telegram sent after office hours. 53 L.R.A. 738.

Loss of profits as element of damages for breach of contract to transmit telegram. 53 L.R.A. 91; 27 L.R.A.(N.S.) 639; 49 L.R.A.(N.S.) 927.

Damages recoverable in action by addressee of telegram for delay in delivery. 30 L.R.A.(N.S.) 1133.

§ 6267. Transfer of messages. Every telegraph company, firm or corporation engaged in the business of transmitting messages by telegraph, in this state, or partly within and partly without this state, shall upon receipt of a message within this state to a point not on its own lines, transmit and deliver such message to another telegraph company on whose line such point may be reached, at the intersecting point where both such companies maintain an office for the transmission of messages which will, when the rate of both such companies are combined, make the cheapest route to the destination of such message; provided, however, that nothing in this act shall prohibit the transfer of such message at convenient or central points where both such telegraph companies may be better equipped, but in no

case shall this rate exceed the combined rate of both companies at the nearest intersecting point, nor the transmission of such message partly by telephone; provided, it is cheaper or more expedient and agreeable to sender, when copy is delivered within reasonable time to addressee, if required. [1913, ch. 282, § 1.]

§ 6268. Penalty. Every telegraph company, firm or corporation violating the provisions of this act [sections 6267, 6268] shall be fined not less than ten dollars nor more than fifty dollars for each offense, and it shall be the duty of the state's attorney upon order from the state board of railroad commissioners or upon the complaint of any citizen, to commence and prosecute all actions necessary for the enforcement of [sections 6267, 6268] this act. [1913, ch. 282, § 2.]

§ 6269. Messages other than telegraph. A common carrier of messages, otherwise than by telegraph, must transmit messages in the order in which he received them, except messages from agents of the United States or of this state on public business to which he must always give priority. But he may fix upon certain times for the simultaneous transmission of messages previously received. [R. C. 1905, § 5700; Civ. C. 1877, § 1286; R. C. 1899, § 4252.]

§ 6270. Damages for postponing, refusing or delaying messages. Every person whose message is refused, postponed or delayed, contrary to the provisions of this chapter, is entitled to recover from the carrier his actual damages and additional damages for mental distress and anguish caused by said refusal, delay or postponement. [1913, ch. 283; R. C. 1905, § 5701; Civ. C. 1877, § 1287; R. C. 1899, § 4253.]

Requirement that messages shall be written on company's blanks. *Kirby v. W. U. Tel. Co.*, 4 S. D. 105, 55 N. W. 759, 46 Am. St. Rep. 765, 30 L.R.A. 621, 624; *Kirby v. W. U. Tel. Co.*, 7 S. D. 623, 65 N. W. 37, 30 L.R.A. 621.

Penal statute must be strictly construed. *Kirby v. W. U. Tel. Co.*, 4 S. D. 463, 57 N. W. 202.

Detriment proximately resulting and which must be presumed to have been contemplated by parties cannot be held measure of damages for delay in delivering telegram. *Lothian v. Western U. Teleg. Co.*, 25 S. D. 319, 126 N. W. 621.

Penalty for delay in delivery of telegram. 53 L.R.A. 738.

State statutes imposing penalties on telegraph companies for not transmitting and delivering messages properly. 31 L.R.A. 807.

Liability under statutes imposing penalty for delay of telegraph company sending message to office after closing hour. 53 L.R.A. 738.

Recovery of damages for mental anguish in case of default or delay in delivery of telegraph message. 49 L.R.A.(N.S.) 206, 296, 300, 305, 308, 327, 343.

Constitutionality of statutes permitting recovery for mental anguish in telegraph cases. 49 L.R.A.(N.S.) 337.

CHAPTER 70.

TRUSTS IN GENERAL.

- ARTICLE 1. NATURE AND CREATION OF A TRUST, §§ 6271-6280.
 2. OBLIGATIONS OF TRUSTEES, §§ 6281-6292.
 3. OBLIGATIONS OF THIRD PERSONS, §§ 6293, 6294.

ARTICLE 1.—NATURE AND CREATION OF A TRUST.

§ 6271. Classified. A trust is either:

1. Voluntary; or,
2. Involuntary. [R. C. 1905, § 5702; Civ. C. 1877, § 1288; R. C. 1899, § 4254.]

Agent taking title to property in fraud of principal holds such title in trust. *Fideler v. Norton*, 4 D. 258, 30 N. W. 128.

Person who assumes trust must account as trustee. *Wright v. Jones*, 23 N. D. 191, 135 N. W. 1120.

As to similar provision in Cal. Civ. Code, § 2215, see *Hinckley's Estate*, 58 Cal. 457; *Barker v. Hurley*, 132 Cal. 21, 63 Pac. 1071.

§ 6272. Voluntary. A voluntary trust is an obligation arising out of personal confidence reposed in and voluntarily accepted by one for the benefit of another. [R. C. 1905, § 5703; Civ. C. 1877, § 1289; R. C. 1899, § 4255.]

Sufficiency of declaration to establish voluntary trust where legal title is retained by settler. 12 L.R.A.(N.S.) 547.

Establishment and enforcement of voluntary trusts in equity. 34 Am. St. Rep. 194.

As to similar provision in Cal. Civ. Code, § 2216, see *Roach v. Caraffa*, 85 Cal. 436, 25 Pac. 22; *Kopp v. Gunther*, 95 Cal. 63, 30 Pac. 301.

§ 6273. Involuntary. An involuntary trust is one which is created by operation of law. [R. C. 1905, § 5704; Civ. C. 1877, § 1290; R. C. 1899, § 4256.]

Two causes of action may be united against one who became involuntary trustee by taking mortgage from insolvent as preference. *Bowler v. First Nat. Bank*, 21 S. D. 449, 130 Am. St. Rep. 725, 113 N. W. 618.

City taxes collected by county are held under implied, and not an express, trust. *Centerville v. Turner County*, 25 S. D. 300, 126 N. W. 605.

As to similar provision in Cal. Civ. Code, § 2217, see *Barr v. O'Donnell*, 76 Cal. 469, 9 Am. St. Rep. 242, 18 Pac. 429; *Fulton v. Jansen*, 99 Cal. 587, 34 Pac. 331.

§ 6274. Trustor, trustee, beneficiary, defined. The person whose confidence creates a trust is called the trustor; the person in whom the confidence is reposed is called the trustee; and the person for whose benefit the trust is created is called the beneficiary. [R. C. 1905, § 5705; Civ. C. 1877, § 1291; R. C. 1899, § 4257.]

§ 6275. Constructive trust. Every one who voluntarily assumes a relation of personal confidence with another is deemed a trustee within the meaning of this chapter, not only as to the person who reposes such confidence, but as to all persons of whose affairs he thus acquires information which was given to such person in the like confidence, or over whose affairs he by such confidence obtains any control. [R. C. 1905, § 5706; Civ. C. 1877, § 1292; R. C. 1899, § 4258.]

Bank receiving deposit becomes trustee of express trust. *McLaughlin v. Bank*, 6 D. 406, 43 N. W. 715.

Purchase of property from agent with knowledge that it is trust property holds it in trust for principal. *Luscombe v. Grigsby*, 11 S. D. 408, 78 N. W. 357.

Trust funds in hands of insolvent bank at time of failure. *Kimmel v. Dickson*, 5 S. D. 221, 58 N. W. 561, 49 Am. St. Rep. 869, 25 L.R.A. 309; *Nat. Bank v. Johnson*, 6 N. D. 180, 69 N. W. 49; *Plano Mfg. Co. v. Auld*, 14 S. D. 512, 86 N. W. 21.

Agent to loan money and collect interest must act with highest good faith. *Bush v. Froelick*, 14 S. D. 62, 84 N. W. 230.

Partners are trustees for each other. *State v. Reddick*, 2 S. D. 124, 48 N. W. 846.

Agent, purchasing property for himself at slightly greater price than instructed to pay by principal, becomes trustee. *Brookings Land & Trust Co. v. Bertness*, 17 S. D. 293, 96 N. W. 97.

Trust implied to effectuate purpose of contract when its terms cannot be given effect. 58 L.R.A. 115.

Does donor's expectation that the donee will allow him to share in the benefit of the property raise an implied trust to that effect. 24 L.R.A.(N.S.) 1043.

Constructive trust in deed of homestead by husband to wife, with proviso attempting to derogate from her right of survivorship. 1 L.R.A.(N.S.) 312.

Does assignee of mortgage as collateral security, who forecloses the same and purchases the property, hold the title subject to a trust in favor of the assignor. 7 L.R.A.(N.S.) 1094.

Implied trust in property of religious society in case of schism or division. 24 L.R.A.(N.S.) 703.

Grantee's oral promise to grantor to hold in trust as giving rise to constructive trust. 39 L.R.A.(N.S.) 906.

Resulting trust in partnership lands. 27 L.R.A. 468; 37 L.R.A.(N.S.) 899.

As to similar provision in Cal. Civ. Code, § 2219, see *Connor v. Stanley*, 72 Cal. 556, 1 Am. St. Rep. 84, 14 Pac. 306; *Colton v. Stanford*, 82 Cal. 351, 16 Am. St. Rep. 137, 23 Pac. 16; *Roach v. Caraffa*, 85 Cal. 436, 25 Pac. 22; *White v. Warren*, 120 Cal. 322, 49 Pac. 129, 52 Pac. 723; *Ruhl v. Mott*, 120 Cal. 668, 53 Pac. 304; *Montgomery v. Rauer*, 125 Cal. 227, 57 Pac. 894; *Dow v. Swain*, 125 Cal. 674, 58 Pac. 271; *Odell v. Moss*, 130 Cal. 352, 62 Pac. 555; *More v. More*, 133 Cal. 489, 65 Pac. 1044, 66 Pac. 76; *Donnelly v. Rees*, 141 Cal. 56, 74 Pac. 433; *Bell v. Solomons*, 142 Cal. 59, 75 Pac. 649; *White v. Warren*, 120 Cal. 322, 49 Pac. 129, 52 Pac. 723.

§ 6276. For what purpose created. A trust may be created for any purpose for which a contract may lawfully be made, except as otherwise pre-

scribed by the chapters on uses and trusts and on transfers. [R. C. 1905, § 5707; Civ. C. 1877, § 1293; R. C. 1899, § 4259.]

As to similar provision in Cal. Civ. Code, § 2220, see *Hinckley's Estate*, 58 Cal. 457; *Hellman v. McWilliams*, 70 Cal. 449, 11 Pac. 659; *Duff v. Duff*, 71 Cal. 513, 12 Pac. 570; *Re Walkerly*, 108 Cal. 627, 49 Am. St. Rep. 97, 41 Pac. 772; *Toland v. Toland*, 123 Cal. 140, 55 Pac. 681.

§ 6277. How created as to trustor and beneficiary. Subject to the provisions of section 5364 a voluntary trust is created as to the trustor and beneficiary by any words or acts of the trustor, indicating with reasonable certainty:

1. An intention on the part of the trustor to create a trust; and,
2. The subject, purpose and beneficiary of the trust. [R. C. 1905, § 5708; Civ. C. 1877, § 1294; R. C. 1899, § 4260.]

These sections in no way qualify statutes providing for creation of trusts in land. *Murphey v. Cook*, 11 S. D. 47, 75 N. W. 387.

Trust as to property fraudulently gained. *Sussenbach v. Bank*, 5 D. 477, 41 N. W. 662; *Farmers' Bank v. Kimball Milling Co.*, 1 S. D. 388, 47 N. W. 402, 36 Am. St. Rep. 739; *Jasper v. Hazen*, 1 N. D. 75, 44 N. W. 1018.

An involuntary trustee. *Van Dyke v. Grigsby*, 11 S. D. 30, 75 N. W. 274.

Agent to foreclose mortgage, who buys in property in his own name, is an involuntary trustee. *Luscombe v. Grigsby*, 11 S. D. 408, 78 N. W. 357.

General rule not changed that trustee wrongfully disposing of trust property is liable to beneficiary for value. *Prondzinski v. Garbutt*, 10 N. D. 300, 86 N. W. 969.

Holder of sheriff's certificate of sale of realty, by preventing owner by fraud from redeeming until after sheriff's deed is taken, becomes involuntary trustee. *Prondzinski v. Garbutt*, 8 N. D. 191, 77 N. W. 1012.

One receiving deed as security with intent to defraud becomes an involuntary trustee. *Jasper v. Hazen*, 1 N. D. 75, 44 N. W. 1018.

Voluntary trusts arising from the declaration of the trustor. 34 Am. St. Rep. 189.

Voluntary parol trust in personal property. 51 Am. St. Rep. 389.

Upholding instrument otherwise ineffective as a conveyance of real property as a covenant to stand seized to uses. 38 L.R.A.(N.S.) 937.

Necessity of beneficiary's knowledge of trust. 10 L.R.A.(N.S.) 616.

Necessity of word "heirs" in deed or devise in trust to pass fee to trustee. 2 L.R.A.(N.S.) 172.

Effect of executor's promise as to payment of legacy upon trust relations with legatees. 9 L.R.A.(N.S.) 214.

Effect of specifying use of real estate in devise to religious society as creating a trust. 11 L.R.A.(N.S.) 512, 520.

Creation of trust by use of words "upon condition," in will or conveyance of real property. 9 L.R.A.(N.S.) 758.

Character of estate created by grant, lease or devise of property to person so long as he shall desire to live upon it, or devote it to a particular use. 21 L.R.A.(N.S.) 575.

Creation of trust by precatory words in a will. 37 L.R.A.(N.S.) 646.

Trust for charity or religion. 14 L.R.A.(N.S.) 77; 37 L.R.A.(N.S.) 999.

Effect of creation of testamentary trust for payment of debts. 5 L.R.A.(N.S.) 355.

Bequest to one to divide as he thinks best. 37 L.R.A.(N.S.) 401.

As to similar provision in Cal. Civ. Code, § 2221, see *Hinckley's Estate*, 58 Cal. 457; *Hellman v. McWilliams*, 70 Cal. 449, 11 Pac. 659; *Goldtree v. Thompson*, 79 Cal. 613, 22 Pac. 50; *Tyler v. Mayre*, 95 Cal. 160, 27 Pac. 160, 30 Pac. 196; *Re Walkerly*, 108 Cal. 627, 49 Am. St. Rep. 97, 41 Pac. 772; *Lynch v. Rooney*, 112 Cal. 279, 44 Pac. 565; *Booth v. Oakland Bank*, 122 Cal. 19, 54 Pac. 370; *Wittfield v. Forster*, 124 Cal. 418, 57 Pac. 219; *Sheehan v. Sullivan*, 126 Cal. 189, 58 Pac. 543; *McCloud v. Hewlett*, 135 Cal. 361, 67 Pac. 333; *Faylor v. Faylor*, 136 Cal. 92, 68 Pac. 482; *Re Reith*, 144 Cal. 314, 77 Pac. 942; *Bedell v. Scoggins*, 5 Cal. Unrep. 66, 40 Pac. 954.

§ 6278. How as to trustee. Subject to the provisions of section 5364, a voluntary trust is created as to the trustee by any words or acts of his, indicating with reasonable certainty:

1. His acceptance of the trust or his acknowledgment, made upon sufficient consideration, of its existence; and,
2. The subject, purpose and beneficiary of the trust. [R. C. 1905, § 5709; Civ. C. 1877, § 1295; R. C. 1899, § 4261.]

As to similar provision in Cal. Civ. Code, § 2222, see *Broder v. Conklin*, 77 Cal. 330, 19 Pac. 513; *Goldtree v. Thompson*, 79 Cal. 613, 22 Pac. 50; *Roach v. Caraffa*, 85 Cal. 436, 25 Pac. 22; *Tyler v. Mayre*, 95 Cal. 160, 27 Pac. 160, 30 Pac. 196; *Bedell v. Scoggins*, 5 Cal. Unrep. 66, 40 Pac. 954; *Re Walkerly*, 108 Cal. 627, 49 Am. St. Rep. 97, 41 Pac. 772; *Booth v. Oakland Bank*, 122 Cal. 19, 54 Pac. 370; *Barker v. Hurley*,

132 Cal. 21, 63 Pac. 1071; McCloud v. Hewlett, 135 Cal. 361, 67 Pac. 333; Keogh v. Noble, 136 Cal. 153, 68 Pac. 579; Elizalde v. Elizalde, 137 Cal. 634, 66 Pac. 379, 70 Pac. 861.

§ 6279. Trustee by wrongful detention. One who wrongfully detains a thing is an involuntary trustee thereof for the benefit of the owner. [R. C. 1905, § 5710; Civ. C. 1877, § 1296; R. C. 1899, § 4262.]

As to whether one in possession of crops severed from land which he occupied under land contract upon which he has defaulted, is involuntary trustee for benefit of owner where he wrongfully retains crops. *Golden Valley Land & Cattle Co. v. Johnstone*, 21 N. D. 101, 128 N. W. 691, Ann. Cas. 1913B, 631.

Two causes of action may be united against one who became involuntary trustee by taking mortgage from insolvent as preference. *Bowler v. First Nat. Bank*, 21 S. D. 449, 130 Am. St. Rep. 725, 113 N. W. 618.

As to similar provision in Cal. Civ. Code, § 2223, see *Greiner v. Greiner*, 58 Cal. 115; *Roach v. Caraffa*, 85 Cal. 436, 25 Pac. 22; *Heydenfeldt v. Jacobs*, 107 Cal. 373, 40 Pac. 492; *Nougues v. Newlands*, 118 Cal. 102, 50 Pac. 386.

§ 6280. Trustee by fraud, etc. One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust or other wrongful act is, unless he has some other and better right thereto, an involuntary trustee of the thing gained for the benefit of the person who would otherwise have had it. [R. C. 1905, § 5711; Civ. C. 1877, § 1297; R. C. 1899, § 4263.]

Agent purchasing property for himself at slightly greater price than instructed to pay by principal becomes trustee. *Brookings Land & Trust Co. v. Bertness*, 17 S. D. 293, 96 N. W. 97.

Bank receiving money under false pretenses becomes trustee *ex maleficio* of such funds. *Widman v. Kellogg*, 22 N. D. 396, 39 L.R.A.(N.S.) 563, 133 N. W. 1020.

When devisees, heirs and legatees hold as trustees *ex maleficio*. 106 Am. St. Rep. 94.

May a constructive trust be based upon an undertaking to hold for the benefit of another property received through devise or inheritance where no actual testamentary intention has been frustrated. 33 L.R.A.(N.S.) 996.

When a purchaser of property for less than value without fraudulent intent will be regarded as a trustee for creditors. 5 L.R.A.(N.S.) 395.

Impressing share of heir, devisee or legatee with constructive trust because of his fraud in frustrating decedent's intention to give the property to a third person. 8 L.R.A.(N.S.) 698; 31 L.R.A.(N.S.) 176.

As to similar provision in Cal. Civ. Code, § 2224, see *Harpending v. Meyer*, 55 Cal. 555; *Greiner v. Greiner*, 58 Cal. 115; *Somers v. Overhulser*, 67 Cal. 237, 7 Pac. 645; *Wingerter v. Wingerter*, 71 Cal. 105, 11 Pac. 853; *Barr v. O'Donnell*, 76 Cal. 469, 9 Am. St. Rep. 242, 18 Pac. 429; *Broder v. Conklin*, 77 Cal. 330, 19 Pac. 513; *Loaiza v. Superior Ct.*, 85 Cal. 11, 9 L.R.A. 376, 20 Am. St. Rep. 197, 24 Pac. 707; *Roach v. Caraffa*, 85 Cal. 436, 25 Pac. 22; *Buckley v. Howe*, 86 Cal. 596, 25 Pac. 132; *McDaniel v. Pattison*, 98 Cal. 86, 27 Pac. 651, 32 Pac. 805; *Heydenfeldt v. Jacobs*, 107 Cal. 373, 40 Pac. 492; *Lynch v. Rooney*, 112 Cal. 279, 44 Pac. 565; *Nougues v. Newlands*, 118 Cal. 102, 50 Pac. 386; *Sheehan v. Sullivan*, 126 Cal. 189, 58 Pac. 543; *Mulcahey v. Dow*, 131 Cal. 73, 63 Pac. 158; *Crosby v. Clark*, 132 Cal. 1, 63 Pac. 1022; *Donnelly v. Rees*, 141 Cal. 56, 74 Pac. 433; *Bell v. Solomons*, 142 Cal. 59, 75 Pac. 649.

ARTICLE 2.—OBLIGATIONS OF TRUSTEES.

§ 6281. Highest good faith to beneficiary. In all matters connected with his trust a trustee is bound to act in the highest good faith toward his beneficiary and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat or adverse pressure of any kind. [R. C. 1905, § 5712; Civ. C. 1877, § 1298; R. C. 1899, § 4264.]

Sale of bank's assets by receiver to another bank in which he is interested will not be vacated, where bank permitted it or was not thereby injured. *Jackson v. First State Bank*, 21 S. D. 484, 113 N. W. 876.

Attorney must not permit private interests to conflict with those of his client. *Re Ramsey*, 24 S. D. 266, 123 N. W. 726.

Fiduciary relation of trustee and beneficiary. 16 Am. Dec. 616.

Fiduciary relations as affecting reliance on fraudulent statement. 37 L.R.A. 613.

Independent advice as condition of valid gift inter vivos between trustee and cestui que trust. 16 L.R.A.(N.S.) 1087.

Control of discretion of trustee by courts of equity. 6 Am. St. Rep. 885.

When beneficiaries bound by acts of trustees in contravention of their trusts. 63 Am. St. Rep. 467.

Compensation of trustees. 17 Am. Dec. 266.

Sales and conveyances by trustees. 64 Am. Dec. 199; 19 Am. St. Rep. 266.

When power of sale vests in trustee by implication. 87 Am. Dec. 209.

Sales under powers in trust deeds to secure money. 92 Am. St. Rep. 573.

As to similar provision in Cal. Civ. Code, § 2228, see *Colton v. Stanford*, 82 Cal. 351, 16 Am. St. Rep. 137, 23 Pac. 16; *San Francisco Water Co. v. Pattee*, 86 Cal. 623, 25 Pac. 135; *Dolliver v. Dolliver*, 94 Cal. 642, 30 Pac. 4; *Re Nichols*, 5 Cal. Unrep. 856, 50 Pac. 1072; *Richards v. Fraser*, 136 Cal. 460, 69 Pac. 83; *Calmon v. Sarraille*, 143 Cal. 638, 76 Pac. 486; *Schnittger v. Old Home Consol. Min. Co.*, 144 Cal. 603, 78 Pac. 9.

§ 6282. Use of property for trustee's profit prohibited. A trustee may not use or deal with the trust property for his own profit or for any other purpose unconnected with the trust in any manner. [R. C. 1905, § 5713; Civ. C. 1877, § 1299; R. C. 1899, § 4265.]

Partner using partnership property for his own profit may be required to account for such profits. *Lay v. Emery*, 8 N. D. 515, 79 N. W. 1053.

Former administrator can recover only amount paid by him for mortgage against estate. *Bidwell v. Smith*, 23 S. D. 120, 120 N. W. 880.

Right to pursue and recover trust funds. 32 Am. St. Rep. 125; 46 Am. St. Rep. 608.

As to similar provision in Cal. Civ. Code, § 2229, see *Colton v. Stanford*, 82 Cal. 351, 16 Am. St. Rep. 137, 23 Pac. 16; *Wickersham v. Crittenden*, 93 Cal. 17, 28 Pac. 788; *Allin v. Williams*, 97 Cal. 403, 32 Pac. 441; *Millet v. Bradbury*, 109 Cal. 170, 41 Pac. 865; *San Diego, O. T. & P. B. R. Co. v. Pacific Beach R. Co.*, 112 Cal. 53, 33 L.R.A. 788; 44 Pac. 333; *Birmingham v. Wilcox*, 120 Cal. 467, 52 Pac. 822; *Lower Kings River Reclamation Dist. v. McCullah*, 124 Cal. 175, 56 Pac. 887; *State Loan & T. Co. v. Cochran*, 130 Cal. 245, 62 Pac. 466, 600; *Sims v. Petaluma Gaslight Co.*, 131 Cal. 656, 63 Pac. 1011; *Pacific Vinegar & Pickle Works v. Smith*, 145 Cal. 352, 104 Am. St. Rep. 42, 78 Pac. 550.

§ 6283. Transactions when trustee's interest adverse to beneficiary prohibited. Exceptions. Neither a trustee, nor any of his agents, may take part in any transaction concerning the trust in which he or any one for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

1. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee and of all other facts concerning the transaction which might affect his own decision and without the use of any influence on the part of the trustee, permits him to do so.

2. When the beneficiary not having power to contract, the district court upon the like information of the facts, grants the like permission; or,

3. When some of the beneficiaries having capacity to contract and some not having it, the former grant permission for themselves and the district court for the latter in the manner above prescribed. [R. C. 1905, § 5714; Civ. C. 1877, § 1300; R. C. 1899, § 4266.]

Resolution allowing accounts and increasing salary of managing director, passed by votes of such director and his wife, is void. *Ritchie v. People's Teleph. Co.*, 22 S. D. 598, 119 N. W. 990.

As to similar provision in Cal. Civ. Code, § 2230, see *Chamberlain v. Pacific Wool-Growing Co.*, 54 Cal. 103; *Graves v. Mono Lake Hydraulic Min. Co.*, 81 Cal. 303, 22 Pac. 665; *San Francisco Water Co. v. Pattee*, 86 Cal. 623, 25 Pac. 135; *Burke v. Bours*, 98 Cal. 171, 32 Pac. 980; *San Diego, O. T. & P. B. R. Co. v. Pacific Beach Co.*, 112 Cal. 53, 33 L.R.A. 788, 44 Pac. 333; *Blood v. La Serena Land & Water Co.*, 113 Cal. 221, 41 Pac. 1017, 45 Pac. 252; *Broder v. Conklin*, 121 Cal. 282, 53 Pac. 699; *State Loan & T. Co. v. Cochran*, 130 Cal. 245, 62 Pac. 466, 600; *Phillips v. Sanger Lumber Co.*, 130 Cal. 431, 62 Pac. 749; *Sims v. Petaluma Gaslight Co.*, 131 Cal. 656, 63 Pac. 1011; *Re Healy*, 6 Cal. Unrep. 780, 66 Pac. 175; *McCabe v. Healy*, 138 Cal. 81, 70 Pac. 1008; *Schnittger v. Old Home Consol. Min. Co.*, 144 Cal. 603, 78 Pac. 9; *Pacific Vinegar & Pickle Works v. Smith*, 145 Cal. 352, 104 Am. St. Rep. 42, 78 Pac. 550.

§ 6284. Use of influence for advantage prohibited. A trustee may not use the influence which his position gives to obtain any advantage from his beneficiary. [R. C. 1905, § 5715; Civ. C. 1877, § 1301; R. C. 1899, § 4267.]

As to similar provision in Cal. Civ. Code, § 2231, see *Jackson v. Jackson*, 94 Cal. 446, 29 Pac. 957; *Dimond v. Sanderson*, 103 Cal. 97, 37 Pac. 189; *Blood v. La Serena Land & Water Co.*, 113 Cal. 221, 41 Pac. 1017, 45 Pac. 252; *McCabe v. Healy*, 138 Cal. 81, 70 Pac. 1008; *Bell v. Solomons*, 142 Cal. 59, 75 Pac. 649; *Calmon v. Sarraille*, 142 Cal. 638, 76 Pac. 486.

§ 6285. Undertaking adverse trust prohibited. No trustee so long as he remains in the trust may undertake another trust adverse in its nature to

the interest of his beneficiary in the subject of the trust without the consent of the latter. [R. C. 1905, § 5716; Civ. C. 1877, § 1302; R. C. 1899, § 4268.]

§ 6286. Adverse interest acquired. If a trustee acquires any interest or becomes charged with any duty adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof and may be at once removed. [R. C. 1905, § 5717; Civ. C. 1877, § 1303; R. C. 1899, § 4269.]

As to similar provision in Cal. Civ. Code, § 2232, see *Blood v. La Serena Land & Water Co.*, 113 Cal. 221, 41 Pac. 1017, 45 Pac. 252; *Re Watkins*, 121 Cal. 327, 53 Pac. 702; *Re Healy*, 6 Cal. Unrep. 780, 66 Pac. 175; *McCabe v. Healy*, 138 Cal. 81, 70 Pac. 1008; *Calmon v. Sarraille*, 142 Cal. 638, 76 Pac. 486.

§ 6287. Violation of preceding sections a fraud. Every violation of the provisions of the preceding sections of this article is a fraud against the beneficiary of the trust. [R. C. 1905, § 5718; Civ. C. 1877, § 1304; R. C. 1899, § 4270.]

As to similar provision in Cal. Civ. Code, § 2234, see *Statt's Estate*, 52 Cal. 403; *Graves v. Mono Lake Hydraulic Min. Co.*, 81 Cal. 303, 22 Pac. 665; *San Francisco Water Co. v. Pattee*, 86 Cal. 623, 25 Pac. 135; *Jackson v. Jackson*, 94 Cal. 446, 29 Pac. 957; *Allin v. Williams*, 97 Cal. 403, 32 Pac. 441; *Dimond v. Sanderson*, 103 Cal. 97, 37 Pac. 189; *Blood v. La Serena Land & Water Co.*, 113 Cal. 221, 41 Pac. 1017, 45 Pac. 252; *Re Watkins*, 121 Cal. 327, 53 Pac. 702; *Phillips v. Sanger Lumber Co.*, 130 Cal. 431, 62 Pac. 749; *Mulcahey v. Dow*, 131 Cal. 73, 63 Pac. 158; *Re Healy*, 6 Cal. Unrep. 780, 66 Pac. 175; *Pacific Vinegar & Pickle Works v. Smith*, 145 Cal. 352, 104 Am. St. Rep. 42, 78 Pac. 550.

§ 6288. Presumption against trustee. All transactions between a trustee and his beneficiary during the existence of the trust or while the influence acquired by the trustee remains by which he obtains any advantage from his beneficiary are presumed to be entered into by the latter without sufficient consideration and under undue influence. [R. C. 1905, § 5719; Civ. C. 1877, § 1305; R. C. 1899, § 4271.]

As to similar provision in Cal. Civ. Code, § 2235, see *Connor v. Stanley*, 72 Cal. 556, 1 Am. St. Rep. 84, 14 Pac. 306; *Golson v. Dunlap*, 73 Cal. 157, 14 Pac. 576; *Brisson v. Brisson*, 75 Cal. 525, 7 Am. St. Rep. 189, 17 Pac. 689; *Colton v. Stanford*, 82 Cal. 351, 16 Am. St. Rep. 137, 23 Pac. 16; *Jackson v. Jackson*, 94 Cal. 446, 29 Pac. 957; *Dimond v. Sanderson*, 103 Cal. 97, 37 Pac. 189; *White v. Warren*, 120 Cal. 322, 49 Pac. 129, 52 Pac. 723; *Odell v. Moss*, 130 Cal. 352, 62 Pac. 555; *Re Healy*, 6 Cal. Unrep. 780, 66 Pac. 175; *Stiles v. Cain*, 134 Cal. 170, 66 Pac. 231; *Richards v. Fraser*, 136 Cal. 460, 69 Pac. 83; *Farmers' & M. Bank v. De Shorb*, 137 Cal. 685, 70 Pac. 771; *Bell v. Solomons*, 142 Cal. 59, 75 Pac. 649; *Calmon v. Sarraille*, 142 Cal. 638, 76 Pac. 486.

§ 6289. Liability for mingling property. A trustee who willfully and unnecessarily mingles the trust property with his own so as to constitute himself in appearance its absolute owner is liable for its safety in all events. [R. C. 1905, § 5720; Civ. C. 1877, § 1306; R. C. 1899, § 4272.]

As to similar provision in Cal. Civ. Code, § 2236, see *Re Arguello*, 97 Cal. 196, 31 Pac. 937; *Re Bane*, 120 Cal. 533, 65 Am. St. Rep. 197, 52 Pac. 852; *Calmon v. Sarraille*, 142 Cal. 638, 76 Pac. 486.

§ 6290. Liability for unlawful use. A trustee who uses or disposes of the trust property contrary to section 6282 may, at the option of the beneficiary, be required to account for all profits so made or to pay the value of its use and, if he has disposed thereof, to replace it with its fruits or to account for its proceeds with interest. [R. C. 1905, § 5721; Civ. C. 1877, § 1307; R. C. 1899, § 4273.]

As to award for value of use of land being proper where trustee has conveyed to innocent purchaser. *Berry v. Evendon*, 14 N. D. 1, 103 N. W. 748.

Right of vendee to elect between value of use and occupation or net profits where vendor has used land after conveyance. *Cotton v. Butterfield*, 14 N. D. 465, 105 N. W. 236.

Sale of bank's assets by receiver to another bank in which he is interested will not be vacated, where bank permitted it or was not thereby injured. *Jackson v. First State Bank*, 21 S. D. 484, 113 N. W. 876.

As to similar provision in Cal. Civ. Code, § 2237, see *Harpending v. Meyer*, 55 Cal. 555; *Birmingham v. Wilcox*, 120 Cal. 467, 52 Pac. 822; *Calmon v. Sarraille*, 142 Cal. 638, 76 Pac. 486.

§ 6291. Liability for unauthorized use. A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good faith and with intent to serve the interest of the beneficiary, is liable only to make good whatever is lost to the beneficiary by his error. [R. C. 1905, § 5722; Civ. C. 1877, § 1308; R. C. 1899, § 4274.]

Personal liability of trustee for losses to trust estate from investments. 44 L.R.A.(N.S.) 873.

Investments which trustees may make without becoming liable for loss. 40 Am. Dec. 506.

Investments a trustee may not make without incurring liability in case of loss. 132 Am. St. Rep. 372.

As to similar provision in Cal. Civ. Code, § 2238, see *Winchester v. Howard*, 136 Cal. 432, 89 Am. St. Rep. 153, 64 Pac. 692, 69 Pac. 77; *Calmon v. Sarraile*, 142 Cal. 638, 76 Pac. 486.

§ 6292. Liability for cotrustees consenting. A trustee is responsible for the wrongful acts of a cotrustee to which he consented or which by his negligence he enabled the latter to commit but for no others. [R. C. 1905, § 5723; Civ. C. 1877, § 1309; R. C. 1899, § 4275.]

Liability of one cotrustee for the acts and defaults of another. 42 Am. Dec. 288.

Liability of inactive trustee for defalcation of cotrustee. 38 L.R.A.(N.S.) 1029.

When majority of trustees may act. 11 Am. Dec. 674.

As to similar provision in Cal. Civ. Code, § 2239, see *Re Osborn*, 87 Cal. 1, 11 L.R.A. 264, 25 Pac. 157; *Birmingham v. Wilcox*, 120 Cal. 467, 52 Pac. 822; *Calmon v. Sarraile*, 142 Cal. 638, 76 Pac. 486.

ARTICLE 3.—OBLIGATIONS OF THIRD PERSONS.

§ 6293. When transferee involuntary trustee. Every one to whom property is transferred in violation of a trust holds the same as an involuntary trustee under such trust, unless he purchased it in good faith and for a valuable consideration. [R. C. 1905, § 5724; Civ. C. 1877, § 1310; R. C. 1899, § 4276.]

Addition of "trustee" to name of grantee in deed does not create trust. *Rua v. Watson*, 13 S. D. 453, 83 N. W. 572.

Purchaser of property from agent, with knowledge that it is trust property, holds it for principal. *Luscombe v. Grigsby*, 11 S. D. 408, 78 N. W. 357.

As to similar provision in Cal. Civ. Code, § 2243, see *Warnock v. Harlow*, 96 Cal. 298, 31 Am. St. Rep. 209, 31 Pac. 166; *Gray v. Farmers' Exch. Bank*, 105 Cal. 60, 38 Pac. 519; *Chapman v. Hughes*, 134 Cal. 641, 58 Pac. 298, 60 Pac. 974, 66 Pac. 982.

§ 6294. Trustee's misapplication no prejudice to good faith. One who actually and in good faith transfers any money or other property to a trustee as such is not bound to see to the application thereof; and his rights can in no way be prejudiced by a misapplication thereof by the trustee. Other persons must at their peril see to the proper application of money or other property paid or delivered by them. [R. C. 1905, § 5725; Civ. C. 1877, § 1311; R. C. 1899, § 4277.]

As to similar provision in Cal. Civ. Code, § 2244, see *Nougues v. Newlands*, 118 Cal. 102, 50 Pac. 386.

CHAPTER 71.

TRUSTS FOR THE BENEFIT OF THIRD PERSONS.

ARTICLE 1. NATURE AND CREATION OF THE TRUST, §§ 6295-6299.

2. OBLIGATIONS OF TRUSTEES, §§ 6300-6304A.

3. POWERS OF TRUSTEES, §§ 6305-6307.

4. RIGHTS OF TRUSTEES, §§ 6308-6310.

5. TERMINATION OF THE TRUST, §§ 6311-6315.

6. SUCCESSION OR APPOINTMENT OF NEW TRUSTEES, §§ 6316-6318.

ARTICLE 1.—NATURE AND CREATION OF THE TRUST.

§ 6295. Scope of chapter. The provisions of this chapter apply only to express trusts, created for the benefit of another than the trustor, and in

which the title to the trust property is vested in the trustee; not including, however, those of executors, administrators and guardians as such. [R. C. 1905, § 5726; Civ. C. 1877, § 1312; R. C. 1899, § 4278.]

As to similar provision in Cal. Civ. Code, § 2250, see *Elizalde v. Elizalde*, 137 Cal. 634, 66 Pac. 369, 70 Pac. 861.

§ 6296. By mutual consent, enforceable before rescission. The mutual consent of a trustor and trustee creates a trust of which the beneficiary may take advantage at any time prior to its rescission. [R. C. 1905, § 5727; Civ. C. 1877, § 1313; R. C. 1899, § 4279.]

As to similar provision in Cal. Civ. Code, § 2251, see *Bettis v. Townsend*, 61 Cal. 333; *Dyer v. Leach*, 91 Cal. 191, 25 Am. St. Rep. 171, 27 Pac. 598; *Tyler v. Mayre*, 95 Cal. 160, 27 Pac. 160, 30 Pac. 196; *Robertson v. Burrell*, 110 Cal. 568, 42 Pac. 1086; *Booth v. Oakland Bank*, 122 Cal. 19, 54 Pac. 370.

§ 6297. When court trustor. When a trustee is appointed by a court or public officer as such, such court or officer is the trustor within the meaning of the last section. [R. C. 1905, § 5728; Civ. C. 1877, § 1314; R. C. 1899, § 4280.]

As to similar provision in Cal. Civ. Code, § 2252, see *Dyer v. Leach*, 91 Cal. 191, 25 Am. St. Rep. 171, 27 Pac. 598.

§ 6298. Where object, etc., expressed. The nature, extent and object of a trust are expressed in the declaration of trust. [R. C. 1905, § 5729; Civ. C. 1877, § 1315; R. C. 1899, § 4281.]

§ 6299. What deemed part of declaration of trust. All declarations of a trustor to his trustees in relation to the trust before its acceptance by the trustees, or any of them, are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing all previous declarations by the same trustor are merged therein. [R. C. 1905, § 5730; Civ. C. 1877, § 1316; R. C. 1899, § 4282.]

ARTICLE 2.—OBLIGATIONS OF TRUSTEES.

§ 6300. Must follow directions. Exception. A trustee must fulfill the purpose of the trust as declared at its creation and must follow all the directions of the trustor given at that time, except as modified by the consent of all parties interested in the same manner and to the same extent as an employee. [R. C. 1905, § 5731; Civ. C. 1877, § 1317; R. C. 1899, § 4283.]

As to similar provision in Cal. Civ. Code, § 2258, see *Kennedy v. Dunn*, 58 Cal. 339.

§ 6301. Ordinary care and diligence required. A trustee, whether he receives any compensation or not, must use at least ordinary care and diligence in the execution of his trust. [R. C. 1905, § 5732; Civ. C. 1877, § 1318; R. C. 1899, § 4284.]

Liability of trustee for torts or negligence of servants. 63 L.R.A. 227.

As to similar provision in Cal. Civ. Code, § 2259, see *Re Nichols*, 5 Cal. Unrep. 856, 50 Pac. 1072.

§ 6302. Duty as to appointment of successor. If a trustee procures or assents to his discharge from his office before his trust is fully executed, he must use at least ordinary care and diligence to secure the appointment of a trustworthy successor before accepting his own final discharge. [R. C. 1905, § 5733; Civ. C. 1877, § 1319; R. C. 1899, § 4285.]

§ 6303. Investment of trust money. A trustee must invest money received by him under the trust as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same. [R. C. 1905, § 5734; Civ. C. 1877, § 1320; R. C. 1899, § 4286.]

Personal liability of trustee for losses to trust estate from investments. 44 L.R.A.(N.S.) 873.

Liability of bank directors in case of bad loans or investments. 55 L.R.A. 762; 39 L.R.A.(N.S.) 173.

As to similar provision in Cal. Civ. Code, § 2261, see *Elizalde v. Elizalde*, 137 Cal. 634, 66 Pac. 369, 70 Pac. 861.

§ 6304. Liability for failure. If the trustee omits to invest the trust moneys according to the last section, he must pay simple interest thereon, if such

omission is negligent merely and compound interest if it is willful. [R. C. 1905, § 5735; Civ. C. 1877, § 1321; R. C. 1899, § 4287.]

As to similar provision in Cal. Civ. Code, § 2262, see *Birmingham v. Wilcox*, 120 Cal. 467, 52 Pac. 822; *Bemmerly v. Woodward*, 124 Cal. 568, 57 Pac. 561; *Elizalde v. Elizalde*, 137 Cal. 634, 66 Pac. 369, 70 Pac. 861.

§ 6304a. Cannot enforce claims purchased in contemplation of appointment. A trustee cannot enforce any claim against the trust property which he purchases after or in contemplation of his appointment as trustee; but he may be allowed by any competent court to charge to the trust property what he has in good faith paid for the claim upon discharging the same. [R. C. 1905, § 5736; Civ. C. 1877, § 1322; R. C. 1899, § 4288.]

Pledged bonds purchased by managing agent of corporation, inure to benefit thereof. *Fowler v. Iowa Land Co.*, 18 S. D. 131, 99 N. W. 1095.

As to similar provision in Cal. Civ. Code, § 2263, see *Carey v. Brown*, 62 Cal. 373.

ARTICLE 3.—POWERS OF TRUSTEES.

§ 6305. Authority of trustee. A trustee is a general agent for the trust property. His authority is such as is conferred upon him by the declaration of trust and by this chapter and none other. His acts, within the scope of his authority, bind the trust property to the same extent as the acts of a general agent bind his principal. [R. C. 1905, § 5737; Civ. C. 1877, § 1323; R. C. 1899, § 4289.]

Ordinarily trustee personally liable on all contracts made by him as trustee. May charge liability upon trust fund. Creditor may follow trust property. Authority of trustee. *Mercantile Co. v. Grover*, 7 N. D. 460, 75 N. W. 914.

Implied power of trustee to sell real property. 32 L.R.A.(N.S.) 676.

Power of trustee to mortgage trust estate for purpose of making improvements so as to render it productive. 7 L.R.A.(N.S.) 263.

Right of trustee to execute lease to extend beyond termination of trust. 13 L.R.A.(N.S.) 496.

Power of testamentary trustee to carry on business in behalf of estate. 40 L.R.A.(N.S.) 204.

§ 6306. All cotrustees must act. When there are several cotrustees all must unite in any act to bind the trust property, unless the declaration of trust otherwise provides. [R. C. 1905, § 5738; Civ. C. 1877, § 1324; R. C. 1899, § 4290.]

§ 6307. Discretionary power controlled by court. A discretionary power conferred upon a trustee is presumed not to be left to his arbitrary discretion, but may be controlled by the district court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust. [R. C. 1905, § 5739; Civ. C. 1877, § 1325; R. C. 1899, § 4291.]

As to similar provision in Cal. Civ. Code, § 2269, see *Hallinan v. Hearst*, 133 Cal. 645, 55 L.R.A. 216, 66 Pac. 17.

ARTICLE 4.—RIGHTS OF TRUSTEES.

§ 6308. Payment of expenses incurred. A trustee is entitled to the payment out of the trust property of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures if they were productive of actual benefit to the estate. [R. C. 1905, § 5740; Civ. C. 1877, § 1326; R. C. 1899, § 4292.]

§ 6309. Compensation. When a declaration of trust is silent upon the subject of compensation, the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation, he is entitled to the amount thus specified and no more. If it directs that he shall be allowed a compensation, but does not specify the rate or amount, he is entitled to such compensation as may be reasonable under the circumstances. [R. C. 1905, § 5741; Civ. C. 1877, § 1327; R. C. 1899, § 4293.]

Right of partner appointed trustee on liquidation to compensation. 17 L.R.A.(N.S.) 399.

Right of trustee to retain bonus or gratuity received from third person. 37 L.R.A. (N.S.) 923.

Right as between trustee and cestui que trust to compensation due for former's services as director. 1 B. R. C. 313.

As to similar provision in Cal. Civ. Code, § 2274, see *Menke v. Miller*, 56 Cal. 628.

§ 6310. Involuntary trustee excluded. An involuntary trustee, who becomes such through his own fault, has none of the rights mentioned in this article. [R. C. 1905, § 5742; Civ. C. 1877, § 1328; R. C. 1899, § 4294.]

ARTICLE 5.—TERMINATION OF THE TRUST.

§ 6311. How trust extinguished. A trust is extinguished by the entire fulfillment of its object or by such object becoming impossible or unlawful. [R. C. 1905, § 5743; Civ. C. 1877, § 1329; R. C. 1899, § 4295.]

As to similar provision in Cal. Civ. Code, § 2279, see *Schlessinger v. Mallard*, 70 Cal. 326, 11 Pac. 728; *Pico v. Warner*, 73 Cal. 17, 14 Pac. 377; *Scrivner v. Dietz*, 84 Cal. 295, 24 Pac. 171; *People ex rel. Ellert v. Cogswell*, 113 Cal. 129, 35 L.R.A. 269, 45 Pac. 270; *Wittfield v. Forster*, 124 Cal. 418, 57 Pac. 219.

§ 6312. Trust not revocable. Exception. A trust cannot be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor and in that case the power must be strictly pursued. [R. C. 1905, § 5744; Civ. C. 1877, § 1330; R. C. 1899, § 4296.]

Power to revoke or set aside voluntary trust or settlement. 15 L.R.A. 75.

Mistake, fraud, undue influence, etc., as a ground for relief from a voluntary trust. 19 L.R.A. 767.

As to similar provision in Cal. Civ. Code, § 2280, see *Hellman v. McWilliams*, 70 Cal. 449, 11 Pac. 659; *Nichols v. Emery*, 109 Cal. 323, 50 Am. St. Rep. 43, 41 Pac. 1089; *People ex rel. Ellert v. Cogswell*, 113 Cal. 129, 35 L.R.A. 269, 45 Pac. 270; *Booth v. Oakland Bank*, 122 Cal. 19, 54 Pac. 370; *Re Willey*, 128 Cal. 1, 56 Pac. 550, 60 Pac. 471.

§ 6313. How office vacated. The office of a trustee is vacated:

1. By his death; or,
2. By his discharge. [R. C. 1905, § 5745; Civ. C. 1877, § 1331; R. C. 1899, § 4297.]

§ 6314. Discharge of trustee. A trustee can be discharged from his trust only as follows:

1. By the extinction of the trust.
2. By the completion of his duties under the trust.
3. By such means as may be prescribed by the declaration of trust.
4. By the consent of the beneficiary if he has a capacity to contract.
5. By the judgment of a competent tribunal in a direct proceeding for that purpose that he is of unsound mind; or,
6. By the district court. [R. C. 1905, § 5746; Civ. C. 1877, § 1332; R. C. 1899, § 4298.]

Power of court to dissolve trust. 18 L.R.A. 745.

Effect of lapse of time to extinguish express trust. 1 L.R.A. 328.

As to similar provision in Cal. Civ. Code, § 2282, see *Pico v. Warner*, 73 Cal. 17, 14 Pac. 377; *Re Fair*, 132 Cal. 523, 84 Am. St. Rep. 70, 60 Pac. 442, 64 Pac. 1000.

§ 6315. Removal by court. The district court may remove any trustee who has violated or is unfit to execute the trust. [R. C. 1905, § 5747; Civ. C. 1877, § 1333; R. C. 1899, § 4299.]

As to similar provision in Cal. Civ. Code, § 2283, see *Fatjo v. Swasey*, 111 Cal. 628, 44 Pac. 225.

ARTICLE 6.—SUCCESSION OR APPOINTMENT OF NEW TRUSTEES.

§ 6316. Court may fill vacancies. The district court may appoint a trustee whenever there is a vacancy and the declaration of trust does not provide a practicable method of appointment. [R. C. 1905, § 5748; Civ. C. 1877, § 1334; R. C. 1899, § 4300.]

As to similar provision in Cal. Civ. Code, § 2287, see *Schlessinger v. Mallard*, 70 Cal. 326, 11 Pac. 728; *Dyer v. Leach*, 91 Cal. 191, 25 Am. St. Rep. 171, 27 Pac. 598.

§ 6317. Trust survives to cotrustees. On the death, renunciation or discharge of one of several cotrustees the trust survives to the others. [R. C. 1905, § 5749; Civ. C. 1877, § 1335; R. C. 1899, § 4301.]

As to similar provision in Cal. Civ. Code, § 2288, see *Schlessinger v. Mallard*, 70 Cal. 326, 11 Pac. 728; *Spence v. Widney*, 5 Cal. Unrep. 516, 46 Pac. 463.

§ 6318. When court may appoint trustee. When a trust exists without any appointed trustee, or when all the trustees renounce, die or are discharged the district court of the county or judicial subdivision where the trust property, or some portion thereof, is situated, must appoint another trustee and direct the execution of the trust. The court may in its discretion appoint the original number or any less number of trustees. [R. C. 1905, § 5750; Civ. C. 1877, § 1336; R. C. 1899, § 4302.]

Charitable trust shall never fail for want of trustee. *Hagen v. Sacrison*, 19 N. D. 160, 26 L.R.A.(N.S.) 724, 123 N. W. 518.

Power of court to change number of trustees designated in trust instrument. 1 L.R.A.(N.S.) 802.

As to similar provision in Cal. Civ. Code, § 2289, see *Schlessinger v. Mallard*, 70 Cal. 326, 11 Pac. 728; *State Invest. & Ins. Co. v. Superior Ct.*, 101 Cal. 135, 35 Pac. 549; *Fatjo v. Swasey*, 111 Cal. 628, 44 Pac. 225; *Spence v. Widney*, 5 Cal. Unrep. 516, 46 Pac. 463; *Golden Cross Min. & Mill. Co. v. Spiers*, 115 Cal. 247, 47 Pac. 108; *Lloyd v. Davis*, 123 Cal. 348, 55 Pac. 1003; *Hallinan v. Hearst*, 133 Cal. 645, 55 L.R.A. 216, 66 Pac. 17.

CHAPTER 72.

AGENCY.

- ARTICLE 1. DEFINITION OF AGENCY, §§ 6319-6324.
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ARTICLE 1.— DEFINITION OF AGENCY.

§ 6319. Defined. An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency. [R. C. 1905, § 5751; Civ. C. 1877, § 1337; R. C. 1899, § 4303.]

Agreement for lease by local manager of telegraph company presumed to be authorized. *Grigsby v. Telegraph Co.*, 5 S. D. 561, 59 N. W. 734.

Firemen as agents of owner of burning property. 39 L.R.A.(N.S.) 237.

Agency of clearing-house members. 25 L.R.A. 830.

Is medical examiner agent of insurer or of insured. 41 L.R.A.(N.S.) 505.

Proof of agency by evidence of similar acts by alleged agent. 17 L.R.A.(N.S.) 219.

Admissibility of books of account to prove agency. 52 L.R.A. 714.

§ 6320. Who may appoint and who be agent. Any person having capacity to contract may appoint an agent and any person may be an agent. [R. C. 1905, § 5752; Civ. C. 1877, § 1338; R. C. 1899, § 4304.]

Powers of president and vice-president of corporation as to employment of agents. 14 L.R.A. 358.

§ 6321. Special and general agent defined. An agent for a particular act or transaction is called a special agent. All others are general agents. [R. C. 1905, § 5753; Civ. C. 1877, § 1339; R. C. 1899, § 4305.]

§ 6322. Agency classified. An agency is either actual or ostensible. [R. C. 1905, § 5754; Civ. C. 1877, § 1340; R. C. 1899, § 4306.]

§ 6323. Actual. An agency is actual when the agent is really employed by the principal. [R. C. 1905, § 5755; Civ. C. 1877, § 1341; R. C. 1899, § 4307.]

As to existence of agency. *First Nat. Bank v. Minneapolis & N. Elevator Co.*, 11 N. D. 280, 91 N. W. 436.

§ 6324. Ostensible. An agency is ostensible when the principal intentionally or by want of ordinary care causes a third person to believe another to be his agent, who is not really employed by him. [R. C. 1905, § 5756; Civ. C. 1877, § 1342; R. C. 1899, § 4308.]

Agency not established by statement or act of pretended agent. *Gordon v. Trust Co.*, 6 N. D. 454, 71 N. W. 556.

General agent of insurance company may employ soliciting agent whose waiver of condition will bind company. *Harding v. Fire Ins. Co.*, 10 S. D. 64, 71 N. W. 755; *Enos v. Ins. Co.*, 4 S. D. 639, 57 N. W. 919, 46 Am. St. Rep. 796.

Ostensible authority is such as principal intentionally causes third person to believe exists. *Reid v. Kellogg*, 8 S. D. 596, 67 N. W. 687.

Insurance broker, when agent for insurer. *South Bend Toy Co. v. Ins. Co.*, 2 S. D. 17, 48 N. W. 310; *South Bend Toy Co. v. Ins. Co.*, 3 S. D. 205, 52 N. W. 866; *Fromherz v. Ins. Co.*, 7 S. D. 187, 63 N. W. 784.

As to existence of ostensible agency. *First Nat. Bank v. Minneapolis & N. Elevator Co.*, 11 N. D. 280, 91 N. W. 436.

ARTICLE 2.—AUTHORITY OF AGENTS.

§ 6325. Extent of authority. An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention. [R. C. 1905, § 5757; Civ. C. 1877, § 1343; R. C. 1899, § 4309.]

§ 6326. Acts done by or to agent. Every act which according to this code may be done by or to any person may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears. [R. C. 1905, § 5758; Civ. C. 1877, § 1344; R. C. 1899, § 4310.]

§ 6327. Agents' authority limited. An agent can never have authority, either actual or ostensible, to do an act which is and is known or suspected by the person with whom he deals to be a fraud upon the principal. [R. C. 1905, § 5759; Civ. C. 1877, § 1345; R. C. 1899, § 4311.]

Filling blank in mortgage with larger amount than authorized. *Ellis v. Wait*, 4 S. D. 31, 54 N. W. 925.

Liability of corporation transferring stock on books at request of agent of owner. 45 L.R.A.(N.S.) 1079.

§ 6328. How agency created. An agency may be created and an authority may be conferred by a precedent authorization or a subsequent ratification. [R. C. 1905, § 5760; Civ. C. 1877, § 1346; R. C. 1899, § 4312.]

§ 6329. No consideration necessary. A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal. [R. C. 1905, § 5761; Civ. C. 1877, § 1347; R. C. 1899, § 4313.]

§ 6330. Form of authorization. An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing. [R. C. 1905, § 5762; Civ. C. 1877, § 1348; R. C. 1899, § 4314.]

Parol authority of agent to sell real estate. *McLaughlin v. Wheeler*, 1 S. D. 497, 47 N. W. 816.

Effect of statute of frauds upon parol contracts for employment of agent which may, but are not intended to, be performed within a year. 15 L.R.A.(N.S.) 324.

§ 6331. How ratification made. A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified or, when an oral authorization would suffice by accepting or retaining the benefit of the act with notice thereof. [R. C. 1905, § 5763; Civ. C. 1877, § 1349; R. C. 1899, § 4315.]

Ratification of principal by accepting benefits. *Jewell Nursery Co. v. State*, 5 S. D. 623, 59 N. W. 1025; *Anderson v. Bank*, 4 N. D. 182, 59 N. W. 1029; *Union Trust Co. v. Phillips*, 7 S. D. 225, 63 N. W. 903; *Townsend v. Kennedy*, 6 S. D. 47, 60 N. W. 164.

Principal cannot take benefits of and repudiate an unauthorized agency. *Wyckoff v. Johnson*, 2 S. D. 91, 48 N. W. 837; *Union Trust Co. v. Phillips*, 7 S. D. 225, 63 N. W. 903.

One holding another out as agent; how far bound by agent's acts. *Aldrich v. Wilmarth*, 3 S. D. 523, 54 N. W. 811.

Fraud of agent; liability of principal by accepting benefits. *Nichols v. Bruns*, 5 D. 28, 37 N. W. 752.

Unauthorized agent does not bind principal unless ratified. *Clendenning v. Hawk*, 8 N. D. 419, 79 N. W. 878; *Larpenteur v. Williams*, 12 S. D. 373, 81 N. W. 625.

Corporation bound by knowingly accepting benefit of contract made by its agents and promoters. *Kaeppler v. Creamery Co.*, 12 S. D. 483, 81 N. W. 907; *Chase v. Creamery Co.*, 12 S. D. 529, 81 N. W. 951.

Vendor ratifies agent's unauthorized parol contract of sale by suing purchaser for value of property. *Plano Mfg. Co. v. Millage*, 14 S. D. 331, 85 N. W. 594.

Ratification of unauthorized mortgage, to be valid, must be in writing. *Morris v. Ewing*, 8 N. D. 99, 76 N. W. 1047.

Passage of bill by one branch of legislature providing for payment, not ratification of unauthorized contract by board of regents. *Jewell Nursery Co. v. State*, 8 S. D. 531, 67 N. W. 629.

Ratification only by accepting and retaining benefits with notice. *Fargo v. Cravens*, 9 S. D. 646, 70 N. W. 1053.

What amounts to ratification of unauthorized execution of written instrument. 27 Am. Dec. 343.

What will constitute an implied ratification of an unauthorized loan effected by an agent. 6 L.R.A.(N.S.) 311.

Ratification of unauthorized loan by agent, by retention of benefit. 2 B. R. C. 743.

Mere passive acceptance of the benefit by the principal as a ratification of an agent's unauthorized use of a third person's money for purposes beneficial to principal. 15 L.R.A.(N.S.) 693.

Effect of principal's performance of part of contract in ignorance of unauthorized provisions inserted by his agent as ratification of latter. 29 L.R.A.(N.S.) 210.

Payment by principal of what he deems property or services worth as ratification of agent's unauthorized contract for same. 29 L.R.A.(N.S.) 400.

Effect of attempted ratification to confer right or impose liability upon one not contemplated by agent as his principal. 2 B. R. C. 260.

Ratification of agent's unauthorized contract for the purchase or sale of real property as affected by the statute of frauds. 38 L.R.A.(N.S.) 783.

Ratification of bank's cashier's sale or lease of property. 31 L.R.A.(N.S.) 738.

§ 6332. Part ratified, all ratified. Ratification of part of an indivisible transaction is a ratification of the whole. [R. C. 1905, § 5764; Civ. C. 1877, § 1350; R. C. 1899, § 4316.]

§ 6333. Ratification, when valid. A ratification is not valid, unless at the time of ratifying the act done the principal has power to confer authority for such an act. [R. C. 1905, § 5765; Civ. C. 1877, § 1351; R. C. 1899, § 4317.]

Ratification of lease executed by agent without written authority, by owner after parting with title, is ineffectual. *Dobbs v. Atlas Elevator Co.*, 22 S. D. 226, 117 N. W. 128.

Ratification of what contracts not possible. 59 Am. St. Rep. 638.

Power to ratify criminal act. 5 Am. St. Rep. 618.

§ 6334. Retroactive ratification limited. No unauthorized act can be made valid retroactively to the prejudice of third persons without their consent. [R. C. 1905, § 5766; Civ. C. 1877, § 1352; R. C. 1899, § 4318.]

Ratification will not affect prior contract with third persons. *Clendenning v. Hawk*, 10 N. D. 90, 86 N. W. 114.

Ratification after loss of unauthorized act of another in securing fire insurance. 42 L.R.A.(N.S.) 1025.

Power of principal to ratify unauthorized contract of agent so as to raise cause of action in his own favor against the adverse party. 4 L.R.A.(N.S.) 431.

May unauthorized contract by one apparently acting on his own behalf but with undisclosed intention to act for another be ratified by such other. 1 B. R. C. 397.

§ 6335. Rescission of ratification. A ratification may be rescinded when made without such consent as is required in a contract or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise. [R. C. 1905, § 5767; Civ. C. 1877, § 1353; R. C. 1899, § 4319.]

§ 6336. Authority. An agent has such authority as the principal actually or ostensibly confers upon him. [R. C. 1905, § 5768; Civ. C. 1877, § 1354; R. C. 1899, § 4320.]

Principal bound by acts within agent's apparent, though in excess of his actual, authority. *Aldrich v. Wilmarth*, 3 S. D. 523, 54 N. W. 811; *Shull v. New Birdsall Co.*, 15 S. D. 8, 86 N. W. 654.

Ostensible authority is question of fact to be determined. *Corey v. Hunter*, 10 N. D. 5, 84 N. W. 570; *Reid v. Kellogg*, 8 S. D. 596, 67 N. W. 687.

General rules respecting authority of agent. 16 Am. St. Rep. 493.

Power of agent to borrow money. 29 Am. St. Rep. 93.

Admissibility of books of account to prove authority of agent. 52 L.R.A. 714.

Liability of principal on negotiable paper executed by an agent. 21 L.J.R.A.(N.S.) 1046.

Implied or presumed authority of a superintendent of a department to contract as to matters relating to his department. 38 L.R.A.(N.S.) 1135.

Right to reward offered for arrest when arrest is made by agent of claimant. 7 L.R.A.(N.S.) 218.

Effect of agent's consent to taking of property on crime of larceny. 7 L.R.A.(N.S.) 1149.

Agent's implied power to assent to rescission of contract. 37 L.R.A.(N.S.) 91.

Right of agent to locate mining claim. 7 L.R.A.(N.S.) 817.

Power of lessee or vendee to subject owner's interest to mechanics' liens under statutes giving liens for improvements made by agent. 23 L.R.A.(N.S.) 608.

§ 6337. Actual authority. Actual authority is such as a principal intentionally confers upon the agent or intentionally or by want of ordinary care allows the agent to believe himself to possess. [R. C. 1905, § 5769; Civ. C. 1877, § 1355; R. C. 1899, § 4321.]

§ 6338. Ostensible authority. Ostensible authority is such as the principal intentionally or by want of ordinary care causes or allows a third person to believe the agent to possess. [R. C. 1905, § 5770; Civ. C. 1877, § 1356; R. C. 1899, § 4322.]

Payment by principal of previous drafts drawn upon him by his agent without authority, as implied authority to draw another. 34 L.R.A.(N.S.) 440.

Right of an innocent payee to recover on a note signed in blank and intrusted to a third person, who exceeds his authority in filling up the blanks before delivery to the payee. 13 L.R.A.(N.S.) 490.

Conclusiveness of judgment as between plaintiff and principal of one who voluntarily conducted the defense. 37 L.R.A.(N.S.) 963.

As to similar provision in Cal. Civ. Code, § 2317, see *Wisp v. Hazard*, 66 Cal. 459, 6 Pac. 91.

§ 6339. Has authority defined by law. Exception Every agent has actually such authority as is defined by this and the succeeding chapter, unless specially deprived thereof by his principal, and has even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon his authority. [R. C. 1905, § 5771; Civ. C. 1877, § 1357; R. C. 1899, § 4323]

Placing "trust" after grantee's name in a deed not notice of any kind. *Rua v. Watson*, 13 S. D. 453, 83 N. W. 572.

§ 6340. Authority to do necessary acts; make representations. An agent has authority:

1. To do everything necessary or proper and useful in the ordinary course of business for effecting the purpose of his agency; and,

2. To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends and the truth of which cannot be determined by the use of reasonable diligence on the part of the person to whom the representation is made. [R. C. 1905, § 5772; Civ. C. 1877, § 1358; R. C. 1899, § 4324.]

Agent cannot make oral agreement changing terms of prior written contract of sale. *Reeves & Co. v. Corrigan*, 3 N. D. 415, 57 N. W. 80.

Powers of agent; express and implied. *Rea v. Eclipse*, 4 D. 21^a, 30 N. W. 159.

Special agent has no power to appoint subagent. *Fargo v. Cravens*, 9 S. D. 646, 70 N. W. 1053.

Authority of agent to bind principal for expenses in taking appeal. *Pilcher v. Trust Co.*, 12 S. D. 52, 80 N. W. 151.

General agent of insurance company may, without knowledge of principal, employ soliciting agent whose waiver of condition against incumbrances will bind company. *Harding v. Ins. Co.*, 10 S. D. 64, 71 N. W. 755.

Agent to make collections cannot accept account against himself. *Union School Fur. Co. v. Mason*, 3 S. D. 147, 52 N. W. 671.

Bank cashier cannot contract beyond duties as such. *North Star B. & S. Co. v. Stebbins*, 2 S. D. 74, 48 N. W. 833.

Authority of agent strictly confined to particular kind of business placed in his hands. *Jasper v. Hazen*, 2 N. D. 401, 51 N. W. 583.

Admissions, to bind principal, must be within scope of authority. *Plymouth Co. Bank v. Gilman*, 3 S. D. 170, 52 N. W. 869, 44 Am. St. Rep. 782; *First Nat. Bank v. North*, 6 D. 136, 41 N. W. 736; *Roberts v. Machine Co.*, 8 S. D. 579, 67 N. W. 607; *La Rue v. Elevator Co.*, 3 S. D. 637, 54 N. W. 806; *Wendt v. Ry. Co.*, 4 S. D. 476, 57 N. W. 226;

Esty v. Birnbaum, 9 S. D. 174, 68 N. W. 290; *Parlman v. Young*, 2 D. 175, 4 N. W. 711; *Short v. Elevator Co.*, 1 N. D. 159, 45 N. W. 706.

General attorney of foreign corporation may employ attorneys to make foreclosure of trust deed effective for corporation. *Fowler v. Iowa Land Co.*, 18 S. D. 131, 99 N. W. 1095.

Authority of agents of initial carrier to extend its undertaking beyond its own line. 81 L.R.A.(N.S.) 32.

Implied authority of claim agent to promise employment to induce settlement of claim. 38 L.R.A.(N.S.) 826.

Liability of principal to exemplary damages where attachment was sued out by agent for collection of debt only. 29 L.R.A.(N.S.) 279.

Authority of sales agent who is authorized to collect the whole or part of purchase price on making the sale to receive payments afterwards. 38 L.R.A.(N.S.) 700.

Power of bank officer to bind bank by agreement varying the liability of parties to commercial paper from that imported on its face. 28 L.R.A.(N.S.) 511.

Power of agents to indorse negotiable paper. 27 L.R.A. 401.

Remedy of payee of check against one who has taken it on indorsement of unauthorized agent. 13 L.R.A.(N.S.) 211.

Implied warranty of genuineness upon sale of negotiable paper by agent. 36 L.R.A. 95.

Dealing with agent as a circumstance putting purchaser of negotiable paper on inquiry. 29 L.R.A.(N.S.) 351.

Effect of transfer by agent, without indorsement, of worthless check or note of third person. 10 L.R.A.(N.S.) 550.

Purchase of money order from agent of indorsee. 3 L.R.A.(N.S.) 136.

Whether agency to make sales includes authority to receive payment and create liabilities. 47 Am. Rep. 518.

Extent of authority conferred on traveling salesmen. 18 L.R.A. 663.

Authority of traveling salesman to make advertising contracts. 41 L.R.A.(N.S.) 1019.

Agent's authority to employ medical services for employe or other third person. 20 L.R.A. 695.

Implied power of cashier of bank to sell or lease property. 31 L.R.A.(N.S.) 737.

As to similar provision in Cal. Civ. Code, § 2319, see *Hoakins v. Swain*, 61 Cal. 338; *Harris v. San Diego Flume Co.*, 87 Cal. 526, 25 Pac. 758; *Consolidated Nat. Bank v. Pacific Coast S. S. Co.*, 95 Cal. 1, 29 Am. St. Rep. 85, 30 Pac. 96.

§ 6341. When agent may disobey instructions. An agent has power to disobey instructions in dealing with the subject of the agency in cases when it is clearly for the interest of his principal that he should do so and there is not time to communicate with the principal. [R. C. 1905, § 5773; Civ. C. 1877, § 1359; R. C. 1899, § 4325.]

Disregard of principal's orders, when justified by unexpected emergencies. 6 Am. St. Rep. 37.

§ 6342. Authority limited to specific terms. When an authority is given partly in general and partly in specific terms, the general authority gives no higher powers than those specifically mentioned. [R. C. 1905, § 5774; Civ. C. 1877, § 1360; R. C. 1899, § 4326.]

§ 6343. General authority limited. An authority expressed in general terms, however broad, does not authorize an agent:

1. To act in his own name unless it is the usual course of business to do so.
2. To define the scope of his agency; or,
3. To do any act which a trustee is forbidden to do by article 2 of chapter 70 of this code. [R. C. 1905, § 5775; Civ. C. 1877, § 1361; R. C. 1899, § 4327.]

If agent contracts in his own name he alone is liable. *Nat. German Bank v. Lang*, 2 N. D. 66, 49 N. W. 414.

Traveling agent not authorized to enter into secret agreement in his own name to sell for less than market price. *Tollerton & W. Co. v. Gilruth*, 21 S. D. 320, 112 N. W. 842.

Contract to be binding on party alleged to have ratified it must have been executed by agent in name of or on behalf of such party. *Minder & J. Land Co. v. Brustuen*, 24 S. D. 537, 124 N. W. 723.

Principal as bona fide holder of bill or note passing through agent's hands. 5 L.R.A.(N.S.) 628.

Admissibility of extrinsic evidence to show whether principal or agent liable on note. 20 L.R.A. 705.

Taking commercial paper by agent as payment. 35 L.R.A.(N.S.) 49.

Implied or apparent authority of agent to take note payable to himself. 28 L.R.A.(N.S.) 341.

Assumption of debt by agent as payment. 17 L.R.A.(N.S.) 607.

§ 6344. May warrant title to personalty. An authority to sell personal property includes authority to warrant the title of the principal and the quality and quantity of the property. [R. C. 1905, § 5776; Civ. C. 1877, § 1362; R. C. 1899, § 4328.]

Principal who empowers auctioneer to sell goods is bound by warranty of quality made by him. *Cysewski v. Fried*, 24 N. D. 152, 139 N. W. 104.

Extent of a commercial traveler's implied or ostensible authority to warrant goods. 39 L.R.A.(N.S.) 1151.

§ 6345. Give usual covenants of warranty. An authority to sell and convey real property includes authority to give the usual covenants of warranty. [R. C. 1905, § 5777; Civ. C. 1877, § 1363; R. C. 1899, § 4329.]

§ 6346. Receive price. A general agent to sell, who is intrusted by the principal with the possession of the thing sold, has authority to receive the price. [R. C. 1905, § 5778; Civ. C. 1877, § 1364; R. C. 1899, § 4330.]

§ 6347. Special agent may on delivery. A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards. [R. C. 1905, § 5779; Civ. C. 1877, § 1365; R. C. 1899, § 4331.]

Agent for sale of machinery on commission cannot employ attorney for principal. *Kirby v. Scraper Co.*, 9 S. D. 623, 70 N. W. 1052.

Agent for sale of farm machinery cannot bind principal to receive second hand machinery in payment for new. *Shull v. Birdsall Co.*, 15 S. D. 8, 86 N. W. 654.

ARTICLE 3.—MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS.

§ 6348. Rights and liabilities of agent accrue to principal. An agent represents his principal for all purposes within the scope of his actual or ostensible authority and all the rights and liabilities which would accrue to the agent from the transactions within such limit, if they had been entered into on his own account, accrue to the principal. [R. C. 1905, § 5780; Civ. C. 1877, § 1366; R. C. 1899, § 4332.]

Right of principal to proceeds of insurance policy taken by agent in his own name. 13 L.R.A.(N.S.) 152.

Right of defendant in action by undisclosed principal to avail himself of defenses that would have been available in an action by the agent in his own right on the contract. 28 L.R.A.(N.S.) 227.

Character of contract as affecting right of undisclosed principal to sue thereon. 29 L.R.A.(N.S.) 472; 39 L.R.A.(N.S.) 324.

Liability of telegraph company to undisclosed principal of sendee. 4 L.R.A.(N.S.) 678; 24 L.R.A.(N. S.) 1045.

May statute of frauds relating to sales of real property be satisfied by a memorandum which discloses that one of the parties acted for an undisclosed principal. 8 L.R.A.(N.S.) 733.

Parol evidence that one of the persons who signed an instrument relating to real property was agent for an undisclosed principal. 24 L.R.A.(N.S.) 315.

As to similar provision in Cal. Civ. Code, § 2330, see *Donnelly v. San Francisco Bridge Co.*, 117 Cal. 417, 49 Pac. 559, 3 Am. Neg. Rep. 7.

§ 6349. When incomplete execution binding. A principal is bound by an incomplete execution of an authority when it is consistent with the whole purpose and scope thereof, but not otherwise. [R. C. 1905, § 5781; Civ. C. 1877, § 1367; R. C. 1899, § 4333.]

§ 6350. When notice to one notice to both. As against a principal both principal and agent are deemed to have notice of whatever either has notice of and ought in good faith and the exercise of ordinary care and diligence to communicate to the other. [R. C. 1905, § 5782; Civ. C. 1877, § 1368; R. C. 1899, § 4334.]

Knowledge of agent before employment; effect on principal. *Gregg v. Baldwin*, 9 N. D. 515, 84 N. W. 373.

Knowledge of bank cashier as to infirmities of note made to him as individual and transferred to bank is bank's knowledge. *Black Hills Bank v. Kellogg*, 4 S. D. 312, 56 N. W. 1071.

Principal is chargeable with knowledge of agent who was present when note was executed to principal. *New Birdsall Co. v. Stordalen*, 21 S. D. 26, 109 N. W. 516.

One who makes bank his agent to collect check is chargeable with agent's knowledge of forgery. *Greenwald v. Ford*, 21 S. D. 28, 109 N. W. 516.

Bank is liable for acts of cashier in receiving funds illegally, by giving check upon

corporation of which such cashier is treasurer. *Emerald Farmers' Elevator Co. v. Farmers' Bank*, 20 N. D. 270, 29 L.R.A.(N.S.) 567, 127 N. W. 522.

Notice to principal as notice to agent. 24 Am. St. Rep. 228.

How far corporation charged with knowledge of managing officer engaged in illegal act. 2 L.R.A.(N.S.) 993.

Whose knowledge of defects is imputed to employer. 41 L.R.A. 132.

Imputing knowledge of officers or agents of defect in highway to municipality. 20 L.R.A.(N.S.) 697.

Imputing agent's knowledge of vicious character of dog to owner. 24 L.R.A.(N.S.) 463.

Imputing to principal notice to agent while acting in other capacity. 3 L.R.A.(N.S.) 444.

Knowledge by agent that his own act is in excess of authority as notice to principal. 29 L.R.A.(N.S.) 82.

Effect of notice to purchaser's agent of vendor's intent to defraud his creditors. 32 L.R.A. 62.

Notice to traveling salesman as notice to his employer. 25 L.R.A.(N.S.) 231.

Notice to trustee in mortgage or deed of trust as notice to bondholders. 16 L.R.A.(N.S.) 1013.

Imputation of knowledge of bank officers to bank, where officers are personally interested. 29 L.R.A.(N.S.) 558.

The effect of notice to a subagent. 21 L.R.A. 340.

§ 6351. Authorized acts bind when authority exceeded. When an agent exceeds his authority his principal is bound by his authorized acts so far only as they can be plainly separated from those which are unauthorized. [R. C. 1905, § 5783; Civ. C. 1877, § 1369; R. C. 1899, § 4335.]

Liability of principal for unauthorized acts of agent. 22 Am. St. Rep. 189; 88 Am. St. Rep. 779.

§ 6352. When ostensible authority binding. A principal is bound by acts of his agent under a merely ostensible authority to those persons only who have in good faith and without ordinary negligence incurred a liability or parted with value upon the faith thereof. [R. C. 1905, § 5784; Civ. C. 1877, § 1370; R. C. 1899, § 4336.]

As to similar provision in Cal. Civ. Code, § 2334, see *Donnelly v. San Francisco Bridge Co.*, 117 Cal. 417, 49 Pac. 559, 3 Am. Neg. Rep. 7.

§ 6353. When exclusive credit to agent binds principal. If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent in good faith before receiving notice of the creditor's election to hold him responsible. [R. C. 1905, § 5785; Civ. C. 1877, § 1371; R. C. 1899, § 4337.]

§ 6354. Set-off against agent. One who deals with an agent without knowing or having reason to believe that the agent acts as such in the transaction may set-off against any claim of the principal arising out of the same all claims which he might have set-off against the agent before notice of the agency. [R. C. 1905, § 5786; Civ. C. 1877, § 1372; R. C. 1899, § 4338.]

As to rights of party dealing with agent as principal. *Hogen v. Klabo*, 13 N. D. 319, 100 N. W. 847.

§ 6355. Instrument within scope of authority binding. Any instrument within the scope of his authority by which an agent intends to bind his principal does bind him, if such intent is plainly inferable from the instrument itself. [R. C. 1905, § 5787; Civ. C. 1877, § 1373; R. C. 1899, § 4339.]

Partner signing written contract may bind other partners within scope of his authority. *Pearson v. Post*, 2 D. 220, 9 N. W. 684; *Post v. Pearson*, 108 U. S. 418, 27 L.ed. 774, 2 S. Ct. R. 799.

Deed signed and sealed "Patrick M., Atty. in fact for Amelia B." is deed of Amelia although words "he," "his," etc., are used in deed. *Donovan v. Welch*, 11 N. D. 113, 90 N. W. 262.

§ 6356. Principal responsible for agent's negligence. Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business; and for his willful omission to fulfill the obligations of the principal. [R. C. 1905, § 5788; Civ. C. 1877, § 1374; R. C. 1899, § 4340.]

Partner is liable for fraudulent representations of every other partner in selling partnership property. *Brundage v. Mellon*, 5 N. D. 72, 63 N. W. 209.

Acceptance of benefits without knowledge will not create liability for fraudulent representations of unauthorized agent. *Nichols v. Bruns*, 5 D. 28, 37 N. W. 752.

Wife not responsible for assault committed by husband, although acting as her servant. *Curtis v. Dinneen*, 4 D. 245, 30 N. W. 148.

Criminal and penal liability for act of agent. 41 L.R.A. 650.

Liability of principal for misconduct of agent. 55 Am. Dec. 317.

As to similar provision in Cal. Civ. Code, § 2338, see *Brown v. La Societe Francaise*, 138 Cal. 475, 71 Pac. 516, 13 Am. Neg. Rep. 251.

§ 6357. Principal's responsibility limited. A principal is responsible for no other wrongs committed by his agent than those mentioned in the last section, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service. [R. C. 1905, § 5789; Civ. C. 1877, § 1375; R. C. 1899, § 4341.]

ARTICLE 4.—OBLIGATIONS OF AGENTS TO THIRD PERSONS.

§ 6358. Agent warrants authority. One who assumes to act as an agent thereby warrants to all who deal with him in that capacity that he has the authority which he assumes. [R. C. 1905, § 5790; Civ. C. 1877, § 1376; R. C. 1899, § 4342.]

As to liability of one assuming to act as agent. *Kennedy v. Stonehouse*, 13 N. D. 232, 3 A. & E. Ann. Cas. 217, 100 N. W. 258.

§ 6359. When agent liable as principal. One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency in any of the following cases and in no others:

1. When with his consent credit is given to him personally in a transaction.

2. When he enters into a written contract in the name of his principal without believing in good faith that he has authority to do so; or,

3. When his acts are wrongful in their nature. [R. C. 1905, § 5791; Civ. C. 1877, § 1377; R. C. 1899, § 4343.]

Personal liability of agents to third persons. 54 Am. Rep. 233; 22 Am. St. Rep. 508.

—on contract executed without authority. 50 Am. Dec. 793.

When contracts executed in the name of agents only do not bind them personally.

57 Am. Rep. 536.

Personal liability of one known to be an agent for an undisclosed principal. 47 L.R.A.(N.S.) 232.

Liability of auctioneer or clerk of auction for return of money. 35 L.R.A.(N.S.) 481.

Personal liability of one signing contract by adding to his signature, words indicating representative capacity. 42 L.R.A.(N.S.) 2.

Agent's liability toward his principal and a third person respectively for money or property received in course of agency. 2 L.R.A.(N.S.) 657.

Judgment between principal and third person as *res judicata* in action between latter and agent. 37 L.R.A.(N.S.) 37.

1. Contract signed by members of school board in individual names for school supplies binds them as individuals. *Western Pub. House v. Murdick*, 4 S. D. 207, 56 N. W. 120, 21 L.R.A. 671; *Western Pub. House v. Bachman*, 2 S. D. 512, 51 N. W. 214.

Members of unincorporated association may be liable as partners for its acts. *Winona Lumber Co. v. Church*, 6 S. D. 498, 62 N. W. 107.

Right to recover from agent money paid him for his principal where the agency is undisclosed. 23 L.R.A.(N.S.) 560.

2. Personal liability to other contracting party of one who, without authority, assumes to contract as agent for another. 34 L.R.A.(N.S.) 518.

3. One who takes money under agreement to procure insurance and unjustifiably fails to do so thereby assumes risk. *Lindsay v. Pettigrew*, 5 S. D. 500, 59 N. W. 726.

Agent's liability for misfeasance is not based on agency but on ground that he is wrongdoer. *Schlusser v. Great Northern R. Co.*, 20 N. D. 406, 127 N. W. 502.

Personal liability of officer for act or transaction in excess of corporate powers or in violation of law. 6 L.R.A.(N.S.) 1003.

Liability of agent for conversion, trespass or other positive act of wrongdoing against third persons under orders of employer. 50 L.R.A. 644.

Liability of landlord's agent for conversion of tenant's goods by one put in possession of premises before the expiration of the tenancy. 24 L.R.A.(N.S.) 226.

Liability of corporate officer for misrepresentations which induce the sale or purchase of stock. 1 L.R.A.(N.S.) 258; 28 L.R.A.(N.S.) 359.

False statements in reports required by statute to be made to public officers as basis of action by individuals at common law for deceit against officers personally. 6 L.R.A.(N.S.) 872.

Liability of agent in case license tax is not paid by principal. 12 L.R.A.(N.S.) 946.
 Liability of agent where statutes regulating business of foreign insurance companies have not been complied with. 20 L.R.A. 407.

Jurisdiction of equity over suits by a corporation or its representative to hold the officers liable for losses occasioned by their fraud, bad faith or negligence. 8 L.R.A.(N.S.) 739.

§ 6360. Surrender of property adversely claimed. If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must on demand surrender it to such person, or so much of it as he has under his control at the time of demand, on being indemnified for any advance which he has made to his principal in good faith on account of the same; and is responsible therefor if after notice from the owner, he delivers it to his principal. [R. C. 1905, § 5792; Civ. C. 1877, § 1378; R. C. 1899, § 4344.]

ARTICLE 5.—DELEGATION OF AGENCY.

§ 6361. This article subject to chapter 2. The provisions of this article are subject to the provisions of chapter 2 of this code. [R. C. 1905, § 5793; Civ. C. 1877, § 1379; R. C. 1899, § 4345.]

§ 6362. When agent cannot delegate powers. An agent unless specially forbidden by his principal to do so can delegate his powers to another person in any of the following cases, and in no others:

1. When the act to be done is purely mechanical.
2. When it is such as the agent cannot himself and the subagent can lawfully perform.

3. When it is the usage of the place to delegate such powers; or,
4. When such delegation is specially authorized by the principal. [R. C. 1905, § 5794; Civ. C. 1877, § 1380; R. C. 1899, § 4346.]

Delegation of power by agent. *Picket v. Rugg*, 1 N. D. 230, 46 N. W. 446.

Employment of attorney in interests of principal. *Davis v. Matthews*, 8 S. D. 300, 66 N. W. 456; *Kirby v. Western Wheeled Scraper Co.*, 9 S. D. 623, 70 N. W. 1052.

Agent may have authority to bind principal for payment of costs on appeal. *Pilcher v. Trust Co.*, 12 S. D. 52, 80 N. W. 151.

Bank at which note is payable has no implied authority to employ a bank in other city to collect note so as to make a payment to such subagent a payment to owner of note. *Sherman v. Port Huron Engine Co.*, 8 S. D. 343, 66 N. W. 1077; *Sherman v. Port Huron Engine Co.*, 13 S. D. 95, 82 N. W. 413.

As to similar provision in Cal. Civ. Code, § 2349, see *Rice v. Trinity County*, 110 Cal. 247, 42 Pac. 809; *Dingley v. McDonald*, 124 Cal. 682, 57 Pac. 574.

§ 6363. Wrongful delegation makes agent principal. If an agent employs a subagent without authority, the former is a principal and the latter his agent and the principal of the former has no connection with the latter. [R. C. 1905, § 5795; Civ. C. 1877, § 1381; R. C. 1899, § 4347.]

§ 6364. Rightful subagent principal's agent. A subagent lawfully appointed represents the principal in like manner with the original agent; and the original agent is not responsible to third persons for the acts of the subagent. [R. C. 1905, § 5796; Civ. C. 1877, § 1382; R. C. 1899, § 4348.]

Agent not responsible for negligence or want of skill of subagent, when latter's employment was necessary. *Kunhert v. Angell*, 10 N. D. 59, 84 N. W. 579.

ARTICLE 6.—TERMINATION OF AGENCY.

§ 6365. How terminated. An agency is terminated as to every person having notice thereof by:

1. The expiration of its term.
2. The extinction of its subject.
3. The death of the agent.
4. His renunciation of the agency; or,
5. The incapacity of the agent to act as such. [R. C. 1905, § 5797; Civ. C. 1877, § 1383; R. C. 1899, § 4349.]

Written power to sell land exhausted by a sale and agent cannot cancel first sale and make a second binding on principal. *Luke v. Griggs*, 4 D. 287, 30 N. W. 170.

Presumption of continuance of agency. 1 L.R.A.(N.S.) 891.

Intoxication as justification for discharge of agent. 38 L.R.A.(N.S.) 339.

Necessity and sufficiency, as between principal and third person, of notice of termination of agency by act of the parties. 41 L.R.A.(N.S.) 663.

Effect of revocation of authority on agent's right to receive payment where security is not in his possession. 23 L.R.A.(N.S.) 423.

3. Effect of death on contract of agency. 23 L.R.A. 709.

5. Dissolution of partnership authorized to act as agent, as termination of agency. 23 L.R.A.(N.S.) 849.

§ 6366. Not coupled with interest, how terminated. Unless the power of an agent is coupled with an interest in the subject of the agency it is terminated as to every person having notice thereof by:

1. Its revocation by the principal.

2. His death; or,

3. His incapacity to contract. [R. C. 1905, § 5798; Civ. C. 1877, § 1384; R. C. 1899, § 4350.]

Termination of agency as affecting insurance agent's right to commissions on renewals. 35 L.R.A.(N.S.) 153.

As to similar provision in Cal. Civ. Code, § 2356, see *Flanagan v. Brown*, 70 Cal. 254, 11 Pac. 706; *Blumenthal v. Goodall*, 89 Cal. 251, 26 Pac. 906.

1. Necessity of notice to revoke power of attorney. 1 L.R.A.(N.S.) 577.

Right to discharge attorney employed for contingent fee. 38 L.R.A.(N.S.) 389.

2. Power of sale in real estate mortgage is a power coupled with an interest, and is not terminated by mortgagor's death. *Reilly v. Phillips*, 4 S. D. 604, 57 N. W. 780; *Grandin v. Emmons*, 10 N. D. 223, 86 N. W. 723.

As to power not coupled with interest terminating by death of author. *Brown v. Skotland*, 12 N. D. 445, 97 N. W. 543.

Effect of death on contract of agency. 23 L.R.A. 709.

Effect of principal's death on agent's right to indorse commercial paper. 23 L.R.A. 711.

Effect of death of party to revoke warrant of attorney to confess judgment. 13 L.R.A. 797.

Effect of provision in power of attorney that it shall not be revoked by death. 6 L.R.A.(N.S.) 855.

Validity of agent's acts after death of his principal. 39 Am. Dec. 81.

CHAPTER 73.

PARTICULAR AGENCIES.

- ARTICLE 1. AUCTIONEERS, §§ 6367, 6368.
 2. FACTORS, §§ 6369-6371.
 3. SHIPMASTERS AND PILOTS, §§ 6372-6383.
 4. SHIP'S MANAGERS, §§ 6384, 6385.

ARTICLE 1.—AUCTIONEERS.

§ 6367. Authority from seller. An auctioneer in the absence of special authorization or usage to the contrary has authority from the seller only as follows:

1. To sell by public auction to the highest bidder.
2. To sell for cash only, except such articles as are usually sold on credit at auction.
3. To warrant in like manner with other agents to sell according to section 6344.
4. To prescribe reasonable rules and terms of sale.
5. To deliver the thing sold upon payment of the price.
6. To collect the price; and,
7. To do whatever else is necessary or proper and usual in the ordinary course of business for effecting these purposes. [R. C. 1905, § 5799; Civ. C. 1877, § 1385; R. C. 1899, § 4351.]

Principal is bound by warranty of quality of goods made by auctioneer. *Cysewski v. Fried*, 24 N. D. 152, 139 N. W. 104.

Right of auctioneer or officer conducting a sale to make bids. 20 L.R.A. 503.

Liability of auctioneer or clerk of auction for return of money. 35 L.R.A.(N.S.) 481.

§ 6368. Authority from bidder. An auctioneer has authority from a bidder at the auction as well as from the seller to bind both by a memorandum of the contract as prescribed in the chapter on sale. [R. C. 1905, § 5800; Civ. C. 1877, § 1386; R. C. 1899, § 4352.]

ARTICLE 2.—FACTORS.

§ 6369. Defined. A factor is an agent who is employed to buy or sell property in his own name and who is intrusted by his principal with the possession thereof as defined in section 6145. [R. C. 1905, § 5801; Civ. C. 1877, § 1387; R. C. 1899, § 4353.]

Factor may buy as well as sell property the subject of the agency, and may buy and sell in his own name as well as in name of principal. *Turner v. Crumpton*, 21 N. D. 294, 130 N. W. 937.

Contract to ship goods and agreement to receive them and to sell them and that if they are not sold vendor may take them back, is contract of agency and not of sale. *Sioux Remedy Co. v. Lindgren*, 27 S. D. 123, 130 N. W. 49.

§ 6370. Authority. In addition to the authority of agents in general a factor has actual authority from his principal, unless specially restricted:

1. To insure property consigned to him uninsured.
2. To sell on credit anything intrusted to him for sale except such things as it is contrary to usage to sell on credit; but not to pledge, mortgage or barter the same; and,
3. To delegate his authority to his partner or servant, but not to any person in an independent employment. [R. C. 1905, § 5802; Civ. C. 1877, § 1388; R. C. 1899, § 4354.]

§ 6371. Ostensible authority. A factor has ostensible authority to deal with the property of his principal as his own in transactions with persons not having notice of the actual ownership. [R. C. 1905, § 5803; Civ. C. 1877, § 1389; R. C. 1899, § 4355.]

ARTICLE 3.—SHIPMASTERS AND PILOTS.

§ 6372. General agent of owner. The master of a ship is a general agent for its owner in all matters concerning the same. [R. C. 1905, § 5804; Civ. C. 1877, § 1390; R. C. 1899, § 4356.]

§ 6373. Has authority to borrow. The master of a ship has authority to borrow money on the credit of its owner, if it is necessary to enable him to complete the voyage, and if neither the owner nor his proper agent for such matters can be consulted without injurious delay. [R. C. 1905, § 5805; Civ. C. 1877, § 1391; R. C. 1899, § 4357.]

§ 6374. Agent for owner of cargo. The master of a ship during a voyage is a general agent for each of the owners of the cargo and has authority to do whatever they might do for the preservation of their respective interests, except to sell or hypothecate the same. [R. C. 1905, § 5806; Civ. C. 1877, § 1392; R. C. 1899, § 4358.]

§ 6375. Authority to make contracts binding owner. The master of a ship may procure all its necessary repairs and supplies, may engage cargo and passengers for carriage and in a foreign port may enter into a charter party; and his contracts for these purposes bind the owner to the full amount of the value of the ship and freightage. [R. C. 1905, § 5807; Civ. C. 1877, § 1393; R. C. 1899, § 4359.]

§ 6376. Authority to hypothecate. The master of a ship may hypothecate the ship, freightage and cargo in the cases prescribed by the chapters on bottomry and respondentia and in no others. [R. C. 1905, § 5808; Civ. C. 1877, § 1394; R. C. 1899, § 4360.]

Master's power to sell vessel and to hypothecate it and the freight and cargo. 63 Am. Dec. 638.

§ 6377. Authority to sell ship. When a ship, whether foreign or domestic, is seriously injured or the voyage is otherwise broken up beyond the possibility of pursuing it, the master in case of necessity may sell the ship without instructions from the owners, unless by the earliest use of ordinary means of communication he can inform the owners and await their instructions. [R. C. 1905, § 5809; Civ. C. 1877, § 1395; R. C. 1899, § 4361.]

§ 6378. Authority to sell cargo. The master of a ship may sell the cargo, if the voyage is broken up beyond the possibility of pursuing it, and no other ship can be obtained to carry it to its destination and the sale is otherwise absolutely necessary. [R. C. 1905, § 5810; Civ. C. 1877, § 1396; R. C. 1899, § 4362.]

§ 6379. Authority to pay ransom. The master of a ship in case of its capture may engage to pay a ransom for it in money or in part of the cargo and his engagement will bind the ship, freightage and cargo. [R. C. 1905, § 5811; Civ. C. 1877, § 1397; R. C. 1899, § 4363.]

§ 6380. Authority ceases on abandonment to insurers. The power of the master of a ship to bind its owner or the owners of the cargo ceases upon the abandonment of the ship and freightage to insurers. [R. C. 1905, § 5812; Civ. C. 1877, § 1398; R. C. 1899, § 4364.]

§ 6381. Master's personal liability. Unless otherwise expressly agreed, or unless the contracting parties give exclusive credit to the owner, the master of a ship is personally liable upon his contracts relative thereto, even when the owner is also liable. [R. C. 1905, § 5813; Civ. C. 1877, § 1399; R. C. 1899, § 4365.]

§ 6382. Liable for negligence of crew. The master of a ship is liable to third persons for the acts or negligence of persons employed in its navigation, whether appointed by him or not, to the same extent as the owner of the ship. [R. C. 1905, § 5814; Civ. C. 1877, § 1400; R. C. 1899, § 4366.]

§ 6383. When for negligence of pilot. The owner or master of a ship is not responsible for the negligence of a pilot whom he is bound by law to employ; but if he is allowed an option between pilots, some of whom are competent, or is required only to pay compensation to a pilot whether he employs him or not, he is responsible to third persons. [R. C. 1905, § 5815; Civ. C. 1877, § 1401; R. C. 1899, § 4367.]

ARTICLE 4.—SHIP'S MANAGERS.

§ 6384. Authority to contract and settle. A ship's manager has power to make contracts requisite for the performance of his duties as such; to enter into charter parties or make contracts for carriage and to settle for freightage and to adjust averages. [R. C. 1905, § 5816; Civ. C. 1877, § 1402; R. C. 1899, § 4368.]

§ 6385. Authority limited. Without special authority a ship's manager cannot borrow money or give up the lien for freightage or purchase a cargo or bind the owners of the ship to an insurance. [R. C. 1905, § 5817; Civ. C. 1877, § 1403; R. C. 1899, § 4369.]

CHAPTER 74.

PARTNERSHIP IN GENERAL.

- ARTICLE 1. WHAT CONSTITUTES A PARTNERSHIP, §§ 6386-6388.
 2. PARTNERSHIP PROPERTY, §§ 6389-6394.
 3. MUTUAL OBLIGATIONS OF PARTNERS, §§ 6395-6398.
 4. RENUNCIATION OF PARTNERSHIP, §§ 6399, 6400.

ARTICLE 1.—WHAT CONSTITUTES A PARTNERSHIP.

§ 6386. Partnership defined. Partnership is the association of two or more persons for the purpose of carrying on business together and dividing its profits between them. [R. C. 1905, § 5818; Civ. C. 1877, § 1404; R. C. 1899, § 4370.]

Division of profit between loan agent and his principal not indicative of partnership. *Grigsby v. Day*, 9 S. D. 585, 70 N. W. 881.

Owners of ships, operating them jointly, are partners as to third parties. *Braithwaite v. Aiken*, 1 N. D. 475, 48 N. W. 361.

Agreement by which one purchases property with other's money, both to share profits or loss, is partnership. *McPherson v. Swift*, 22 S. D. 165, 113 Am. St. Rep. 907, 116 N. W. 76.

Necessity of sharing in profits to constitute partnership. *Clements v. Miller*, 13 N. D. 176, 100 N. W. 239.

What constitutes a partnership. 115 Am. St. Rep. 400.

What agreements establish partnership. 43 Am. St. Rep. 229.

What constitutes a partnership to deal in real estate. 5 L.R.A.(N.S.) 503.

Creation of partnership by speculative purchase of real estate for sale. 18 L.R.A.(N.S.) 1089.

Creation of partnership by provision for taking profits as compensation for use of real estate. 18 L.R.A.(N.S.) 1042.

Effect of agreement to share profits to create a partnership. 18 L.R.A.(N.S.) 963; 49 Am. Rep. 255; 58 Am. Rep. 99; 30 Am. St. Rep. 828.

Partnership undertakings between initial and connecting carrier. 31 L.R.A.(N.S.) 44.

Whether croppers occupy relation of partners. 37 Am. Rep. 609.

Partnership in business between husband and wife. 31 Am. St. Rep. 935.

Whether married woman may be a partner. 31 Am. St. Rep. 934; 34 Am. St. Rep. 339.

Infants as partners. 18 Am. St. Rep. 601.

As to similar provision in Cal. Civ. Code, § 2395, see *Quackenbush v. Sawyer*, 54 Cal. 439; *Hendy v. March*, 75 Cal. 566, 17 Pac. 702; *Quinn v. Quinn*, 81 Cal. 14, 22 Pac. 264; *Chapin v. Brown*, 101 Cal. 500, 35 Pac. 1051; *Chapman v. Hughes*, 104 Cal. 302, 37 Pac. 1048, 38 Pac. 109; *Plass v. Plass*, 122 Cal. 3, 54 Pac. 372; *Prince v. Lamb*, 128 Cal. 120, 60 Pac. 689, 20 Mor. Min. Rep. 419; *Krasky v. Wollpert*, 134 Cal. 338, 66 Pac. 309; *Kennedy & S. Lumber Co. v. Taylor*, 3 Cal. Unrep. 697, 31 Pac. 1122.

§ 6387. Ship owners not partners. Part owners of a ship do not by simply using it in joint enterprise become partners as to the ship. [R. C. 1905, § 5819; Civ. C. 1877, § 1405; R. C. 1899, § 4371.]

As to similar provision in Cal. Civ. Code, § 2396, see *Hendy v. March*, 75 Cal. 566, 17 Pac. 702.

§ 6388. Formed only by consent. A partnership can be formed only by the consent of all the parties thereto and therefore no new partner can be admitted into a partnership without the consent of every existing member thereof. [R. C. 1905, § 5820; Civ. C. 1877, § 1406; R. C. 1899, § 4372.]

ARTICLE 2.—PARTNERSHIP PROPERTY.

§ 6389. Defined. The property of a partnership consists of all that is contributed to the common stock at the formation of the partnership and all that is subsequently acquired thereby. [R. C. 1905, § 5821; Civ. C. 1877, § 1407; R. C. 1899, § 4373.]

Interest of deceased partner passes to administrator from surviving partner, who holds in trust for liquidation. *McPherson v. Swift*, 22 S. D. 165, 113 Am. St. Rep. 907, 116 N. W. 76.

When real estate will be considered partnership property. 27 L.R.A. 449; 37 L.R.A.(N.S.) 889.

Good will of a partnership and the means of making it productive on the death of a member or the dissolution of the firm. 96 Am. St. Rep. 610.

Name of business establishment as part of good will on dissolution. 15 L.R.A. 463.

Mining partnership. 83 Am. Dec. 104; 28 Am. St. Rep. 488.

Whether lands may become partnership property without a writing. 98 Am. Dec. 197; 27 Am. Rep. 270.

Purchase by one of the partners of property of, at a forced sale. 39 Am. Rep. 461.

Deceased partner's interest in partnership. 27 Am. Dec. 454.

As to similar provision in Cal. Civ. Code, § 2401, see *Chapman v. Hughes*, 104 Cal. 302, 37 Pac. 1048, 38 Pac. 109.

§ 6390. Extent of member's interest. The interest of each member of a partnership extends to every portion of its property. [R. C. 1905, § 5822; Civ. C. 1877, § 1408; R. C. 1899, § 4374.]

Rights of partners inter se in partnership real estate. 28 L.R.A. 86.

As to similar provision in Cal. Civ. Code, § 2402, see *Chapman v. Hughes*, 104 Cal. 302, 37 Pac. 1048, 38 Pac. 109.

§ 6391. Shares in profit or loss presumed equal. In the absence of an agreement on the subject the shares of partners in the profits or loss of the business are equal, and the share of each in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss. [R. C. 1905, § 5823; Civ. C. 1877, § 1409; R. C. 1899, § 4375.]

As to similar provision in Cal. Civ. Code, § 2403, see *Shorb v. Beaudry*, 56 Cal. 446; *Chapman v. Hughes*, 104 Cal. 302, 37 Pac. 1048, 38 Pac. 109.

§ 6392. Loss divided same as profits. An agreement to divide the profits of a business implies an agreement for a corresponding division of its losses, unless it is otherwise expressly stipulated. [R. C. 1905, § 5824; Civ. C. 1877, § 1410; R. C. 1899, § 4376.]

As to similar provision in Cal. Civ. Code, § 2404, see *Quinn v. Quinn*, 81 Cal. 14, 22 Pac. 264; *Smith v. Schultz*, 89 Cal. 526, 26 Pac. 1087; *Plass v. Plass*, 122 Cal. 3, 54 Pac. 372.

§ 6393. Lien on property for payment of debts. Each member of a partnership may require its property to be applied to the discharge of its debts and has a lien upon the shares of the other partners for this purpose and for the payment of the general balance, if any, due to him. [R. C. 1905, § 5825; Civ. C. 1877, § 1411; R. C. 1899, § 4377.]

Partner failing to have his judgment in decree of dissolution made a lien upon partnership assets loses that right. *Wishek v. Hammond*, 10 N. D. 72, 84 N. W. 587.

Partner cannot obtain homestead right in partnership property as against copartner. *Brady v. Kreuger*, 8 S. D. 464, 66 N. W. 1083, 59 Am. St. Rep. 771.

Partner has lien for balance due him after settlement of partnership debts. *Betts v. Letcher*, 1 S. D. 182, 46 N. W. 193.

Copartner has lien upon interest in property acquired by partner subsequently to discharge in bankruptcy in payment of partnership debt for one-half of amount of overdraft upon firm. *Hefner v. Hefner*, 26 S. D. 74, 127 N. W. 634.

Rights and position of creditors, purchasers and other third parties in partnership real estate. 28 L.R.A. 161.

As to similar provision in Cal. Civ. Code, § 2405, see *Sheehy v. Graves*, 58 Cal. 449; *Leedom v. Ham*, 5 Cal. Unrep. 633, 48 Pac. 222.

§ 6394. What presumed partnership property. Property, whether real or personal, acquired with partnership funds is presumed to be partnership property. [R. C. 1905, § 5826; Civ. C. 1877, § 1412; R. C. 1899, § 4378.]

ARTICLE 3.—MUTUAL OBLIGATIONS OF PARTNERS.

§ 6395. Partners trustees. The relations of partners are confidential. They are trustees for each other within the meaning of chapter 70 of this code. Their obligations as such trustees are defined by that chapter. [R. C. 1905, § 5827; Civ. C. 1877, § 1413; R. C. 1899, § 4379.]

Partnership relation requires the highest good faith. *Lay v. Emery*, 8 N. D. 515, 79 N. W. 1053; *Betts v. Letcher*, 1 S. D. 182, 46 N. W. 193.

Misappropriation of partnership funds not embezzlement. *State v. Reddick*, 2 S. D. 124, 48 N. W. 846.

Partner may rely upon copartner's statements, and one knowingly procuring money by deceit is responsible. *Davenport v. Buchanan*, 6 S. D. 376, 61 N. W. 47.

Interest of deceased partner passes to administrator from surviving partner who holds in trust for liquidation. *McPherson v. Swift*, 22 S. D. 165, 113 Am. St. Rep. 907, 116 N. W. 76.

Allowance of interest in favor of or against partner during continuance of firm. 35 L.R.A.(N.S.) 220, 45 Am. Dec. 518.

Misappropriation of property of, by one of the partners. 8 Am. Dec. 297.

Misapplication of property by partner to the payment of his personal debt. 7 Am. St. Rep. 377.

As to similar provision in Cal. Civ. Code, § 2410, see *Wiester v. Wiester*, 5 Cal. Unrep. 686, 48 Pac. 1086.

§ 6396. Highest good faith required. In all proceedings connected with the formation, conduct, dissolution and liquidation of the partnership every partner is bound to act in the highest good faith toward his copartners. He may not obtain any advantage over them in the partnership affairs by the slightest misrepresentation, concealment, threat or adverse pressure of any kind. [R. C. 1905, § 5828; Civ. C. 1877, § 1414; R. C. 1899, § 4380.]

As to similar provision in Cal. Civ. Code, § 2411, see *Wiester v. Wiester*, 5 Cal. Unrep. 686, 48 Pac. 1086; *Richards v. Fraser*, 112 Cal. 456, 55 Pac. 246; s. c., 136 Cal. 460, 69 Pac. 83.

§ 6397. Each member must account to partnership. Each member of a partnership must account to it for everything that he receives on account thereof and is entitled to reimbursement therefrom for everything that he properly expends for the benefit thereof and to be indemnified thereby for all losses and risks which he necessarily incurs on its behalf. [R. C. 1905, § 5829; Civ. C. 1877, § 1415; R. C. 1899, § 4381.]

Jurisdiction of court of equity over suit for a partnership accounting in respect of land in another jurisdiction. 23 L.R.A.(N.S.) 924.

Failure to account to partnership for partnership funds as theft, larceny or embezzlement. 31 L.R.A.(N.S.) 822.

Power of court to require accounting between members of partnership which is illegal or void, or which has been engaged in illegal business. 23 L.R.A.(N.S.) 478.

Liability of one party to an arrangement to share profits from gambling for money lost by a third person to the other party. 23 L.R.A.(N.S.) 522.

Right of one indorsing note for accommodation of firm to recover from firm after payment of note. 37 L.R.A.(N.S.) 784.

Right to subrogation of partner who pays firm debt. 54 L.R.A. 614.

Subrogation of retiring partner to rights of creditor where debts have been assumed on dissolution of partnership. 9 L.R.A.(N.S.) 117.

When accounting between members of partnership for illegal purpose compellable. 99 Am. St. Rep. 326.

As to similar provision in Cal. Civ. Code, § 2412, see *Sears v. Starbird*, 78 Cal. 225, 20 Pac. 547.

§ 6398. No compensation. A partner is not entitled to any compensation for services rendered by him to the partnership. [R. C. 1905, § 5830; Civ. C. 1877, § 1416; R. C. 1899, § 4382.]

Right of partner to compensation for services rendered to partnership. *Wianer v. Field*, 11 N. D. 257, 91 N. W. 67.

Right of partner to compensation for services rendered to the partnership. 17 L.R.A.(N.S.) 385.

Rights of estate of law partner in compensation for business unfinished at time of his death. 66 L.R.A. 821.

Right of surviving member of law partnership to compensation for services. 17 L.R.A.(N.S.) 402.

Surviving partner's right to compensation. 112 Am. St. Rep. 843.

As to similar provision in Cal. Civ. Code, § 2413, see *Osment v. McElrath*, 68 Cal. 466, 58 Am. Rep. 17, 9 Pac. 731; *Nevills v. Moore Min. Co.*, 135 Cal. 561, 67 Pac. 1054.

ARTICLE 4.—RENUNCIATION OF PARTNERSHIP.

§ 6399. Renunciation with notice exonerates. A partner may exonerate himself from all future liability to a third person on account of the partnership by renouncing in good faith all participation in its future profits and giving notice to such third person and to his own copartners that he has made such renunciation and that, so far as may be in his power, he dissolves

the partnership and does not intend to be liable on account thereof for the future. [R. C. 1905, § 5831; Civ. C. 1877, § 1417; R. C. 1899, § 4383.]

§ 6400. Cannot claim profits thereafter. After a partner has given notice of his renunciation of the partnership he cannot claim any of its subsequent profits and his copartners may proceed to dissolve the partnership. [R. C. 1905, § 5832; Civ. C. 1877, § 1418; R. C. 1899, § 4384.]

CHAPTER 75.

GENERAL PARTNERSHIP.

- ARTICLE 1. WHAT IS A GENERAL PARTNERSHIP, § 6401.
 2. POWERS AND AUTHORITY OF PARTNERS, §§ 6402-6405.
 3. MUTUAL OBLIGATIONS OF PARTNERS, §§ 6406-6409.
 4. LIABILITY OF PARTNERS, §§ 6410-6413.
 5. TERMINATION OF PARTNERSHIP, §§ 6414-6419.
 6. LIQUIDATION, §§ 6420-6425.
 7. OF THE USE OF FICTITIOUS NAMES, §§ 6426-6432.

ARTICLE 1.—WHAT IS A GENERAL PARTNERSHIP.

§ 6401. Defined. Every partnership that is not formed in accordance with the law concerning special partnership and every special partnership, so far only as the general partners are concerned, is a general partnership. [R. C. 1905, § 5833; Civ. C. 1877, § 1419; R. C. 1899, § 4385.]

ARTICLE 2.—POWERS AND AUTHORITY OF PARTNERS.

§ 6402. Majority governs. Unless otherwise expressly stipulated, the decision of the majority of the members of a general partnership binds it in the conduct of its business. [R. C. 1905, § 5834; Civ. C. 1877, § 1420; R. C. 1899, § 4386.]

§ 6403. Each partner general agent. Every general partner is agent for the partnership in the transaction of its business and has authority to do whatever is necessary to carry on such business in the ordinary manner and for this purpose may bind his copartners by an agreement in writing. [R. C. 1905, § 5835; Civ. C. 1877, § 1421; R. C. 1899, § 4387.]

Authority conferred upon partnership may be exercised by any partner. *McLaughlin v. Wheeler*, 1 S. D. 497, 47 N. W. 816; *Pearson v. Post*, 2 D. 220, 9 N. W. 684.

Fraud of one binds all. *Brundage v. Mellon*, 5 N. D. 72, 63 N. W. 209.

Partner had authority to authorize clerk to execute note in firm name to obtain money for use in firm business. *Inman v. Brookman*, 28 S. D. 361, 133 N. W. 810.

Power over real estate of partners in firm formed to deal in real estate. 28 L.R.A. 106.

Power of one partner to bind firm by a promissory note or bill of exchange under seal. 17 L.R.A. (N.S.) 969.

Power of one partner to give note affecting partnership real estate. 28 L.R.A. 97.

Power of one partner to limit the authority of another. 88 Am. St. Rep. 322.

As to similar provision in Cal. Civ. Code, § 2429, see *Myers v. Moulton*, 71 Cal. 498, 12 Pac. 505; *Smith v. Schultz*, 89 Cal. 526, 26 Pac. 1087.

§ 6404. Authority limited. A partner as such has not authority to do any of the following acts, unless his copartners have wholly abandoned the business to him or are incapable of acting:

1. To make an assignment of the partnership property, or any portion thereof, to a creditor or to a third person in trust for the benefit of a creditor or of all creditors.
2. To dispose of the good will of the business.
3. To dispose of the whole of the partnership property at once, unless it consists entirely of merchandise.
4. To do any act which would make it impossible to carry on the ordinary business of the partnership.

5. To confess a judgment.
6. To submit a partnership claim to arbitration; or,
7. To do any act not within the scope of the preceding section. [R. C. 1905, § 5836; Civ. C. 1877, § 1422; R. C. 1899, § 4388.]

Draft made by partnership bank to one of the partners who signs it as cashier not conclusively void. *Noyes v. Crandall*, 6 S. D. 460, 61 N. W. 806.

Levy on assets of partnership under a writ against one partner only. 57 Am. St. Rep. 436.

Judgment against partnership on service of process on one member only. 44 Am. Dec. 570.

As to similar provision in Cal. Civ. Code, § 2430, see *Bernheim v. Porter*, 2 Cal. Unrep. 349, 4 Pac. 446; *Crites v. Wilkinson*, 66 Cal. 559, 4 Pac. 567; *Myers v. Moulton*, 71 Cal. 498, 12 Pac. 505; *Perkins v. Brock*, 80 Cal. 320, 22 Pac. 194; *Quinn v. Quinn*, 81 Cal. 14, 22 Pac. 264.

1. Power of one partner to assign partnership real estate for benefit of creditors. 28 L.R.A. 97.

Assignments for creditors executed by one partner only. 48 Am. Rep. 359.

2. Sale of good will of firm must be with authority or ratification of all members. *Griffing v. Dunn*, 23 S. D. 141, 120 N. W. 890.

One partner not empowered to dispose of good will of partnership. *Kelly v. Pierce*, 16 N. D. 234, 12 L.R.A.(N.S.) 80, 112 N. W. 995.

Power of one partner to sell all the goods of the firm. 30 Am. Dec. 290.

7. Bank cashier cannot purchase stock of boots and shoes in bank's name, although he is a partner. *North Star B. & S. Co. v. Stebbins*, 2 S. D. 74, 48 N. W. 833.

Power of one partner to bind partnership as a surety or indorser. 13 Am. Dec. 115.

— to obtain loan on credit of the firm. 48 Am. St. Rep. 438.

— to authorize an appearance for the firm. 13 Am. Dec. 726.

— to bind the firm by accommodation paper. 31 Am. St. Rep. 754.

— to dissolve partnership for definite period. 77 Am. St. Rep. 319.

Circumstances sufficient to put a purchaser of partnership paper on inquiry. 29 L.R.A.(N.S.) 356.

§ 6405. Effect of bad faith. A partner is not bound by any act of a copartner in bad faith toward him, though within the scope of a partner's powers, except in favor of persons who have in good faith parted with value in reliance upon such act. [R. C. 1905, § 5837; Civ. C. 1877, § 1423; R. C. 1899, § 4389.]

As to similar provision in Cal. Civ. Code, § 2431, see *Gibson v. Henley*, 131 Cal. 6, 63 Pac. 61.

ARTICLE 3.— MUTUAL OBLIGATIONS OF PARTNERS.

§ 6406. Profits belong to firm. All profits made by a general partner in the course of any business usually carried on by the partnership belong to the firm. [R. C. 1905, § 5838; Civ. C. 1877, § 1424; R. C. 1899, § 4390.]

§ 6407. Partner cannot have adverse interest. A general partner, who agrees to give his personal attention to the business of the partnership, may not engage in any business which gives him an interest adverse to that of the partnership or which prevents him from giving to such business all the attention which would be advantageous to it. [R. C. 1905, § 5839; Civ. C. 1877, § 1425; R. C. 1899, § 4391.]

As to similar provision in Cal. Civ. Code, § 2436, see *Bremner v. Leavitt*, 109 Cal. 130, 41 Pac. 859.

§ 6408. May engage in separate business. A partner may engage in any separate business, except as otherwise provided by the last two sections. [R. C. 1905, § 5840; Civ. C. 1877, § 1426; R. C. 1899, § 4392.]

As to similar provision in Cal. Civ. Code, § 2437, see *Bremner v. Leavitt*, 109 Cal. 130, 41 Pac. 859.

§ 6409. When must account for profits. A general partner, transacting business contrary to the provisions of this article, may be required by any copartner to account to the partnership for the profits of such business. [R. C. 1905, § 5841; Civ. C. 1877, § 1427; R. C. 1899, § 4393.]

As to similar provision in Cal. Civ. Code, § 2438, see *Bremner v. Leavitt*, 109 Cal. 130, 41 Pac. 859.

ARTICLE 4.— LIABILITY OF PARTNERS.

§ 6410. Liable to third persons. Every general partner is liable to third persons for all the obligations of the partnership jointly with his copartners. [R. C. 1905, § 5842; Civ. C. 1877, § 1428; R. C. 1899, § 4394.]

Necessity of sharing in profits to constitute partnership. *Clements v. Miller*, 13 N. D. 176, 100 N. W. 239.

Right of one accepting negotiable paper for accommodation of firm to recover from firm after payment of paper. 37 L.R.A.(N.S.) 785.

Availability to maker of defense that commercial paper was partnership paper as against transferee after maturity. 46 L.R.A. 771.

Effect of judgment against some of partners to release liability of others. 43 L.R.A. 161.

Effect on right of individual partners of sale by firm of good will of business with or without an agreement not to re-engage in the same business. 19 L.R.A.(N.S.) 769.

Preferences as between partnership creditors and creditors of the individual partners. 35 Am. Rep. 306.

Separate property of partners, liability of for partnership debts. 18 Am. Dec. 280.

Assignment for benefit of creditors by partnership. 57 Am. Dec. 505; 58 Am. St. Rep. 90; 48 Am. Rep. 359.

Rights and remedies of creditors of partnership. 43 Am. St. Rep. 364.

As to similar provision in Cal. Civ. Code, § 2442, see *Northern Ins. Co. v. Potter*, 63 Cal. 157; *Harrison v. McCormick*, 69 Cal. 616, 11 Pac. 456; *Stuart v. Adams*, 89 Cal. 367, 26 Pac. 970; *Smith v. Schultz*, 89 Cal. 526, 26 Pac. 1087.

§ 6411. Liability defined by chapter 72. The liability of general partners for each other's acts is defined by chapter 72 of this code. [R. C. 1905, § 5843; Civ. C. 1877, § 1429; R. C. 1899, § 4395.]

Partner liable for fraud committed by copartner in course of their business. *Brundage v. Mellon*, 5 N. D. 72, 63 N. W. 209.

Liability of one partner for the tortious acts of another. 67 Am. St. Rep. 32.

Criminal and penal liability for act of partner. 41 L.R.A. 650.

—for sale of intoxicating liquor by partner. 16 L.R.A.(N.S.) 786; 20 L.R.A.(N.S.) 321; 33 L.R.A.(N.S.) 419.

Liability of partner to action for false imprisonment for act of copartner. 3 L.R.A.(N.S.) 221.

Suspension or disbarment of attorney for partner's misconduct in withholding client's money or property. 19 L.R.A.(N.S.) 418.

Liability of partner for libel published without his consent. 26 L.R.A. 779.

Liability of one party to an arrangement to share profits from gambling for money lost by a third person to the other party. 23 L.R.A.(N.S.) 522.

Attachment of individual property of one partner for fraud of another. 25 L.R.A. 645.

Liability of physician or surgeon for acts of partner. 42 L.R.A.(N.S.) 786.

Assumption by partnership of individual debts of partners. 29 L.R.A. 681.

Liability of partnership for torts. 51 L.R.A. 463.

As to similar provision in Cal. Civ. Code, § 2443, see *Smith v. Schultz*, 89 Cal. 526, 26 Pac. 1087; *Lane v. Turner*, 114 Cal. 396, 46 Pac. 290; *Gibson v. Henley*, 131 Cal. 6, 63 Pac. 61.

§ 6412. Ostensible partner. Any one permitting himself to be represented as a partner, general or special is liable as such to third persons to whom such representation is communicated, who on the faith thereof give credit to the partnership. [R. C. 1905, § 5844; Civ. C. 1877, § 1430; R. C. 1899, § 4396.]

Proof of partnership by general reputation. 38 Am. Dec. 481.

Liability of one held out as a partner. 22 Am. St. Rep. 757.

As to similar provision in Cal. Civ. Code, § 2444, see *Nofsinger v. Goldman*, 122 Cal. 609, 55 Pac. 425.

§ 6413. Otherwise only partner in fact liable. No one is liable as a partner who is not such in fact, except as provided by the last section. [R. C. 1905, § 5845; Civ. C. 1877, § 1431; R. C. 1899, § 4397.]

Dormant partners, who are and their powers and liabilities. 56 Am. Dec. 147.

As to similar provision in Cal. Civ. Code, § 2445, see *Nofsinger v. Goldman*, 122 Cal. 609, 55 Pac. 425.

ARTICLE 5.—TERMINATION OF PARTNERSHIP.

§ 6414. Duration of partnership. If no term is prescribed by agreement for its duration, a general partnership continues until dissolved by a partner or by operation of law. [R. C. 1905, § 5846; Civ. C. 1877, § 1432; R. C. 1899, § 4398.]

§ 6415. Causes dissolving. A general partnership is dissolved as to all the partners:

1. By lapse of time prescribed by agreement for its duration.

2. By the express will of any partner if there is no such agreement.
3. By the death of a partner.
4. By the transfer to a person not a partner of the interest of any partner in the partnership property.
5. By war or by the prohibition of commercial intercourse between the country in which one partner resides and that in which another resides; or,
6. By a judgment of dissolution. [R. C. 1905, § 5847; Civ. C. 1877, § 1433; R. C. 1899, § 4399.]

Partnership is dissolved eo instante when partners form a corporation. *Hennessey v. Griggs et al.*, 1 N. D. 52, 44 N. W. 1010.

Causes sufficient for dissolution of partnership. 69 Am. St. Rep. 410.

Physical or mental incapacity of partner as dissolution, or a ground for dissolution, of a partnership. 47 L.R.A.(N.S.) 839.

Dissolution of partnership by reason of formation of corporation. 31 L.R.A.(N.S.) 471.

As to similar provision in Cal. Civ. Code, § 2450, see *Louis v. Elfelt*, 89 Cal. 547, 26 Pac. 1095; *Chapman v. Hughes*, 104 Cal. 302, 37 Pac. 1048, 38 Pac. 109.

3. Continuation of partnership owning real estate after death of partner. 28 L.R.A. 106.

Name of business establishment as part of good will on dissolution by death. 15 L.R.A. 463.

Dissolution by death, of partnership authorized to act as agent, as termination of agency. 23 L.R.A.(N.S.) 850.

Termination of contract of employment by death of member of employing firm. 21 L.R.A.(N.S.) 919.

Effect of death of one member. 77 Am. Dec. 114; 86 Am. Dec. 600; 79 Am. St. Rep. 709.

Carrying on of partnership business by representative of deceased partner. 86 Am. Dec. 600; 79 Am. St. Rep. 709.

Continuance of partnership for benefit of heirs of deceased partner. 56 Am. Dec. 517, 79 Am. St. Rep. 709.

6. Dissolution of partnership by a decree. 98 Am. Dec. 260.

§ 6416. Partial dissolution. A general partnership may be dissolved as to himself only by the expressed will of any partner, notwithstanding his agreement for its continuance, subject, however, to liability to his copartners for any damage caused to them thereby, unless the circumstances are such as to entitle him to a judgment of dissolution. [R. C. 1905, § 5848; Civ. C. 1877, § 1434; R. C. 1899, § 4400.]

Duty of partnership toward employees as to changes of personnel of partnership. 6 L.R.A. 807.

§ 6417. Judgment of dissolution. A general partner is entitled to a judgment of dissolution:

1. When he or another partner becomes legally incapable of contracting.
2. When another partner fails to perform his duties under the agreement of partnership or is guilty of serious misconduct; or,
3. When the business of the partnership can be carried on only at a permanent loss. [R. C. 1905, § 5849; Civ. C. 1877, § 1435; R. C. 1899, § 4401.]

§ 6418. Liability until notice given. The liability of a general partner for the acts of his copartners continues, even after a dissolution of the partnership, in favor of persons who have had dealings with and given credit to the partnership during its existence, until they have had personal notice of the dissolution; and in favor of other persons, until such dissolution has been advertised in a newspaper published in every county where the partnership at the time of its dissolution had a place of business; to the extent in either case to which such persons part with value in good faith and in the belief that such partner is still a member of the firm. [R. C. 1905, § 5850; Civ. C. 1877, § 1436; R. C. 1899, § 4402.]

Making two deposits in one year during existence of a banking firm is a dealing within this section. *Tobin v. McKinney*, 14 S. D. 52, 84 N. W. 228.

Liability of partner continues after dissolution until notice, as to parties doing business with partnership. *Cornwall v. McKinney*, 12 S. D. 118, 30 N. W. 171.

Dissolution; effect of settlement; setting aside contract. *Little v. Little*, 2 N. D. 175, 49 N. W. 736.

When notice of dissolution of partnership required and what sufficient. 26 Am. Dec. 290.

Liability under continuing guaranty running to partnership for goods sold or credits extended after a change in the firm. 14 L.R.A. (N.S.) 1231.

Liability of retiring member of mining partnership for debts subsequently incurred. 22 L.R.A. (N.S.) 851.

Liability of corporation formed by firm for debts of old concern in absence of express assumption or fraud. 29 L.R.A. (N.S.) 589.

Assumption of debts on dissolution of partnership. 25 L.R.A. 274; 9 L.R.A. (N.S.) 49.

Acceptance of note of partner assuming debts on dissolution of firm as release of other partner. 9 L.R.A. (N.S.) 92.

Dissolution of partnership authorized to act as agent as termination of agency. 23 L.R.A. (N.S.) 849.

Necessity for notice of dissolution to prevent continuing partner from reviving barred debt. 15 L.R.A. 659.

Necessity of actual notice of retirement of member of firm to relieve retiring member from liability on obligation renewed after his retirement. 4 L.R.A. (N.S.) 800.

As to similar provision in Cal. Civ. Code, § 2453, see *Dellapiazza v. Foley*, 112 Cal. 380, 44 Pac. 727.

§ 6419. When change of name sufficient notice. A change of the partnership name, which plainly indicates the withdrawal of a partner is a sufficient notice of the fact of such withdrawal to all persons to whom it is communicated. But a change in the name which does not contain such an indication is not notice of the withdrawal of any partner. [R. C. 1905, § 5851; Civ. C. 1877, § 1437; R. C. 1899, § 4403.]

ARTICLE 6.—LIQUIDATION.

§ 6420. Authority after dissolution. After the dissolution of a partnership the powers and authority of the partners are such only as are prescribed by this article. [R. C. 1905, § 5852; Civ. C. 1877, § 1438; R. C. 1899, § 4404.]

Powers, rights, remedies and liabilities of partners after dissolution. 40 Am. St. Rep. 561.

As to similar provision in Cal. Civ. Code, § 2458, see *Louis v. Elfelt*, 89 Cal. 547, 26 Pac. 1095.

§ 6421. Who may act in liquidation. Any member of a general partnership may act in liquidation of its affairs, except as provided by the next section. [R. C. 1905, § 5853; Civ. C. 1877, § 1439; R. C. 1899, § 4405.]

When should receivers be appointed for partnership. 72 Am. St. Rep. 80.

As to similar provision in Cal. Civ. Code, § 2459, see *Hawn v. Seventy-Six Land & Water Co.*, 74 Cal. 418, 16 Pac. 196; *Quinn v. Quinn*, 81 Cal. 14, 22 Pac. 264; *Louis v. Elfelt*, 89 Cal. 547, 26 Pac. 1095.

§ 6422. Who may not act. If the liquidation of a partnership is committed by consent of all the partners to one or more of them, the others have no right to act therein; but their acts are valid in favor of persons parting with value in good faith upon the credit thereof. [R. C. 1905, § 5854; Civ. C. 1877, § 1440; R. C. 1899, § 4406.]

§ 6423. Authority of partner liquidating. A partner authorized to act in liquidation may collect, compromise or release any debts due to the partnership, pay or compromise any claims against it, and dispose of the partnership property. [R. C. 1905, § 5855; Civ. C. 1877, § 1441; R. C. 1899, § 4407.]

As to similar provision in Cal. Civ. Code, § 2461, see *Hawn v. Seventy-Six Land & Water Co.*, 74 Cal. 418, 16 Pac. 196; *Quinn v. Quinn*, 81 Cal. 14, 22 Pac. 264; *Berson v. Ewing*, 84 Cal. 89, 23 Pac. 1112; *Louis v. Elfelt*, 89 Cal. 547, 26 Pac. 1095.

§ 6424 Same. A partner authorized to act in liquidation may indorse in the name of the firm promissory notes or other obligations held by the partnership for the purpose of collecting the same, but he cannot create any new obligation in its name, or revive a debt against the firm by an acknowledgment, when an action thereon is barred under the provisions of the code of civil procedure. [R. C. 1905, § 5856; Civ. C. 1877, § 1442; R. C. 1899, § 4408.]

As to foreclosure by advertisement with sheriff's deed not being subject to attack on ground in invalidity because of usury in mortgage. *Grove v. Great Northern Loan Co.*, 17 N. D. 352, 116 N. W. 345.

Interest of deceased partner passes to administrator from surviving partner who holds in trust for liquidation. *McPherson v. Swift*, 22 S. D. 165, 113 Am. St. Rep. 907, 116 N. W. 76.

Winding up of firm owning real estate. 28 L.R.A. 107.

Power of continuing partner over partnership real estate. 28 L.R.A. 98.

Right of partner to compensation for services in winding up firm business. 17 L.R.A.(N.S.) 396.

Commercial paper after dissolution of partnership as payment of firm debt 35 L.R.A (N.S.) 55.

Power of member of dissolved firm to bind other members by a note given in payment of a firm debt 32 L.R.A.(N.S.) 255.

Revival of partnership debt after dissolution by one partner giving note. 15 L.R.A. 660.

As to similar provision in Cal. Civ. Code. § 2462, see *Louis v. Elfelt*, 89 Cal. 547, 26 Pac. 1095.

§ 6425. Surviving partner's authority. On the death of a partner the surviving partners succeed to all the partnership property, whether real or personal, in trust for the purposes of liquidation, even though the deceased was appointed by agreement sole liquidator; and the interest of the deceased in the ultimate distribution of the partnership assets passes to those who succeed to his other personal property [R. C. 1905, § 5857; Civ. C. 1877, § 1442; R. C. 1899, § 4409.]

Powers and duties of surviving partners. 65 Am. Dec. 295.

Admissibility in evidence of entries in books of account by surviving partner. 52 L.R.A. 846

Position and powers of surviving partner in partnership real estate. 28 L.R.A. 129.

Deceased partner's interest in realty held by partnership 27 Am. Dec. 454.

Rights in partnership real estate as between surviving partner and heirs of deceased partner. 27 L.R.A. 350

Right of subrogation of partner who pays firm debt after death of copartner. 54 L.R.A. 621.

Surviving partner as creditor of firm 28 L.R.A. 132.

Surviving partner's right to compensation. 17 L.R.A.(N.S.) 399; 112 Am. St. Rep. 843

Note by surviving partner as payment of firm indebtedness. 35 L.R.A (N.S.) 54.

ARTICLE 7.—OF THE USE OF FICTITIOUS NAMES.

§ 6426. Fictitious names. Service. Publication. Except as otherwise provided in the next section, every partnership transacting business in this state under a fictitious name, or a designation not showing the names of the persons interested as partners in such business, must file with the clerk of the district court of the county or subdivision in which its principal place of business is situated a certificate, stating the names in full of all the members of such partnership and their places of residence, and publish the same once a week for four successive weeks in a newspaper published in the county, if there is one, and if there is none in such county, then in a newspaper published in an adjoining county. [R. C. 1905, § 5858; Civ. C. 1877, § 1443; R. C. 1899, § 4410.]

Objection that certificate of partnership has not been filed can only be taken by pleading the same. *Heegaard v. Dakota L. & T. Co.*, 3 S. D. 569, 54 N. W. 656.

Owners of several ships operating them jointly are liable as partners. *Braithwaite v. Aiken*, 1 N. D. 475, 48 N. W. 361.

Inapplicable to firm name showing only surnames of parties. *Walker v. Stimmel*, 15 N. D. 484, 107 N. W. 1081.

Failure of partnership to file certificate containing their full names will not invalidate their transaction. *Borce v. De Jong*, 22 S. D. 163, 116 N. W. 83.

Failure of partnership to publish and file certificate disclosing names of partners must be taken advantage of by answer amounting to plea in abatement. *Drake v. Great Northern R. Co.*, 24 S. D. 19, 123 N. W. 82.

As to similar provision in Cal. Civ. Code, § 2466, see *Fabian & Co. v. Callahan*, 56 Cal. 159; *Byers v. Bourret*, 64 Cal. 73, 28 Pac. 61; *Sweeny v. Stanford*, — Cal. . ., 6 Pac. 688; *Sweeny v. Stanford*, 67 Cal. 635, 8 Pac. 444; *Wing Co. v. Baldwin*, 70 Cal. 194, 11 Pac. 565; *Lee v. Orr*, 70 Cal. 398, 11 Pac. 745; *Phillips v. Goldtree*, 74 Cal. 151, 13 Pac. 313, 15 Pac. 451; *Goldtree v. Swinford*, 74 Cal. 586, 16 Pac. 493; *Pendleton v. Cline*, 85 Cal. 142, 24 Pac. 659; *Carlock v. Cagnacci*, 88 Cal. 600, 26 Pac. 597; *McLean v. Crow*, 88 Cal. 644, 26 Pac. 596; *Re Dennery*, 89 Cal. 101, 26 Pac. 639; *Meads v. Lasar*, 92 Cal. 221, 28 Pac. 935; *Cook v. Fowler*, 101 Cal. 89, 35 Pac. 431; *Gray v. Wells*,

118 Cal. 11, 50 Pac. 23; *Quan Wye v. Chin Lin Hee*, 123 Cal. 185, 55 Pac. 783; *North v. Moore*, 135 Cal. 621, 67 Pac. 1037.

§ 6427. Foreign partnership. A commercial or banking partnership, established and transacting business in a place without the United States, may without filing the certificate or making the publication prescribed in the last section use in this state the partnership name used by it there, although it is fictitious or does not show the names of the persons interested as partners in such business. [R. C. 1905, § 5859; Civ. C. 1877, § 1444; R. C. 1899, § 4411.]

As to similar provision in Cal. Civ. Code, § 2467, see *Sweeny v. Stanford*, 67 Cal. 635, 8 Pac. 444.

§ 6428. How certificates executed. The certificate filed with the clerk of the district court, provided in section 6426, must be signed by the partners and acknowledged before some officer authorized to take acknowledgments of conveyances of real property. [R. C. 1905, § 5860; Civ. C. 1877, § 1445; 1881, ch. 30, § 1; R. C. 1899, § 4412.]

Inapplicable to firm name showing only surnames of parties. *Walker v. Stimmel*, 15 N. D. 484, 107 N. W. 1081.

Failure of partnership to file certificate containing their full names will not invalidate their transaction. *Borce v. De Long*, 22 S. D. 163, 116 N. W. 83.

As to similar provision in Cal. Civ. Code, § 2468, see *Philip Fabian & Co. v. Callahan*, 56 Cal. 159; *Ralph v. Lockwood*, 61 Cal. 155; *Byers v. Bourret*, 64 Cal. 73, 28 Pac. 61; *Cheney v. Newberry & Co.*, 67 Cal. 126, 7 Pac. 445; *Sweeny v. Stanford*, — Cal. —, 6 Pac. 638; *Sweeny v. Stanford*, 67 Cal. 635, 8 Pac. 444; *Lee v. Orr*, 70 Cal. 398, 11 Pac. 745; *Phillips v. Goldtree*, 74 Cal. 151, 13 Pac. 313, 15 Pac. 451; *Goldtree v. Swinford*, 74 Cal. 536, 16 Pac. 493; *Re Dennerly*, 89 Cal. 101, 26 Pac. 639; *Cook v. Fowler*, 101 Cal. 89, 35 Pac. 431; *Gray v. Wells*, 118 Cal. 11, 50 Pac. 23; *Quan Wye v. Chin Lin Hee*, 123 Cal. 185, 55 Pac. 783; *North v. Moore*, 135 Cal. 621, 67 Pac. 1037.

§ 6429. Penalty. Persons doing business as partners, contrary to the provisions of this article shall not maintain any action on or on account of any contracts made or transactions had in their partnership name in any court of this state, until they have first filed the certificate and made the publication herein required; provided, however, that if such partners shall at any time comply with the provisions of this article, then such partnership shall have the right to maintain an action in all such partnership contracts and transactions entered into prior as well as after such compliance with this article and the disability heretofore imposed on partnerships by said article for a failure to comply therewith are hereby removed and made to conform to this section. [R. C. 1905, § 5861; Civ. C. 1877, § 1445; 1881, ch. 30, § 1; R. C. 1899, § 4412.]

§ 6430. New certificate when members changed. On every change in the members of a partnership transacting business in this state under a fictitious name or designation which does not show the names of the persons interested as partners in the business except in the cases mentioned in section 6427, a new certificate must be filed with the clerk of the district court and a new publication made as required by this article on the formation of such partnership. [R. C. 1905, § 5862; Civ. C. 1877, § 1446; R. C. 1899, § 4413.]

As to similar provision in Cal. Civ. Code, § 2469, see *Mortimer v. Marder*, 93 Cal. 172, 23 Pac. 814.

§ 6431. Duty of clerk. Every clerk of the district court must keep a register of the names of firms and persons mentioned in the certificates filed with him pursuant to this article, entering in alphabetical order the name of every such partnership and of each partner therein. [R. C. 1905, § 5863; Civ. C. 1877, § 1447; R. C. 1899, § 4414.]

As to similar provision in Cal. Civ. Code, § 2470, see *Mortimer v. Marder*, 93 Cal. 172, 23 Pac. 814.

§ 6432. Certified copies evidence. Copies of the entries of the clerk of the district court, as herein directed, when certified by him and affidavits of publication made as prescribed in section 7913 of the code of civil procedure are presumptive evidence of the facts therein stated. [R. C. 1905, § 5864; Civ. C. 1877, § 1448; R. C. 1895, § 4415.]

As to similar provision in Cal. Civ. Code, § 2471, see *Mortimer v. Marder*, 93 Cal. 172, 23 Pac. 814.

CHAPTER 76.

SPECIAL PARTNERSHIP.

- ARTICLE 1. FORMATION OF THE PARTNERSHIP, §§ 6433-6440.
 2. POWERS, RIGHTS AND DUTIES OF THE PARTNERS, §§ 6441-6450.
 3. LIABILITY OF PARTNERS, §§ 6451-6454.
 4. ALTERATION AND DISSOLUTION, §§ 6455-6457.

ARTICLE 1.—FORMATION OF THE PARTNERSHIP.

§ 6433. **Special partnership authorized.** A special or limited partnership may be formed by any two or more persons in the manner and with the effect prescribed in this chapter for the transaction of any business except banking or insurance. [R. C. 1905, § 5865; Civ. C. 1877, § 1449; R. C. 1899, § 4416.]

As to similar provision in Cal. Civ. Code, § 2477, see *Hawn v. Seventy-Six Land & Water Co.*, 74 Cal. 418, 16 Pac. 196; *Prince v. Lamb*, 128 Cal. 130, 60 Pac. 689, 20 Mor. Min. Rep. 419.

§ 6434. **How constituted.** A special partnership may consist of one or more persons called general partners and one or more persons called special partners. [R. C. 1905, § 5866; Civ. C. 1877, § 1450; R. C. 1899, § 4417.]

As to similar provision in Cal. Civ. Code, § 2478, see *Prince v. Lamb*, 128 Cal. 120, 60 Pac. 689, 20 Mor. Min. Rep. 419.

§ 6435. **How formed.** Persons desirous of forming a special partnership must severally sign a certificate, stating:

1. The name under which such partnership is to be conducted.
2. The general nature of the business intended to be transacted.
3. The names of all the partners and their residences, specifying which are general and which are special partners.
4. The amount of capital which each special partner has contributed to the common stock; and,
5. The periods at which such partnership will begin and end. [R. C. 1905, § 5867; Civ. C. 1877, § 1451; R. C. 1899, § 4418.]

§ 6436. **Certificate, how executed and filed.** Certificates under the last section must be acknowledged by all the partners before some officer authorized to take acknowledgment of deeds, one to be filed in the office of the clerk of the district court of the county or subdivision and the other recorded in the office of the register of deeds of the county in which the principal place of business of the partnership is situated in a book to be kept for that purpose open to public inspection; and if the partnership has places of business situated in different counties, a copy of the certificate, certified by the register of deeds in whose office it is recorded, must be filed in the clerk's office as aforesaid and recorded in like manner in the office of the register of deeds in every such county. If any false statement is made in any such certificate all the persons interested in the partnership are liable as general partners for all the engagements thereof. [R. C. 1905, § 5868; Civ. C. 1877, § 1452; R. C. 1899, § 4419.]

§ 6437. **Affidavits required of partners.** An affidavit of each of the partners stating that the sums specified in the certificate of the partnership as having been contributed by each of the special partners has been actually and in good faith paid in the lawful money of the United States, must be filed in the same office with the original certificate. [R. C. 1905, § 5869; Civ. C. 1877, § 1453; R. C. 1899, § 4420.]

§ 6438. **Compliance necessary to formation.** No special partnership is formed until the provisions of the last five sections are complied with. [R. C. 1905, § 5870; Civ. C. 1877, § 1454; R. C. 1899, § 4421.]

§ 6439. **Publication required.** The certificate mentioned in this article or a statement of its substance must be published in a newspaper printed in the

county where the original certificate is filed and if no newspaper is there printed then in a newspaper in the state nearest thereto. Such publication must be made once a week for four successive weeks, beginning within one week from the time of filing of such certificate. In case the publication is not so made the partnership must be deemed general. [R. C. 1905, § 5871; Civ. C. 1877, § 1455; R. C. 1899, § 4422.]

§ 6440. **Affidavit of publication filed.** An affidavit of publication pursuant to the preceding section made by the printer, publisher or chief clerk of a newspaper, may be filed with the register of deeds with whom the original certificate was filed and is presumptive evidence of the facts therein stated. [R. C. 1905, § 5872; Civ. C. 1877, § 1456; R. C. 1899, § 4425.]

ARTICLE 2.—POWERS, RIGHTS AND DUTIES OF THE PARTNERS.

§ 6441. **How renewed or continued.** Every renewal or continuance of a special partnership must be certified, recorded, verified and published in the same manner as upon its original formation. [R. C. 1905, § 5873; Civ. C. 1877, § 1457; R. C. 1899, § 4424.]

As to similar provision in Cal. Civ. Code, § 2485, see *Prince v. Lamb*, 128 Cal. 120, 60 Pac. 689, 20 Mor. Min. Rep. 419.

§ 6442. **Style of special partnership. Sign.** The business of a special partnership must be conducted under a name consisting of the names or surnames of one or more of the general partners only with or without the addition of the words "and company" or "& Co." Such partnership shall put in some conspicuous place on the outside and in front of the building in which it has its chief place of business some sign on which shall be painted in legible English characters all the names of all the members of such partnership, designating the special partners. [R. C. 1905, § 5874; Civ. C. 1877, § 1458; R. C. 1899, § 4425.]

§ 6443. **Only general partners have authority.** The general partners only have authority to transact the business of a special partnership. [R. C. 1905, § 5875; Civ. C. 1877, § 1459; R. C. 1899, § 4426.]

§ 6444. **Rights of special partner.** A special partner may at all times investigate the partnership affairs and advise his partners or their agents as to their management. [R. C. 1905, § 5876; Civ. C. 1877, § 1460; R. C. 1899, § 4427.]

§ 6445. **May deal with firm.** A special partner may lend money to the partnership or advance money for it and take from it security therefor and as to such loans or advances has the same right as any other creditor; but in case of the insolvency of the partnership, all other claims which he may have against it must be postponed until all other creditors are satisfied. [R. C. 1905, § 5877; Civ. C. 1877, § 1461; R. C. 1899, § 4428.]

§ 6446. **Who joined in actions.** In all matters relating to a special partnership its general partners may sue and be sued alone in the same manner as if there were no special partners. [R. C. 1905, § 5878; Civ. C. 1877, § 1462; R. C. 1899, § 4429.]

§ 6447. **Withdrawal of capital.** No special partner under any pretense may withdraw any part of the capital invested by him in the partnership during its continuance. [R. C. 1905, § 5879; Civ. C. 1877, § 1463; R. C. 1899, § 4430.]

§ 6448. **May receive interest and profits.** A special partner may receive such lawful interest and such proportion of profits as may be agreed upon, if not paid out of the capital invested in the partnership by him, or by some other special partner, and is not bound to refund the same to meet subsequent losses. [R. C. 1905, § 5880; Civ. C. 1877, § 1464; R. C. 1899, § 4431.]

§ 6449. **When special becomes general partner.** If a special partner withdraws capital from the firm contrary to the provisions of this article he thereby becomes a general partner. [R. C. 1905, § 5881; Civ. C. 1877, § 1465; R. C. 1899, § 4432.]

§ 6450. When preference void. Every transfer of the property of a special partnership or of a partner therein, made after or in contemplation of the insolvency of such partnership or partner with intent to give a preference to any creditor of such partnership, or partner over any creditor of such partnership, is void against the creditors thereof; and every judgment confessed, lien created or security given in like manner and with like intent is in like manner void. [R. C. 1905, § 5882; Civ. C. 1877, § 1466; R. C. 1899, § 4436.]

ARTICLE 3.—LIABILITY OF PARTNERS.

§ 6451. Of general partner. The general partners in a special partnership are liable to the same extent as partners in a general partnership. [R. C. 1905, § 5883; Civ. C. 1877, § 1467; R. C. 1899, § 4434.]

§ 6452. Special partners, liability limited. Exceptions. The contribution of a special partner to the capital of the firm and the increase thereof is liable for its debts, but he is not otherwise liable therefor except as follows:

1. If he has willfully made or permitted a false or materially defective statement in the certificate of the partnership, the affidavit filed therewith or the published announcement thereof, he is liable as a general partner to all the creditors of the firm.

2. If he has willfully interfered with the business of the firm, except as permitted in article 2 of this chapter, he is liable in like manner; or,

3. If he has willfully joined in or assented to an act contrary to any of the provisions of article 2 of this chapter he is liable in a like manner. [R. C. 1905, § 5884; Civ. C. 1877, § 1468; R. C. 1899, § 4435.]

§ 6453. When special liable as general partner. When a special partner has unintentionally done any of the acts mentioned in the last section he is liable as a general partner to any creditor of the firm who has been actually misled thereby to his prejudice. [R. C. 1905, § 5885; Civ. C. 1877, § 1469; R. C. 1899, § 4436.]

§ 6454. Estoppel, when contracting with as such. One who upon making a contract with a partnership accepts from or gives to it a written memorandum of the contract, stating that the partnership is special and giving the names of the special partners, cannot afterwards charge the persons thus named as general partners upon that contract by reason of any error or defect in the proceedings for the creation of the special partnership prior to the acceptance of the memorandum, if an effort has been made by the partners in good faith to form a special partnership in the manner provided by law. [R. C. 1905, § 5886; Civ. C. 1877, § 1470; R. C. 1899, § 4437.]

ARTICLE 4.—ALTERATION AND DISSOLUTION.

§ 6455. When special becomes general partnership. A special partnership becomes general, if within ten days after any partner withdraws from it, or any new partner is received into it, or a change is made in the nature of its business, or in its name, a certificate of such fact, duly verified and signed by one or more of the partners, is not filed with the clerk of the district court and the register of deeds with whom the original certificate of the partnership was filed and notice thereof published as is provided in article 1 of this chapter for the publication of this certificate. [R. C. 1905, § 5887; Civ. C. 1877, § 1471; R. C. 1899, § 4438.]

§ 6456. How new special partners admitted. New special partners may be admitted into a special partnership upon a certificate, stating the names, residences and contributions to the common stock of each of such partners, signed by each of them and by the general partners, verified, acknowledged or proved and filed with the clerk and recorded in the register's office in which the original certificate was filed according to the provisions of article 1 of this chapter. [R. C. 1905, § 5888; Civ. C. 1877, § 1472; R. C. 1899, § 4439.]

§ 6457. Dissolution. Notice filed and published. A special partnership is subject to dissolution in the same manner as a general partnership, except that no dissolution by the act of the partners is complete until a notice thereof has been filed and recorded in the office of the register of deeds with whom the original certificate was recorded and filed in the office of the clerk of the district court and published once in each week for four successive weeks in a newspaper printed in each county where the partnership has a place of business. [R. C. 1905, § 5889; Civ. C. 1877, § 1473; R. C. 1899, § 4440.]

CHAPTER 77.

INSURANCE IN GENERAL.

- ARTICLE 1. DEFINITION OF INSURANCE, § 6458.
 2. WHAT MAY BE INSURED, §§ 6459, 6460a.
 3. PARTIES TO THE CONTRACT, §§ 6461-6465.
 4. INSURABLE INTEREST, §§ 6466-6479.
 5. CONCEALMENT AND REPRESENTATION, §§ 6480-6502.
 6. THE POLICY, §§ 6503-6518.
 7. WARRANTIES, §§ 6519-6528.
 8. PREMIUM, §§ 6529-6536.
 9. LOSS, §§ 6537-6540.
 10. NOTICE OF LOSS, §§ 6541-6546.
 11. DOUBLE INSURANCE, §§ 6547, 6548.
 12. REINSURANCE, §§ 6549-6552.

ARTICLE 1.— DEFINITION OF INSURANCE.

§ 6458. Defined. Insurance is a contract whereby one undertakes to indemnify another against loss, damage or liability arising from an unknown or contingent event. [R. C. 1905, § 5890; Civ. C. 1877, § 1474; R. C. 1899, § 4441.]

Corporation undertaking to guarantee fixed revenue per acre for farm lands is an insurance company within statute. *State v. Hogan*, 8 N. D. 301, 78 N. W. 1051, 73 A. S. R. 759, 45 L.R.A. 166.

Insurer is entitled to such interpretation of clause making policy void because of increase of hazard occasioned by insured as will include mortgage placed upon property insured. *Lawver v. Globe Mut. Ins. Co.*, 25 S. D. 549, 127 N. W. 615.

What constitutes insurance. 47 L.R.A.(N.S.) 290.

ARTICLE 2.— WHAT MAY BE INSURED.

§ 6459. Insurable interest. Any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest or create a liability against him may be insured against, subject to the provisions of this chapter, with the exception of an insurance for or against the drawing of any lottery or for or against any chance or ticket in a lottery drawing a prize. [R. C. 1905, § 5891; Civ. C. 1877, § 1475; R. C. 1899, § 4442.]

§ 6460. Insurance classified. The most usual kinds of insurance are:

1. Marine insurance.
2. Fire insurance.
3. Life insurance.
4. Health insurance; and
5. Accident insurance. [R. C. 1905, § 5892; Civ. C. 1877, § 1476; R. C. 1899, § 4443.]

§ 6460a. All kinds subject to chapter. All kinds of insurance are subject to the provisions of this chapter. [R. C. 1905, § 5893; Civ. C. 1877, § 1477; R. C. 1899, § 4444.]

Mutual fire insurance company is as effectively bound by section 1849 [6515 herein] as an insurance company organized on any other basis. *Peever Mercantile Co. v. State Mut. F. Ins. Co.*, 25 S. D. 406, 127 N. W. 559.

ARTICLE 3.—PARTIES TO THE CONTRACT.

§ 6461. **Insurer and insured defined.** The person who undertakes to indemnify another by a contract of insurance is called the insurer and the person indemnified is called the insured. [R. C. 1905, § 5894; Civ. C. 1877, § 1478; R. C. 1899, § 4445.]

§ 6462. **Who may insure.** Any one who is capable of making a contract may be an insurer, subject to the restrictions imposed by special statutes upon foreign corporations, nonresidents and others. [R. C. 1905, § 5895; Civ. C. 1877, § 1479; R. C. 1899, § 4446.]

§ 6463. **Who may be insured.** Any one except a public enemy may be insured. [R. C. 1905, § 5896; Civ. C. 1877, § 1480; R. C. 1899, § 4447.]

§ 6464. **Insurance of mortgaged property.** When a mortgagor of property effects insurance in his own name, providing that the loss shall be payable to the mortgagee, or assigns a policy of insurance to the mortgagee, the insurance is deemed to be upon the interest of the mortgagor, who does not cease to be a party to the original contract and any act of his which would otherwise avoid the insurance will have the same effect, although the property is in the hands of the mortgagee. [R. C. 1905, § 5897; Civ. C. 1877, § 1481; R. C. 1895, § 4448.]

Failure to give notice under mortgage clause agreement of material changes in property will avoid policy. *Ormsby v. Ins. Co.*, 5 S. D. 72, 58 N. W. 301.

Liability of mortgagee for premium. *St. Paul Ins. Co. v. Upton*, 2 N. D. 229, 50 N. W. 702.

Mortgagee to whom policy is made payable may sue alone where his claims exceed amount of insurance. *Travelers' Ins. Co. v. Ins. Co.*, 1 N. D. 151, 45 N. W. 703.

Application of proceeds of insurance on mortgaged premises. 118 Am. St. Rep. 968.

Forfeiture of insurance as against mortgagees for breaches of condition. 58 Am. St. Rep. 667.

Rights of mortgagee under an insurance on the mortgaged property. 54 Am. Dec. 693.

§ 6465. **Same. New contract.** If an insurer assents to the transfer of an insurance from a mortgagor to a mortgagee and at the time of his assent imposes further obligations on the assignee, making a new contract with him, the acts of the mortgagor cannot affect his right. [R. C. 1905, § 5898; Civ. C. 1877, § 1482; R. C. 1899, § 4449.]

ARTICLE 4.—INSURABLE INTEREST.

§ 6466. **Defined.** Every interest in the property, or any relation thereto, or liability in respect thereof of such a nature that a contemplated peril might directly damnify the insured is an insurable interest. [R. C. 1905, § 5899; Civ. C. 1877, § 1483; R. C. 1899, § 4450.]

What is insurable interest in property. 7 Am. Dec. 42; 20 Am. Dec. 510.

Insurable interest in unfinished building during its construction by a contractor. 43 L.R.A. 664.

—of sole and absolute owner of building and land not belonging to him. 38 L.R.A.(N.S.) 429.

—of one secondarily liable on an obligation, in property primarily charged with the same. 9 L.R.A.(N.S.) 490.

—of tenant in leased property. 42 L.R.A.(N.S.) 135.

—of husband in wife's property, or that in which she is interested. 66 L.R.A. 658.

§ 6467. **Classified.** An insurable interest in property may consist in:

1. An existing interest.
2. An inchoate interest founded on an existing interest; or,
3. An expectancy coupled with an existing interest in that out of which the expectancy arises. [R. C. 1905, § 5900; Civ. C. 1877, § 1484; R. C. 1899, § 4451.]

§ 6468. **Carrier or depositary has.** A carrier or depositary of any kind has an insurable interest in a thing held by him as such to the extent of its value. [R. C. 1905, § 5901; Civ. C. 1877, § 1485; R. C. 1899, § 4452.]

§ 6469. Contingent or expectant interest not. A mere contingent or expectant interest in anything, not founded on an actual right to the thing, nor upon valid contract for it, is not insurable. [R. C. 1905, § 5902; Civ. C. 1877, § 1486; R. C. 1899, § 4453.]

§ 6470. Measure of. The measure of an insurable interest in property is the extent to which the insured might be damnified by loss or injury thereof. [R. C. 1905, § 5903; Civ. C. 1877, § 1487; R. C. 1899, § 4454.]

§ 6471. Insurance without interest void. The sole object of insurance is the indemnity of the insured and if he has no insurable interest the contract is void. [R. C. 1905, § 5904; Civ. C. 1877, § 1488; R. C. 1899, § 4455.]

Insurable interest in the life of another, and necessity of. 57 Am. Dec. 93; 46 Am. Rep. 189; 52 Am. Rep. 135; 58 Am. Rep. 852; 128 Am. St. Rep. 302.

When life insurance regarded as wagering contract because of the small insurable interest. 60 Am. Rep. 729.

Insurance "for whom it may concern." 16 Am. Dec. 323.

§ 6472. When interest must exist. An interest insured must exist when the insurance takes effect and when the loss occurs, but need not exist in the meantime. R. C. 1905, § 5905; Civ. C. 1877, § 1489; R. C. 1899, § 4456.]

Company not liable if insured had no interest in insured property at time of loss. Tierney v. Ins. Co., 4 N. D. 565, 62 N. W. 642; Ormsby v. Ins. Co., 5 S. D. 72, 58 N. W. 301.

Immaterial variance as to incumbance, value or size of property will not vitiate policy. McNamara v. Ins. Co., 1 S. D. 342, 47 N. W. 288.

When insurable interest must exist under fire policies. 52 L.R.A. 330.

§ 6473. When change of interest suspends insurance. Except in the cases specified in the next five sections and in the cases of life, accident and health insurance, a change of interest in any part of a thing insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent, until the interest in the thing and the interest in the insurance are vested in the same person. [R. C. 1905, § 5906; Civ. C. 1877, § 1490; R. C. 1899, § 4457.]

When sale or alienation of property avoids insurance. 28 Am. Dec. 154.

§ 6474. Change after loss does not affect. A change of interest in a thing insured after the occurrence of an injury which results in a loss does not affect the right of the insured to indemnity for the loss. [R. C. 1905, § 5907; Civ. C. 1877, § 1491; R. C. 1899, § 4458.]

§ 6475. Change in one of several things. A change of interest in one or more of several distinct things insured by one policy does not avoid the insurance as to the others. [R. C. 1905, § 5908; Civ. C. 1877, § 1492; R. C. 1895, § 4459.]

§ 6476. Incumbrance or reinsurance of one of several things. The procurement of any other contract of insurance upon or the incumbrance of one or more of the several distinct things insured by one policy does not render void any insurance upon the things not covered by such other contract of insurance or incumbrance; but in case of loss or damage such an amount shall be deducted from the insurance as the value of the property so incumbered or doubly insured bears to the value of all the property covered by the policy. Any agreement made to waive the provisions of this or the preceding section is void. [R. C. 1905, § 5909; R. C. 1895, § 4460.]

Policy covering building and personal property, having separate amounts on each, must be treated as two separate policies. First Nat. Bank v. German American Ins. Co., 23 N. D. 139, 38 L.R.A.(N.S.) 213, 134 N. W. 873.

Mortgage as terminating insurable interest in property. 38 L.R.A. 562.

§ 6477. Change of interest by death. A change of interest by will or succession on the death of the insured does not avoid an insurance; and his interest in the insurance passes to the person taking his interest in the thing insured. [R. C. 1905, § 5910; Civ. C. 1877, § 1493; R. C. 1899, § 4461.]

§ 6478. Change among joint owners. A transfer of interest by one of several partners, joint owner or owners in common who are jointly insured to the others does not avoid an insurance, even though it has been agreed that the

insurance shall cease upon an alienation of the thing insured. [R. C. 1905, § 5911; Civ. C. 1877, § 1494; R. C. 1899, § 4462.]

Whether sale by one partner to another, whether amounts to change of title. 49 Am. Rep. 22; 52 Am. Rep. 442.

§ 6479. Stipulation of interest void. Every stipulation in a policy of insurance for the payment of loss whether the person insured has or has not any interest in the property insured or that the policy shall be received as proof of such interest and every policy executed by way of gaming or wagering is void. [R. C. 1905, § 5912; Civ. C. 1877, § 1494; R. C. 1899, § 4463.]

ARTICLE 5.—CONCEALMENT AND REPRESENTATION.

§ 6480. Concealment defined. A neglect to communicate that which a party knows and ought to communicate is called a concealment. [R. C. 1905, § 5913; Civ. C. 1877, § 1495; R. C. 1899, § 4464.]

Concealment of facts by insured in case of Lloyds policies. 55 L.R.A. 201.

Duty to notify insurer of facts which develop after submission of application, but before delivery of policy or certificate. 39 L.R.A.(N.S.) 951.

§ 6481. Rescission on account of. A concealment, whether intentional or unintentional, entitles the injured party to rescind a contract of insurance. [R. C. 1905, § 5914; Civ. C. 1877, § 1496; R. C. 1899, § 4465.]

When concealment or misrepresentations avoid insurance. 35 Am. Rep. 629.

§ 6482. Mutual disclosures. Each party to a contract of insurance must communicate to the other in good faith all facts within his knowledge which are or which he believes to be material to the contract and which the other has not the means of ascertaining and as to which he makes no warranty. [R. C. 1905, § 5915; Civ. C. 1877, § 1497; R. C. 1899, § 4466.]

§ 6483. What not bound to disclose. Neither party to a contract of insurance is bound to communicate information of the matters following, except in answer to the inquiries of the other:

1. Those which the other knows.
2. Those which in the exercise of ordinary care the other ought to know and of which the former has no reason to suppose him ignorant.
3. Those of which the other waives communication.
4. Those which prove or tend to prove the existence of a risk excluded by a warranty and which are not otherwise material; and,
5. Those which relate to a risk excepted from the policy and which are not otherwise material. [R. C. 1905, § 5916; Civ. C. 1877, § 1498; R. C. 1899, § 4467.]

§ 6484. How materiality determined. Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due in forming his estimate of the disadvantages of the proposed contract or in making his inquiries. [R. C. 1905, § 5917; Civ. C. 1877, § 1499; R. C. 1899, § 4468.]

Materiality of representation. *Waterbury v. Ins. Co.*, 6 D. 468, 43 N. W. 697.

§ 6485. Presumption of knowledge. Each party to a contract of insurance is bound to know all the general causes which are open to his inquiry, equally with that of the other and which may affect either the political or material perils contemplated and all general usages of trade. [R. C. 1905, § 5918; Civ. C. 1877, § 1500; R. C. 1899, § 4469.]

§ 6486. Right to information waived. The right to information of material facts may be waived, either by the terms of insurance, or by neglect to make inquiries as to such facts, when they are distinctly implied in other facts of which information is communicated. [R. C. 1905, § 5919; Civ. C. 1877, § 1501; R. C. 1899, § 4470.]

Life insurance agents accepting insurance when they know answers in the application are false. 7 Am. Rep. 128.

§ 6487. Information as to interest. Information of the nature or amount of the interest of one insured need not be communicated unless in answer to

inquiry, except as prescribed by section 6504. [R. C. 1905, § 5920; Civ. C. 1877, § 1502; R. C. 1899, § 4471.]

Clause avoiding policy in case property is incumbered not waived by insurer's neglect to make inquiry if such incumbrance is a chattel mortgage. *Harding v. Ins. Co.*, 10 S. D. 64, 71 N. W. 755.

How far an undivided interest in property is a complete or full ownership for the purposes of insurance. 18 L.R.A. 481.

Vendee under executory contract as owner, where vendor holds legal title. 20 L.R.A.(N.S.) 775.

Retention of policy as waiver of mistake or fraud as to state of title. 67 L.R.A. 731.

Effect of insurance broker's knowledge as to title. 38 L.R.A.(N.S.) 637.

Conclusiveness of statements as to ownership, etc., in proof of loss. 44 L.R.A. 859.

§ 6488. Rescission for fraudulent concealment. An intentional and fraudulent omission on the part of one insured to communicate information of matters proving or tending to prove the falsity of a warranty entitles the insurer to rescind. [R. C. 1905, § 5921; Civ. C. 1877, § 1503; R. C. 1899, § 4472.]

§ 6489. Matters of opinion. Neither party to a contract of insurance is bound to communicate even upon inquiry information of his own judgment upon the matters in question. [R. C. 1905, § 5922; Civ. C. 1877, § 1504; R. C. 1899, § 4473.]

§ 6490. Form of representation. A representation may be oral or written. [R. C. 1905, § 5923; Civ. C. 1877, § 1505; R. C. 1899, § 4474.]

§ 6491. When may be made. A representation may be made at the same time with issuing the policy or before it. [R. C. 1905, § 5924; Civ. C. 1877, § 1506; R. C. 1899, § 4475.]

§ 6492. Rules of interpretation. The language of a representation is to be interpreted by the same rules as the language of contracts in general. [R. C. 1905, § 5925; Civ. C. 1877, § 1507; R. C. 1899, § 4476.]

Failure to build a chimney as promised will not avoid policy. *Waterbury v. Ins. Co.*, 6 D. 468, 43 N. W. 697.

Warranties and representations and their effect. 16 Am. Dec. 462; 59 Am. Rep. 616.

§ 6493. What deemed promise. A representation as to the future is to be deemed a promise, unless it appears that it was merely a statement of belief or expectation. [R. C. 1905, § 5926; Civ. C. 1877, § 1508; R. C. 1899, § 4477.]

§ 6494. Cannot qualify contract; may, implied warranty. A representation cannot be allowed to qualify an express provision in a contract of insurance; but it may qualify an implied warranty. [R. C. 1905, § 5927; Civ. C. 1877, § 1509; R. C. 1899, § 4478.]

§ 6495. When may be withdrawn. A representation may be altered or withdrawn before the insurance is effected, but not afterwards. [R. C. 1905, § 5928; Civ. C. 1877, § 1510; R. C. 1899, § 4479.]

§ 6496. Time to which refers. The completion of the contract of insurance is the time to which a representation must be presumed to refer. [R. C. 1905, § 5929; Civ. C. 1877, § 1511; R. C. 1899, § 4480.]

§ 6497. On information and belief. When a person insured has no personal knowledge of a fact, he may nevertheless repeat information which he has upon the subject and which he believes to be true with the explanation that he does so on the information of others, or he may submit the information in its whole extent to the insurer; and in neither case is he responsible for its truth, unless it proceeds from an agent of the insured whose duty it is to give the intelligence. [R. C. 1905, § 5930; Civ. C. 1877, § 1512; R. C. 1899, § 4481.]

§ 6498. When deemed false. A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations. [R. C. 1905, § 5931; Civ. C. 1877, § 1513; R. C. 1899, § 4482.]

§ 6499. Effect of falsity. If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false. [R. C. 1905, § 5932; Civ. C. 1877, § 1514; R. C. 1899, § 4483.]

Life insurance agents accepting insurance when they know answers in the application are false. 7 Am. Rep. 128.

Right of insured to return of premium where policy is void or voidable because of misrepresentations on his part. 32 L.R.A.(N.S.) 298.

§ 6500. How materiality determined. The materiality of a representation is determined by the same rule as the materiality of a concealment. [R. C. 1905, § 5933; Civ. C. 1877, § 1515; R. C. 1899, § 4484.]

§ 6501. When not material. No oral or written misrepresentation made in the negotiation of a contract or policy of insurance by the insured or in his behalf shall be deemed material or defeat or avoid the policy or prevent its attaching, unless such misrepresentation is made with actual intent to deceive, or unless the matter misrepresented increased the risk of loss. [R. C. 1905, § 5934; R. C. 1895, § 4485.]

Misrepresentation referred to in statute includes statements in applications for insurance, called warranties, by law of insurance. *Soules v. Brotherhood of American Yeomen*, 19 N. D. 23, 120 N. W. 760.

§ 6502. Modification. Rescission. The provisions of this article apply as well to a modification of a contract of insurance as to its original formation. Whenever a right to rescind a contract of insurance is given to the insured by any provision of this chapter such right may be exercised at any time previous to the commencement of an action on the contract. [R. C. 1905, § 5935; Civ. C. 1877, § 1516; R. C. 1899, § 4486.]

ARTICLE 6.—THE POLICY.

§ 6503. Defined. The written instrument in which a contract of insurance is set forth is called a policy of insurance. [R. C. 1905, § 5936; Civ. C. 1877, § 1517; R. C. 1899, § 4487.]

§ 6504. What must specify. A policy of insurance must specify:

1. The parties between whom the contract is made.
2. The rate of premium.
3. The property or life insured.
4. The interest of the insured in property insured, if he is not the absolute owner thereof.
5. The risks insured against; and,
6. The period during which the insurance is to continue. [R. C. 1905, § 5937; Civ. C. 1877, § 1518; R. C. 1899, § 4488.]

As to similar provision in Cal. Civ. Code, § 2587, see *Davis v. Phoenix Ins. Co.*, 111 Cal. 409, 43 Pac. 1115.

4. Effect of bond for title to defeat unconditional and sole ownership. 2 L.R.A.(N.S.) 512.

Vendor's lien as affecting sole and unconditional ownership. 7 L.R.A.(N.S.) 627.

Failure to record conveyance to insured as affecting his "sole and unconditional ownership." 22 L.R.A.(N.S.) 732.

Title, for purpose of insurance, of house on government land under homestead entry, as within sole and unconditional ownership clause in insurance policy. 8 L.R.A.(N.S.) 903.

Want of title to land where insured is sole and absolute owner of building. 38 L.R.A.(N.S.) 427.

§ 6505. Applied only to interest. When the name of the person intended to be insured is specified in a policy, it can be applied only to his own proper interest. [R. C. 1905, § 5938; Civ. C. 1877, § 1519; R. C. 1899, § 4489.]

§ 6506. Insurance by trustee or agent. When an insurance is made by an agent or trustee, the fact that his principal or beneficiary is the person really insured may be indicated by describing him as an agent or trustee or by other general words in the policy. [R. C. 1905, § 5939; Civ. C. 1877, § 1520; R. C. 1899, § 4490.]

§ 6507. Terms govern joint or common interest. To render an insurance effected by one partner or part owner, applicable to the interest of his copartners or of other part owners, it is necessary that the terms of the policy should be such as are applicable to the joint or common interest. [R. C. 1905, § 5940; Civ. C. 1877, § 1521; R. C. 1899, § 4491.]

§ 6508. Only person intended may claim benefit. When the description of the insured in a policy is so general that it may comprehend any person or

any class of persons, he only can claim the benefit of the policy who can show that it was intended to include him. [R. C. 1905, § 5941; Civ. C. 1877, § 1522; R. C. 1899, § 4492.]

Insuring under an assumed name. *Pollard v. Ins. Co.*, 1 S. D. 570, 47 N. W. 1060.

Condition rendering policy void on procuring additional insurance without consent of company cannot be waived by agent whose agency has expired. *Smith v. Ins. Co.*, 6 D. 433, 43 N. W. 810.

Representations in application signed by agent disregarded. *South Bend Toy Co. v. Ins. Co.*, 2 S. D. 17, 48 N. W. 310.

Knowledge of facts by agent may be a waiver. *Lyon v. Ins. Co.*, 6 D. 67, 50 N. W. 483.

Devesture of title by sheriff's deed being proved it is error to allow plaintiff to show deed to be void. *Tierney v. Ins. Co.*, 4 N. D. 565, 62 N. W. 642.

Failure of mortgagee to notify company of changes in condition of property. *Ormsby v. Ins. Co.*, 5 S. D. 72, 58 N. W. 301.

False statements in application and medical examination for life insurance constitute breach of warranty. *Knudson v. Legion of Honor*, 7 S. D. 214, 63 N. W. 911.

§ 6509. Benefit of any owner. A policy may be so framed that it will inure to the benefit of whomsoever during the continuance of the risk may become the owner of the interest insured. [R. C. 1905, § 5942; Civ. C. 1877, § 1523; R. C. 1899, § 4493.]

§ 6510. Transfer suspends. The mere transfer of a thing insured does not transfer the policy, but suspends it until the same person becomes owner of both the policy and the thing insured. [R. C. 1905, § 5943; Civ. C. 1877, § 1524; R. C. 1899, § 4494.]

§ 6511. Classified. A policy is either open or valued. [R. C. 1905, § 5944; Civ. C. 1877, § 1525; R. C. 1899, § 4495.]

§ 6512. Open. An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss. [R. C. 1905, § 5945; Civ. C. 1877, § 1526; R. C. 1899, § 4496.]

§ 6513. Valued. A valued policy is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum. [R. C. 1905, § 5946; Civ. C. 1877, § 1527; R. C. 1899, § 4497.]

Under standard policy, value of real property on total loss is conclusively fixed by total of all insurance written therein which is amount of policy and concurrent insurance. *Lawyer v. Globe Mut. Ins. Co.*, 25 S. D. 549, 127 N. W. 615.

§ 6514. Running. A running policy is one which contemplates successive insurances and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements. [R. C. 1905, § 5947; Civ. C. 1877, § 1528; R. C. 1899, § 4498.]

§ 6515. Receipt for premium. Effect of. An acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid. [R. C. 1905, § 5948; Civ. C. 1877, § 1529; R. C. 1899, § 4499.]

Is not unconstitutional because it declares that receipt of premium acknowledged in policy is conclusive evidence of payment. *Peever Mercantile Co. v. State Mut. F. Ins. Co.*, 25 S. D. 406, 127 N. W. 559.

Insurance company acknowledging receipt of premium in renewal policy cannot deny same in action on policy. *Peever Mercantile Co. v. State Mut. F. Asso.*, 23 S. D. 1, 119 N. W. 1008.

Insurance company cannot be permitted to show that actual date of issuance of policy was of later date than date recited in policy, where policy acknowledges receipt of premium. *Harrington v. Mutual L. Ins. Co.*, 21 N. D. 447, 34 L.R.A.(N.S.) 373, 131 N. W. 246.

Policy becomes binding on its delivery to insured, though it contains condition that policy shall not take effect until actual payment of first premium. *Chasse v. Bankers' Reserve Fund L. Ins. Co.*, 27 S. D. 70, 129 N. W. 568.

Waiver of conditions requiring payment of premium before delivery of policy. 57 Am. Rep. 514.

As to similar provision in Cal. Civ. Code, § 2598, see *Palmer v. Continental Ins. Co.*, 132 Cal. 68, 64 Pac. 97.

§ 6516. Agreement not to transfer void. An agreement made before a loss not to transfer the claim of a person insured against the insurer after the loss

has happened is void. [R. C. 1905, § 5949; Civ. C. 1877, § 1530; R. C. 1899, § 4500.]

§ 6517. Holder may surrender for cancellation. The holder of any policy of insurance against loss or damage to property by fire or other casualty hereafter issued by any insurance company doing business in this state may, notwithstanding any provision thereof or contract to the contrary, at any time surrender the same for cancellation; and upon such surrender the company issuing such policy shall retain or receive such proportion and not more of the premium paid or agreed to be paid as corresponds with the usual short rates upon term policies as adopted and maintained by the Minnesota and Dakota fire underwriters' union of St. Paul, Minnesota, for the time the policy remained in force. [R. C. 1905, § 5950; 1887, ch. 69, § 1; R. C. 1899, § 4501.]

§ 6518. Notice necessary to forfeit. No such policy of insurance shall by virtue of any condition or provision thereof be forfeited, suspended or impaired for nonpayment of any note or obligation taken for the premium, or any part thereof, unless the insurer shall, not less than thirty days prior to the maturity of such premium, note or obligation, mail, postage prepaid, to the assured at his usual post office a notice, stating:

1. The date when such note or obligation will become due.
2. The amount of principal and interest that will then be due.
3. The effect upon the policy of nonpayment.
4. Such notice shall further inform the assured of his right at his own election either to pay in full and keep the policy in full force, or to terminate the insurance by surrendering the policy and paying such part of the whole premium as it shall have earned and must further state the amount which the assured is lawfully required to pay, or which on account of previous payment may be due him in case of his election to terminate the insurance on the day of the maturity of the premium, note or obligation. [R. C. 1905, § 5951; 1887, ch. 69, § 2; R. C. 1899, § 4502.]

Notice to insured that premium note falls due on certain day not sufficient to forfeit policy for nonpayment of premium. *Epiphany Catholic Church v. Ins. Co.*, 16 S. D. 17, 91 N. W. 332.

Notice mailed twenty-three days before premium note falls due is insufficient. *Epiphany R. C. Church v. German Ins. Co.*, 16 S. D. 17, 91 N. W. 332.

First and last days in computing time for notice of premiums. 49 L.R.A. 208.

Mode of proving mailing of notice of maturity of premiums or assessments. 7 L.R.A.(N.S.) 238.

Necessity that notice of maturity of premiums or assessments sent through the mail be received. 7 L.R.A.(N.S.) 253.

Effect of custom to give insured notice of maturity of premium where insured is not otherwise entitled to notice. 20 L.R.A.(N.S.) 1037.

ARTICLE 7.—WARRANTIES.

§ 6519. Classified. A warranty is either express or implied. [R. C. 1905, § 5952; Civ. C. 1877, § 1531; R. C. 1899, § 4503.]

Policy of insurance cannot be avoided after loss where premium was received with full knowledge of facts. *Leisen v. St. Paul F. & M. Ins. Co.*, 20 N. D. 316, 30 L.R.A.(N.S.) 539, 127 N. W. 837.

Warranties and representations and their effect. 16 Am. Dec. 462; 59 Am. Rep. 816.

§ 6520. No form necessary. No particular form of words is necessary to create a warranty. [R. C. 1905, § 5953; Civ. C. 1877, § 1532; R. C. 1899, § 4504.]

Warranties in case of Lloyds policies. 55 L.R.A. 202.

When may statements be regarded as representations, although expressly denominated in the policy as warranties. 11 L.R.A.(N.S.) 981.

When answers concerning watchmen deemed to be warranties. 33 Am. Rep. 832.

§ 6521. Express, must be written. Every express warranty made at or before the execution of a policy must be contained in the policy itself, or in another instrument signed by the insured and referred to in the policy as making a part of it. [R. C. 1905, § 5954; Civ. C. 1877, § 1533; R. C. 1899, § 4505.]

§ 6522. To what time may relate. A warranty may relate to the past, the present, the future or to any or all of these. [R. C. 1905, § 5955; Civ. C. 1877, § 1534; R. C. 1899, § 4506.]

§ 6523. What statement of fact is express warranty. A statement in a policy of a matter relating to the person or thing insured or to the risk as a fact is an express warranty thereof. [R. C. 1905, § 5956; Civ. C. 1877, § 1535; R. C. 1899, § 4507.]

Policy of insurance cannot be avoided after loss where premium was received with full knowledge of facts. *Leisen v. St. Paul F. & M. Ins. Co.*, 20 N. D. 316, 30 L.R.A.(N.S.) 539, 127 N. W. 837.

On representations and promises made in application for policy as immaterial because policy does comply with this section. *Farmers' & M. State Bank v. United States Fidelity & G. Co.*, 28 S. D. 315, 36 L.R.A.(N.S.) 1152, 133 N. W. 247.

As to similar provision in Cal. Civ. Code, § 2607, see *National Bank v. Union Ins. Co.*, 88 Cal. 497, 22 Am. St. Rep. 324, 26 Pac. 509.

§ 6524. Statement of intention a warranty. A statement in a policy, which imports that it is intended to do or not to do a thing which materially affects the risk, is a warranty that such act or omission shall take place. [R. C. 1905, § 5957; Civ. C. 1877, § 1536; R. C. 1899, § 4508.]

§ 6525. As to future, when need not be fulfilled. When before the time arrives for the performance of a warranty relating to the future a loss insured against happens or performance becomes unlawful at the place of the contract or impossible, the omission to fulfill the warranty does not avoid the policy. [R. C. 1905, § 5958; Civ. C. 1877, § 1537; R. C. 1899, § 4509.]

§ 6526. Rescission for violation of material. The violation of a material warranty or other material provision of a policy on the part of either party thereto entitles the other to rescind. [R. C. 1905, § 5959; Civ. C. 1877, § 1538; R. C. 1899, § 4510.]

§ 6527. What avoids policy. A policy may declare that a violation of specified provisions thereof shall avoid it; otherwise the breach of an immaterial provision does not avoid the policy. [R. C. 1905, § 5960; Civ. C. 1877, § 1539; R. C. 1899, § 4511.]

Forfeiture waived by demanding judgment for premium note. *Johnson v. Ins. Co.*, 1 N. D. 167, 45 N. W. 799.

Undisclosed incumbrances will avoid policy. *Peet v. Ins. Co.*, 7 S. D. 410, 64 N. W. 206.

Policy of insurance cannot be avoided after loss where premium was received with full knowledge of facts. *Leisen v. St. Paul F. & M. Ins. Co.*, 20 N. D. 316, 30 L.R.A.(N.S.) 539, 127 N. W. 837.

§ 6528. Breach without fraud. A breach of warranty without fraud merely exonerates an insurer from the time that it occurs, or when it is broken in its inception, prevents the policy from attaching to the risk. [R. C. 1905, § 5961; Civ. C. 1877, § 1540; R. C. 1899, § 4512.]

Policy of insurance cannot be avoided after loss where premium was received with full knowledge of the facts. *Leisen v. St. Paul F. & M. Ins. Co.*, 20 N. D. 316, 30 L.R.A.(N.S.) 539, 127 N. W. 837.

ARTICLE 8.—PREMIUM.

§ 6529. When premium payable. An insurer is entitled to the payment of the premium as soon as the thing insured is exposed to the peril insured against. [R. C. 1905, § 5962; Civ. C. 1877, § 1541; R. C. 1899, § 4513.]

What amounts to waiver of payment of premium. 29 Am. Rep. 777.

As to similar provision in Cal. Civ. Code, § 2616, see *Joshua Hendy Mach. Works v. American Steam Boiler Ins. Co.*, 86 Cal. 248, 21 Am. St. Rep. 33, 24 Pac. 1018.

§ 6530. When insured entitled to return. A person insured is entitled to a return of premium as follows:

1. To the whole of the premium if no part of his interest in the thing insured is exposed to any of the perils insured against.

2. When the insurance is made for a definite period of time and the insured surrenders his policy, to such proportion of the premium as corresponds with the unexpired time after deducting from the whole premium any claim for

loss or damage under the policy which has previously accrued. [R. C. 1905, § 5963; Civ. C. 1877, § 1542; R. C. 1899, § 4514.]

Premium note past due is collectible though policy is void while due and unpaid. *St. Paul Ins. Co. v. Coleman*, 6 D. 458, 43 N. W. 693; *St. Paul Ins. Co. v. Neidecken*, 6 D. 494, 43 N. W. 696; *Johnson v. Ins. Co.*, 1 N. D. 167, 56 N. W. 799.

Breach of agreement of insurer to make loan on policy as justifying rescission and recovery of premiums by insured. 30 L.R.A.(N.S.) 1202.

Right of insured to return of premium where insurer seeks rescission on ground of misrepresentation by insured. 32 L.R.A.(N.S.) 299.

As to similar provision in Cal. Civ. Code, § 2617, see *Joshua Hendy Mach. Works v. American Steam Boiler Ins. Co.*, 86 Cal. 248, 21 Am. St. Rep. 33, 24 Pac. 1018.

§ 6531. Premium defined. The term premium within the meaning of sections 6517, 6518 and 6530 includes policy fees in excess of two dollars on any one policy and all other sums of money paid or agreed to be paid in consideration of the policy of insurance. [R. C. 1905, § 5964; 1887, ch. 69, § 3; R. C. 1899, § 4515.]

§ 6532. Return when insurance voidable. A person insured is entitled to a return of the premium when the contract is voidable on account of the fraud or misrepresentation of the insurer or on account of facts of the existence of which the insured was ignorant without his fault; or when by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy. [R. C. 1905, § 5965; Civ. C. 1877, § 1543; R. C. 1899, § 4516.]

Return of assessment on benefit certificate proving void for fraud. 3 L.R.A.(N.S.) 114.

Right of insured to return of premium where policy is void or voidable because of misrepresentations on his part. 32 L.R.A.(N.S.) 298.

§ 6533. Not entitled to return. If a peril insured against has existed and the insurer has been liable for any period, however short, the insured is not entitled to a return of premium so far as that particular risk is concerned, unless the insurance was for a definite period of time, in which case he is entitled to a proportionate return under sections 6517 and 6530. [R. C. 1905, § 5966; Civ. C. 1877, § 1544; R. C. 1895, § 4517.]

§ 6534. Return in over insurance by several. In case of an over insurance by several insurers the insured is entitled to a ratable return of the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the thing at risk. [R. C. 1905, § 5967; Civ. C. 1877, § 1545; R. C. 1899, § 4518.]

§ 6535. Contribution to return. When an over insurance is effected by simultaneous policies the insurers contribute to the premium to be returned in proportion to the amount insured by their respective policies. [R. C. 1905, § 5968; Civ. C. 1877, § 1546; R. C. 1899, § 4519.]

§ 6536. Same. When an over insurance is effected by successive policies, those only contribute to a return of the premium who are exonerated by prior insurances from the liability assumed by them and in proportion as the sum for which the premium was paid exceeds the amount for which on account of prior insurance they could be made liable. [R. C. 1905, § 5969; Civ. C. 1877, § 1547; R. C. 1899, § 4520.]

ARTICLE 9.—Loss.

§ 6537. When insurer liable. An insurer is liable for a loss of which a peril insured against was the proximate cause, although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause. [R. C. 1905, § 5970; Civ. C. 1877, § 1548; R. C. 1899, § 4521.]

Losses for which insurer is liable. 36 Am. St. Rep. 852.

What included in fire, loss by. 45 Am. Dec. 657; 23 Am. St. Rep. 915; 133 Am. St. Rep. 1087.

What is proximate cause of loss. 36 Am. St. Rep. 852.

Custom to pay certain class of losses as affecting liability of insurer for such a loss not covered by the policy. 19 L.R.A.(N.S.) 421.

Retention of policy as waiver of mistake or fraud of insurer or agent as to provisions as to risks insured against. 67 L.R.A. 711.

Loss by lightning. 26 L.R.A. 267.

Loss caused by excessive heat, smoke or soot from heating apparatus without actual ignition. 25 L.R.A.(N.S.) 501.

Meaning of "cyclone," "tornado," or other kind of wind storm, in an insurance policy. 8 L.R.A.(N.S.) 308.

Liability of insurer for fire caused by earthquake. 21 L.R.A.(N.S.) 103.

Loss by theft during fire. 35 L.R.A.(N.S.) 892.

Liability of insurer for property destroyed by mob or during riot. 20 L.R.A.(N.S.) 277.

Scope and effect of provision exempting insurer from loss caused by military or usurped power or order of civil authority, etc. 36 L.R.A.(N.S.) 1155.

Fall of building clause in fire insurance policies. 32 L.R.A.(N.S.) 604.

Liability of insurer for loss caused by explosion. 19 L.R.A. 594; 38 L.R.A.(N.S.) 474.

Explosion clause in fire insurance policy. 32 L.R.A.(N.S.) 607.

Effect of escape and explosion of gas upon liability of insurer 29 L.R.A. 359.

What constitutes an accident within accident policy. 30 L.R.A. 206; 54 Am. Rep. 302; 8 Am. St. Rep. 763.

Injury to insured by act of his own while asleep, as an accident. 1 L.R.A.(N.S.) 422.

Rupture of blood vessel as an accident within accident insurance policy. 19 L.R.A.(N.S.) 1206.

Words "sane or insane" or other words relating to mental condition in suicide clause in policy as referring to pure accident. 17 L.R.A.(N.S.) 261.

Previous diseased condition as affecting liability for death or injury from accident. 34 L.R.A.(N.S.) 445.

Liability under accident policy for condition caused by external infection without cut or abrasion. 42 L.R.A.(N.E.) 140.

— for death by drowning. 42 L.R.A.(N.S.) 631.

— for sickness or death caused by blood poisoning. 5 L.R.A.(N.S.) 926.

— for death from asphyxiation. 30 L.R.A. 212; 2 L.R.A.(N.S.) 168.

— for death or injury caused by medical treatment. 26 L.R.A.(N.S.) 1004.

— for injury or disability resulting from exertion or strain. 42 L.R.A.(N.S.) 562;

2 B. R. C. 367.

Risks covered by insurance against sunstroke. 6 L.R.A.(N.S.) 609.

May death or injury from substance taken internally be deemed to have been caused by external means. 30 L.R.A.(N.S.) 1181.

Death from suicide as one caused by external, violent and accidental means. 7 L.R.A.(N.S.) 223.

Applicability of provision in accident insurance policy exempting insurer in case of accident on railroad trains. 22 L.R.A.(N.S.) 1255.

Scope of provision exempting insurer, or limiting its liability, when insured is injured on "roadbed" of railroad company. 8 L.R.A.(N.S.) 970.

Boarding or alighting from moving train as defense under general provisions as to exposure to danger. 10 L.R.A.(N.S.) 957.

Scope and construction of provision for indemnity in case of injury while riding in or on a public conveyance. 37 L.R.A.(N.S.) 618.

Death in known violation of law. 60 Am. St. Rep. 160.

Death resulting from a criminal act. 21 Am. Rep. 542.

Necessity that assured's death be reasonable and legitimate consequence of violation of law, in order to relieve insurer. 13 L.R.A.(N.S.) 258.

Effect of the execution of insured for crime, on right to recover life or accident insurance. 14 L.R.A.(N.S.) 356.

§ 6538. Liable for loss in rescuing. An insurer is liable when the thing insured is rescued from a peril insured against that would otherwise have caused a loss, if in the course of such rescue the thing is exposed to peril, not insured against, which permanently deprives the insured of its possession in whole or in part; or when a loss is caused by efforts to rescue the thing insured from a peril insured against. [R. C. 1905, § 5971; Civ. C. 1877, § 1549; R. C. 1899, § 4522.]

§ 6539. Not liable for a peril excepted. When a peril is specially excepted in a contract of insurance, a loss which would not have occurred but for such peril is thereby excepted, although the immediate cause of the loss was a peril which was not excepted. [R. C. 1905, § 5972; Civ. C. 1877, § 1550; R. C. 1899, § 4523.]

Does general requirement as to external, violent and accidental means apply to a separate provision as to liability in case of death or injury from certain specified causes. 27 L.R.A.(N.S.) 480.

When death or injury may be deemed to have been caused by accidental means, though the voluntary act of insured was the primary cause thereof. 5 L.R.A.(N.S.) 657.

§ 6540. Willful act exonerates; negligence not. An insurer is not liable for a loss caused by the willful act of the insured; but he is not exonerated

by the negligence of the insured or of his agents or others. [R. C. 1905, § 5973; Civ. C. 1877, § 1551; R. C. 1899, § 4524.]

Negligence of assured will not avoid policy. *Angier v. Ins. Co.*, 10 S. D. 82, 71 N. W. 761, 65 Am. St. Rep. 685.

Policyholder cannot recover for loss of personal property where he did not exercise proper diligence to save same. *First Nat. Bank v. German American Ins. Co.*, 23 N. D. 139, 38 L.R.A.(N.S.) 213, 134 N. W. 873.

Liability of insurance company in case of intentional destruction of property by insured. 17 L.R.A.(N.S.) 189.

Voluntary exposure to unnecessary danger within meaning of accident insurance policy. 40 L.R.A. 432; 22 L.R.A.(N.S.) 779; 27 L.R.A.(N.S.) 1164; 40 L.R.A.(N.S.) 135; 12 Am. St. Rep. 272; 139 Am. St. Rep. 699.

Boarding or alighting from moving train as defense under general provision as to exposure to danger. 10 L.R.A.(N.S.) 957.

As to similar provision in Cal. Civ. Code, § 2629, see *Trojan Min. Co. v. Fireman's Ins. Co.*, 67 Cal. 27, 7 Pac. 4; *Sierra Mill. Smelting & Min. Co. v. Hartford F. Ins. Co.*, 76 Cal. 235, 18 Pac. 267; *McKenzie v. Scottish Union & Nat. Ins. Co.*, 112 Cal. 548, 44 Pac. 922.

ARTICLE 10.—NOTICE OF LOSS.

§ 6541. Without unnecessary delay. In case of loss upon an insurance against fire an insurer is exonerated, if notice thereof is not given to him by some person insured, or entitled to the benefit of the insurance without unnecessary delay. [R. C. 1905, § 5974; Civ. C. 1877, § 1552; R. C. 1899, § 4525.]

Proof of loss in case of Lloyd's policies. 55 L.R.A. 200.

Delay in giving notice of claim under employers' indemnity policy. 47 L.R.A.(N.S.) 1214.

Condition in burglary insurance policy as to notice and proofs of loss. 46 L.R.A.(N.S.) 571.

Waiver by requiring further proofs of loss. 9 Am. St. Rep. 236.

§ 6542. Only best proof in power required. When preliminary proof of loss is required by a policy the insured is not bound to give such proof as would be necessary in a court of justice; but it is sufficient for him to give the best evidence which he has in his power at the time. [R. C. 1905, § 5975; Civ. C. 1877, § 1553; R. C. 1899, § 4526.]

Effect of false swearing in proofs of loss. 32 L.R.A.(N.S.) 453.

Conclusiveness of proofs of loss as against insured or beneficiary. 44 L.R.A. 846.

Furnishing proofs of loss not under oath as substantial compliance with policy requiring proofs under oath. 28 L.R.A.(N.S.) 651.

Duty of insured to submit to examination and furnish information. 52 L.R.A. 424.

§ 6543. Defects in, how waived. All defects in a notice of loss or in preliminary proof thereof which the insured might remedy and which the insurer omits to specify to him without unnecessary delay as grounds of objection are waived. [R. C. 1905, § 5976; Civ. C. 1877, § 1554; R. C. 1899, § 4527.]

Objection to proofs of loss come too late after suit brought. *Fosmark v. Equitable F. Asso.*, 23 S. D. 102, 120 N. W. 777.

Waiver of condition as to arbitration by accepting proof of loss. 15 L.R.A.(N.S.) 1073.

§ 6544. Delay in, how waived. Delay in the presentation to an insurer of notice or proof of loss is waived, if caused by any act of his, or if he omits to make objections promptly and specifically upon that ground. [R. C. 1905, § 5977; Civ. C. 1877, § 1555; R. C. 1899, § 4528.]

Evidence examined and held waived. *Johnson v. D. F. & M. Co.*, 1 N. D. 167, 45 N. W. 799; *Purcell v. St. P. F. & M. Co.*, 5 N. D. 100, 64 N. W. 943; *Peet v. D. F. & M. Co.*, 1 S. D. 462, 47 N. W. 532.

An objection to the sufficiency of proof of loss on a specific ground is a waiver of all others. *Enos v. St. P. F. & M. Co.*, 4 S. D. 639, 57 N. W. 919.

Failure to make objection to proof until after expiration of time prescribed for making, held waiver of time. *Angier v. W. Assurance Co.*, 10 S. D. 82, 71 N. W. 761.

Making proof of loss may be waived by company's adjuster. *Hitchcock v. Insurance Co.*, 10 S. D. 271, 72 N. W. 898.

Forfeiture by failure to furnish proofs of loss within a stipulated time. 18 L.R.A. 85.

When delay in giving notice or making proof of death under policy of life insurance is excusable. 41 L.R.A.(N.S.) 285.

When strict compliance with requirement as to time of notice in accident or health policy is excused. 18 L.R.A.(N.S.) 109; 27 L.R.A.(N.S.) 319.

Validity of provision of accident or health policy requiring notice of accident or sickness within specified time. 18 L.R.A.(N.S.) 106.

Nondevelopment of injury as affecting time for giving the notice required by an accident insurance policy. 14 L.R.A.(N.S.) 503.

Delay in giving notice of claim under employers' indemnity policy. 38 L.R.A.(N.S.) 62; 47 L.R.A.(N.S.) 1214.

Presumption as to time of insured's death after seven years' absence. 26 L.R.A.(N.S.) 294.

§ 6545. Time in which to make. Blanks to be furnished. Upon notice of loss being given to the insurer on behalf of the insured or of a beneficiary under a policy of life insurance the insurer shall within twenty days after receipt of such notice furnish to the insured or beneficiary, as the case may be, a blank form of proof of loss and the insured shall have sixty days after such blank form is furnished in which to make such proof of loss; in case of life insurance the beneficiary shall have ninety days after receipt of such blank form in which to make such proof of loss. If the insurer shall fail to furnish such blank form of proof of loss within the time aforesaid he shall be deemed to have waived such proof and any agreement made to waive the provisions of this section is void. [R. C. 1905, § 5978; R. C. 1895, § 4529.]

§ 6546. Failure to furnish certificate of another. If a policy requires by way of preliminary proof of loss the certificate or testimony of another person than the insured, it is sufficient for the insured to use reasonable diligence to procure it and in case of the refusal of such person to give it, then to furnish reasonable evidence to the insurer that such refusal was not induced by any just grounds of disbelief in the facts necessary to be certified. [R. C. 1905, § 5979; Civ. C. 1877, § 1556; R. C. 1899, § 4530.]

Effect of failure of mortgagor to give notice or proof of loss upon right of mortgagee to recover under the policy. 14 L.R.A.(N.S.) 459.

ARTICLE 11.—DOUBLE INSURANCE.

§ 6547. Defined. A double insurance exists when the same person is insured by several insurers separately in respect to the same subject and interest. [R. C. 1905, § 5980; Civ. C. 1877, § 1557; R. C. 1899, § 4531.]

Waiver of conditions against other insurance. 27 Am. Rep. 601.

§ 6548. Contribution of insurers. In case of double insurance the several insurers are liable to pay losses thereon as follows:

1. In fire insurance each insurer must contribute ratably towards the loss without regard to the dates of the several policies.

2. In marine insurance the liability of the several insurers for a total loss, whether actual or constructive, when the policies are not simultaneous is in the order of the dates of the several policies, no liability attaching to a second or other subsequent policy, except as to the excess of the loss over the amount of all previous policies on the same interest. If two or more policies bear date upon the same day they are deemed to be simultaneous and the liability of insurers on simultaneous policies is to contribute ratably with each other. The insolvency of any of the insurers does not affect the proportionate liability of the other insurers. The liability of all insurers on the same marine interest for a partial or average loss is to contribute ratably. [R. C. 1905, § 5981; Civ. C. 1877, § 1558; R. C. 1899, § 4532.]

Insurer is entitled to such interpretation of clause making policy void because of increase of hazard occasioned by insured as will include mortgage placed upon property by insured. *Lawver v. Globe Mut. Ins. Co.*, 25 S. D. 549, 127 N. W. 615.

Liability of successive insurers. 28 Am. Dec. 121.

ARTICLE 12.—REINSURANCE.

§ 6549. Defined. A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance. [R. C. 1905, § 5982; Civ. C. 1877, § 1559; R. C. 1899, § 4533.]

Reinsurance and the remedies of the parties thereunder. 45 Am. St. Rep. 442.

Liability of reinsurer. 8 L.R.A.(N.S.) 845; 44 L.R.A.(N.S.) 317.

§ 6550. Disclosures required. When an insurer obtains reinsurance he must communicate all the representations of the original insurer and also all the knowledge and information he possesses, whether previously or subsequently acquired, which is material to the risk. [R. C. 1905, § 5983; Civ. C. 1877, § 1560; R. C. 1899, § 4534.]

§ 6551. Contract of indemnity. A reinsurance is presumed to be a contract of indemnity against liability and not merely against damage. [R. C. 1905, § 5984; Civ. C. 1877, § 1561; R. C. 1899, § 4535.]

§ 6552. Original insured no interest. The original insured has no interest in a contract of reinsurance. [R. C. 1905, § 5985; Civ. C. 1877, § 1562; R. C. 1899, § 4536.]

CHAPTER 78.

MARINE INSURANCE.

- ARTICLE 1. DEFINITION OF MARINE INSURANCE, § 6553.**
2. INSURABLE INTEREST, §§ 6554-6560.
 3. CONCEALMENT, §§ 6561-6564.
 4. REPRESENTATIONS, §§ 6565, 6566.
 5. IMPLIED WARRANTIES, §§ 6567-6574.
 6. THE VOYAGE AND DEVIATION, §§ 6575-6580.
 7. LOSS, §§ 6581-6591.
 8. ABANDONMENT, §§ 6592-6608.
 9. MEASURE OF INDEMNITY, §§ 6609-6619.

ARTICLE 1. DEFINITION OF MARINE INSURANCE.

§ 6553. Definition. Marine insurance is an insurance against risks connected with navigation to which a ship, cargo, freightage, profits or other insurable interest in movable property may be exposed during a certain voyage or a fixed period of time. [R. C. 1905, § 5986; Civ. C. 1877, § 1563; R. C. 1899, § 4537.]

ARTICLE 2.—INSURABLE INTEREST.

§ 6554. Owner always has. The owner of a ship has in all cases an insurable interest in it, even when it has been chartered by one who covenants to pay him its value in case of loss. [R. C. 1905, § 5987; Civ. C. 1877, § 1564; R. C. 1899, § 4538.]

§ 6555. Hypothecation reduces interest. The insurable interest of the owner of a ship hypothecated by bottomry is only the excess of its value over the amount secured by bottomry. [R. C. 1905, § 5988; Civ. C. 1877, § 1565; R. C. 1899, § 4539.]

§ 6556. Freightage defined as to insurance. Freightage in the sense of a policy of marine insurance signifies all the benefit derived by the owner, either from the chartering of the ship or its employment for the carriage of his own goods or those of others. [R. C. 1905, § 5989; Civ. C. 1877, § 1566; R. C. 1899, § 4540.]

§ 6557. Expected freightage. The owner of a ship has an insurable interest in expected freightage which he would have certainly earned but for the intervention of a peril insured against. [R. C. 1905, § 5990; Civ. C. 1877, § 1567; R. C. 1899, § 4541.]

§ 6558. Same. The interest mentioned in the last section exists, in the case of a charter party, when the ship has broken ground on the chartered voyage; and if the price is to be paid for the carriage of goods, when they are actually on board or there is some contract for putting them on board and both ship and goods are ready for the specified voyage. [R. C. 1905, § 5991; Civ. C. 1877, § 1568; R. C. 1899, § 4542.]

§ 6559. When profits insurable interest. One who has an interest in the thing from which profits are expected to proceed has an insurable interest in the profits. [R. C. 1905, § 5992; Civ. C. 1877, § 1569; R. C. 1899, § 4543.]

§ 6560. Charterer has. The charterer of a ship has an insurable interest in it to the extent that he is liable to be damnified by its loss. [R. C. 1905, § 5993; Civ. C. 1877, § 1570; R. C. 1899, § 4544.]

ARTICLE 3.—CONCEALMENT.

§ 6561. Disclosures more extensive. In marine insurance each party is bound to communicate in addition to what is required by section 6482 all the information which he possesses material to the risk, except such as is mentioned in section 6483 and to state the exact and whole truth in relation to all matters that he represents or upon inquiry assumes to disclose. [R. C. 1905, § 5994; Civ. C. 1877, § 1571; R. C. 1899, § 4545.]

§ 6562. Belief of another material. In marine insurance information of the belief or expectation of a third person in reference to a material fact is material. [R. C. 1905, § 5995; Civ. C. 1877, § 1572; R. C. 1899, § 4546.]

§ 6563. When knowledge of loss presumed. A person insured by a contract of marine insurance is presumed to have had knowledge at the time of insuring of a prior loss, if the information might possibly have reached him in the usual mode of transmission and at the usual rate of communication. [R. C. 1905, § 5996; Civ. C. 1877, § 1573; R. C. 1899, § 4547.]

§ 6564. What does not vitiate entire contract. A concealment in marine insurance in respect to any of the following matters does not vitiate the entire contract, but merely exonerates the insurer from a loss resulting from the risk concealed:

1. The national character of the insured.
2. The liability of the thing insured to capture and detention.
3. The liability to seizure from breach of foreign laws of trade.
4. The want of necessary documents; and,
5. The use of false and simulated papers. [R. C. 1905, § 5997; Civ. C. 1877, § 1574; R. C. 1899, § 4548.]

ARTICLE 4.—REPRESENTATIONS.

§ 6565. Rescission for false. If a representation by a person insured by contract of marine insurance is intentionally false in any respect, whether material or immaterial, the insurer may rescind the entire contract. [R. C. 1905, § 5998; Civ. C. 1877, § 1575; R. C. 1899, § 4549.]

§ 6566. Without fraud does not avoid. The eventual falsity of a representation as to expectation does not in the absence of fraud avoid a contract of insurance. [R. C. 1905, § 5999; Civ. C. 1877, § 1576; R. C. 1899, § 4550.]

ARTICLE 5.—IMPLIED WARRANTIES.

§ 6567. Seaworthiness. In every marine insurance upon a ship or freight, or freightage, or upon anything which is the subject of marine insurance a warranty is implied that the ship is seaworthy. [R. C. 1905, § 6000; Civ. C. 1877, § 1577; R. C. 1899, § 4551.]

What embraced in warranty of seamanship. 1 Am. Dec. 165; 33 Am. Dec. 33.

Implied warranty of seaworthiness. 58 Am. Dec. 671.

§ 6568. Seaworthy defined. A ship is seaworthy when reasonably fit to perform the services and to encounter the ordinary perils of the voyage contemplated by the parties to the policy. [R. C. 1905, § 6001; Civ. C. 1877, § 1578; R. C. 1899, § 4552.]

§ 6569. When foregoing warranty complied with. An implied warranty of seaworthiness is complied with if the ship is seaworthy at the time of the commencement of the risk, except in the following cases:

1. When the insurance is made for a specified length of time, the implied warranty is not complied with, unless the ship is seaworthy at the commencement of every voyage she may undertake during that time; and,
2. When the insurance is upon the cargo, which by the terms of the policy, or the description of the voyage or the established custom of the

trade is to be transshipped at an intermediate port, the implied warranty is not complied with, unless each vessel upon which the cargo is shipped or transshipped is seaworthy at the commencement of its particular voyage. [R. C. 1905, § 6002; Civ. C. 1877, § 1579; R. C. 1899, § 4553.]

§ 6570. **What seaworthiness includes.** A warranty of seaworthiness extends not only to the structure of the ship itself, but requires that it be properly laden and provided with a competent master, a sufficient number of competent officers and seamen and the requisite appurtenances and equipments such as cables and anchors, food, fuel and lights and other necessary or proper stores and implements for the voyage. [R. C. 1905, § 6003; Civ. C. 1877, § 1580; R. C. 1899, § 4554.]

§ 6571. **As to each part of voyage.** When different portions of the voyage contemplated by a policy differ in respect to the things requisite to make the ship seaworthy therefor, a warranty of seaworthiness is complied with, if at the commencement of each portion the ship is seaworthy with reference to that portion. [R. C. 1905, § 6004; Civ. C. 1877, § 1581; R. C. 1899, § 4555.]

§ 6572. **Delay in repairing exonerates.** When a ship becomes unseaworthy during the voyage to which an insurance relates, an unreasonable delay in repairing the defect exonerates the insurer from liability from any loss arising therefrom. [R. C. 1905, § 6005; Civ. C. 1877, § 1582; R. C. 1899, § 4556.]

§ 6573. **Seaworthy as to cargo.** A ship which is seaworthy for the purpose of an insurance upon the ship may, nevertheless, by reason of being unfitted to receive the cargo be unseaworthy for the purpose of insurance upon the cargo. [R. C. 1905, § 6006; Civ. C. 1877, § 1583; R. C. 1899, § 4557.]

§ 6574. **Neutral papers.** When the nationality or neutrality of a ship or cargo is expressly warranted it is implied that the ship will carry the requisite documents to show such nationality or neutrality and that it will not carry any documents which cast reasonable suspicion thereon. [R. C. 1905, § 6007; Civ. C. 1877, § 1584; R. C. 1899, § 4558.]

ARTICLE 6.—THE VOYAGE AND DEVIATION.

§ 6575. **Voyage fixed by mercantile usage.** When the voyage contemplated by a policy is described by the places of beginning and ending, the voyage insured is one which conforms to the course from point to point fixed by mercantile usage between those places. [R. C. 1905, § 6008; Civ. C. 1877, § 1585; R. C. 1899, § 4559.]

§ 6576. **When not so fixed.** If the course of sailing is not fixed by mercantile usage, the voyage insured by a policy is the way between the places specified, which to a master of ordinary skill and discretion would seem the most natural, direct and advantageous. [R. C. 1905, § 6009; Civ. C. 1877, § 1586; R. C. 1899, § 4560.]

§ 6577. **Deviation defined.** Deviation is a departure from the course of the voyage insured mentioned in the last two sections, or an unreasonable delay in pursuing the voyage; or the commencement of an entirely different voyage. [R. C. 1905, § 6010; Civ. C. 1877, § 1587; R. C. 1899, § 4561.]

Effect of deviation by necessity upon policy. 58 Am. Dec. 673.

What is and effect of deviation of vessel. 33 Am. Dec. 60.

§ 6578. **When proper.** A deviation is proper:

1. When caused by circumstances over which neither the master nor the owner of the ship has any control.
2. When necessary to comply with a warranty or to avoid a peril, whether insured against or not.
3. When made in good faith and upon reasonable grounds of belief in its necessity to avoid a peril; or,
4. When made in good faith for the purpose of saving human life or

relieving another vessel in distress. [R. C. 1905, § 6011; Civ. C. 1877, § 1588; R. C. 1899, § 4562.]

§ 6579. Improper. Every deviation not specified in the last section is improper. [R. C. 1905, § 6012; Civ. C. 1877, § 1589; R. C. 1899, § 4563.]

§ 6580. Insurer not liable after. An insurer is not liable for any loss happening to a thing insured subsequently to an improper deviation. [R. C. 1905, § 6013; Civ. C. 1877, § 1590; R. C. 1899, § 4564.]

ARTICLE 7.—LOSS.

§ 6581. Classified. A loss may be either total or partial. [R. C. 1905, § 6014; Civ. C. 1877, § 1591; R. C. 1899, § 4565.]

Liability of marine insurer for loss caused by explosion. 19 L.R.A. 594; 38 L.R.A.(N.S.) 474.

Effect of navigating in forbidden waters in case of loss within waters covered by policy. 10 L.R.A.(N.S.) 742.

Retention of policy as waiver of mistake or fraud of insurer or its agent as to voyage covered by marine policy. 67 L.R.A. 723.

Effect of voluntary exposure to peril upon liability on marine insurance policy. 1 L.R.A.(N.S.) 1095.

When goods stowed on deck and jettisoned are covered by policy. 86 Am. Dec. 500.

Liability for injuries caused by another vessel through collision with the insured vessel. 54 Am. Dec. 787.

Loss due to neglect to employ a pilot. 33 Am. Dec. 599.

§ 6582. Partial. Every loss which is not total is partial. [R. C. 1905, § 6015; Civ. C. 1877, § 1592; R. C. 1899, § 4566.]

§ 6583. Total loss classified. A total loss may be either actual or constructive. [R. C. 1905, § 6016; Civ. C. 1877, § 1593; R. C. 1899, § 4567.]

§ 6584. Actual total. An actual total loss is caused by:

1. A total destruction of the thing insured.
2. The loss of the thing by sinking or by being broken up.
3. Any damage to the thing which renders it valueless to the owner for the purposes for which he held it; or,
4. Any other event which entirely deprives the owner of the possession at the port of destination of the thing insured. [R. C. 1905, § 6017; Civ. C. 1877, § 1594; R. C. 1899, § 4568.]

§ 6585. Constructive total. A constructive total loss is one which gives to a person insured a right to abandon under section 6593. [R. C. 1905, § 6018; Civ. C. 1877, § 1595; R. C. 1895, § 4569.]

§ 6586. When actual loss presumed. An actual loss may be presumed from the continued absence of a ship without being heard of; and the length of time which is sufficient to raise this presumption depends on the circumstances of the case. [R. C. 1905, § 6019; Civ. C. 1877, § 1596; R. C. 1899, § 4570.]

§ 6587. Duty to procure another ship for cargo. When a ship is prevented at an intermediate port from completing the voyage by the perils insured against, the master must make every exertion to procure in the same or a contiguous port another ship for the purpose of conveying the cargo to its destination and the liability of a marine insurer thereon continues after they are thus reshipped. [R. C. 1905, § 6020; Civ. C. 1877, § 1597; R. C. 1899, § 4571.]

§ 6588. Liable for cost of reshipment. In addition to the liability mentioned in the last section a marine insurer is bound for damages, expenses of discharging, storage, reshipment, extra freightage and all other expenses incurred in saving the cargo reshipped pursuant to the last section up to the amount insured. [R. C. 1905, § 6021; Civ. C. 1877, § 1598; R. C. 1899, § 4572.]

Right to recover under "sue and labor" clause in policy of marine insurance, for moving cargo overland. 14 L.R.A.(N.S.) 1161.

§ 6589. Payment without notice. Upon an actual total loss a person insured is entitled to payment without notice of abandonment. [R. C. 1905, § 6022; Civ. C. 1877, § 1599; R. C. 1899, § 4573.]

§ 6590. General average loss. When it has been agreed that an insurance upon a particular thing or class of things shall be free from particular average a marine insurer is not liable for any particular average loss not depriving the insured of the possession at the port of destination of the whole of such thing or class of things, even though it becomes entirely worthless; but he is liable for his proportion of all general average loss assessed upon the thing insured. [R. C. 1905, § 6023; Civ. C. 1877, § 1600; R. C. 1899, § 4574.]

§ 6591. What against actual total loss covers. An insurance confined in terms to an actual total loss does not cover a constructive total loss, but covers any loss which necessarily results in depriving the insured of the possession at the port of destination of the entire thing insured. [R. C. 1905, § 6024; Civ. C. 1877, § 1601; R. C. 1899, § 4575.]

ARTICLE 8.—ABANDONMENT.

§ 6592. Defined. Abandonment is the act by which after a constructive total loss a person insured by a contract of marine insurance declares to the insurer that he relinquishes to him his interest in the thing insured. [R. C. 1905, § 6025; Civ. C. 1877, § 1602; R. C. 1899, § 4576.]

§ 6593. When authorized. A person insured by a contract of marine insurance may abandon the thing insured, or any particular portion thereof, separately valued by the policy, or otherwise separately insured and recover for a total loss thereof when the cause of the loss is a peril insured against:

1. If more than half thereof in value is actually lost or would have to be expended to recover it from the peril.

2. If it is injured to such an extent as to reduce its value more than one-half.

3. If the thing insured, being a ship, the contemplated voyage cannot be lawfully performed without incurring an expense to the insured of more than half the value of the thing abandoned, or without incurring a risk which a prudent man would not take under the circumstances; or,

4. If, the thing insured being cargo and freightage, the voyage cannot be performed nor another ship procured by the master within a reasonable time and with reasonable diligence to forward the cargo without incurring the like expenses or risk. But freightage cannot in any case be abandoned unless the ship is also abandoned. [R. C. 1905, § 6026; Civ. C. 1877, § 1603; R. C. 1899, § 4577.]

§ 6594. Must be absolute. An abandonment must be neither partial nor conditional. [R. C. 1905, § 6027; Civ. C. 1877, § 1604; R. C. 1899, § 4578.]

§ 6595. When made. An abandonment must be made within a reasonable time after information of the loss and after the commencement of the voyage and before the party abandoning has information of its completion. [R. C. 1905, § 6028; Civ. C. 1877, § 1605; R. C. 1899, § 4579.]

§ 6596. When becomes ineffectual. When the information upon which an abandonment has been made proves incorrect or the thing insured was so far restored when the abandonment was made that there was then in fact no total loss, the abandonment becomes ineffectual. [R. C. 1905, § 6029; Civ. C. 1877, § 1606; R. C. 1899, § 4580.]

§ 6597. Made by written notice. Abandonment is made by giving notice thereof to the insurer which may be done orally or in writing. [R. C. 1905, § 6030; Civ. C. 1877, § 1607; R. C. 1899, § 4581.]

§ 6598. Requisites of notice. A notice of abandonment must be explicit and must specify the particular cause of the abandonment; but need state only enough to show that there is probable cause therefor and need not be accompanied with proof of interest or of loss. [R. C. 1905, § 6031; Civ. C. 1877, § 1608; R. C. 1899, § 4582.]

§ 6599. **Sustained only on cause specified.** An abandonment can be sustained only upon the cause specified in the notice thereof. [R. C. 1905, § 6032; Civ. C. 1877, § 1609; R. C. 1899, § 4583.]

§ 6600. **Equivalent to transfer.** An abandonment is equivalent to a transfer by the insured of his interest to the insurer with all the chances of recovery and indemnity. [R. C. 1905, § 6033; Civ. C. 1877, § 1610; R. C. 1899, § 4584.]

§ 6601. **Payment entitles insurer to salvage.** If a marine insurer pays for a loss as if it was an actual total loss, he is entitled to whatever may remain of the thing insured or its proceeds or salvage as if there had been a formal abandonment. [R. C. 1905, § 6034; Civ. C. 1877, § 1611; R. C. 1899, § 4585.]

§ 6602. **Insured's agents become insurer's on abandonment.** Upon an abandonment acts done in good faith by those who were agents of the insured in respect to the thing insured subsequent to the loss are at the risk of the insurer and for his benefit. [R. C. 1905, § 6035; Civ. C. 1877, § 1612; R. C. 1899, § 4586.]

§ 6603. **Acceptance of unnecessary.** An acceptance of an abandonment is not necessary to the rights of the insured and is not to be presumed from the mere silence of the insurer upon his receiving notice of abandonment. [R. C. 1905, § 6036; Civ. C. 1877, § 1613; R. C. 1899, § 4587.]

§ 6604. **Acceptance conclusive.** The acceptance of an abandonment, whether express or implied, is conclusive upon the parties and admits the loss and sufficiency of the abandonment. [R. C. 1905, § 6037; Civ. C. 1877, § 1614; R. C. 1899, § 4588.]

§ 6605. **Accepted is irrevocable.** An abandonment once made and accepted is irrevocable, unless the ground upon which it was made proves to be unfounded. [R. C. 1905, § 6038; Civ. C. 1877, § 1615; R. C. 1899, § 4589.]

§ 6606. **To whom freightage belongs after.** On an accepted abandonment of a ship freightage earned previous to the loss belongs to the insurer thereof; but freightage subsequently earned belongs to the insurer of the ship. [R. C. 1905, § 6039; Civ. C. 1877, § 1616; R. C. 1899, § 4590.]

§ 6607. **Refusal to accept.** If an insurer refuses to accept a valid abandonment, he is liable as upon an actual total loss, deducting from the amount any proceeds of the thing insured which may have come to the hands of the insured. [R. C. 1905, § 6040; Civ. C. 1877, § 1617; R. C. 1899, § 4591.]

§ 6608. **Rights, if abandonment omitted.** If a person insured omits to abandon he may, nevertheless, recover his actual loss. [R. C. 1905, § 6041; Civ. C. 1877, § 1618; R. C. 1899, § 4592.]

ARTICLE 9.—MEASURE OF INDEMNITY.

§ 6609. **Valuation conclusive between parties.** A valuation in a policy of marine insurance is conclusive between the parties thereto in the adjustment of either a partial or total loss, if the insured has some interest at risk and there is no fraud on his part; except that when a thing has been hypothecated by bottomry or respondentia before its insurance and without the knowledge of the person actually procuring the insurance, he may show the real value. But a valuation fraudulent in fact entitles the insurer to rescind the contract. [R. C. 1905, § 6042; Civ. C. 1877, § 1619; R. C. 1899, § 4593.]

§ 6610. **Partial loss. Liability.** A marine insurer is liable upon a partial loss only for such proportion of the amount insured by him as the loss bears to the value of the whole interest of the insured in the property insured. [R. C. 1905, § 6043; Civ. C. 1877, § 1620; R. C. 1899, § 4594.]

§ 6611. **Recovery of profits, how estimated.** When profits are separately insured in a contract of marine insurance, the insured is entitled to recover in case of loss a proportion of such profits equivalent to the proportion which the value of the property lost bears to the value of the whole. [R. C. 1905, § 6044; Civ. C. 1877, § 1621; R. C. 1899, § 4595.]

§ 6612. **How loss determined on valued policy.** In case of a valued policy of marine insurance on freightage or cargo, if a part only of the subject is

exposed to risk the valuation applies only in proportion to such part. [R. C. 1905, § 6045; Civ. C. 1877, § 1622; R. C. 1899, § 4596.]

§ 6613. When loss of profits presumed. When profits are valued and insured by a contract of marine insurance, a loss of them is conclusively presumed from a loss of the property out of which they were expected to arise and the valuation fixes their amount. [R. C. 1905, § 6046; Civ. C. 1877, § 1623; R. C. 1899, § 4597.]

§ 6614. How loss on open policy estimated. In estimating a loss under an open policy of marine insurance the following rules are to be observed:

1. The value of a ship is its value at the beginning of the risk including all articles or charges which add to its permanent value or which are necessary to prepare it for the voyage insured.

2. The value of the cargo is its actual cost to the insured, when laden on board or when that cost cannot be ascertained, its market value at the time and place of lading, adding the charges incurred in purchasing and placing it on board, but without reference to any losses incurred in raising money for its purchase, or to any drawback on its exportation, or to the fluctuations of the market at the port of destination, or of expenses incurred on the way or on arrival.

3. The value of freightage is the gross freightage, exclusive of primage, without reference to the cost of earning it; and,

4. The cost of insurance is in each case to be added to the value thus estimated. [R. C. 1905, § 6047; Civ. C. 1877, § 1624; R. C. 1899, § 4598.]

§ 6615. How partial loss of cargo estimated. If a cargo insured against partial loss arrives at the port of destination in a damaged condition, the loss of the insured is deemed to be the same proportion of the value, which the market price at that port of the thing so damaged bears to the market price it would have brought if sound. [R. C. 1905, § 6048; Civ. C. 1877, § 1625; R. C. 1899, § 4599.]

§ 6616. Liability for repairs and labor to recover. A marine insurer is liable for all the expenses attendant upon a loss which forces a ship into port to be repaired; and when it is agreed that the insured may labor for the recovery of the property the insurer is liable for the expense incurred thereby; such expense in either case being in addition to the total loss, if that afterward occurs. [R. C. 1905, § 6049; Civ. C. 1877, § 1626; R. C. 1899, § 4600.]

§ 6617. Liability for insured's contribution to general average. A marine insurer is liable for a loss falling upon the insured through a contribution in respect to the thing insured, required to be made by him toward a general average loss called for by a peril insured against. [R. C. 1905, § 6050; Civ. C. 1877, § 1627; R. C. 1899, § 4601.]

§ 6618. Subrogation of right to contribution. When a person insured by a contract of marine insurance has a demand against others for contribution he may claim the whole loss from the insurer, subrogating him to his own right to contribution. But no such claim can be made upon the insurer after the separation of the interests liable to contribution, nor when the insured, having the right and opportunity to enforce contribution from others, has neglected or waived the exercise of that right. [R. C. 1905, § 6051; Civ. C. 1877, § 1628; R. C. 1899, § 4602.]

§ 6619. Liability for partial loss of ship. In the case of a partial loss of a ship or its equipment the old materials are to be applied toward payment for the new and whether the ship is new or old a marine insurer is liable for only two-thirds of the remaining cost of the repairs, except that he must pay for anchors and cannon in full and for sheathing metal at a depreciation of only two and one-half per cent for each month that it has been fastened to the ship. [R. C. 1905, § 6052; Civ. C. 1877, § 1629; R. C. 1899, § 4603.]

CHAPTER 79.

FIRE INSURANCE.

§ 6620. Rescission for alteration in use increasing risk. An alteration in the use or condition of a thing insured from that to which it is limited by the policy, made without the consent of the insurer, by means within the control of the insured and increasing the risk entitles an insurer to rescind a contract of fire insurance. [R. C. 1905, § 6053; Civ. C. 1877, § 1630; R. C. 1899, § 4604.]

A policy limiting the use of building insured to certain purposes is void if building is used without knowledge of insured for purposes increasing hazard. *School District v. Insurance Co.*, 7 S. D. 458, 64 N. W. 527.

Indications that building may be intentionally set on fire as an increase of insurance risk. 31 L.R.A.(N.S.) 603.

Necessity of proof of increase of risk to avoid insurance policy because of the vacancy of insured property. 13 L.R.A.(N.S.) 456.

Effect of temporary condition which ceased before loss, under general provision against increase of insurance risk, or specific provision against certain conditions. 10 L.R.A.(N.S.) 736; 28 L.R.A.(N.S.) 593; 32 L.R.A.(N.S.) 240.

Effect of temporary removal of property. 43 Am. Rep. 84.

"Vacant and unoccupied," significance of these and like expressions. 10 Am. St. Rep. 390.

"Hazardous" and "extrahazardous," meaning of. 97 Am. Dec. 798.

Hazardous and prohibited articles kept in the ordinary course of business. 24 Am. Rep. 150.

When use or keeping of forbidden materials avoids policy. 24 Am. Rep. 150.

Condition against keeping petroleum or other inflammable fluids, when violated. 37 Am. Rep. 650.

What results in increase of hazard. 66 Am. St. Rep. 691.

When alterations in premises avoid policy. 26 Am. St. Rep. 407.

Construction of conditions as to use of premises. 30 Am. St. Rep. 731.

As to similar provision in Cal. Civ. Code, § 2753, see *Slinkard v. Manchester Fire Assur. Co.*, 122 Cal. 595, 55 Pac. 417.

§ 6621. Not if risk not increased. An alteration in the use or condition of a thing insured from that to which it is limited by the policy, which does not increase the risk, does not affect a contract of fire insurance. [R. C. 1905, § 6054; Civ. C. 1877, § 1631; R. C. 1899, § 4605.]

As to similar provision in Cal. Civ. Code, § 2754, see *Slinkard v. Manchester Fire Assur. Co.*, 122 Cal. 595, 55 Pac. 417.

§ 6622. When contract unaffected, though risk increased. A contract of fire insurance is not affected by any act of the insured subsequent to the execution of the policy, which does not violate its provisions, even though it increases the risk and is the cause of a loss. [R. C. 1905, § 6055; Civ. C. 1877, § 1632; R. C. 1899, § 4606.]

§ 6623. Measure of indemnity. If there is no valuation in the policy, the measure of indemnity in an insurance against fire is the full amount stated in the policy; but the effect of a valuation in a policy of fire insurance is the same as in a policy of marine insurance. [R. C. 1905, § 6056; Civ. C. 1877, § 1633; R. C. 1899, § 4607.]

§ 6624. Face of policy to be paid in case of loss. Whenever any policy of insurance shall be written to insure any real property in this state against loss by fire and that property insured shall be destroyed without fraud on the part of the insured or his assigns, the stated amount of the insurance written in such policy shall be taken conclusively to be the true value of the property insured. [1907, ch. 158.]

§ 6625. Standard policy. No fire insurance company, corporation or association, their officers or agents, shall make, issue, use or deliver for use any fire insurance policy or renewal of any fire policy on property in this state other than such as shall conform in all particulars as to blanks, size of type, context, provisions, agreements and conditions with the printed form of contract or policy heretofore filed in the office of the commissioner of insurance as a

standard policy for this state and no other or different provisions, agreement, condition or clause shall in any manner be made a part of such contract or policy or be indorsed thereon or delivered therewith, except as follows, to wit:

1. The name of the company, its location and place of business, the date of its incorporation or organization, and the state or county under which the same is organized, the amount of paid up capital stock, whether it is a stock or mutual company, the names of its officers, the number and date of the policy; and if it is issued through a manager or agent of the company, the words, "this policy shall not be valid until countersigned by the duly authorized manager or agent of the company, at " may be printed on policies issued on property in this state.

2. Printed or written forms of description and specifications or schedules of the property covered by any particular policy and any other matter necessary to express clearly all the facts and conditions of insurance on any particular risk, which facts or conditions shall in no case be inconsistent with or a waiver of any of the provisions or conditions of the standard policy herein provided for may be written upon or attached or appended to any policy issued on property in this state.

3. A company, corporation or association organized or incorporated under and in pursuance of the laws of this state or elsewhere, if entitled to do business in this state, may with the approval of the commissioner of insurance, if the same is not already included in the standard form as filed in the office of the commissioner of insurance, print on its policies any provision which it is required by law to insert therein, if such provision is not in conflict with the laws of this state or the United States, or of the provisions of the standard form provided for herein, but said provision shall be printed apart from the other provisions, agreements or conditions of the policy and in type not smaller than the body of the policy and under a separate title, as follows: "Provisions required by law to be stated in this policy" and be a part of said policy.

4. There may be indorsed on the outside of any policy herein provided for the name, with the word "agent or agents" and place of business, of any insurance agent or agents, either by writing, printing, stamping or otherwise.

5. When two or more companies, each having previously complied with the laws of this state, unite to issue a joint policy, there may be expressed in the heading of such policy the fact of the severalty of the contract; also the proportion of premiums to be paid to each company and the proportion of liability which each company agrees to assume. And in the printed conditions of such policy the necessary change may be made from the singular to the plural number, when reference is had to the companies issuing such policies. [R. C. 1905, § 6057; 1890, ch. 74, § 4; R. C. 1895, § 4608.]

Insurance commissioner cannot compel use of standard policy prepared by himself. *Phenix Ins. Co. v. Perkins*, 19 S. D. 59, 101 N. W. 1110.

§ 6626. Construction of standard policy. Policies of insurance in the form prescribed by the last section shall be in all respects subject to the same rules of construction as to their effect or the waiver of any of their provisions as if the form thereof had not been prescribed. [R. C. 1905, § 6058; R. C. 1895, § 4609.]

Policy of insurance cannot be avoided after loss where premium was received with full knowledge of factor. *Leisen v. St. Paul F. & M. Ins. Co.*, 20 N. D. 316, 30 L.R.A.(N.S.) 539, 127 N. W. 827.

CHAPTER 80.

LIFE AND HEALTH INSURANCE.

§ 6627. When payable. An insurance upon life may be made payable on the death of the person or on his surviving a specified period, or periodically so long as he shall live, or otherwise contingently on the continuance or termination of life. [R. C. 1905, § 6059; Civ. C. 1877, § 1634; R. C. 1899, § 4610.]

§ 6628. In whom person has insurable interest. Every person has an insurable interest in the life and health:

1. Of himself.
2. Of any person on whom he depends wholly or in part for education or support.
3. Of any person under a legal obligation to him for the payment of money, or respecting property or services, of which death or illness might delay or prevent the performance; and,
4. Of any person upon whose life any estate or interest vested in him depends. [R. C. 1905, § 6060; Civ. C. 1877, § 1635; R. C. 1899, § 4611.]

Conflict of laws as to insurable interest. 63 L.R.A. 856; 23 L.R.A.(N.S.) 976.

Insurable interest in the life of another, and necessity of. 57 Am. Dec. 93; 46 Am. Rep. 189; 52 Am. Rep. 135; 58 Am. Rep. 852.

When life insurance regarded as wagering contract because of the small insurable interest. 60 Am. Rep. 729.

Life insurance in favor of persons having no insurable interest. 128 Am. St. Rep. 302.

Defense of want of insurable interest as affected by incontestable clause. 42 L.R.A. 257; 5 L.R.A.(N.S.) 747.

Consent of person whose life is insured, as a condition. 56 L.R.A. 586.

Insurable interest in life of parent or child or other relative by blood. 54 L.R.A. 225.

Wife's right to insure life of husband. 53 L.R.A. 817.

Right to insure life of betrothed husband. 53 L.R.A. 825.

Validity of life insurance for benefit of betrothed wife. 19 L.R.A. 187.

Insurable interest of husband as such, in life of wife. 2 B. R. C. 410.

Insurable interest in life of foster child or foster parent. 46 L.R.A.(N.S.) 779.

Insurable interest of adult child in life of parent. 19 L.R.A.(N.S.) 233.

Insurable interest of cousin. 14 L.R.A.(N.S.) 1172.

Insurable interest of brother or sister in other's life. 45 L.R.A.(N.S.) 982.

Right to take life insurance for benefit of stranger. 25 L.R.A. 627.

Insurance on life in favor of paramour. 47 L.R.A.(N.S.) 252.

Insurance on life of officer of corporation for benefit of the corporations. 16 L.R.A.(N.S.) 1020.

Insurable interest in animals. 44 L.R.A.(N.S.) 569.

Who is a member of the "family" within contract of benefit society. 3 L.R.A.(N.S.) 334.

Who is a "dependent" within statute or rules defining beneficiaries of mutual benefit societies. 2 L.R.A.(N.S.) 653; 36 L.R.A.(N.S.) 208; 37 L.R.A.(N.S.) 1191.

Effect of the death of a beneficiary before that of the person whose life is insured. 11 Am. St. Rep. 721.

§ 6629. Policy transferable. A policy of insurance upon life or health may pass by transfer, will or succession to any person, whether he has an insurable interest or not, and such person may recover upon it whatever the insured might have recovered. [R. C. 1905, § 6061; Civ. C. 1877, § 1636; R. C. 1899, § 4612.]

Policy made payable to insured or his personal representative may be willed, but it is subject to statutory allowance of surviving husband or wife and minor children. Meyer v. Meyer, 25 S. D. 596, 127 N. W. 595.

Assignment of life insurance policy. 87 Am. St. Rep. 484.

Validity of assignment of life insurance policy to one having no insurable interest. 27 Am. St. Rep. 327; 16 Am. St. Rep. 906.

Validity of assignment by beneficiary having no insurable interest to one paying premiums. 3 L.R.A.(N.S.) 952.

Validity of assignment of life insurance policy to one having no insurable interest where the assignment is not made by way of cover for a wager policy. 6 L.R.A.(N.S.) 128.

§ 6630. When notice of transfer unnecessary. Notice to an insurer of a transfer or bequest therefor is not necessary to preserve the validity of a policy of insurance upon life or health, unless thereby expressly required. [R. C. 1905, § 6062; Civ. C. 1877, § 1637; R. C. 1899, § 4613.]

§ 6631. Measure of indemnity. Unless the interest of a person insured is susceptible of exact pecuniary measurement, the measure of indemnity under a policy of insurance upon life or health is the sum fixed in the policy. [R. C. 1905, § 6063; Civ. C. 1877, § 1638; R. C. 1899, § 4614.]

§ 6632. Agent defined. Any person who shall solicit an application for insurance upon the life of another shall, in any controversy between the assured or his beneficiary and the company issuing any policy upon such application, be regarded as the agent of the company and not the agent of the assured. [1907, ch. 146.]

§ 6633. Suicide no defense after one year. In all suits on policies of insurance on life issued by any regular or assessment or fraternal beneficiary association, company or corporation, doing business in this state, it shall be no defense after the policy has been in force one year, that the insured committed suicide, and any provision or stipulation in the policy to the contrary shall be void. [1911, ch. 157; R. C. 1905, § 6064; 1903, ch. 111.]

Defense that insured committed suicide cannot be set up, when suicide occurs after expiration of one year from date of policy. *Harrington v. Mutual L. Ins. Co.*, 21 N. D. 447, 34 L.R.A.(N.S.) 373, 131 N. W. 246.

Power of legislature to forbid defense of suicide in life insurance. 31 L.R.A. 831.

Conflict of laws as to suicide provision in insurance contract. 63 L.R.A. 867; 23 L.R.A.(N.S.) 981.

Suicide as a defense to action on life insurance policy. 59 Am. Dec. 487; 3 Am. Rep. 454; 19 Am. Rep. 628; 84 Am. St. Rep. 539.

Effect of words "sane or insane" or other words relating to mental condition in suicide clause in policy. 17 L.R.A.(N.S.) 260.

Suicide while sane as a defense to an action on a policy or certificate containing no provision as to effect of suicide. 8 L.R.A.(N.S.) 1124.

Death from suicide as one caused through external, violent and accidental means. 7 L.R.A.(N.S.) 223.

Necessity that suicide be reasonable and legitimate consequence of violation of law in order to relieve insurer. 13 L.R.A.(N.S.) 261.

Retroactive effect of resolution of mutual insurance company changing period during which policy may be contested for suicide. 12 L.R.A.(N.S.) 504.

Incontestability of policy where defense is suicide. 42 L.R.A. 253, 260.

Conclusiveness of proof of death as to suicide. 44 L.R.A. 853.

Duty of insured to negative suicide. 4 L.R.A.(N.S.) 636.

Burden of proof as to suicide in action on life insurance policy. 4 L.R.A.(N.S.) 636.

Insanity as affecting condition as to suicide. 35 L.R.A. 258.

Liability under accident policy for death during delirium. 46 L.R.A.(N.S.) 543.

Subsequent by-law excluding or reducing liability in case of suicide. 46 L.R.A.(N.S.) 308.

CHAPTER 81.

STANDARD FORMS OF INSURANCE POLICIES; PROVISIONS IN LIFE INSURANCE POLICIES.

§ 6634. Authority required to issue policies. No policy of life insurance shall be issued or delivered in this state and no policy of life insurance of a life insurance company organized under the laws of this state shall be issued, unless authorized by the provisions of this article. [1907, ch. 140, § 1.]

§ 6635. Standard forms. The following are established as standard forms in which policies of life insurance may be issued and delivered in this state, and in which policies of life insurance of life insurance companies organized under the laws of this state may be issued:

NORTH DAKOTA STANDARD LIFE INSURANCE POLICY.

(Insert " Ordinary " or " Limited Payment.")

..... Life
 Age.....
 Amount \$..... Premium \$.....

Of North Dakota.

In consideration of dollars, receipt of which is hereby acknowledged, and of the payment of (insert amounts and times of payments of premiums) until (insert " the death of the insured " in ordinary life and " full year's premiums shall have been paid or until the prior death of the insured " in limited payment life).

Promises to pay upon receipt at the home office of the company in of due proof of death of of county of, state of North Dakota, herein called the insured, to beneficiary with (insert " out " if so desired) right of revocation, dollars, less any indebtedness hereon to the company and any unpaid portion of the premium for the then current policy year.

Change of Beneficiary. When the right of revocation has been reserved, or in case of death of any beneficiary under either a revocable or irrevocable designation, the insured, subject to any existing assignment of the policy, may designate a new beneficiary with or without reserving right of revocation by filing written notice thereof at the home office of the company, accompanied by the policy for a suitable indorsement thereon. If any beneficiary shall die before the insured and the insured shall not have designated a new beneficiary the interest of such beneficiary shall be payable to the insured (insert " his " or " her "), executors, administrators or assigns.

Payment of Premiums. The company will accept payment of premiums at other times than as above stated, as follows:

.....

Except as herein provided the payment of the premium or installment thereof shall not maintain the policy in force beyond the date when the next premium or installment thereof is payable.

All premiums are payable in advance at said home office, or to an agent of the company upon delivery of the receipt signed by one or more of the following officers of the company (insert titles of officers who may sign receipts) and countersigned by the said agent.

A grace of one month, subject to any interest charge at the rate of per centum per annum, shall be granted for the payment of every premium after the first, during which month the insurance shall continue in force. If the insured shall die during the month of grace, the overdue premiums will be deducted from any amount payable hereon in any settlement hereunder.

Conditions. (The policy may here provide for restrictions of liability by reason of travel, occupation, change of residence and suicide. These restrictions, such as refer to military and naval services in time of war, must be applicable only to cases where the act of the insured provided against occurs within two years after the issuance of the policy.)

Incontestability. The policy constitutes the entire contract between the parties and shall be incontestable from its date, except for nonpayments of premiums and except as otherwise provided in this policy. All statements made by the insured shall in the absence of fraud be deemed representations and not warranties, and no such statement shall avoid this policy, unless it is

contained in written application and a copy of such application shall be indorsed upon or attached to this policy when issued. If the age of the insured has been understated the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

Participation. This policy shall participate in the surplus of the company and beginning not later than the end of the (insert first, second or third) policy year, the company will annually determine and account for the portion of the divisible surplus accruing hereon.

Dividends. Dividends at the option of the owner of this policy shall on the day of of each year (here may be inserted "after the first policy year" or "after the second policy year") be either:

1. Paid in cash, or,
2. Applied toward payment of any premium or premiums, or,
3. Applied to the purchase of paid-up additions to the policy, or,
4. Left to accumulate to the credit of the policy with interest at (here insert a rate not exceeding that used by the company for calculating its reserves) per centum per annum and payable at the maturity of the policy, but withdrawable at the anniversary of the policy.

Unless the owner of the policy shall elect otherwise within three months after the mailing by the company of a written notice requiring such election the dividends shall be paid in cash.

Loans. After three full years' premiums have been paid, the company at any time, while this policy is in force, will advance, on proper assignment of this policy, and on the sole security thereof at a rate of interest not greater than per centum per annum, which interest if not paid annually shall be added to the principal and bear the same rate of interest, a sum equal to, or, at the option of the owner of the policy, less than the reserve at the end of the current policy year on this policy and on any dividend additions thereto, computed according to the (designate mortality table adopted by the company for computing reserve) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum, less (here may be inserted not more than two and one-half) per centum of the amount insured by this policy and of the dividend additions thereto.

The company, however, will deduct from such loan value any existing indebtedness to the company on the policy and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year. Such loan may be deferred by the company for not exceeding six months after the application therefor is made. Failure to repay any such advance or to pay interest shall not void this policy, unless the total indebtedness hereon to the company shall be equal or exceed such loan value at the time of such failure and until one month after notice shall have been mailed by the company to the last known address of the insured and of the assignee, if any. No condition other than as herein provided shall be exacted as a prerequisite to any such advance.

Assignment. No assignment of this policy shall be binding upon the company until it be filed with the company at its said home office. The company assumes no responsibility as to the validity of any assignment.

Option of Surrender or Lapse. After this policy shall have been in force three years the owner, within one month after any default, may elect (a) to accept the value of this policy in cash, or, (b) to have the insurance continued in force from date of default, without future participation and without the right to loan, for its face amount, including any outstanding dividend additions, less any indebtedness to the company thereon, or, (c) to purchase non-participating paid-up insurance payable at the same time and on the same conditions as this policy.

The cash value will be the reserve at the date of default on this policy and on any dividend additions thereto, computed according to the (designate mortality table adopted by the company for computing reserves) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum, less (here may be inserted not more than two and one-half) per centum of the amount insured by this policy and of any dividend additions thereto, and less any existing indebtedness to the company on this policy. Payment of such cash value may be deferred by the company for not exceeding six months after the application therefor is made. The term for which the insurance will be continued or the amount of the paid-up policy will be such as the cash value will purchase as a net single premium at the attained age of the insured according to the (designate the mortality table adopted by the company for computing reserves) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum. If the owner shall not, within one month from default, surrender this policy to the company at its home office for a cash surrender value or for paid-up insurance as provided in options (a) and (c) the insurance will be continued as provided in option (b).

The figures in the following table are computed in accordance with the above provisions and upon the assumption that there is no indebtedness on the policy, and that there are no outstanding dividend additions.

(At the option of the company the following may be here inserted: "The figures apply to a policy for \$1,000. As this contract is for \$, the loan, cash or paid insurance available in any year will be \$, the amount stated in the table for that year: ")

	At end of Year	Cash or Loan Value	Paid up Life Insurance	Continued Insurance		
				Years	Months	Days
3	\$.....	\$.....	\$.....
4	\$.....	\$.....	\$.....
5	\$.....	\$.....	\$.....
6	\$.....	\$.....	\$.....
7	\$.....	\$.....	\$.....
8	\$.....	\$.....	\$.....
9	\$.....	\$.....	\$.....
10	\$.....	\$.....	\$.....
11	\$.....	\$.....	\$.....
12	\$.....	\$.....	\$.....
13	\$.....	\$.....	\$.....
14	\$.....	\$.....	\$.....
15	\$.....	\$.....	\$.....
16	\$.....	\$.....	\$.....
17	\$.....	\$.....	\$.....
18	\$.....	\$.....	\$.....
19	\$.....	\$.....	\$.....
20	\$.....	\$.....	\$.....

Figures for later years will be furnished upon request.

Reinstatement. In case of continued temporary insurance under the above provisions this policy upon evidence of insurability satisfactory to the company may be reinstated within the first three years of the term for which the insurance is continued by payment of arrears of premiums with interest at (here insert not more than six) per centum per annum.

Options at Maturity. The insured, by written notice to the company at its home office, and with the written consent of the assignee and irrevocable beneficiary, if any, may elect to have the net sum payable under this policy paid either in cash or as follows:

1. By the payment of interest thereon at per centum per annum payable annually, to the payee under this policy at the end of each year

Unless otherwise specified by the insured the payee may on any interest date receive the amount yet due under option one, and may at any time receive the commuted value of payments yet to be made, computed upon the same basis as option two in the following table, provided that no such commutation will be made under three, except after the death of the payee occurring within the aforesaid twenty years.

OPTION 3.

[illegible]

In witness whereof, the company has caused this policy to be executed this day of

Amount \$..... Premium \$.....

.....

 of North Dakota.

In consideration of dollars, receipt of which is hereby acknowledged, and the payment of (here insert amounts and times of payments of premiums) until full year's premiums shall have been paid or until the prior death of the insured.

Promises to pay at the home office of the company in to of, county of, state of North Dakota, herein called the insured, on the day of, if the insured be then living, or upon receipt at said home office of due record [proof] of the prior death of the insured, to, beneficiary...., with (insert " out " if so desired) right of revocation, dollars, less any indebtedness hereon to the company and any unpaid portion of the premium for the then current policy year.

Change of Beneficiary. When the right of revocation has been reserved, or in case of the death of any beneficiary under either a revocable or irrevocable designation, the insured, subject to any existing assignment of the policy, may designate a new beneficiary with or without reserving right of revocation by filing written notice thereof at the home office of the company accompanied by the policy for suitable indorsement thereon. If any beneficiary shall die before the insured, and the insured shall not have designated a new beneficiary, the interest of such beneficiary shall be payable to the insured (insert " his " or " her ") executors, administrators or assigns.

Payments of Premiums. The company will accept payments of premiums at other times than as stated above, as follows:

.....

Except as herein provided the payment of a premium or installment thereof shall not maintain the policy in force beyond the date when the next premium or installment thereof is payable.

All premiums are payable in advance at the said home office or to any agent of the company upon delivery of a receipt signed by one or more of the following officers of the company (insert titles of officers who may sign receipts), and countersigned by said agent.

A grace of one month, subject to an interest charge at the rate of per centum per annum, shall be granted for the payment of every premium after the first, during which month the insurance shall continue in force. If the insured shall die during the month of grace the overdue premium will be deducted from any amount payable hereon in any settlement hereunder.

Conditions. (The policy may here provide for restriction of liability by reason of travel, occupation, change of residence and suicide. These restrictions, except such as refer to military and naval service in time of war, must be applicable only to cases where the act of the insured provided against occurs within two years after the issuance of the policy.)

Incontestability. This policy constitutes the entire contract between the parties and shall be incontestable from its date, except for nonpayment of premiums and except as otherwise provided in this policy. All statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties, and no such statement shall void this policy, unless it is contained in a written application and a copy of such application shall be indorsed upon or attached to this policy when issued. If the age of the insured has been understated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

Participation. This policy shall participate in the surplus of the company and beginning not later than the end of the (insert first, second or third)

policy year the company will annually determine and account for the portion of the divisible surplus accruing hereon.

Dividends. Dividends at the option of the owner of this policy shall on the day of of each year (here may be inserted "after the first policy year" or "after the second policy year") be either:

1. Paid in cash, or,
2. Applied toward the payment of any premium or premiums, or,
3. Applied to the purchase of paid-up additions to the policy, or,
4. Left to accumulate to the credit of the policy with the interest at (here insert a rate not exceeding that used by the company in calculating its reserves) per centum per annum and payable at the maturity of the policy, but withdrawable on any anniversary of the policy.

Unless the owner of this policy shall elect otherwise within three months after the mailing by the company of a written notice requiring such election, the dividends shall be paid in cash.

Loans. After three full years' premiums have been paid the company at any time while this policy is in force, will advance, on proper assignment of the policy and on the sole security thereof, at a rate of interest not greater than per centum per annum, which interest, if not paid annually, shall be added to the principal and bear the same rate of interest, a sum equal to, or, at the option of the owner of the policy, less than, the reserve at the end of the current policy year, on this policy and on any dividend additions thereto, computed according to the (designate mortality table adopted by the company for computing reserves) mortality table, and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum, less (here may be inserted not more than two and one-half) per centum of the amount insured by this policy and of any dividend additions thereto. The company, however, will deduct from such loan value any existing indebtedness to the company on this policy, and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year. Such loan may be deferred by the company for not exceeding six months after the application therefor is made. Failure to repay any such advance or to pay interest shall not void this policy, unless the total indebtedness hereon to the company shall equal or exceed such loan value at the time of such failure and until one month after notice shall have been mailed by the company to the last known address of the insured and of the assignee, if any.

No conditions, other than as herein provided, shall be exacted as a prerequisite to any such advance.

Assignment. No assignment of this policy shall be binding upon the company until it be filed with the company at its said home office. The company assumes no responsibility as to the validity of any assignment.

Options on Surrender or Lapse. After this policy shall have been in force three full years the owner, within one month after any default, may elect (a) to accept the value of this policy in cash, or, (b) to have the insurance continue in force from date of default without future participation and without the right to loans, for its face amount, including any outstanding dividend additions, less any indebtedness to the company hereon, or, (c) to purchase nonparticipating paid-up insurance payable at the same times and on the same conditions as this policy. The cash value will be the reserve at the date of default on this policy and on any dividend additions thereto computed according to the (designate mortality table adopted by the company for computing reserves) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum less (here may be inserted not more than two and one-half) per centum of the amount insured by this policy and of any dividend additions thereto, and less any existing indebtedness to the company on this policy. Payment

of such cash value may be deferred by the company for not exceeding six months after the application therefor is made.

The term for which the insurance will be continued or the amount of the paid-up policy will be such as the cash value will purchase as a net single premium at the attained age of the insured, according to the (designate the mortality table adopted by the company for computing reserves) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum. If the sum applicable to the purchase of temporary insurance shall be more than sufficient to continue the insurance to the end of the endowment term named in this policy the excess shall be used to purchase in the same manner nonparticipating paid-up pure endowment, payable at the end of the endowment term and on the same conditions. If the owner shall not, within one month from default surrender this policy to the company at the home office for a cash surrender value or for paid-up insurance as provided in options (a) and (c) the insurance will be continued as provided in option (b).

The figures in the following table are computed in accordance with the above provisions and upon the assumption that there is no indebtedness on the policy, and that there are no outstanding dividend additions.

(At the option of the company the following may be here inserted: "The figures apply to a policy of \$1,000. As this contract is for \$....., the loan, cash, paid-up insurance on pure endowment available in any year will be the amount stated in the table for this year.")

	At End of Year	Cash or Loan Value	Paid Up Endowment Insurance	Years	Continued Insurance Months	Days	Pure Endow- ment
3	\$.....	\$.....	\$.....	\$.....
4	\$.....	\$.....	\$.....	\$.....
5	\$.....	\$.....	\$.....	\$.....
6	\$.....	\$.....	\$.....	\$.....
7	\$.....	\$.....	\$.....	\$.....
8	\$.....	\$.....	\$.....	\$.....
9	\$.....	\$.....	\$.....	\$.....
10	\$.....	\$.....	\$.....	\$.....
11	\$.....	\$.....	\$.....	\$.....
12	\$.....	\$.....	\$.....	\$.....
13	\$.....	\$.....	\$.....	\$.....
14	\$.....	\$.....	\$.....	\$.....
15	\$.....	\$.....	\$.....	\$.....
16	\$.....	\$.....	\$.....	\$.....
17	\$.....	\$.....	\$.....	\$.....
18	\$.....	\$.....	\$.....	\$.....
19	\$.....	\$.....	\$.....	\$.....
20	\$.....	\$.....	\$.....	\$.....

Figures for later years will be furnished upon request.

Reinstatement. In case of continued temporary insurance under the above provision this policy upon evidence of insurability satisfactory to the company may be reinstated within the first three years of the term for which the insurance is continued by payment of arrears of premiums with interest at (here insert not greater than six) per centum per annum.

Options at Maturity. The insured, by written notice to the company at its home office, and with written consent of the assigned and irrevocable beneficiary, if any, may elect to have the net sum payable under this policy paid either in cash or as follows:

1. By the payment of interest thereon at per centum per annum payable annually, to the payee under this policy at the end of each year during the life of the payee and by the payment upon the death of the payee of the

Unless otherwise specified by the insured the payee may on any interest date receive the amount yet due under option one, and may at any time receive the commuted value of payments yet to be made, computed upon the same basis as option two in the following table, provided that no such commutation will be made under three except after the death of the payee occurring within the aforesaid twenty years.

.....
of North Dakota.

In consideration of dollars, receipt of which is hereby acknowledged, and of the payment of (here insert amounts and times of payments of premium) until (insert "the death of the insured" in ordinary life and "..... full year's premiums shall have been paid or until the prior death of the insured" in limited payment life).

Promises to pay at its home office in, dollars in twenty equal annual installments of \$..... to (herein called the beneficiary), (insert "his" or "her") executors, administrators or assigns, with (insert "out" if so desired) right of revocation, if (insert "he" or "she") survives the insured (otherwise to the executors, administrators or assigns of the insured) the first installment being payable immediately upon receipt of due proof of the death of the insured, any indebtedness to the company on this policy, together with the balance, if any, of the then current year's premium being deducted from the amounts first payable under this contract.

Should the beneficiary live to receive the twenty installments payable to (insert "him" or "her") as above provided, the company will pay (insert "him" or "her") annually during the remainder of (insert "his" or "her") life the sum of \$....., beginning one year after the date when the twentieth installment payable hereunder shall fall due.

Change of Beneficiary. When the right of revocation has been reserved, or in case of the death of any beneficiary under either a revocable or irrevocable designation, the insured subject to any existing assignment of the policy, may designate a new beneficiary with or without reserving right of revocation, by filing written notice thereof at the home office of the company, accompanied by the policy for suitable indorsement thereon. If any beneficiary shall die before the insured and the insured shall not have designated a new beneficiary, the interest of such beneficiary shall be payable to the insured (insert "his" or "her") executors, administrators or assigns. If a new beneficiary shall be designated only twenty annual installments will be payable under this policy, and future (if necessary, insert "semi" or "quarterly") annual premiums will be reduced to dollars each.

Payment of Premiums. The company will accept payment of premiums at other times than as stated above, as follows:

.....
.....
Upon return of this policy to the company accompanied by evidence satisfactory to the company of the death of the beneficiary the company will reduce the future (here insert "annual," "semi-annual" or "quarterly") premium to \$..... each.

Except as herein provided the payment of a premium or installment thereof shall not maintain the policy in force beyond the date when the next premium or installment thereof is payable.

All premiums are payable in advance at said home office, or to an agent of the company upon delivery of a receipt signed by one or more of the following officers of the company (insert titles of officers who may sign receipts) and countersigned by said agent.

A grace of one month subject to an interest charge at the rate of per centum per annum shall be granted for the payment of every premium after the first, during which month the insurance shall continue in force. If the insured shall die during the month of grace the overdue premium will be deducted from any amount payable hereon in any settlement hereunder.

Conditions. (The policy may here provide for restriction of liability by reason of travel, occupation, change of residence and suicide. These restrictions, except such as refer to military and naval service in time of war,

must be applicable only to cases where the act of the insured provided against occurs within two years after the issuance of the policy.)

Incontestability. This policy constitutes the entire contract between the parties and shall be incontestable from its date, except for nonpayment of premiums and except as otherwise provided in this policy. All statements made by the insured shall in the absence of fraud be deemed representations and not warranties and no such statement shall void this policy unless it is contained in a written application and a copy of such application shall be indorsed upon or attached to this policy when issued.

If the age of the insured has been understated or if the age of the beneficiary has been overstated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

Participation. This policy shall participate in the surplus of the company and beginning not later than the end of the (insert first, second or third) policy year the company will annually determine and account for the portion of the divisible surplus accruing thereon.

Dividends. Dividends at the option of the owner of the policy shall on the day of of each year (here may be inserted "after the first policy year" or "after the second policy year" be either:

1. Paid in cash, or,
2. Applied toward the payment of any premium or premiums, or,
3. Applied to the purchase of paid-up additions to the policy, payable in twenty annual installments at the same times as the original amount insured under this policy is payable. The payments of such twenty installments shall discharge the company from all liability on account of such dividend additions, or,
4. Left to accumulate to the credit of the policy with interest at (here insert a rate not exceeding that used by the company in calculating its reserves) per centum per annum and payable at the maturity of the policy, but withdrawable on any anniversary of the policy.

Unless the owner of this policy shall elect otherwise within three months after the mailing by the company of a written notice requiring such election, the dividends shall be paid in cash.

Loans. After three full year's premiums have been paid, the company at any time, while this policy is in force, will advance on the proper assignment of this policy and on the sole security thereof, at a rate of interest not greater than per centum per annum, which interest if not paid annually shall be added to the principal and bear the same rate of interest, a sum equal to, or, at the option of the owner of the policy, less than, the reserve at the end of the current policy year required to provide for the twenty installments payable under this policy and for any dividend additions thereto and no more, computed according to the (designate mortality table adopted by the company for computing reserves) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum. less (here may be inserted not more than two and one-half) per centum per annum of the amount insured by the policy, and of any dividend additions thereto. The company will deduct, however, from such loan value any existing indebtedness to the company on the policy and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year. Such loan may be deferred by the company for not exceeding six months after the application therefor is made. Failure to repay any such advance or to pay interest shall not void this policy unless the total indebtedness hereon to the company shall equal or exceed such loan value at the time of such failure, and until one month after notice shall have been mailed by the company to the last known address of the insured and of the assignee, if any. No condition other than as herein provided shall be exacted as a prerequisite to any such advance.

Assignment. No assignment of this policy shall be binding upon the company until it be filed with the company at its said home office. The company assumes no responsibility as to the validity of any assignment.

Options on Surrender or Lapse. After this policy shall have been in force three full years the owner, within one month after any default may elect,

(a) To accept the value of the policy in cash, or,

(b) To have the insurance continued in force from date of default without future participation and without the right to loans, for its face amount, including any outstanding dividend additions, less any indebtedness to the company hereon, or,

(c) To purchase nonparticipating paid-up insurance, payable except as hereinafter provided, at the same time and on the same conditions as this policy. The cash value will be the reserve at the date of default required to provide for the twenty installments payable under this policy and for any dividend additions hereto, computed according to the (designate mortality table adopted by the company for computing reserves) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum, less (here may be inserted not more than two and one-half) per centum of the amount insured by this policy and of any dividend additions thereto, and less any existing indebtedness to the company on this policy. Payment of such cash value may be deferred by the company for not exceeding six months after the application therefor is made. The term for which the insurance will be continued or the amount of the paid-up policy will be such as the cash value would purchase as a net single premium at the attained age of the insured according to the (designate the mortality table adopted by the company for computing reserves) mortality table and interest at the rate of (designate the rate of interest adopted by the company for computing reserves) per centum per annum. If the owner shall not within one month from default surrender this policy to the company at its home office for a cash surrender value or paid-up insurance as provided in options (a) and (c) the insurance will be continued as provided in option (b). The paid-up or continued temporary insurance will be payable in twenty equal installments and a payment of twenty installments under either option shall discharge the company from all liability under this policy. The figures in the following table are computed in accordance with the above provisions and upon the assumption that there is no indebtedness upon the policy, and that there are no outstanding dividend additions. (At the option of the company the following may be here inserted: "The figures apply to a policy for \$1,000. As this contract is for \$..... the loan, cash or paid-up insurance, available in any year will be \$....., the amount stated in the table for that year.")

	At End of Year	Cash or Loan Value	Paid up Life Insurance	Years	Continued Insurance Months	Days
3	\$.....	\$.....
4	\$.....	\$.....
5	\$.....	\$.....
6	\$.....	\$.....
7	\$.....	\$.....
8	\$.....	\$.....
9	\$.....	\$.....
10	\$.....	\$.....
11	\$.....	\$.....
12	\$.....	\$.....
13	\$.....	\$.....
14	\$.....	\$.....
15	\$.....	\$.....
16	\$.....	\$.....
17	\$.....	\$.....

	At End of Year	Cash or Loan Value	Paid up Life Insurance	Years	Continued Insurance Months	Days
18	\$.....	\$.....
19	\$.....	\$.....
20	\$.....	\$.....

Figures for later years will be furnished upon request.

Reinstatement. In case of continued temporary insurance under the above provisions this policy upon evidence of insurability satisfactory to the company may be reinstated within the first three years of the term for which the insurance is continued by payment of arrears of premium with interest at (here insert not greater than six) per centum per annum.

Agents are not authorized to modify this policy or extend the time for paying the premium.

In witness whereof the company has caused this policy to be executed this day of

NORTH DAKOTA STANDARD LIFE INSURANCE POLICY.

Endowment Fixed Survivorship Annuity.

Age

Amount \$..... Premium \$.....

.....
.....
.....

of North Dakota.

In consideration of dollars, receipt of which is hereby acknowledged, and of the payment of (here insert amounts in times of payments of premiums) until full year's premiums shall have been paid or until the prior death of the insured.

Promises to pay at its home office in, dollars in twenty equal annual installments of \$..... to the insured, the first installment to be payable on the day of, 190.., and if the insured shall die before receiving all the twenty installments herein provided for, the remainder of such twenty installments shall be payable as they fall due to (herein called the beneficiary), (insert " his " or " her ") executors, administrators or assigns, with (insert " out " if so desired) right of revocation, if (insert " he " or " she ") survives the insured, otherwise to the executors, administrators or assigns of the insured.

Should the insured die before (insert date of maturity) this policy shall be payable to the beneficiary (insert " his " or " her ") executors, administrators or assigns, if (insert " he " or " she ") survives the insured, otherwise to the executors, administrators or assigns of the insured, (the first installment, being payable immediately upon receipt of due proof of the death of the insured.)

Any indebtedness to the company on this policy together with the balance, if any, of the then current year's premium, will be deducted from the amounts first payable under this contract.

Should the insured or beneficiary live to receive the twenty installments payable as above provided, the company, beginning one year after the date when the twentieth installment payable hereunder shall fall due, will pay the sum of \$..... annually to the insured, or, in the event of the death of the insured, to the beneficiary the said annual payment to be due and payable so long as either the insured or beneficiary is living.

Change of Beneficiary. When the right of revocation has been reserved, or in case of the death of any beneficiary under either a revocable or irrevocable designation, the insured, subject to any existing assignment of the policy,

may designate a new beneficiary with or without reserving right of revocation by filing written notice thereof at the home office of the company, accompanied by the policy for suitable indorsement thereon.

If any beneficiary shall die before the insured and the insured shall not have designated a new beneficiary the interest of such beneficiary shall be payable to the insured, (insert "his" or "her") executors, administrators or assigns. If a new beneficiary shall be designated only twenty annual installments will be payable under this policy, and future, (if necessary, insert "semi" or "quarter") annual premiums will be reduced to dollars each.

Payment of Premiums. The company will accept payment of premiums at other times than as stated above, as follows:

.....
 Upon return of this policy accompanied by evidence satisfactory to the company of the death of the beneficiary the company will reduce the future (here insert "annual," "semi-annual" or "quarterly") premiums to \$..... each.

Except as herein provided the payment of a premium or installment thereof shall not maintain the policy in force beyond the date when the next premium or installment thereof is payable. All the premiums are payable in advance at said home office, or to any agent of the company upon delivery of a receipt signed by one or more of the following officers of the company (insert titles of officers who may sign receipts) and countersigned by said agent.

A grace of one month subject to an interest charge at the rate of per centum per annum shall be granted for the payment of every premium after the first, during which month the insurance will continue in force. If the insured shall die during the month of grace the overdue premium will be deducted from any amount payable hereon in any settlement hereunder.

Conditions. (The policy may here provide for restrictions of liability by reason of travel, occupation, change of residence and suicide. These restrictions, except such as refer to military and naval service in time of war, must be applicable only to cases where the act of the insured provided against occurs within two years after the issuance of the policy.)

Incontestability. This policy constitutes the entire contract between the parties and shall be incontestable from its date, except for nonpayment of premiums and except as otherwise provided in this policy. All statements made by the insured shall in the absence of fraud be deemed representations and not warranties and no such statement shall void this policy unless it is contained in a written application and a copy of such application shall be indorsed upon or attached to this policy when issued.

If the age of the insured has been understated, or if the age of the beneficiary has been overstated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

Participation. This policy shall participate in the surplus of the company and beginning not later than the end of the (insert first, second or third) policy year the company will annually determine and account for the portion of the divisible surplus accruing thereon.

Dividends. Dividends at the option of the owner of this policy shall on the day of of each year (here may be inserted "after the first policy year" or "after the second policy year") be either:

1. Paid in cash, or,
2. Applied toward the payment of any premium or premiums, or,
3. Applied to the purchase of paid-up additions to the policy, payable in twenty annual installments at the same time as the original amount insured under this policy is payable. The payment of such twenty installments shall discharge the company from all liability on account of such dividend additions; or,

4. Left to accumulate to the credit of the policy with interest at (here insert a rate not exceeding that used by the company in calculating its reserves) per centum per annum and payable at the maturity of the policy, but withdrawable on any anniversary of the policy.

Unless the owner of this policy shall elect otherwise within three months after the mailing by the company of a written notice requiring such election, the dividends shall be paid in cash.

Loans. After three full year's premiums have been paid the company at any time, while this policy is in force, will advance, on proper assignment of this policy and on the sole security thereof, at a rate of interest not greater than per centum per annum, which interest if not paid annually shall be added to the principal and bear the same rate of interest, a sum equal to, or, at the option of the owner of the policy, less than, the reserve at the end of the current policy year required to provide for the twenty installments payable under this policy and for any dividend additions thereto, and no more, computed according to the (designate mortality table adopted by the company for computing reserves) mortality table, and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum, less (here may be inserted not more than two and one-half per centum) of the amount insured by this policy and of any dividend addition thereto. The company, however, will deduct from such loan value any existing indebtedness to the company on the policy and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year. Such loan may be deferred by the company for not exceeding six months after the application therefor is made. Failure to repay any such advance or to pay interest shall not avoid this policy unless the total indebtedness hereon to the company shall equal or exceed such loan value at the time of such failure, and until one month after notice shall have been mailed by the company to the last known address of the insured and of the assignee, if any. No condition other than as herein provided shall be exacted as a prerequisite to any such advance.

Assignment. No assignment of this policy shall be binding upon the company until it be filed with the company at its said home office. The company assumes no responsibility as to the validity of the assignment.

Options on Surrender or Lapse. After this policy shall have been in force three full years the owner, within one month after any default, may elect:

(a) To accept the value of this policy in cash, or,
(b) To have the insurance continued in force from date of default, without future participation and without the right of loans, for its face amount, including outstanding dividend additions, less any indebtedness to the company hereon, or,

(c) To purchase nonparticipating paid-up insurance, payable, except as hereinafter provided, at the same time and on the same conditions as this policy. The cash value will be the reserve at the date of default required to provide for the twenty installments payable under this policy and for any dividend additions thereto, computed according to the (designate mortality table adopted by the company for computing reserves) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum, less (here may be inserted not more than two and one-half) per centum of the amount insured by this policy and of any dividend additions thereto, and less any existing indebtedness to the company on this policy. Payment of such cash value may be deferred by the company for not exceeding six months after the application therefor is made. The term for which the insurance will be continued or the amount of the paid-up policy will be such as the cash value will purchase as a net single premium at the attained age of the insured according to the (designate the

mortality table adopted by the company for computing reserves) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum. If the sum applicable to the purchase of temporary insurance shall be more than sufficient to continue the insurance to the end of the endowment term named in this policy, the excess shall be used to purchase in the same manner nonparticipating, paid-up pure endowment, payable at the end of the endowment term and on the same conditions.

If the owner shall not within one month from default surrender this policy to the company at its home office for a cash surrender value or for paid-up insurance as provided in options (a) and (c) the insurance will be continued as provided in option (b). The paid-up or continued temporary and pure endowment insurance will be payable in twenty equal annual installments and the payment of twenty installments under either option shall discharge the company from all liability under this policy.

The figures in the following table are computed in accordance with the above provisions and upon the assumption that there is no indebtedness on the policy, and that there are no outstanding dividend additions.

(At the option of the company the following may be here inserted: "The figures apply to a policy of \$1,000. As this contract is for \$....., the loan, cash, paid-up insurance or pure endowment available in any year will be the amount stated in the table for that year.")

At End of Year	Cash or Loan Value	Paid Up Endowment Insurance	Continued Insurance			Pure Endow- ment
			Years	Months	Days	
3	\$.....	\$.....	\$.....
4	\$.....	\$.....	\$.....
5	\$.....	\$.....	\$.....
6	\$.....	\$.....	\$.....
7	\$.....	\$.....	\$.....
8	\$.....	\$.....	\$.....
9	\$.....	\$.....	\$.....
10	\$.....	\$.....	\$.....
11	\$.....	\$.....	\$.....
12	\$.....	\$.....	\$.....
13	\$.....	\$.....	\$.....
14	\$.....	\$.....	\$.....
15	\$.....	\$.....	\$.....
16	\$.....	\$.....	\$.....
17	\$.....	\$.....	\$.....
18	\$.....	\$.....	\$.....
19	\$.....	\$.....	\$.....
20	\$.....	\$.....	\$.....

Figures for later years will be furnished upon request.

Reinstatement. In case of continued temporary insurance under the above provisions this policy upon evidence of insurability satisfactory to the company may be reinstated within the first three years of the term for which the insurance is continued by payment of arrears of premiums with interest at (here insert not greater than six) per centum per annum.

.....

Agents are not authorized to modify this policy or to extend the time for paying a premium.

In witness whereof, the company has caused this policy to be executed this day of

NORTH DAKOTA STANDARD LIFE INSURANCE POLICY.

Term.

Age

Amount \$.....

Premium \$.....

.....
.....
.....

Of North Dakota.

In consideration of dollars, receipt of which is hereby acknowledged, and of the payment of (here insert amounts and times of payments of premiums) until full year's premiums shall have been paid or until the prior death of the insured, promises to pay upon receipt at the home office of the company in of due proof of the death of, of, county of state of North Dakota, herein called the insured, within years from the date hereof, dollars, less any indebtedness hereon to the company and any unpaid portion of the premium for the then current policy year, at said home office, to beneficiary..... with (insert "out" if so desired) right of revocation.

Change of Beneficiary. When the right of revocation has been reserved, or in case of the death of any beneficiary under either a revocable or irrevocable designation, the insured, subject to any existing assignment of the policy, may designate a new beneficiary with or without reserving the right of revocation by filing written notice thereof at the home office of the company, accompanied by the policy for suitable indorsement thereon. If any beneficiary shall die before the insured and the insured shall not have designated a new beneficiary the interest of such beneficiary shall be payable to the insured, (insert "his" or "her") executors, administrators or assigns.

Payment of Premiums. The company will accept payment of premiums at other times than as stated above, as follows:

.....
.....

Except as herein provided the payment of a premium or installment thereof shall not maintain the policy in force beyond the date when the next premium or installment thereof is payable.

All premiums are payable in advance at said home office, or to an agent of the company upon delivery of a receipt signed by one or more of the following officers of the company (insert titles of officers who may sign receipts) and countersigned by said agent.

A grace of one month subject to an interest charge at the rate of per centum per annum shall be granted for the payment of every premium after the first, during which month the insurance shall continue in force. If the insured shall die during the month of grace the overdue premium will be deducted from any amount payable hereon in any settlement hereunder.

Conditions. (The policy may here provide for restrictions of liability by reason of travel, occupation, change of residence and suicide. These restrictions, except such as refer to military and naval service in time of war, must be applicable only to cases where the act of the insured provided against occurs within two years after the issuance of the policy.)

Incontestability. This policy constitutes the entire contract between the parties and shall be incontestable, from its date, except for nonpayment of premiums and except as otherwise provided in this policy. All statements made by the insured shall in the absence of fraud be deemed representations and not warranties and no such statement shall avoid this policy unless it is contained in a written application and a copy of such application shall be indorsed upon or attached to this policy when issued. If the age of the insured

has been understated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

Participation. This policy shall participate in the surplus of the company and beginning not later than the end of the (insert first, second or third) policy year the company will annually determine and account for the portion of the divisible surplus accruing hereon.

Dividends. Dividends at the option of the owner of this policy shall on the day of of each year (here may be inserted " after the first policy year " or " after the second policy year ") be either

1. Paid in cash, or,

2. Applied toward the payment of any premium or premiums, or (the policy, at the option of the company, may here provide for a further option, as follows:)

3. Left to accumulate to the credit of the policy with interest at (here insert a rate not exceeding that used by the company in calculating its reserves) per centum per annum and payable at the maturity of the policy, or at the expiration of the term, but withdrawable on any anniversary of the policy.

Unless the owner of this policy shall elect otherwise within three months after the mailing by the company of a written notice requiring such election, the dividends shall be paid in cash.

Assignment. No assignment of this policy shall be binding upon the company, until it be filed with the company at its said home office. The company assumes no responsibility as to the validity of any assignment.

(If the term of the policy is for more than twenty years, the company shall provide for continuance of insurance on surrender or lapse in the following form:)

Continuance of Insurance on Lapse. In event of default in premium payments after this policy shall have been in force three full years, the reserve hereon according to the (designate mortality table adopted by the company for computing reserves) mortality table and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum, less (here may be inserted not more than two and one-half) per centum of the amount insured by this policy will be applied to the purchase of nonparticipating continued temporary insurance for the face amount of this policy at net single premium rates at the attained age of the insured according to the same table of mortality and rate of interest.

TABLE OF CONTINUED INSURANCE.

End of Year	Years	Continued Insurance Months	Days
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

Figures for later years will be furnished upon request.

(If the term policy is for more than twenty years the company shall provide for reinstatement in the following form:)

Reinstatement. Upon evidence of insurability satisfactory to the company this policy may be reinstated within the first three years of the term for which the insurance is continued by payment of arrears of premiums with interest at (here insert not greater than six) per centum per annum.

Options at Maturity. The insured, by written notice to the company at its home office and with written consent of the assignee and irrevocable beneficiary, if any, may elect to have the net sum payable under this policy paid either in cash or as follows:

1. By the payment of interest thereon at per centum per annum, payable annually to the payee under this policy at the end of each year during the life of the payee and by the payment upon the death of the payee of the said net sum and accrued interest to the executors, administrators or assigns of the payee, unless otherwise directed in said notice.

2. By the payment of equal annual installments for a specified number of years, the first installment being payable immediately, in accordance with the following table for each one thousand dollars of said net sum.

3. By the payment of equal annual payments payable at the beginning of each year for a fixed period of twenty years and for so many years longer as the payee shall survive, in accordance with the following table for each one thousand dollars of said net sum.

Installments payable under options (2) or (3) which shall not have been paid prior to the death of the payee shall be paid, unless otherwise directed in said notice, to the executors, administrators or assigns of the payee.

If the insured shall not have directed otherwise the beneficiary may, after the death of the insured, by like written notice, and with the written consent of the assignee, if any, select either of the above options.

Unless otherwise specified by the insured the payee may on any interest date receive the amount yet due under option (1), and may at any time receive the commuted value of payments yet to be made, computed upon the same basis as option (2) in the following table, provided that no such commutation will be made under (3), except after the death of the payee occurring within the aforesaid twenty years.

TABLE OF INSTALLMENTS FOR EACH \$1,000.

OPTION 2		OPTION 3	
Number of Annual Installments	Amount of Each Installment	Age of Payee When Policy Becomes Payable	Amount of Each Installment

(Blank lines)

Agents are not authorized to modify this policy or to extend the time for paying a premium.

In Witness Whereof, the company has caused this policy to be executed this day of

NORTH DAKOTA STANDARD LIFE INSURANCE POLICY.

Term with right to renew and change.

Age....

Amount \$..... Premium \$.....

OF NORTH DAKOTA.

In consideration of dollars, receipt of which is hereby acknowledged, and of the payment of (here insert amounts and times

of payments of premium) until full year's premium shall have been paid or until the prior death of the insured.

Promises to pay upon receipt at the home office of the company in of due proof of the death of of, county of, state of North Dakota, herein called the insured, within years from the date hereof, dollars, less any indebtedness hereon to the company and any unpaid portion of the premium for the then current policy year, at said home office, to..... beneficiary.... with (insert " out " if so desired) right of revocation.

Change of Beneficiary. When the right of revocation has been reserved, or in case of the death of any beneficiary under either a revocable or irrevocable designation, the insured, subject to any existing assignment of the policy, may designate a new beneficiary with or without reserving right of revocation by filing written notice thereof at the home office of the company, accompanied by the policy for suitable indorsement thereon. If any beneficiary shall die before the insured and the insured shall not have designated a new beneficiary the interest of such beneficiary shall be payable to the insured (insert " his " or " her ") executors, administrators or assigns.

Payment of Premiums. The company will accept payment of premiums at other times than as stated above, as follows:

.....

 Except as herein provided the payment of premium or installment thereof shall not maintain the policy in force beyond the date when the next premium or installment thereof is payable.

All premiums are payable in advance at said home office, or to an agent of the company upon delivery of a receipt signed by one or more of the following officers of the company (insert titles of officers who may sign receipts) and countersigned by said agent.

A grace of one month subject to an interest charge at the rate of per centum per annum shall be granted for the payment of every premium after the first, during which month the insurance shall continue in force. If the insured shall die during the month of grace the overdue premium will be deducted from any amount payable hereon in any settlement hereunder.

Conditions. (The policy may here provide for restrictions of liability by reason of travel, occupation, change of residence, and suicide. These restrictions, except such as refer to military and naval service in time of war, must be applicable only to cases where the act of the insured provided against occurs within two years after the issuance of the policy.)

Incontestability. This policy constitutes the entire contract between the parties and shall be incontestable from its date, except for nonpayment of premiums and except as otherwise provided in this policy. All statements made by the insured shall in the absence of fraud be deemed representations and not warranties and no such statement shall avoid this policy unless it is contained in a written application and a copy of such application shall be indorsed upon or attached to this policy when issued.

If the age of the insured has been understated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

Participation. This policy shall participate in the surplus of the company and beginning not later than the end of the (insert first, second and third) policy year the company will annually determine and account for the portion of the divisible surplus accruing hereon.

Dividends. Dividends at the option of the owner of this policy shall on the day of, of each year (here may be inserted " after the first policy year " or " after the second policy year ") be either:

1. Be paid in cash, or,
 2. Applied toward the payment of any premium or premiums. (The policy at the option of the company may here provide for a further option, as follows:)

3. Left to accumulate to the credit of the policy with interest at (here insert a rate not exceeding that used by the company in calculating its reserves) per centum per annum and payable at the maturity of the policy, or at the expiration of the term, but withdrawable on any anniversary of the policy.

Unless the owner of this policy shall elect otherwise within three months after the mailing by the company of a written notice requiring such election, the dividends shall be paid in cash.

Privilege of Renewal. The owner of this policy, if the insured be not over the age of sixty-five years, may renew this policy for the further terms of years each by written notice to the company at its said home office accompanied by this policy for suitable indorsement on or before the expiration of the insurance hereunder and by paying the premiums to be fixed by the age on the birthday nearest to the date of such renewal in accordance with the following table for each one thousand dollars of insurance; if the insured shall be over the age of sixty-five years this policy may upon similar notice be surrendered for an ordinary life policy which shall require premiums during life in accordance with the following table for each one thousand dollars of insurance.

TABLE OF PREMIUMS FOR RENEWALS.

Attained Age	Years Term Premium Payable in Advance for Each \$1,000	Attained Age	Ordinary Life Premium Payable in Advance for Each \$1,000
-----------------	--	-----------------	---

(Blank lines.)

Privilege to Change to Other Forms of Policies. The owner of this policy may at any time within the first years exchange this policy for a participating policy for the same amount or any less amount upon the ordinary life, limited payment life, or endowment plan upon any anniversary of the policy, or within the month of grace by surrendering the policy to the company at said home office with written notice of the election and by paying the premiums to be fixed by the age on the birthday nearest to the date of such exchange according to the rates of the company then in force.

Assignment. No assignment of this policy shall be binding upon the company, until it be filed with the company at its said home office. The company assumes no responsibility as to the validity of any assignment.

(If the term of the policy is for more than twenty years the company shall provide for continuance of insurance on surrender or lapse in the following form:)

Continuance of Insurance on Lapse. In event of default in premium payments after this policy shall have been in force three full years, the reserve hereon according to the (designate mortality table, adopted by the company for computing reserves) mortality table, and interest at the rate of (designate rate of interest adopted by the company for computing reserves) per centum per annum, less (here may be inserted not more than two and one-half) per centum of the amount insured by this policy will be applied to the purchase of nonparticipating continued temporary insurance for the face amount of this policy at net single premium rates at the attained age of the insured according to the same table of mortality and rate of interest.

TABLE OF CONTINUED INSURANCE.

At End of Year	Years	Continued Insurance Months	Days
3
4
5
6
7
8
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10
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Figures for later years will be given upon request.

(If the term of the policy is for more than twenty years, the company shall provide for reinstatement in the following form:)

Reinstatement. Upon evidence of insurability satisfactory to the company this policy may be reinstated within the first three years of the term for which the insurance is continued by payment of arrears of premiums with interest at (here insert not greater than six) per centum per annum.

Options at Maturity. The insured, by written notice to the company at its home office and with the written consent of the assignee and irrevocable beneficiary, if any, may elect to have the net sum payable under this policy paid either in cash or as follows:

1. By the payment of interest thereon at per centum per annum, payable annually, to the payee under this policy at the end of each year during the life of the payee and by the payment upon the death of the payee of the said net sum and accrued interest to the executors, administrators or assigns of the payee, unless otherwise directed in said notice.

2. By the payment of equal annual installments for a specified number of years, the first installment being payable immediately, in accordance with the following table for each one thousand dollars of said net sum.

3. By the payment of equal annual installments payable at the beginning of each year for a fixed period of twenty years and for so many years longer as the payee shall survive, in accordance with the following table for each one thousand dollars of said net sum.

Installments payable under (2) or (3) which shall not have been paid prior to the death of the payee shall be paid, unless otherwise directed in said notice, to the executors, administrators or assigns of the payee.

If the insured shall not have otherwise directed the beneficiary may after the death of the insured by like written notice and with the written consent of the assignee, if any, select either of the above options.

Unless otherwise specified by the insured the payee may, on any interest date, receive the amount yet due under option (1) and may at any time receive the commuted value of payments yet to be made, computed upon the same basis as option (2) in the following table, provided that no such commutation will be made under (3), except after the death of the payee occurring within the aforesaid twenty years.

TABLE OF INSTALLMENTS FOR EACH \$1,000.

(Option 2)		(Option 3)	
Number of Annual Installments	Amount of Each Installment	Age of Payee When Policy Becomes Payable	Amount of Each Installment
(Blank lines.)			

Agents are not authorized to modify this policy or to extend the time for payment of a premium.

In Witness Whereof, the company has caused this policy to be executed this day of [1907, ch. 140, § 2.]

§ 6635a. Single premium policies. Single premium policies may be issued in any form prescribed in section 6635, omitting therefrom provisions or portions thereof applicable only to other than single premium policies. Nonparticipating policies may be issued in any form prescribed in section 6635 if they shall contain a provision that the policy shall be nonparticipating, and such policies shall omit therefrom clauses for participation in the surplus of the company. [1907, ch. 140, § 3.]

§ 6635b. Term insurance. Policies issued on the standard forms prescribed in section 6635 may provide for not more than one year preliminary term insurance by corporation therein of the following clause immediately preceding the "change of beneficiary" clause: "The first year's insurance under this policy is term insurance." If the premium charged for term insurance under a limited payment life preliminary term policy providing for the payment of all premiums thereon in less than twenty years from the date of the policy or under an endowment preliminary term policy, exceeds that charged for like insurance under twenty payment preliminary term policies of the same company, the reserve thereon at the end of any year, including the first, shall not be less than the reserve on the twenty payment preliminary term policy issued in the same year and at the same age, together with an amount which shall be equivalent to the accumulation of a net level premium sufficient to provide for a pure endowment at the end of the premium-payment period equal to the difference between the value at the end of such period of such twenty payment preliminary term policy and the full reserve at such time of such a limited payment or endowment policy. [1909, ch. 149; 1907, ch. 140, § 4.]

§ 6635c. Provisions of life policies. No policy of life insurance in form other than as provided in section 6635 shall be issued in this state or be issued by a life insurance company organized under the laws of this state unless the same shall contain the following provisions:

1. A provision that all premiums shall be payable in advance either at the home office of the company, or to an agent of the company, upon delivery of a receipt signed by one or more of the officers who shall be named in the policy.

2. A provision for a grace of one month for the payment of every premium after the first, which may be subject to an interest charge during which month the insurance shall continue in force, which provision may contain a stipulation that if the insured shall die during the month of grace the over-due premium will be deducted in any settlement under the policy.

3. A provision that the policy shall constitute the entire contract between the parties and shall be incontestable after two years from its date, except for nonpayment of premiums and except for violations of the conditions of the policy relating to naval and military services in time of war.

4. A provision that all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties and that no such statement shall void the policy unless it is contained in a written application and a copy of such application shall be indorsed upon or attached to the policy when issued.

5. A provision that if the age of the insured has been understated the amount payable under the policy shall be such as the premium would have purchased at the correct age.

6. A provision that the policy shall participate in the surplus of the company and that, beginning not later than the end of the third policy year, the company will annually determine and account for the portion of the divisible surplus accruing on the policy, and that the owner of the policy shall have the right each year to have the current dividend arising from such participation paid in cash and if the policy shall provide other dividend options, it shall further provide that if the owner of the policy shall not elect any such other options the dividends shall be paid in cash. This provision shall not be required in nonparticipating policies.

7. A provision that after three full years' premiums have been paid the company at any time while the policy is in force will advance on proper assignment of the policy and on the sole security thereof, at a specified rate of interest, a sum equal to, or at the option of the owner of the policy, less than, the reserve at the end of the current policy year on the policy and on any dividend additions thereto, specifying the mortality table and rate of interest adopted for computing such reserve, less a sum not more than two and one-half per centum of the amount insured by the policy and of any dividend additions thereto; and that the company will deduct from such loan value any existing indebtedness on the policy and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year; which provision may further provide that such loan may be deferred for not exceeding six months after the application thereof is made. It shall be further stipulated in the policy that failure to repay any such advance or to pay interest shall not void the policy unless the total indebtedness thereon to the company shall equal or exceed such loan value at the time of such failure nor until one month after notice shall have been mailed by the company to the last known address of the insured and of the assignee, if any. No condition other than as herein provided shall be exacted as a prerequisite to any such advance. This provision shall not be required in term insurances.

8. A provision which, in event of default in premium payments, after premium shall have been paid for three years, shall secure to the owner of the policy a stipulated form of insurance, the net value of which shall be at least equal to the reserve at the date of default on the policy and on any dividend additions thereto, specifying the mortality table and rate of interest adopted for computing such reserves, less a sum of not more than two and one-half per centum of the amount insured by the policy and of any existing dividend additions thereto, and less any existing indebtedness to the company on the policy. Such provision shall stipulate that the policy may be surrendered to the company at its home office within one month from date of default for a specified cash value at least equal to the sum which would otherwise be available for the purchase of insurance as aforesaid and may stipulate that the company may defer payment for not more than six months after the application therefor is made. This provision shall not be required in term insurances of twenty years or less.

9. A table showing in figures the loan values, and the options available under the policies each year upon default in premium payments, during at least the first twenty years of the policy, beginning with the year in which such values and options become available.

10. A provision that if, in event of default in premium payments, the value of the policy shall be applied to the purchase of other insurance, and if such insurance shall be in force and the original policy shall not have been surrendered to the company and cancelled, the policy may be reinstated within

three years from such default, upon evidence of insurability satisfactory to the company and payment of arrears of premiums with interest.

11. A provision that when a policy shall become a claim by the death of the insured settlement shall be made upon receipt of due proof of death, or not later than two months after receipt of such proof.

12. A table showing the amounts of installments in which the policy may provide its proceeds may be payable.

13. A title on the face and on the back of the policy correctly describing the same.

Any of the foregoing provisions or portions thereof relating to premiums not applicable to single [premium] policies, shall to that extent not be incorporated therein. [1907, ch. 140, § 5.]

§ 6635d. Provisions prohibited. No policy of life insurance in form other than as prescribed in section 6635 shall be issued or delivered in this state or be issued by a life insurance company organized under the laws of this state, if it contain any of the following provisions:

1. A provision for forfeiture of the policy for failure to repay any loan on the policy or to pay interest on such loan while the total indebtedness on the policy is less than the loan value thereof; or any provision for forfeiture for failure to repay any such loan or to pay interest thereon, unless such provision contain a stipulation that no such forfeiture shall occur until at least one month after notice shall have been mailed by the company to the last known address of the insured and of the assignee, if any.

2. A provision limiting the time within which any action at law or in equity may be commenced to less than five years after the cause of action shall accrue.

3. A provision by which the policy shall purport to be issued or to take effect before the original application for the insurance was made, if thereby the assured would rate at an age younger than his age at date when the application was made, according to his age at nearest birthday.

4. A provision for any mode of settlement at maturity of less value than the amount insured on the face of the policy plus dividend additions, if any, less any indebtedness to the company on the policy and less any premium that may by the terms of the policy be deducted. [1907, ch. 140, § 6.]

§ 6635e. Preliminary term policies. Preliminary term policies not issued on the standard forms shall also be subject to the provisions of section 6635b. [1907, ch. 140, § 7.]

§ 6635f. Form filed with insurance commissioner. No policy of life insurance shall be issued or delivered in this state, or be issued by a life insurance company organized under the laws of this state, until the form of the same has been filed with the insurance commissioner; and after the insurance commissioner shall have notified any company of his disapproval of any form it shall be unlawful for such company to issue any policy in the form so disapproved. The commissioner's action shall be subject to review by any court of competent jurisdiction. [1907, ch. 140, § 8.]

§ 6635g. Provisions restricted. The policies of a life insurance company, not organized under the laws of this state, may contain any provision which the law of this state, territory, district or county under which the company is organized, prescribes shall be in such policies when issued in this state, and the policies of a life insurance company organized under the laws of this state may, when issued or delivered in any other state, territory, district or county, contain any provision required by the laws of the state, territory, district or county in which the same are issued, anything in this act to the contrary notwithstanding. [1907, ch. 140, § 9.]

§ 6635h. What companies exempt. This act [sections 6634-6635i] shall not apply to annuities, industrial policies or to corporations or associations operating on the assessment or fraternal plan. [1907, ch. 140, § 10.]

§ 6635i. "Company" defined. Wherever the word "company" is used

in this act [sections 6634-6635i] it shall be held to include corporations and associations. [1907, ch. 140, § 11.]

§ 6636. Policy must contain entire contract. Every policy of life insurance issued or delivered within this state on or after the first day of January, 1908, by any life insurance corporation doing business within the state shall contain the entire contract between the parties. [1907, ch. 155.]

CHAPTER 82.

POLICIES OF HEALTH OR ACCIDENT INSURANCE.

§ 6637. Typography of policy, and provisions required. No policy of insurance against loss or damage by the sickness, bodily injury or death by accident of the assured shall be issued or delivered in this state, unless the same shall be plainly printed, no portion thereof in smaller than long primer type, and every policy so issued and delivered shall contain the following provisions:

1. A provision that notice of accident or disability shall be given within forty (40) days, unless such notice may be shown not to have been reasonably possible, to some certain office or officer designated therein.

2. A provision that the policy or certificate contains the entire contract.

3. A provision that if a past-due premium is accepted after lapse, such acceptance shall reinstate the policy in full.

4. A provision that if the occupation of the insured be changed to a more hazardous one, then the benefit and payment to be such as the premium would pay for in that occupation.

5. All benefits called for by the policy shall be specifically stated in full therein, and all exceptions shall be stated specifically and with the same prominence as the benefits. [1911, ch. 158, § 1.]

§ 6638. Provisions forbidden. No policy of insurance against loss or damage by the sickness, bodily injury or death by accident of the assured shall be issued or delivered in this state if it contain any of the following provisions:

1. A provision limiting the time in which an action at law or in equity may be commenced to less than two years after date upon which final proof of loss or disability shall have been filed with the company.

2. A provision referring to the constitution, by-laws or rules of the company or association or attempting to make the same a part of the policy.

3. A provision for the deduction of advance premiums or assessments from benefits payable under the terms of the policy.

4. A provision limiting the amount of indemnity to be paid to a sum less than the indemnity as stated in the policy and for which the premium has been paid. [1911, ch. 158, § 2.]

§ 6639. Application of this chapter. This chapter shall apply to all companies, corporations or associations issuing a policy of insurance against loss or damage caused by the sickness, bodily injury or death by accident of the assured, except fraternal beneficiary associations. [1911, ch. 158, § 3.]

§ 6640. Form of policy to be filed with insurance commissioner for approval. No policy of insurance against loss or damage by the sickness, bodily injury or death by accident of the assured shall be issued or delivered in this state by any company, corporation or association until the form of the same, together with a table of rates and classification of risks, has been filed with the commissioner of insurance; and after the commissioner of insurance shall have notified any company, corporation or association of his disapproval of any form, stating his reasons therefor in writing, it shall be unlawful for such company, corporation or association to issue any policy in the form so disapproved. The commissioner's action shall be subject to review by any court of competent jurisdiction. [1911, ch. 158, § 4.]

CHAPTER 83.

INDEMNITY.

§ 6641. Defined. Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties or of some other person. [R. C. 1905, § 6065; Civ. C. 1877, § 1639; R. C. 1899, § 4615.]

Contracts of indemnity within the statute of frauds. 42 Am. St. Rep. 186.

As to similar provision in Cal. Civ. Code, § 2772, see *Graves v. Moore*, 58 Cal. 435;

Magee v. McManus, 70 Cal. 553, 12 Pac. 451.

§ 6642. Against unlawful act void. An agreement to indemnify a person against an act thereafter to be done is void, if the act is known by such person at the time of doing it to be unlawful. [R. C. 1905, § 6066; Civ. C. 1877, § 1640; R. C. 1899, § 4616.]

Validity of agreement to indemnify bail in a criminal case. 14 L.R.A. 78; 20 L.R.A.(N.S.) 58.

Agreements to indemnify against illegal acts. 40 Am. Dec. 425.

§ 6643. Against act done valid, unless felony. An agreement to indemnify a person against an act already done is valid, even though the act was known to be wrongful, unless it was a felony. [R. C. 1905, § 6067; Civ. C. 1877, § 1641; R. C. 1899, § 4617.]

§ 6644. Against act of person includes agents. An agreement to indemnify against the acts of a certain person applies not only to his acts and their consequences, but also to those of his agents. [R. C. 1905, § 6068; Civ. C. 1877, § 1642; R. C. 1899, § 4618.]

§ 6645. Several includes each. An agreement to indemnify several persons applies to each, unless a contrary intention appears. [R. C. 1905, § 6069; Civ. C. 1877, § 1643; R. C. 1899, § 4619.]

§ 6646. When liable jointly with person indemnified. One who indemnifies another person against an act to be done by the latter is liable jointly with the person indemnified and separately to every person injured by such act. [R. C. 1905, § 6070; Civ. C. 1877, § 1644; R. C. 1899, § 4620.]

§ 6647. Rules to be applied in interpretation. In the interpretation of a contract of indemnity the following rules are to be applied, unless a contrary intention appears:

1. Upon an indemnity against liability, expressly or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable.

2. Upon an indemnity against claims or demands, or damages or costs, expressly or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof.

3. An indemnity against claims or demands, or liability, expressly or in other equivalent terms, embraces the costs of defense against such claims, demands or liability incurred in good faith and in the exercise of reasonable discretion.

4. The person indemnifying is bound on request of the person indemnified to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity; but the person indemnified has the right to conduct such defense, if he chooses to do so.

5. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter suffered by him in good faith is conclusive in his favor against the former.

6. If the person indemnifying, whether he is a principal or a surety in the agreement, has not reasonable notice of the action or proceedings against the person indemnified, or is not allowed to control its defense, judgment against the latter is only presumptive evidence against the former.

7. A stipulation, that a judgment against the person indemnified shall be conclusive upon the person indemnifying, is inapplicable if he had a good

defense upon the merits which by want of ordinary care he failed to establish in the action. [R. C. 1905, § 6071; Civ. C. 1877, § 1645; R. C. 1895, § 4621.]

One suing on contract of indemnity must show he was injured or became liable to another for damages growing out of the transaction indemnified against. *Cranmer v. Building & Loan Ass'n*, 6 S. D. 341, 61 N. W. 35.

Indemnification of bail in criminal actions is governed by these sections. *Western Surety Co. v. Kelley*, 27 S. D. 465, 131 N. W. 808.

Construction of bond or policy indemnifying employer against loss from negligence of employe. 31 L.R.A.(N.S.) 775.

Injuries covered by employer's indemnity policy. 30 L.R.A.(N.S.) 1192.

How far does limitation of liability in policy of indemnity insurance against liability for injuries to employes and others include expenses of litigation. 12 L.R.A.(N.S.) 478.

Liability under policy indemnifying against liability for injuries to compensate insured for expenses incurred in successful defense or compromise of action. 30 L.R.A.(N.S.) 1105.

Construction of policy or contract insuring against loss of rents. 16 L.R.A.(N.S.) 1055; 23 L.R.A.(N.S.) 123.

When surety becomes liable on contract of indemnity. 1 Am. Dec. 47.

Indemnity to sheriffs for damages suffered by them in executing civil process. 89 Am. St. Rep. 448.

Conclusiveness of judgments against principals in action against indemnitors. 22 Am. St. Rep. 204.

When right of action accrues on contract of indemnity. 49 Am. Dec. 362.

As to similar provision in Cal. Civ. Code, § 2778, see *McBeth v. McIntyre*, 57 Cal. 49; *Commercial Union Assur. Co. v. American Cent. Ins. Co.*, 68 Cal. 430, 9 Pac. 712; *Showers v. Wadsworth*, 81 Cal. 270, 22 Pac. 663; *Fernandez v. Tormey*, 121 Cal. 515, 53 Pac. 1119.

§ 6648. Engagement to answer for violation of duty. Reimbursement.

When one at the request of another engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety for whatever he may pay. [R. C. 1905, § 6072; Civ. C. 1877, § 1646; R. C. 1899, § 4622.]

§ 6649. When sureties called bail. Upon those contracts of indemnity which are taken in legal proceedings as security for the performance of an obligation imposed or declared by the tribunals and known as undertakings or recognizances, the sureties are called bail. [R. C. 1905, § 6073; Civ. C. 1877, § 1647; R. C. 1899, § 4623.]

As verb word "bail" means to deliver arrested person to sureties upon their giving security for his appearance in court. *State v. Western Surety Co.*, 26 S. D. 170, 128 N. W. 173.

Presumption that obligation is joint and not several which arises under section 1118 does not depend on particular obligation imposed on persons therein named as bail. *State v. Western Surety Co.*, 26 S. D. 170, 128 N. W. 173.

§ 6650. Obligations of bail, how governed. The obligations of bail are governed by the statutes specially applicable thereto. [R. C. 1905, § 6074; Civ. C. 1877, § 1648; R. C. 1895, § 4624.]

CHAPTER 84.

GUARANTY.

- ARTICLE 1. DEFINITION OF GUARANTY, §§ 6651, 6652.
 2. CREATION OF GUARANTY, §§ 6653-6656.
 3. INTERPRETATION OF GUARANTY, §§ 6657-6660.
 4. LIABILITY OF GUARANTORS, §§ 6661-6665.
 5. CONTINUING GUARANTY, §§ 6666, 6667.
 6. EXONERATION OF GUARANTORS, §§ 6668-6674.

ARTICLE 1.—DEFINITION OF GUARANTY.

§ 6651. **Defined.** A guaranty is a promise to answer for the debt, default or miscarriage of another person. [R. C. 1905, § 6075; Civ. C. 1877, § 1649; R. C. 1899, § 4625.]

The contract of guaranty. 105 Am. St. Rep. 502.

Effect on contract of guaranty of death of party thereto. 23 L.R.A. 709; 45 L.R.A.(N.S.) 350.

Is liability of guarantor or surety determined by his death. 2 B. R. C. 937.

Indorser of note as guarantor. 18 L.R.A.(N.S.) 565.

Letter in reply to inquiry as to third party's financial condition. 1 L.R.A.(N.S.) 305.

Request to make advances to another as implied guaranty of payment. 15 L.R.A.(N.S.) 1115; 46 L.R.A.(N.S.) 484.

As to similar provision in Cal. Civ. Code, § 2787, see *Fessenden v. Summers*, 62 Cal. 484.

§ 6652. Knowledge of principal unnecessary. A person may become guarantor even without the knowledge or consent of the principal. [R. C. 1905, § 6076; Civ. C. 1877, § 1650; R. C. 1899, § 4626.]

ARTICLE 2.—CREATION OF GUARANTY.

§ 6653. Consideration for. When a guaranty is entered into at the same time with the original obligation or with the acceptance of the latter by the guarantee and forms with that obligation a part of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation. [R. C. 1905, § 6077; Civ. C. 1877, § 1651; R. C. 1899, § 4627.]

One agreeing to collect money due him and payor of note and pay payee on obligation of payor, is liable as guarantor if he collects money. *Rankin v. Matthiesen*, 10 S. D. 628, 75 N. W. 196.

Where one has collected money on note which he has not paid over, the moral obligation to pay is sufficient to support guaranty. *Rankin v. Matthiesen*, 10 S. D. 628, 75 N. W. 196.

Necessity of new consideration to bind third person who signs as guarantor after execution and delivery of original contract by principal. 44 L.R.A.(N.S.) 481.

§ 6654. When must be in writing. Except as prescribed by the next section a guaranty must be in writing and signed by the guarantor; but the writing need not express a consideration. [R. C. 1905, § 6078; Civ. C. 1877, § 1652; R. C. 1899, § 4628.]

§ 6655. When need not be in writing. A promise to answer for the obligation of another in any of the following cases is deemed an original obligation of the promisor and need not be in writing:

1. When the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise; or by one who has received a discharge from an obligation in whole or in part in consideration of such promise.

2. When the creditor parts with value or enters into an obligation in consideration of the obligation in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor and the person in whose behalf it is made his surety.

3. When the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy or his person from imprisonment under an execution on a judgment obtained upon the antecedent obligation; or upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation or from another person.

4. When a factor undertakes for a commission to sell merchandise and guarantee the sale.

5. When the holder of an instrument for the payment of money upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument. [R. C. 1905, § 6079; Civ. C. 1877, § 1653; R. C. 1899, § 4629.]

Oral contract to pay debt of another. *McArthur v. Dryden*, 6 N. D. 438, 71 N. W. 125; *McMillan v. Aitchison*, 3 N. D. 183, 54 N. W. 1030.

Promise to see that one gets his money from third person an original agreement and binding, though not in writing. *Meldrum v. Kenefick*, 15 S. D. 370, 89 N. W. 863.

One's agreement to pay another's claim to discharge his own obligation as "original obligation." *Grimsrud Shoe Co. v. Jackson*, 22 S. D. 114, 115 N. W. 656.

Validity of lessor's oral promise to pay for goods delivered to lessee. *Wood v. Dodge*, 23 S. D. 95, 120 N. W. 774.

Is oral promise to pay another's pre-existing debt made in order to secure benefit to promisor without releasing original debtor within statute of frauds. 22 L.R.A.(N.S.) 1077; 40 L.R.A.(N.S.) 242.

Contemporary promise of one person to pay where benefit inures to another as a promise to answer for default of another within statute of frauds. 15 L.R.A.(N.S.) 214; 32 L.R.A.(N.S.) 598.

§ 6656. Acceptance necessary. A mere offer to guaranty is not binding until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance. [R. C. 1905, § 6080; Civ. C. 1877, § 1654; R. C. 1899, § 4630.]

Test is whether there has been a mental assent—necessary to existence of contract. *Sewing Machine Co. v. Church*, 11 N. D. 420, 92 N. W. 805.

Mutual assent or meeting of minds necessary to make guaranty absolute. *Standard Sewing Mach. Co. v. Church*, 11 N. D. 420, 92 N. W. 805.

Offer to guaranty fulfillment of obligations by agent is not binding until receipt of notice of acceptance. *William Deering & Co. v. Mortell*, 21 S. D. 159, 16 L.R.A.(N.S.) 352, 110 N. W. 86.

Necessity of notice of acceptance to bind guarantor. 16 L.R.A.(N.S.) 353; 33 L.R.A.(N.S.) 960; 48 L.R.A.(N.S.) 198; 39 Am. Dec. 221.

As to similar provision in Cal. Civ. Code, § 2795, see *London & S. F. Bank v. Parrott*, 125 Cal. 472, 73 Am. St. Rep. 64, 58 Pac. 164.

ARTICLE 3.—INTERPRETATION OF GUARANTY.

§ 6657. Of contract, what implied. In a guaranty of a contract the terms of which are not then settled, it is implied that its terms shall be such as will not expose the guarantor to greater risks than he would incur under those terms which are most common in similar contracts at the place where the principal contract is to be performed. [R. C. 1905, § 6081; Civ. C. 1877, § 1655; R. C. 1899, § 4631.]

§ 6658. Of obligations, what implied. A guaranty to the effect that an obligation is good or is collectible imports that the debtor is solvent and that the demand is collectible by the usual legal proceedings, if taken with reasonable diligence. [R. C. 1905, § 6082; Civ. C. 1877, § 1656; R. C. 1899, § 4632.]

"For value received we hereby guarantee the collection of the within note," guarantees only that makers were solvent. *Roberts, Throp & Co. v. Laughlin*, 4 N. D. 167, 59 N. W. 967.

Guaranty of collection. 64 Am. Rep. 393.

§ 6659. When not discharged by omission. A guaranty such as is mentioned in the last section is not discharged by an omission to take proceedings upon the principal debt or upon any collateral security for its payment, if no part of the debt could have been collected thereby. [R. C. 1905, § 6083; Civ. C. 1877, § 1657; R. C. 1899, § 4633.]

§ 6660. When insolvency presumed from removal. In the cases mentioned in section 6658, the removal of the principal from the state leaving no property therein from which the obligation might be satisfied is equivalent to the insolvency of the principal in its effect upon the rights and obligations of the guarantor. [R. C. 1905, § 6084; Civ. C. 1877, § 1658; R. C. 1899, § 4634.]

ARTICLE 4.—LIABILITY OF GUARANTORS.

§ 6661. When guaranty deemed unconditional. A guaranty is to be deemed unconditional, unless its terms import some condition precedent to the liability of the guarantor. [R. C. 1905, § 6085; Civ. C. 1877, § 1659; R. C. 1899, § 4635.]

As to similar provision in Cal. Civ. Code, § 2806, see *Coburn v. Brooks*, 78 Cal. 443. 21 Pac. 2.

§ 6662. When guarantor of payment liable. A guarantor of payment or performance is liable to the guarantee immediately upon the default of the principal and without demand or notice. [R. C. 1905, § 6086; Civ. C. 1877, § 1660; R. C. 1899, § 4636.]

Guaranty examined and held absolute. *Fisk v. Stone*, 6 D. 35, 50 N. W. 125.

Laches releases guarantor, insolvency of guarantor will not excuse laches. *Thorp v. Laughlin*, 4 N. D. 167, 59 N. W. 967.

Guaranty by indorser makes purchaser indorsee within rule protecting innocent purchasers. *Dunham v. Peterson*, 5 N. D. 414, 67 N. W. 293, 57 Am. St. Rep. 556, 36 L.R.A. 232.

Notice of acceptance not necessary to render absolute guarantor liable. *Fisk v. Stone*, 6 D. 35, 50 N. W. 125.

When verbal guaranty will be sufficient. *Dodge v. Furber*, 6 D. 217, 50 N. W. 831.

In absence of contract, grantee in deed does not guarantee payment of mortgage on land. *Granger v. Roll*, 6 S. D. 611, 62 N. W. 970.

"I hereby guarantee collection and payment within five years from the date hereof," guaranty both of collection and payment. *Greely v. McCoy*, 3 S. D. 218, 52 N. W. 1050.

Guaranty to "satisfy all orders Mr. G. gives this spring, such as ploughs and cultivators," complete in itself. *Gilbert v. Moline Plough Co.*, 119 U. S. 491, 30 L. ed. 476, 7 S. Ct. R. 305.

"Guaranty of collection of the within note," guarantees that makers were solvent when note was made. *Roberts, Thorp & Co. v. Laughlin*, 4 N. D. 167, 59 N. W. 967.

No demand or notice is required where written guaranty is indorsed upon back of contract for purchase of goods, to pay for same in accordance with terms of contract. *McConnon v. Lawisen*, 22 N. D. 604, 135 N. W. 213.

As to similar provision in Cal. Civ. Code, § 2807, see *Fessenden v. Summers*, 62 Cal. 484; *Coburn v. Brooks*, 78 Cal. 443, 21 Pac. 2.

§ 6663. Liability on conditional obligation. When one guarantees a conditional obligation, his liability is commensurate with that of his principal and he is not entitled to notice of the default of the principal, unless he is unable by the exercise of reasonable diligence to acquire information of such default and the creditor has actual notice thereof. [R. C. 1905, § 6087; Civ. C. 1877, § 1661; R. C. 1899, § 4637.]

Necessity of notice of default to bind guarantor. 20 L.R.A. 257.

§ 6664. Limit of obligation. The obligation of a guarantor must be neither larger in amount, nor in other respects more burdensome, than that of the principal; and if in its terms it exceeds it, it is reducible in proportion to the principal obligation. [R. C. 1905, § 6088; Civ. C. 1877, § 1662; R. C. 1899, § 4638.]

Liability of guaranty members of mutual fire insurance company. 32 L.R.A. 496.

Character of, and rules governing, contracts by corporations engaged for profit in business of guarantying the fidelity or contracts of other persons. 33 L.R.A.(N.S.) 513.

§ 6665. Not liable on principal's unlawful contract. A guarantor is not liable if the contract of the principal is unlawful, but he is liable, notwithstanding any mere personal disability of the principal though the disability is such as to make the contract void against the principal. [R. C. 1905, § 6089; Civ. C. 1877, § 1663; R. C. 1899, § 4639.]

ARTICLE 5.—CONTINUING GUARANTY.

§ 6666. Defined. A guaranty relating to a future liability of the principal under successive transactions, which either continue his liability or from time to time renew it after it has been satisfied is called a continuing guaranty. [R. C. 1905, § 6090; Civ. C. 1877, § 1664; R. C. 1899, § 4640.]

When is a guaranty a continuing one. 39 L.R.A.(N.S.) 724; 55 Am. Rep. 701.

When does contract of guaranty of commercial paper cover renewals. 16 L.R.A.(N.S.) 775.

Does guaranty of credit extended for price of goods sold cover sales to successor. 19 L.R.A.(N.S.) 901.

Does liability of guarantor of payment of interest cease at maturity of the obligation. 21 L.R.A.(N.S.) 154.

Liability, under continuing guaranty running to partnership or corporation, for goods sold or credits extended after a change in the firm or corporation. 14 L.R.A.(N.S.) 1231.

§ 6667. When may be revoked. A continuing guaranty may be revoked at any time by the guarantor in respect to future transactions, unless there is a continuing consideration as to such transactions which he does not renounce. [R. C. 1905, § 6091; Civ. C. 1877, § 1665; R. C. 1899, § 4641.]

Change of guaranty; release of guarantor. *Moline Plow Co. v. Gilbert*, 3 D. 239, 15 N. W. 1; *Foley-Wadsworth Imp. Co. v. Solomon*, 9 S. D. 511, 70 N. W. 639.

Discharge of guarantor for causes existing prior to his entering upon contract of guaranty. 63 Am. St. Rep. 327.

ARTICLE 6.—EXONERATION OF GUARANTORS.

§ 6668. When exonerated. A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor without the consent of the guarantor the original obligation of the principal is altered in any respect, or the remedies or rights of the creditors against the principal in respect thereto is in any way impaired or suspended. [R. C. 1905, § 6092; Civ. C. 1877, § 1666; R. C. 1899, § 4642.]

Release of guarantor by failure to bring action within reasonable time. *Stackpole v. Trust Co.*, 10 S. D. 389, 73 N. W. 258; *Roberts, Throp & Co. v. Laughlin*, 4 N. D. 167, 59 N. W. 967.

Guarantor not released, unless there be some act by creditor by which obligation of principal is without guarantor's consent altered, or his rights impaired. *Bailey Loan Co. v. Seward*, 9 S. D. 326, 69 N. W. 58.

As to agreement extending time of payment of indebtedness, exonerating guarantor. *Foster County State Bank v. Hester*, 18 N. D. 135, 119 N. W. 1044.

Mortgagor who becomes surety on conveyance to grantee who assumes mortgage with mortgagee's consent, is discharged by extension of time of payment. *Iowa Loan & Trust Co. v. Schnose*, 19 S. D. 248, 103 N. W. 22, 9 A. & E. Ann. Cas. 255.

Distinction between guarantor and surety. *Bailey Loan Co. v. Seward*, 9 S. D. 326, 69 N. W. 58.

Extension of time for payment of note for a consideration discharges surety. *Niblack v. Champeny*, 10 S. D. 165, 72 N. W. 402.

Prior to negotiable instrument laws of 1899, extension of time of payment of note, without consent of guarantor, released guarantor from liability. *Northern State Bank v. Bellamy*, 19 N. D. 509, 31 L.R.A. (N.S.) 149, 125 N. W. 888.

Surety company which is paid premium for issuing bond will be treated as insurer rather than according to strict rules of suretyship. *Long v. American Surety Co.*, 23 N. D. 492, 137 N. W. 41.

Release of principal after maturity of obligation as affecting guarantor. 38 L.R.A. (N.S.) 875.

Estoppel to enforce contract of suretyship or guaranty released through mistake. 13 L.R.A. (N.S.) 576.

As to similar provision in Cal. Civ. Code, § 2819, see *Tuohy v. Woods*, 122 Cal. 665, 55 Pac. 683.

§ 6669. Preceding section limited. A promise by a creditor, which for any cause is void, or voidable by him at his option, does not alter the obligation or suspend or impair the remedy within the meaning of the last section. [R. C. 1905, § 6093; Civ. C. 1877, § 1667; R. C. 1899, § 4643.]

§ 6670. Guarantor once exonerated not liable. The rescission of an agreement altering the original obligation of a debtor or impairing the remedy of a creditor, does not restore the liability of a guarantor who has been exonerated by such agreement. [R. C. 1905, § 6094; Civ. C. 1877, § 1668; R. C. 1899, § 4644.]

§ 6671. Part performance, proportional exoneration. The acceptance by a creditor of anything in partial satisfaction of an obligation reduces the obligation of a guarantor thereof in the same measure as that of the principal, but does not otherwise affect it. [R. C. 1905, § 6095; Civ. C. 1877, § 1669; R. C. 1899, § 4645.]

Effect on guarantor's liability of obligee's insistence upon part payment before expiration of the term of credit. 22 L.R.A. (N.S.) 713.

§ 6672. Mere delay no exoneration. Mere delay on the part of a creditor to proceed against the principal or to enforce any other remedy does not exonerate a guarantor. [R. C. 1905, § 6096; Civ. C. 1877, § 1670; R. C. 1899, § 4646.]

Delay in collection will not release an absolute guaranty. *Porter v. Andrus*, 10 N. D. 558, 88 N. W. 567.

Guarantor is liable absolutely on default of principal, where he agrees by written guaranty on back of contract for purchase of goods to pay for them according to terms of contract. *McConnor v. Lawsen*, 22 N. D. 604, 135 N. W. 213.

§ 6673. Liability of guarantor indemnified. A guarantor, who has been indemnified by the principal, is liable to the creditor to the extent of the indemnity, notwithstanding that the creditor without the assent of the guarantor may have modified the contract or released the principal. [R. C. 1905, § 6097; Civ. C. 1877, § 1671; R. C. 1899, § 4647.]

§ 6674. Principal discharged by law no exoneration. A guarantor is not exonerated by the discharge of his principal by operation of law without the intervention or omission of the creditor. [R. C. 1905, § 6098; Civ. C. 1877, § 1672; R. C. 1899, § 4648.]

CHAPTER 85.

SURETYSHIP.

- ARTICLE 1. WHO ARE SURETIES, §§ 6675, 6676.**
2. LIABILITY OF SURETIES, §§ 6677-6681.
3. RIGHTS OF SURETIES, §§ 6682-6688.
4. RIGHTS OF CREDITORS, § 6689.
5. LETTER OF CREDIT, §§ 6690-6698.

ARTICLE 1.—WHO ARE SURETIES.

§ 6675. Defined. A surety is one who at the request of another and for the purpose of securing to him a benefit becomes responsible for the performance by the latter of some act in favor of a third person or hypothecates property as security therefor. [R. C. 1905, § 6099; Civ. C. 1877, § 1673; R. C. 1899, § 4649.]

Wife becomes surety only by signing land mortgage with husband, without signing note. *Peoples Bank v. Francis*, 8 N. D. 369, 79 N. W. 853.

Surety contracts primarily for benefit of debtor, but a guarantor, for benefit of creditor. *Bailey Loan Co. v. Seward*, 9 S. D. 326, 69 N. W. 58.

Application of principal and surety rule as to creditors an assumption of debts at dissolution of partnership. 48 L.R.A. (N.S.) 552.

As to similar provision in Cal. Civ. Code, § 2831, see *Adams v. Wallace*, 119 Cal. 67, 51 Pac. 14; *McDonald v. Randall*, 139 Cal. 246, 72 Pac. 997.

§ 6676. Surety appearing as principal. One who appears to be a principal, whether by the terms of a written instrument or otherwise, may show that he is in fact a surety, except as against persons who have acted on the faith of his apparent character of principal. [R. C. 1905, § 6100; Civ. C. 1877, § 1674; R. C. 1899, § 4650.]

Parol evidence admissible to show that apparent joint maker of note is surety. *Windhorst v. Bergendahl*, 21 S. D. 218, 130 Am. St. Rep. 715, 111 N. W. 544.

As to similar provision in Cal. Civ. Code, § 2832, see *Harlan v. Ely*, 55 Cal. 340; *Leeke v. Hancock*, 76 Cal. 127, 17 Pac. 937.

ARTICLE 2.—LIABILITY OF SURETIES.

§ 6677. Express terms govern. A surety cannot be held beyond the express terms of his contract and if such contract prescribes a penalty for its breach, he cannot in any case be liable for more than the penalty. [R. C. 1905, § 6101; Civ. C. 1877, § 1675; R. C. 1899, § 4651.]

Surety cannot be held beyond express terms of his contract. *Northern Light Lodge v. Kennedy*, 7 N. D. 146, 73 N. W. 524.

Contract of suretyship in behalf of partnership continues no longer than partnership itself. *London Fire Ins. Co. v. Holdt*, 10 S. D. 171, 72 N. W. 403.

Sureties on fidelity bond of firm as agents, not liable for acts of members after dissolution. *Standard Oil Co. v. Arnestad*, 6 N. D. 255, 69 N. W. 197, 34 L.R.A. 861, 66 Am. St. Rep. 604.

Collateral security need not be exhausted before commencing action against surety. *Deering Co. v. Russell*, 5 N. D. 319, 65 N. W. 691; *Bingham v. Mears*, 4 N. D. 437, 61 N. W. 808, 27 L.R.A. 257.

Liability when each surety signs a bond for only a specified amount. *Custer County v. Albien*, 7 S. D. 482, 64 N. W. 533.

Liability of surety; alterations discharge sureties; when sureties not released. *N. L. Lodge No. 1 v. Kennedy*, 7 N. D. 146, 73 N. W. 524.

Surety must give notice to collect collateral before failure to do so releases surety. *Bailey Loan Co. v. Seward*, 9 S. D. 326, 69 N. W. 58.

Penalty as limit of liability on statutory bond. 55 L.R.A. 381.

Right, in an action on a bond, to recover interest when the total sum is thereby made to exceed the penalty. 19 L.R.A.(N.S.) 84.

Does bond of highway contractor cover personal injuries of members of public. 34 L.R.A.(N.S.) 152.

Liability of sureties under civil damage act for sales causing injury where not confined to the period covered by their bonds. 25 L.R.A.(N.S.) 585.

Elements of damages recoverable in action on replevin bond. 30 L.R.A.(N.S.) 367.

Right to interest on replevin bond. 28 L.R.A.(N.S.) 12.

Guaranty by surety of genuineness of other signatures. 49 L.R.A. 315.

Liability on guaranty or surety obligation obtained by fraud. 21 L.R.A. 409.

As to similar provision in Cal. Civ. Code, § 2836, see *Alaska Improv. Co. v. Hirsch*, 119 Cal. 249, 47 Pac. 124, 51 Pac. 340.

§ 6678. How terms of contract interpreted. In interpreting the terms of a contract of suretyship the same rules are to be observed as in the case of other contracts. [R. C. 1905, § 6102; Civ. C. 1877, § 1676; R. C. 1899, § 4652.]

As to similar provision in Cal. Civ. Code, § 2837, see *Humboldt Sav. & L. Soc. v. Wennerhold*, 81 Cal. 528, 22 Pac. 920.

§ 6679. Is surety after judgment. Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety. [R. C. 1905, § 6103; Civ. C. 1877, § 1677; R. C. 1899, § 4653.]

§ 6680. Exonerated by performance or offer. Performance of the principal obligation or an offer of such performance duly made as provided in this code exonerates a surety. [R. C. 1905, § 6104; Civ. C. 1877, § 1678; R. C. 1899, § 4654.]

Payment voidable under bankruptcy act as discharge of surety, guarantor or indorser. 9 L.R.A.(N.S.) 581.

Payment of promissory note by maker, which proves ineffectual as a satisfaction, as affecting the liability of a surety thereon. 13 L.R.A.(N.S.) 204.

Release of surety on building contractor's bond by making payments not authorized by the contract. 5 L.R.A.(N.S.) 418.

Release of surety by receipt of commercial paper for obligation. 35 L.R.A.(N.S.) 68.

As to similar provision in Cal. Civ. Code, § 2839, see *Randol v. Tatum*, 98 Cal. 390, 33 Pac. 433.

§ 6681. How exonerated. A surety is exonerated:

1. In like manner with a guarantor.
2. To the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights or which lessens his security; or,
3. To the extent to which he is prejudiced by an omission of the creditor to do anything when required by the surety which it is his duty to do. [R. C. 1905, § 6105; Civ. C. 1877, § 1679; R. C. 1899, § 4655.]

Extension of time to debtor for sufficient consideration and to definite time without surety's consent exonerates surety. *Machine Co. v. William Rae*, 9 N. D. 482, 84 N. W. 346.

Extension of time for consideration, without knowledge of surety, will release. *Niblack v. Champeney*, 10 S. D. 165, 72 N. W. 402.

Mortgagor who becomes surety on conveyance to grantee who assumes mortgage with mortgagee's consent, is discharged by extension of time of payment. *Iowa Loan & Trust Co. v. Schnose*, 19 S. D. 248, 103 N. W. 22, 9 A. & E. Ann. Cas. 255.

Surety company which is paid premium for issuing bond will be treated as insurer, rather than according to strict law of suretyship. *Long v. American Surety Co.*, 23 N. D. 492, 137 N. W. 41.

Wife who signs note with husband as joint maker is not released, because of failure of holder of note to file it as claim against deceased husband's estate. *Yerxa v. Ruthruff*, 19 N. D. 13, 25 L.R.A.(N.S.) 139, 120 N. W. 758, Ann. Cas. 1912D, 809.

Is surety discharged by obligee's surrender of original obligation and acceptance of another which is defective. 16 L.R.A.(N.S.) 343.

Release of indorser of note by failure to exhaust security against maker. 18 L.R.A.(N.S.) 539, 551.

Effect of failure to present claim against the estate of a deceased or bankrupt principal, to release surety. 25 L.R.A.(N.S.) 139.

Effect on liability of tenant's surety of surrender of lease containing an option to purchase. 9 L.R.A.(N.S.) 557.

Effect upon surety of bank's failure to apply principal's deposit account upon note. 8 L.R.A.(N.S.) 944.

Effect upon mortgagor's obligation of modification between mortgagee and subsequent grantee. 4 L.R.A.(N.S.) 666.

Change of principals to obligation as discharge of surety. 10 L.R.A.(N.S.) 1160.

Release of indorser by giving time by unenforceable contract. 18 L.R.A.(N.S.) 534.

Effect of renewal of principal's obligation to release party to a note executed to the creditor as collateral. 23 L.R.A.(N.S.) 141.

Effect under negotiable instrument law of extension of time to principal to release surety or guarantor. 31 L.R.A.(N.S.) 149.

Effect of extension of time by creditor on assumption of debts on dissolution of partnership. 9 L.R.A.(N.S.) 90.

Extension of time by attorney as discharging surety. 39 L.R.A.(N.S.) 62.

Extension of time for levying execution as discharge of surety. 5 L.R.A.(N.S.) 764.

When extension of time by the legislature releases the surety. 45 Am. Rep. 406.

Effect, under negotiable instruments law, of extension of time to principal to release one who, on the face of the instrument, is primarily liable, but is in fact a surety. 10 L.R.A.(N.S.) 129; 26 L.R.A.(N.S.) 99.

Effect of payment of usury or contract to pay usury in consideration for extension of time to principal, on surety's liability. 53 L.R.A. 316, 320.

Reservation of rights against party secondarily liable on a bill or note upon granting extension of time to party primarily liable, as preventing discharge of former. 46 L.R.A.(N.S.) 92.

When release of principal may not relieve surety. 73 Am. Dec. 297.

Release of surety by an acceptance or other evidence of indebtedness. 33 Am. Rep. 85.

Release of surety by changing the duties or obligations of the principal. 6 Am. St. Rep. 458.

Release of surety by indulgence of principal. 30 Am. Dec. 257.

What operates as release of surety. 28 Am. St. Rep. 691.

Is liability of surety determined by his death. 2 B. R. C. 937.

When will discharge of principal in bankruptcy release surety on bond given by principal in an action at law. 14 L.R.A.(N.S.) 507; 28 L.R.A.(N.S.) 234.

Release of mortgage as surety by mortgagee's dealings with vendee who has assumed mortgage. 16 L.R.A. 85.

Estoppel to enforce contract of suretyship or guaranty released through mistake. 13 L.R.A.(N.S.) 576.

Compromise or consent to affirmance as affecting liability of surety upon appeal bond. 43 L.R.A.(N.S.) 1040.

Discharge of surety for causes existing prior to his entering upon contract of suretyship. 63 Am. St. Rep. 327.

As to similar provision in Cal. Civ. Code, § 2840, see *Eppinger v. Kendrick*, 114 Cal. 620, 46 Pac. 613.

ARTICLE 3.—RIGHTS OF SURETIES.

§ 6682. Same as guarantor. A surety has all the rights of a guarantor whether he becomes personally responsible or not. [R. C. 1905, § 6106; Civ. C. 1877, § 1680; R. C. 1899, § 4656.]

Specific performance of contract to give indemnity to surety. 6 L.R.A.(N.S.) 590.
Injunction in behalf of surety against judgment. 30 L.R.A. 567.

§ 6683. May require proceedings against principal. A surety may require his creditors to proceed against the principal or to pursue any other remedy in his power, which the surety cannot himself pursue and which would lighten his burden; and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced. [R. C. 1905, § 6107; Civ. C. 1877, § 1681; R. C. 1899, § 4657.]

Notice to creditor by surety to proceed against principal must be specific before surety is relieved. *Kennedy v. Falde*, 4 Dak. 319, 29 N. W. 667; *Bailey Loan Co. v. Seward*, 9 S. D. 326, 69 N. W. 58.

Payment of amount of mortgage and notes to mortgagee who has assigned mortgage and notes before maturity does not discharge notes or mortgage. *Cosgrave v. McAvay*, 24 N. D. 343, 139 N. W. 693.

Effect upon surety of bank's failure to apply principal's deposit account upon note. 8 L.R.A.(N.S.) 944.

Effect of failure to present claim against the estate of a deceased or bankrupt principal, to release surety. 25 L.R.A.(N.S.) 139.

Release of indorser of note by failure to exhaust security against maker. 18 L.R.A.(N.S.) 539, 551.

Creditor's duty to surety. 115 Am. St. Rep. 85.

Duty of creditor to surety with respect to management and collection of collateral. 37 L.R.A.(N.S.) 699.

Duty of the creditor to collect of the principal when requested by the surety. 34 Am. Rep. 580.

Liability of corporate officers who fail to file report required by statute, to surety or guarantor of corporate paper. 35 L.R.A.(N.S.) 855.

As to similar provision in Cal. Civ. Code, § 2845, see *Taylor v. Reynolds*, 53 Cal. 686.

§ 6684. May compel principal to perform. A surety may compel his principal to perform the obligation when due. [R. C. 1905, § 6108; Civ. C. 1877, § 1682; R. C. 1899, § 4658.]

Proceedings by surety to compel principal to discharge his obligation. 117 Am. St. Rep. 35.

As to similar provision in Cal. Civ. Code, § 2846, see *Taylor v. Reynolds*, 53 Cal. 686.

§ 6685. Principal bound to reimburse surety. If a surety satisfies the principal obligation, or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act, except as prescribed by the next section. [R. C. 1905, § 6109; Civ. C. 1877, § 1683; R. C. 1899, § 4659.]

Demand and notice not necessary to sustain action by latter against former. 13 Am. Dec. 122.

When sureties' cause of action against principal becomes perfect and enforceable. 134 Am. St. Rep. 557.

As to similar provision in Cal. Civ. Code, § 2847, see *Taylor v. Reynolds*, 53 Cal. 686; *Tulare County v. Kings County*, 117 Cal. 195, 49 Pac. 8.

§ 6686. Entitled to same remedies as creditor. Contribution. A surety upon satisfying the obligations of the principal is entitled to enforce every remedy, which the creditor then has against the principal to the extent of reimbursing what he has expended; and also to require all his cosureties to contribute thereto without regard to the order of time in which they became such. [R. C. 1905, § 6110; Civ. C. 1877, § 1684; R. C. 1899, § 4660.]

Although parties to note may be cosureties as to payee of note, yet if they are not such as between themselves, contribution will not lie. *Harris v. Jones*, 23 N. D. 488, 136 N. W. 1080.

Liability between different sets of sureties. 70 Am. St. Rep. 443.

Contribution between sureties and the remedies for its enforcement. 10 Am. St. Rep. 639; 70 Am. St. Rep. 444.

As to similar provision in Cal. Civ. Code, § 2848, see *Taylor v. Reynolds*, 53 Cal. 686.

§ 6687. Subrogated to rights of creditors. A surety is entitled to the benefit of every security for the performance of the principal obligation held by the creditor or by a cosurety at the time of entering into the contract of suretyship or acquired by him afterwards, whether the surety was aware of the security or not. [R. C. 1905, § 6111; Civ. C. 1877, § 1685; R. C. 1899, § 4661.]

Surety may offset his individual claim against creditor where both creditor and principal are insolvent. *Clark v. Sullivan*, 2 N. D. 103, 49 N. W. 416.

Where surety pays note secured by chattel mortgage he becomes vested with title of note and mortgage and can sue in conversion. *Thurston v. Osborne-McMillan Co.*, 13 N. D. 508, 101 N. W. 892.

A surety, having paid the debt of his principal, is entitled to the collaterals deposited as security for the debt paid. *Lien v. Bank*, 12 S. D. 317, 81 N. W. 628; *Bank v. Lien*, 14 S. D. 410, 85 N. W. 924; *Park v. Robinson*, 15 S. D. 551, 91 N. W. 344.

Right of sureties of public officer who made good a loss occasioned by their principal's default or misconduct to be subrogated to the rights of the obligee or beneficiary of the bond against a third person. 46 L.R.A.(N.S.) 557.

Right of surety to participate in indemnity given to cosurety. 15 Am. Dec. 526; 43 Am. Dec. 563.

Right of surety or principal to interpose an independent cause of action in favor of the latter against the plaintiff as a defense or counterclaim. 18 L.R.A. (N.S.) 600.

Right of surety, prior to obtaining a judgment or lien, to enjoin principal's transfer of property to defraud him. 15 L.R.A. (N.S.) 484.

Extinction of judgment against principal by sureties' payment. 16 L.R.A. 115; 68 L.R.A. 513.

Right of surety to sue to set aside judgment against principal. 54 L.R.A. 765.

As to similar provision in Cal. Civ. Code, § 2849, see *Crystal v. Hutton*, 1 Cal. App. 251, 81 Pac. 1115.

§ 6688. Hypothecated property of principal first applied. Whenever property of a surety is hypothecated with the property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation. [R. C. 1905, § 6112; Civ. C. 1877, § 1686; R. C. 1899, § 4662.]

Sureties on appeal bond not released by refusal to resort to collateral security, unless prejudice is shown. *Bingham v. Mears*, 4 N. D. 437, 61 N. W. 808, 27 L.R.A. 257.

Application of property of maker of note before surety's to satisfy obligation. *State v. Mellette*, 21 S. D. 404, 113 N. W. 83.

ARTICLE 4.—RIGHTS OF CREDITORS.

§ 6689. Entitled to surety's securities. A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation, and may, upon the maturity of the obligation, compel the application of such security to its satisfaction. [R. C. 1905, § 6113; Civ. C. 1877, § 1687; R. C. 1899, § 4663.]

ARTICLE 5.—LETTER OF CREDIT.

§ 6690. Defined. A letter of credit is a written instrument addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn. [R. C. 1905, § 6114; Civ. C. 1877, § 1688; R. C. 1899, § 4664.]

What writing constitutes. *Parlin v. Hall*, 2 N. D. 473, 52 N. W. 405.

Right of action upon letter of credit. 28 Am. Rep. 347.

§ 6691. May be several. A letter of credit may be addressed to several persons in succession. [R. C. 1905, § 6115; Civ. C. 1877, § 1689; R. C. 1899, § 4665.]

§ 6692. To whom writer liable. The writer of a letter of credit is upon the default of the debtor liable to those who gave credit in compliance with its terms. [R. C. 1905, § 6116; Civ. C. 1877, § 1690; R. C. 1899, § 4666.]

§ 6693. Classified and classes defined. A letter of credit is either general or special. When the request for credit in a letter is addressed to specified persons by name or description the letter is special. All other letters of credit are general. [R. C. 1905, § 6117; Civ. C. 1877, § 1691; R. C. 1899, § 4667.]

§ 6694. Authority conferred by general. A general letter of credit gives any person to whom it may be shown authority to comply with its requests and by his so doing it becomes as to him of the same effect as if addressed to him by name. [R. C. 1905, § 6118; Civ. C. 1877, § 1692; R. C. 1899, § 4668.]

§ 6695. Successive credits. Several persons may successively give credit upon a general letter. [R. C. 1905, § 6119; Civ. C. 1877, § 1693; R. C. 1899, § 4669.]

§ 6696. When continuing guaranty. If the parties to a letter of credit appear by its terms to contemplate a course of future dealing between the parties, it is not exhausted by giving a credit even to the amount limited by the letter, which is subsequently reduced or satisfied by payments made by the debtor, but is to be deemed a continuing guaranty. [R. C. 1905, § 6120; Civ. C. 1877, § 1694; R. C. 1899, § 4670.]

§ 6697. Notice unnecessary unless provided. The writer of a letter of credit is liable for credit given upon it without notice to him, unless its terms express or imply the necessity of giving notice. [R. C. 1905, § 6121; Civ. C. 1877, § 1695; R. C. 1899, § 4671.]

§ 6698. Credit given must agree with letter. If a letter of credit prescribes the persons by whom or the mode in which the credit is to be given, or the term of credit, or limits the amount thereof, the writer is not bound except for transactions which in these respects conform strictly to the terms of the letter. [R. C. 1905, § 6122; Civ. C. 1877, § 1696; R. C. 1899, § 4672.]

CHAPTER 86.

LIENS IN GENERAL.

- ARTICLE**
1. DEFINITION OF LIENS, §§ 6699-6703.
 2. CREATION OF LIENS, §§ 6704-6708.
 3. EFFECT OF LIENS, §§ 6709-6713.
 4. PRIORITY OF LIENS, §§ 6714-6716.
 5. REDEMPTION OF LIENS, §§ 6717-6719.
 6. EXTINCTION OF LIENS, §§ 6720-6724.

ARTICLE 1.—DEFINITION OF LIENS.

§ 6699. Defined. A lien is a charge imposed upon specific property by which it is made security for the performance of an act. [R. C. 1905, § 6123; Civ. C. 1877, § 1697; R. C. 1899, § 4673.]

Word "lien" applies to miner's liens only. *Phillips v. Branch Mint Min. & Mill. Co.*, 27 S. D. 350, 131 N. W. 308.

As to similar provision in Cal. Civ. Code, § 2872, see *Kreling v. Kreling*, 118 Cal. 413, 50 Pac. 546; *Sacramento Bank v. Alcorn*, 121 Cal. 379, 53 Pac. 813; *Higgins v. Manson*, 126 Cal. 467, 77 Am. St. Rep. 192, 58 Pac. 907; *Pauly v. State Loan & T. Co.*, 7 C. C. A. 422, 15 U. S. App. 259, 58 Fed. 666.

§ 6700. Classified. Liens are either general or special. [R. C. 1905, § 6124; Civ. C. 1877, § 1698; R. C. 1899, § 4674.]

§ 6701. General. A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property. [R. C. 1905, § 6125; Civ. C. 1877, § 1699; R. C. 1899, § 4675.]

Order of discharge of assignee for benefit of creditors as final judgment. *Freeman v. Wood*, 14 N. D. 95, 103 N. W. 392.

§ 6702. Special. A special lien is one which the holder thereof can enforce only as a security for the performance of a particular act or obligation and of such obligations as may be incidental thereto. When the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him as a part of the claim for which his own lien exists. [R. C. 1905, § 6126; Civ. C. 1877, § 1700; R. C. 1899, § 4676.]

Junior mortgagee may pay prior mortgage or interest after default thereon, and add amount so paid to his own lien. *Foster v. Furlong*, 8 N. D. 282, 76 N. W. 986.

Right of plaintiff in action to foreclose deed as mortgage, to credit for taxes paid and interest paid on prior mortgage to protect lien. *Merchants State Bank v. Tufts*, 14 N. D. 238, 116 Am. St. Rep. 682, 103 N. W. 760.

Right of one advancing money to pay off lien or incumbrance upon defective security to be subrogated to such lien or incumbrance. 5 L.R.A.(N.S.) 838; 46 L.R.A.(N.S.) 1049.

Right of life tenant who pays off liens or incumbrances as against remainderman. 29 L.R.A.(N.S.) 153.

As to similar provision in Cal. Civ. Code, § 2875, see *Stone v. Harris*, 146 Cal. 555, 80 Pac. 711.

As to similar provision in Cal. Civ. Code, § 2876, see *Weinreich v. Hensley*, 121 Cal. 647, 54 Pac. 254.

§ 6703. Certain liens subject to this chapter. Contracts of mortgage, pledge, bottomry or respondentia are subject to all the provisions of this chapter. [R. C. 1905, § 6127; Civ. C. 1877, § 1701; R. C. 1899, § 4677.]

Chattel mortgage is within provision of this chapter. *Everett v. Buchanan*, 2 D. 249, 6 N. W. 439.

On mortgage as embraced within statutory word "lien." *Phillips v. Branch Mint Min. & Mill. Co.*, 27 S. D. 350, 131 N. W. 308.

ARTICLE 2.—CREATION OF LIENS.

§ 6704. How created. A lien is created:

1. By contract of the parties; or,
2. By operation of law. [R. C. 1905, § 6128; Civ. C. 1877, § 1702; R. C. 1899, § 4678.]

As to similar provision in Cal. Civ. Code, § 2881, see *Fresno Canal & Irrig. Co. v. Rowell*, 80 Cal. 114, 13 Am. St. Rep. 112, 22 Pac. 53; *Moisant v. McPhee*, 92 Cal. 76, 23 Pac. 46; *Kreling v. Kreling*, 118 Cal. 413, 50 Pac. 546; *Higgins v. Manson*, 126 Cal. 467, 77 Am. St. Rep. 192, 58 Pac. 907; *Stone v. Harris*, 146 Cal. 555, 80 Pac. 711.

§ 6705. By operation of law. No lien arises by mere operation of law until the time at which the act to be secured thereby ought to be performed. [R. C. 1905, § 6129; Civ. C. 1877, § 1703; R. C. 1899, § 4679.]

As to similar provision in Cal. Civ. Code, § 2882, see *Fresno Canal & Irrig. Co. v. Rowell*, 80 Cal. 114, 13 Am. St. Rep. 112, 22 Pac. 53.

§ 6706. Liens on future interest. An agreement may be made to create a lien upon property not yet acquired or not yet in existence by the party agreeing to give the lien. In such case, the lien agreed for attaches from the time when the party agreeing to give it acquired an interest in the thing to the extent of such interest; provided, that no lien or mortgage shall be created on the future earnings of any machine or machinery operated in whole or in part with man or animal. [1907, ch. 166; R. C. 1905, § 6130; Civ. C. 1877, § 1704; R. C. 1899, § 4680; 1901, ch. 118.]

Under lease providing that title to crop shall remain in landlord until division, tenant's mortgage of ungrown crops passes no title. *Savings Bank v. Canfield*, 12 S. D. 330, 81 N. W. 630.

Chattel mortgage on unplanted crop within statute. *McKay v. Shotwell*, 6 D. 124, 50 N. W. 622; *Schweinber v. Elevator Co.*, 9 N. D. 113, 81 N. W. 35; *Donovan v. Elevator Co.*, 7 N. D. 513, 75 N. W. 809, 66 Am. St. Rep. 674; *Nichols, Shepard & Co. v. Barnes* 3 D. 148, 14 N. W. 110; *Hostetter v. Elevator Co.*, 4 N. D. 357, 61 N. W. 49; *Merchants Nat. Bank v. Mann*, 2 N. D. 456, 51 N. W. 946; *Grand Forks Bank v. Elevator Co.*, 6 D. 357, 43 N. W. 806; *Mort. Bank & Inv. Co. v. Hanson*, 3 N. D. 465, 57 N. W. 345; *Phil. Best Brewing Co. v. Hurlbut*, 5 D. 62, 37 N. W. 763.

Mortgage on ungrown crop need not be refilled after its growth. *Grand Forks Bank v. Elevator Co.*, 6 D. 357, 43 N. W. 806.

Mortgage upon tenant's interest in crop attaches on division. *Bidgood v. Elevator Co.*, 9 N. D. 627, 84 N. W. 561, 81 Am. St. Rep. 604.

Mortgage on crop to be grown on land given before acquiring lease of land is valid. *Iverson v. Soo Elevator Co.*, 22 S. D. 638, 119 N. W. 1006.

Crop contract having provided title shall remain in landlord until division of crop, tenant's mortgage passes no title until division. *Bank v. Canfield*, 12 S. D. 330, 81 N. W. 630.

Under former statute it was permissible for owner of threshing rig to mortgage future earnings. *Sykes v. Hannawalt*, 5 N. D. 335, 65 N. W. 682; *Reynolds v. Strong*, 10 N. D. 81, 85 N. W. 987. For note on chattel mortgage of future earnings of threshing outfit, see 20 L.R.A.(N.S.) 505.

Chattel mortgage of future accounts or earnings. 14 L.R.A. 126.

Chattel mortgage on after-acquired property, generally. 1 L.R.A.(N.S.) 451.

Voidability of mortgage on after-acquired property given within four months of bankruptcy pursuant to executory agreement antedating such period. 17 L.R.A.(N.S.) 938.

Efficacy of mortgage on chattels to be manufactured or acquired, as independent articles, and not as the increase or fruits of existing property. 18 L.R.A. 298.

Chattel mortgage on crops to be grown on land on which mortgagor has no present interest. 19 L.R.A.(N.S.) 910.

As to similar provision in Cal. Civ. Code, § 2883, see *Kreling v. Kreling*, 118 Cal. 413, 50 Pac. 546.

§ 6707. Upon crops, limited. Exception. A lien by contract upon crops shall attach only to the crop next maturing after the delivery of such contract, except in the case of liens by contract to secure the purchase price, or rental, of the land upon which such crops are to be grown. [R. C. 1905, § 6131; 1897, ch. 55; R. C. 1899, § 4681.]

Contract title to crop, made how. *Angell v. Egger*, 6 N. D. 391, 71 N. W. 547. See note 9 N. D. 630.

As to mortgage on crop covering crop to be sown during following season. *Gorder v. Hillboe*, 17 N. D. 281, 115 N. W. 843.

Chattel mortgage of future crops. 23 L.R.A. 449.

Chattel mortgage on crops to be grown on land on which mortgagor has no present interest. 19 L.R.A.(N.S.) 910.

§ 6708. Obligations not in existence. A lien may be created by contract to take immediate effect as security for the performance of obligations not then in existence. [R. C. 1905, § 6132; Civ. C. 1877, § 1705; R. C. 1899, § 4682.]

As to similar provision in Cal. Civ. Code, § 2884, see *Tapia v. Demartini*, 77 Cal. 383, 11 Am. St. Rep. 288, 19 Pac. 641; *Fresno Canal & Irrig. Co. v. Rowell*, 80 Cal. 114, 13 Am. St. Rep. 112, 22 Pac. 53; *Lemon v. Wolff*, 121 Cal. 272, 53 Pac. 801.

ARTICLE 3.—EFFECT OF LIENS.

§ 6709. Transfer no title. Notwithstanding an agreement to the contrary, a lien or a contract for a lien transfers no title to the property subject to the lien. [R. C. 1905, § 6133; Civ. C. 1877, § 1706; R. C. 1899, § 4683.]

Title to mortgaged property remains in mortgagor. *Sanford v. Elevator Co.*, 2 N. D. 6, 48 N. W. 434; *Harding v. Ins. Co.*, 10 S. D. 64, 71 N. W. 755; *Roberts v. Parker*, 14 S. D. 323, 85 N. W. 591; *Grand Forks Bank v. Elevator Co.*, 6 D. 357, 43 N. W. 806; *Walter A. Wood Co. v. Lee*, 4 S. D. 495, 57 N. W. 238; *Everett v. Buchanan*, 2 D. 249, 6 N. W. 439; *Keith v. Haggart*, 4 D. 438, 33 N. W. 465.

Mortgagee does not assign mortgage on real estate by executing deed. *Yankton B. & L. Ass. v. Dowling*, 10 S. D. 540, 74 N. W. 438.

In action of claim and delivery by second mortgagee, mortgagor cannot set up prior mortgage. *James v. Wilson*, 8 N. D. 186, 77 N. W. 603.

Chattel mortgage not witnessed good between parties. *Machine Co. v. Lee*, 4 S. D. 495, 57 N. W. 238.

As to similar provision in Cal. Civ. Code, § 2888, see *Cross v. Eureka Lake & Y. Canal Co.*, 73 Cal. 302, 2 Am. St. Rep. 808, 14 Pac. 885; *Foley v. Bullard*, 99 Cal. 516, 33 Pac. 1081; *Haber v. Brown*, 101 Cal. 445, 35 Pac. 1035; *Stone v. Owens*, 105 Cal. 292, 38 Pac. 726; *Works v. Merritt*, 105 Cal. 467, 38 Pac. 1109; *Maier v. Freeman*, 112 Cal. 8, 53 Am. St. Rep. 151, 44 Pac. 357; *Shoobert v. De Motta*, 112 Cal. 215, 53 Am. St. Rep. 207, 44 Pac. 487; *Anderson v. Pacific Bank*, 112 Cal. 598, 32 L.R.A. 479, 53 Am. St. Rep. 228, 44 Pac. 1063; *Smith v. San Francisco & N. P. R. Co.*, 115 Cal. 584, 35 L.R.A. 309, 56 Am. St. Rep. 119, 47 Pac. 582; *Fernandez v. Tormey*, 121 Cal. 515, 53 Pac. 1119; *Breedlove v. Norwich Union F. Ins. Soc.*, 6 Cal. Unrep. 94, 54 Pac. 93; *Alferitz v. Borgwardt*, 126 Cal. 201, 58 Pac. 460; *Garwood v. Wheaton*, 128 Cal. 399, 60 Pac. 961; *Mathew v. Mathew*, 138 Cal. 334, 71 Pac. 344; *Pauly v. State Loan & T. Co.*, 7 C. C. A. 422, 15 U. S. App. 259, 58 Fed. 666.

§ 6710. Contracts for forfeiting property subject to void. All contracts for the forfeiture of property subject to a lien in satisfaction of the obligation secured thereby and all contracts in restraint of the right of redemption from a lien are void. [R. C. 1905, § 6134; Civ. C. 1877, § 1707; R. C. 1895, § 4684.]

As to similar provision in Cal. Civ. Code, § 2889, see *Chandler v. People's Sav. Bank*, 61 Cal. 396; *Phelan v. De Martin*, 85 Cal. 355, 24 Pac. 725; *Corcoran v. Hinkel*, 4 Cal. Unrep. 360, 34 Pac. 1031; *Watson v. Edwards*, 105 Cal. 70, 38 Pac. 527; *Bradbury v. Davenport*, 114 Cal. 593, 55 Am. St. Rep. 92, 46 Pac. 1062; *Bradbury v. Davenport*, 120 Cal. 152, 52 Pac. 301; *Garwood v. Wheaton*, 128 Cal. 399, 60 Pac. 961; *Pauly v. State Loan & T. Co.*, 7 C. C. A. 422, 15 U. S. App. 259, 58 Fed. 666.

§ 6711. Does not imply obligation to perform. The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security. [R. C. 1905, § 6135; Civ. C. 1877, § 1708; R. C. 1899, § 4685.]

As to similar provision in Cal. Civ. Code, § 2890, see *Hellman v. Shoulters*, 114 Cal. 136, 44 Pac. 915, 45 Pac. 1057.

§ 6712. Not security for other than original obligations. The existence of a lien upon property does not of itself entitle the person in whose favor it exists to a lien upon the same property, for the performance of any other obligation than that which the lien originally secured. [R. C. 1905, § 6136; Civ. C. 1877, § 1709; R. C. 1899, § 4686.]

Mortgagee cannot hold mortgage as security for another debt after mortgage debt is paid. *Locke v. Hubbard*, 9 S. D. 364, 69 N. W. 588.

As to similar provision in Cal. Civ. Code, § 2891, see *Stone v. Harris*, 146 Cal. 555, 80 Pac. 711.

§ 6713. Extent of compensation to holder. One who holds property by virtue of a lien thereon is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to

the same extent as a borrower under sections 6057 and 6058. [R. C. 1905, § 6137; Civ. C. 1877, § 1710; R. C. 1899, § 4687.]

ARTICLE 4.—PRIORITY OF LIENS.

§ 6714. Priority according to date. Other things being equal, different liens upon the same property have priority according to the time of their creation except in cases of bottomry and respondentia. [R. C. 1905, § 6138; Civ. C. 1877, § 1711; R. C. 1899, § 4688.]

Lien of chattel mortgage properly filed paramount to that of agister for subsequently pasturing mortgaged stock. *Wright v. Sherman*, 3 S. D. 290, 52 N. W. 1093, 17 L.R.A. 792; *First Nat. Bank v. Scott*, 7 N. D. 312, 75 N. W. 254.

Lien for personal taxes is inferior to that of prior mortgage. *Miller v. Anderson*, 1 S. D. 539, 47 N. W. 957, 111 Am. St. Rep. 317.

Lien of carrier for transportation charges on property is inferior to that of chattel mortgage of which carrier has notice. *Owen v. Ry. Co.*, 11 S. D. 153, 76 N. W. 302, 74 Am. St. Rep. 786.

Senior mortgagee is estopped from asserting priority over a junior mortgage acquired on his representations that junior mortgage was a first lien. *Morris v. Beecher et al.*, 1 N. D. 130, 45 N. W. 696.

Priority of mortgages on buildings upon leased premises. 21 L.R.A. 348.

Priority as between agister's lien and chattel mortgage. 17 L.R.A. 792; 12 L.R.A.(N.S.) 310.

Right of seller of chattel retaining title thereto or a lien thereon as against existing mortgagees of the realty to which it is affixed by the owner. 37 L.R.A.(N.S.) 119.

Rights of seller of fixtures, retaining title thereto or a lien thereon, as against purchasers or incumbrancers of the realty. 1 B. R. C. 664.

Priority as between a chattel mortgagee who surrenders mortgage and accepts new form of security on same property and an intervening lienor. 26 L.R.A.(N.S.) 496.

Retroactive effect of filing chattel mortgage for record in regard to liens acquired on same property after execution of the mortgage. 33 L.R.A. 163.

Priority of claims against property in hands of receiver over recorded liens. 2 L.R.A.(N.S.) 1013; 41 L.R.A.(N.S.) 695.

Priority of claims against property in hands of receiver over mechanics' liens. 2 L.R.A.(N.S.) 1013.

Priority of lien in distribution of assets of insolvent insurance company. 38 L.R.A. 108.

Priority as between lien of corporation and pledgee or bona fide purchaser of corporate stock. 39 L.R.A.(N.S.) 292.

Priority of judgment lien on future crops as against purchaser or mortgagee. 23 L.R.A. 466.

Priority of judgment lien as to unrecorded conveyance. 16 L.R.A. 668.

Priority of judgment over conveyance made after beginning of term. 38 L.R.A. 245.

Priority of judgment on after-acquired property. 42 L.R.A. 209.

Priority of mechanics' lien as to earlier mortgages. 14 L.R.A. 306.

Priority of notes falling due at different times secured by same mortgage. 24 L.R.A. 800; 42 L.R.A.(N.S.) 183.

Superiority as between special assessment for public improvement and private mortgage. 35 L.R.A. 372; 30 L.R.A.(N.S.) 769.

§ 6715. Mortgage for price prior to all. A mortgage given for the price of real property at the time of its conveyance has priority over all other liens created against the purchaser, subject to the operation of the recording laws. [R. C. 1905, § 6139; Civ. C. 1877, § 1712; R. C. 1899, § 4689.]

Mortgage of real estate may be complete without power of sale. *Grant County v. Colonial & U. S. Mort. Co.*, 3 S. D. 390, 53 N. W. 746.

Priority of purchase-money mortgage. *Kalscheuer v. Upton*, 6 D. 449, 43 N. W. 816.

Priority of vendor's lien as against purchaser at judicial sale. 21 L.R.A. 39.

Rights of seller of fixtures, retaining title thereto or a lien thereon, as against lien of vendor or realty. 1 B. R. C. 670.

Is money loaned to improve land part of the purchase price within rule that a purchase-money lien takes priority over homestead rights. 41 L.R.A.(N.S.) 89.

As to similar provision in Cal. Civ. Code, § 2898, see *Avery v. Clark*, 87 Cal. 619, 22 Am. St. Rep. 272, 25 Pac. 919; *Van Loben Sels v. Bunnell*, 120 Cal. 680, 53 Pac. 266.

§ 6716. Order of resort for payment. When one has a lien upon several things and other persons have subordinate liens upon, or interests in some but not all of the same things, the person having the prior lien, if he can do so without risk of loss to himself or of injustice to other persons, must

resort to the property in the following order, on the demand of any party interested:

1. To the things upon which he has an exclusive lien.
2. To the things which are subject to the fewest subordinate liens.
3. In like manner inversely to the number of subordinate liens upon the same thing; and,
4. When several things are within one of the foregoing classes, and subject to the same number of liens, resort must be had:
 - (a) To things which have not been transferred since the prior lien was created.
 - (b) To the things which have been so transferred without a valuable consideration; and,
 - (c) To the things which have been so transferred for a valuable consideration in the inverse order of the transfers. [R. C. 1905, § 6140; Civ. C. 1877, § 1713; R. C. 1895, § 4690.]

Mortgagee with knowledge of subsequent liens must first exhaust property on which he holds exclusive lien before resorting to sale of property covered by subsequent lien. *Union Bank v. M. M. & Stoddard Co.*, 7 N. D. 201, 73 N. W. 527.

Mortgagee not required to ascertain whether mortgagor has subsequently incumbered part of premises. *Blanchette v. Farsch*, 18 S. D. 20, 99 N. W. 79.

As to marshaling securities. *Merchants' State Bank v. Tufts*, 14 N. D. 238, 116 Am. St. Rep. 682, 103 N. W. 760.

As to similar provision in Cal. Civ. Code, § 2899, see *Kent v. Williams*, 114 Cal. 537, 46 Pac. 462; *Woodward v. Brown*, 119 Cal. 283, 63 Am. St. Rep. 108, 51 Pac. 2, 542; *Irvine v. Perry*, 119 Cal. 352, 51 Pac. 544, 949; *Mack v. Shafer*, 135 Cal. 113, 67 Pac. 40; *Re Levin Bros.*, 139 Cal. 350, 63 Pac. 335, 73 Pac. 159; *Merced Secur. Sav. Bank v. Simon*, 141 Cal. 11, 74 Pac. 356; *Summerville v. March*, 142 Cal. 554, 100 Am. St. Rep. 145, 76 Pac. 388.

ARTICLE 5.—REDEMPTION OF LIENS.

§ 6717. Redemption, by whom and when made. Every person having an interest in property, subject to a lien, has a right to redeem it from the lien, at any time after the claim is due and before his right of redemption is foreclosed. [R. C. 1905, § 6141; Civ. C. 1877, § 1714; R. C. 1899, § 4691.]

Mortgagor cannot consent to sale of property by superior mortgagee so as to defeat junior mortgage. *Everitt v. Buchanan*, 2 D. 249, 6 N. W. 439.

Lienholder not made party to mechanic's lien foreclosure, not barred from right of redemption. *Trust Co. v. Lynch*, 10 S. D. 410, 73 N. W. 908.

Junior mortgagee may redeem from prior mortgage at any time before sale. *De Luce v. Root*, 12 S. D. 141, 80 N. W. 181; *Boot & Shoe Co. v. Anderson*, 9 S. D. 560, 70 N. W. 877; *MacGregor v. Pierce*, 17 S. D. 51.

None but lien holder can object to payment and redemption from lien before claim due. *Kalscheuer v. Upton*, 6 D. 449, 43 N. W. 816.

Unrecorded assignment of mortgage is void as to subsequent purchasers or incumbrancers in good faith. *Merrill v. Luce*, 6 S. D. 354, 61 N. W. 43, 55 Am. St. Rep. 844.

Right of mortgagee who secures a deficiency degree to redeem from the sale. 35 L.R.A.(N.S.) 413.

Right of wife during husband's lifetime to redeem from mortgage on his real property. 3 L.R.A.(N.S.) 1068.

May a purchaser or mortgagee from the original owner, after a sale under a prior mortgage and during the redemption period, be a redemptioner. 29 L.R.A.(N.S.) 508.

As to similar provision in Cal. Civ. Code, § 2903, see *Randall v. Duff*, 79 Cal. 115, 3 L.R.A. 754, 19 Pac. 532, 21 Pac. 610; *Allen v. Allen*, 95 Cal. 184, 16 L.R.A. 646, 27 Pac. 30, 30 Pac. 213.

§ 6718. Inferior lien holder may redeem. Subrogation. One who has a lien inferior to another upon the same property has a right:

1. To redeem the property in the same manner as its owner might from the superior lien; and,
2. To be subrogated to all the benefits of the superior lien when necessary for the protection of his interests, upon satisfying the claim secured thereby. [R. C. 1905, § 6142; Civ. C. 1877, § 1715; R. C. 1899, § 4692.]

On right of junior mortgagee to redeem at any time. *Home Invest. Co. v. Clarson*, 21 S. D. 72, 109 N. W. 507.

Purchaser at foreclosure of second mortgage, being informed that first mortgage is paid, has constructive notice of second mortgagee's rights under redemption. *Malmberg v. Peterson*, 20 S. D. 587, 108 N. W. 339.

Junior execution creditor redeeming from mortgage foreclosure continues to be a creditor and is also subrogated to rights of mortgagee. *MacGregor v. Pierce*, 17 S. D. 51, 95 N. W. 281.

As to similar provision in Cal. Civ. Code, § 2904, see *Swain v. Stockton Sav. & L. Soc.*, 78 Cal. 600, 12 Am. St. Rep. 118, 21 Pac. 365.

§ 6719. How made. Redemption from a lien is made by performing the act for the performance of which it is a security, and paying the damages, if any, to which the holder of the lien is entitled for delay, or by offering to perform such act and pay such damages; provided, that if the act requires the delivery of money, property or a conveyance of property the same shall be deposited and notice thereof given as provided in section 5263. [R. C. 1905, § 6143; Civ. C. 1877, § 1716; R. C. 1895, § 4693.]

As to similar provision in Cal. Civ. Code, § 2905, see *Chielovich v. Krauss*, 2 Cal. Unrep. 700, 11 Pac. 781; *Sutton v. Stephan*, 101 Cal. 545, 36 Pac. 106.

ARTICLE 6.—EXTINCTION OF LIENS.

§ 6720. Deemed accessory to act secured. A lien is to be deemed accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation. [R. C. 1905, § 6144; Civ. C. 1877, § 1717; R. C. 1899, § 4694.]

Payment of sum named in note is act to be performed. *Bennett v. Ellis*, 13 S. D. 401, 83 N. W. 429.

Docketing of judgment in mortgage foreclosure proceedings does not extinguish mortgage lien and leave only ten-year judgment lien. *Rhomberg v. Bender*, 28 S. D. 609, 134 N. W. 805.

Effect of death of principal contractor on rights of subcontractor or materialman to a lien, or to payment by owner. 20 L.R.A.(N.S.) 45.

Effect of bankruptcy of contractor on right of laborer or materialman to enforce lien against property improved. 26 L.R.A.(N.S.) 409.

Payment to contractors or subcontractors as affecting liens of subordinate claimants. 20 L.R.A. 560.

Assumption of debts on dissolution of partnership as affecting partnership lien. 9 L.R.A.(N.S.) 102.

Taking of property by general owner for purpose of defeating lien thereon as larceny. 12 L.R.A.(N.S.) 94.

Effect of discharge in bankruptcy on real property liens. 42 L.R.A.(N.S.) 292.

Rescission of purchase of real estate as affecting assumption of lien thereon. 40 L.R.A.(N.S.) 672.

Release or satisfaction of lien by giving commercial paper. 35 L.R.A.(N.S.) 86.

Lienor joining in mortgage on the property as a waiver of his lien. 35 L.R.A.(N.S.) 348.

New obligation given by debtor to secure release of a lien as a novation of the original obligation. 36 L.R.A.(N.S.) 464.

As to similar provision in Cal. Civ. Code, § 2909, see *Duncan v. Hawn*, 104 Cal. 10, 37 Pac. 626.

§ 6721. Extinguished by sale of property. What defendant may show in conversion. The sale of any property on which there is a lien in satisfaction of the claim secured thereby, or in case of personal property its wrongful conversion by the person holding the lien, extinguishes the lien thereon; provided, however, that in an action for the conversion of personal property the defendant may show in mitigation of damages the amount due on any lien to which the plaintiff's rights were subject, and which was held or paid by the defendant or any person under whom he claims. [R. C. 1905, § 6145; Civ. C. 1877, § 1718; R. C. 1895, § 4695.]

Sale of property under chattel mortgage extinguishes lien. *La Crosse B. & S. Co. v. Anderson*, 13 S. D. 301, 83 N. W. 331; *La Crosse B. & S. Co. v. Anderson*, 9 S. D. 560, 70 N. W. 877; *American Banking & Trust Co. v. Lynch*, 10 S. D. 410, 73 N. W. 908.

Where first mortgagee takes possession of property under his mortgage, and sells same at private sale without foreclosure, such sale is a conversion. *Lovejoy v. Bank*, 5 N. D. 623, 67 N. W. 956.

Mortgagee's use of chattels against mortgagor's will, not conversion. *Van Dusen & Co. v. Arnold*, 5 S. D. 588, 59 N. W. 961.

Purchaser of mortgaged property liable for conversion. *Nichols, Shepard & Co. v. Barnes*, 3 D. 148, 14 N. W. 110.

Conversion of property forfeits lien. *Everett v. Buchanan*, 2 D. 249, 6 N. W. 439.
Wrongful conversion by lienor extinguishes lien. *Mosteller v. Holborn*, 21 S. D. 547, 114 N. W. 693.

Verdict may be directed where, upon undisputed facts, instrument on which rights of parties depends, being pledge, chattel mortgage or absolute conveyance of title, with secret reservation of interest, is void. *Walklin v. Horswill*, 24 S. D. 191, 123 N. W. 668.

Waiver of lien by attachment or execution. 50 L.R.A. 714; 24 L.R.A.(N.S.) 490.

As to similar provision in Cal. Civ. Code, § 2910, see *Loughborough v. McNevin*, 74 Cal. 250, 5 Am. St. Rep. 435, 14 Pac. 369, 15 Pac. 773; *Lehmann v. Schmidt*, 87 Cal. 15, 25 Pac. 161; *Story & I. Commercial Co. v. Story*, 100 Cal. 30, 34 Pac. 671; *Williams v. Ashe*, 111 Cal. 180, 43 Pac. 535; *Chase v. Putnam*, 117 Cal. 364, 49 Pac. 204; *Latta v. Tutton*, 122 Cal. 279, 68 Am. St. Rep. 30, 54 Pac. 844; *Southern P. Co. v. Prosser*, 122 Cal. 413, 55 Pac. 145; *Brittan v. Oakland Bank*, 124 Cal. 282, 71 Am. St. Rep. 58, 57 Pac. 84; *Summerville v. Stockton Mill. Co.*, 142 Cal. 529, 76 Pac. 243.

§ 6722. Not extinguished by mere lapse of time. A lien is not extinguished by the mere lapse of the time within which under the provisions of the code of civil procedure an action can be brought upon the principal obligation. [R. C. 1905, § 6146; Civ. C. 1877, § 1719; R. C. 1899, § 4696.]

Lien of mortgage security is not extinguished by running of statute against note. *Alexander v. Ransom*, 16 S. D. 302, 92 N. W. 418.

As to lien not being extinguished by bar of action upon principal obligation. *Colonial & U. S. Mortg. Co. v. Northwest Thresher Co.*, 14 N. D. 147, 70 L.R.A. 814, 116 Am. St. Rep. 642, 103 N. W. 915, 8 A. & E. Ann. Cas. 1160.

Mortgage security not barred by running of statute against notes. *Philip v. Stearns*, 20 S. D. 220, 105 N. W. 467, 11 A. & E. Ann. Cas. 1108.

Foreclosure of mortgage is not barred by running of limitation against indebtedness. *Green v. Frick*, 25 S. D. 342, 126 N. W. 579.

As to similar provision in Cal. Civ. Code, § 2911, see *Wells v. Harter*, 56 Cal. 342; *Jeffers v. Cook*, 58 Cal. 147; *Henderson v. Grammar*, 66 Cal. 332, 5 Pac. 488; *Raynor v. Drew*, 72 Cal. 307, 13 Pac. 866; *California Sav. Bank v. Parrish*, 116 Cal. 254, 48 Pac. 73; *London & S. F. Bank v. Bandmann*, 120 Cal. 220, 65 Am. St. Rep. 179, 52 Pac. 583; *San Francisco Sav. Union v. Long*, 6 Cal. Unrep. 60, 53 Pac. 907; *Southern P. Co. v. Prosser*, 122 Cal. 413, 55 Pac. 145; *Newhall v. Sherman*, 124 Cal. 509, 57 Pac. 387; *Conway v. Supreme Council, C. K.*, 131 Cal. 437, 63 Pac. 727; *Frost v. Witter*, 133 Cal. 421, 84 Am. St. Rep. 53, 64 Pac. 705; *Conway v. Supreme Council, C. K.*, 137 Cal. 384, 70 Pac. 223; *Commercial Sav. Bank v. Hornberger*, 140 Cal. 16, 73 Pac. 625; *Vandall v. Teague*, 142 Cal. 471, 76 Pac. 35; *Mutual L. Ins. Co. v. Pacific Fruit Co.*, 142 Cal. 477, 76 Pac. 67; *San Jose Safe Deposit Bank v. Bank of Madero*, 144 Cal. 574, 78 Pac. 5.

§ 6723. Not extinguished by partial performance. The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible. [R. C. 1905, § 6147; Civ. C. 1877, § 1720; R. C. 1899, § 4697.]

By sale of part of mortgaged property lien on the rest not discharged. *First Nat. Bank v. Elevator Co.*, 4 S. D. 409, 57 N. W. 77.

As to similar provision in Cal. Civ. Code, § 2912, see *Southern P. Co. v. Prosser*, 122 Cal. 413, 55 Pac. 145.

§ 6724. By restoration of property if lien dependent on possession. The voluntary restoration of property to its owner by the holder of a lien thereon, dependent upon possession, extinguishes the lien as to such property, unless otherwise agreed by the parties and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring title to the property, or a lien thereon, in good faith and for a good consideration. [R. C. 1905, § 6148; Civ. C. 1877, § 1721; R. C. 1899, § 4698.]

Lien on personal property for repairs lost by parting with possession. *Burdick v. Marshall*, 8 S. D. 308, 66 N. W. 462.

As to similar provision in Cal. Civ. Code, § 2913, see *Palmtag v. Doutrick*, 59 Cal. 154, 43 Am. Rep. 245; *Foley v. Bullard*, 99 Cal. 516, 33 Pac. 1081; *Southern P. Co. v. Prosser*, 122 Cal. 413, 55 Pac. 145.

CHAPTER 87.

MORTGAGE.

- ARTICLE 1. MORTGAGE IN GENERAL, §§ 6725-6749.
 2. MORTGAGE OF REAL PROPERTY, §§ 6750-6755.
 3. MORTGAGE OF PERSONAL PROPERTY, §§ 6756-6768.
 4. SATISFACTION OF LIEN OR MORTGAGE BEFORE MATURITY, § 6769.

ARTICLE 1.—MORTGAGE IN GENERAL.

§ 6725. **Defined. Formalities necessary.** Mortgage is a contract by which specific property is hypothecated for the performance of an act without the necessity of a change of possession. A mortgage of real property can be created, renewed or extended only by writing, executed with the formalities required in the case of a grant of real property. [R. C. 1905, § 6149; Civ. C. 1877, § 1722; R. C. 1899, § 4699.]

Mortgage is "extended" when made to stand as security for some debt not originally included therein. *Bank v. Francis*, 8 N. D. 369, 79 N. W. 853.

Chattel mortgage conveys no title; is only security for debt. *Sandmeyer v. Insurance Co.*, 2 S. D. 346, 50 N. W. 353.

A mortgage on personal property is valid as between parties without witnesses. *Machine Co. v. Lee*, 4 S. D. 495, 57 N. W. 238; *Fisher v. Porter*, 11 S. D. 311, 77 N. W. 112; *Peet v. Insurance Co.*, 7 S. D. 410, 64 N. W. 206.

No particular form of words is necessary to constitute a chattel mortgage. *Esshom v. Hotel Co.*, 7 S. D. 74, 63 N. W. 229; *Peet v. Insurance Co.*, 7 S. D. 410, 64 N. W. 206.

Lease of building containing clause giving lien for rent on the lessee's chattels, not chattel mortgage within statute requiring delivery of copy. *Kennedy v. Hull*, 14 S. D. 234, 85 N. W. 223.

Lease of realty making rent lien on building and improvements, is an incumbrance in nature of mortgage. *Peet v. Ins. Co.*, 7 S. D. 410, 64 N. W. 206.

Mortgage as lien only. *Northwestern Port Huron Co. v. Iverson*, 22 S. D. 314, 133 Am. St. Rep. 920, 117 N. W. 372.

Estate of the mortgagee at the common law. 7 Am. St. Rep. 31.

When new mortgage may be enforced as a continuation of the lien of prior mortgages. 5 Am. St. Rep. 705.

Effect of deed delivered in escrow as further security for a mortgage debt. 2 L.R.A.(N.S.) 628.

Mortgage to secure future accounts. 10 Am. Dec. 108.

Mortgage to secure future advances. 20 Am. Dec. 658; 116 Am. Dec. 690.

Mortgage to secure several notes which entitled to precedence of payment. 38 Am. Dec. 440.

What constitute equitable mortgage. 4 Am. St. Rep. 696.

Equitable mortgage by deposit of title deeds. 19 L.R.A.(N.S.) 206.

Right to foreclose deed intended as security for debt as an equitable mortgage. 22 L.R.A.(N.S.) 572.

As to similar provision in Cal. Civ. Code, § 2920, see *Spect v. Spect*, 88 Cal. 437, 13 L.R.A. 137, 22 Am. St. Rep. 314, 26 Pac. 203.

§ 6726. **Lien special. Independent of possession.** The lien of a mortgage is special, unless otherwise expressly agreed and is independent of possession. [R. C. 1905, § 6150; Civ. C. 1877, § 1723; R. C. 1899, § 4700.]

As to mortgage not transferring title or right of possession to mortgagees. *Nash v. Northwest Land Co.*, 15 N. D. 566, 108 N. W. 792.

§ 6727. **What transfers deemed mortgage.** Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act is to be deemed a mortgage, except when in the case of personal property, it is accompanied by an actual change of possession in which case it is deemed a pledge. [R. C. 1905, § 6151; Civ. C. 1877, § 1724; R. C. 1899, § 4701.]

As to what instrument constitutes mortgage. *Langmaack v. Keith*, 19 S. D. 351, 103 N. W. 210.

Warranty deed given to trustee to secure payment of notes is a mortgage. *David Bradley & Co. v. Helgeson*, 14 S. D. 593, 86 N. W. 634.

Fraudulent conveyance of realty by one holding it as security to purchaser with knowledge is only effective as assignment of grantor's mortgage interest. *Shimerda v. Wohlford*, 13 S. D. 155, 82 N. W. 393.

Conveyance of real property to third person in trust as security for a debt operates as mortgage. *Merrill v. Hurley*, 6 S. D. 592, 62 N. W. 958, 55 Am. St. Rep. 859.

Validity of mortgage can only be questioned by purchaser or incumbrancer in good faith. *Murphy v. Plankinton Bank*, 13 S. D. 501, 83 N. W. 575.

As to right to give trust deed as security for payment of indebtedness. *Brown v. Comonow*, 17 N. D. 84, 114 N. W. 728.

As to when assignment is given for security only. *Fifer v. Fifer*, 13 N. D. 20, 99 N. W. 763.

As to when absolute deed constitutes mortgage. *Wells v. Geyer*, 12 N. D. 316, 96 N. W. 289.

Transfer of real property by deed to secure loan constitutes a mortgage. *Krug v. Kautz*, 21 S. D. 461, 113 N. W. 623.

As to similar provision in Cal. Civ. Code, § 2924, see *Works v. Merritt*, 105 Cal. 467, 38 Pac. 1109.

§ 6728. Bottomry and respondentia not affected. Contracts of bottomry or respondentia, although in the nature of mortgages, are not affected by any of the provisions of this chapter. [R. C. 1905, § 6152; Civ. C. 1877, § 1725; R. C. 1899, § 4702.]

§ 6729. When transfer may be shown to be mortgage. The fact that a transfer was made subject to a defeasance on a condition, may, for the purpose of showing such transfer to be a mortgage, be proved, except as against a subsequent purchaser or incumbrancer for value and without notice, though the fact does not appear by the terms of the instrument. [R. C. 1905, § 6153; Civ. C. 1877, § 1726; R. C. 1899, § 4703.]

Evidence to prove deed absolute on its face a mortgage must be clear, convincing and satisfactory. *Jasper v. Hazen*, 4 N. D. 1, 58 N. W. 454.

One transferring property unconditionally is thereafter estopped from claiming it was a mortgage if transfer was relied upon as absolute deed by grantee. *McGuin v. Lee*, 10 N. D. 160, 86 N. W. 714.

Evidence of a parol defeasance insufficient under established rule of proof required. *Little v. Braun*, 11 N. D. 410, 92 N. W. 800.

Deed is absolute unless proof is clear, convincing, satisfactory and specific that it was intended to be a mortgage. *Northwestern Fire & Marine Ins. Co. v. Lough*, 13 N. D. 601, 102 N. W. 160.

In order for party to claim benefit of section 6179 it must appear that he is purchaser or incumbrancer in good faith without notice. *Murphy v. Bank*, 13 S. D. 501, 83 N. W. 575.

A warranty deed given to secure payment of notes is a mortgage. *Bradley v. Helgeson*, 14 S. D. 593, 86 N. W. 634; *Shimerda v. Wohlford*, 13 S. D. 155, 82 N. W. 393; *Merrill v. Hurley*, 6 S. D. 592, 62 N. W. 958; *Wells v. Geyer*, 12 N. D. 316, 96 N. W. 289.

As to necessity of grantor in security deed tendering all indebtedness due grantee before he can compel reconveyance. *Smith v. Jensen*, 16 N. D. 408, 114 N. W. 306.

Intention of parties as to whether instrument is deed or mortgage may be shown by parol evidence. *Miller v. Smith*, 20 N. D. 96, 126 N. W. 499.

Deed absolute on face may be shown to be in fact mortgage securing debt existing at time of its execution. *Adams v. McIntyre*, 22 N. D. 337, 133 N. W. 915.

Parol evidence to show absolute deeds to be mortgages. 15 Am. Dec. 47.

Deeds absolute in form with agreements to reconvey as mortgages. 17 Am. Dec. 300.

Right to foreclose deed intended as security for debt as an equitable mortgage. 22 L.R.A.(N.S.) 572.

Does a deed absolute on its face, but intended as a mortgage, convey the legal title. 11 L.R.A.(N.S.) 209.

Jurisdiction of equity over suit to have deed declared a mortgage as to land in another state or country. 69 L.R.A. 685.

Grantee's oral promise to grantor to hold in trust, as giving rise to constructive trust, where conveyance was made as security. 39 L.R.A.(N.S.) 922.

Protection of purchaser from apparent vendee under instrument apparently a conveyance, but intended as a mortgage. 32 L.R.A.(N.S.) 1046; 38 L.R.A.(N.S.) 982.

Effect of failure to record defeasance as against creditors of the grantee. 5 L.R.A.(N.S.) 387.

Effect of debt becoming barred by limitations, upon rights and remedies under conveyance absolute on its face, but intended as a mortgage. 11 L.R.A.(N.S.) 825; 24 L.R.A.(N.S.) 840.

Right to accept favorable part of decree on absolute deed decreed to be a mortgage and appeal from the rest. 29 L.R.A.(N.S.) 11.

§ 6730. What may be mortgaged. Any interest in property which is capable of being transferred may be mortgaged. [R. C. 1905, § 6154; Civ. C. 1877, § 1727; R. C. 1899, § 4704.]

Mortgage for future advances valid. Second mortgagee with notice, subject to first mortgage. Recording of second lien not notice to prior incumbrancer. *Bank v. Modine & Co.*, 7 N. D. 201, 73 N. W. 527.

As to real estate being subject to mortgage by holder of legal title between foreclosure sale and expiration of redemption period. *North Dakota Horse & Cattle Co. v. Serungard*, 17 N. D. 466, 29 L.R.A.(N.S.) 508, 117 N. W. 453.

Right to mortgage privilege to use streets for quasi-public purposes. 47 L.R.A. 87.

Right to mortgage burial lot. 67 L.R.A. 122.

What articles are included in such general terms as appurtenances, fixtures and the like employed in chattel mortgage. 46 L.R.A.(N.S.) 206.

§ 6731. After-acquired title subject to. Title acquired by the mortgagor subsequent to the execution of the mortgage inures to the mortgagee as security for the debt in like manner as if acquired before the execution. [R. C. 1905, § 6155; Civ. C. 1877, § 1727; R. C. 1899, § 4705.]

Woman signing mortgage with her husband and acquiring title afterward holds same for mortgagee. *Yerkes v. Hadley*, 5 D. 324, 40 N. W. 340, 2 L.R.A. 263.

Assignment of mortgage note. *Merrill v. Hurley*, 6 S. D. 592, 62 N. W. 958, 55 Am. St. Rep. 859.

Assignment of mortgage taken by grantor of land under general warranty will be presumed to have been taken for benefit of grantee. *Sommers v. Wagner*, 21 N. D. 531, 131 N. W. 797.

Title, after acquired by patent to homesteader, inures to mortgagee as of date of execution and delivery of mortgage. *Adam v. McClintock*, 21 N. D. 483, 131 N. W. 394.

Mortgage of after-acquired property and of property having only a potential existence. 46 Am. Dec. 712; 109 Am. St. Rep. 510.

Effect of mortgage upon after-acquired personal property. 76 Am. Dec. 723; 109 Am. St. Rep. 510.

Does chattel mortgage on domestic animals cover their increase when not mentioned therein. 14 L.R.A.(N.S.) 431.

Title to increase of animals as between mortgagee of dam and other claimants. 17 L.R.A. 82.

Necessity that increase of animals be in gestation at time of execution of mortgage in order to be covered thereby. 17 L.R.A.(N.S.) 203.

After-acquired property which passes by railroad mortgage. 99 Am. St. Rep. 252.

§ 6732. Not bound to perform act secured without covenant. A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security, unless there is an express covenant therein to that effect. [R. C. 1905, § 6156; Civ. C. 1877, § 1727; R. C. 1899, § 4706.]

As to similar provision in Cal. Civ. Code, § 2928, see *Jones v. Gardner*, 57 Cal. 641.

§ 6733. Assigning debt carries security. The assignment of a debt secured by mortgage carries with it the security. [R. C. 1905, § 6157; Civ. C. 1877, § 1727; R. C. 1899, § 4707.]

Right of assignee of mortgage to enforce option to declare entire mortgage due for default of payments. 15 L.R.A.(N.S.) 590.

§ 6734. On property adversely held. A mortgage may be created upon property held adversely to the mortgagor. A mortgage of property held adversely to the mortgagor takes effect from the time at which he or one claiming under him obtains possession of the property, but has precedence over every lien upon the mortgagor's interest in the property, created subsequently to the recording of the mortgage. [R. C. 1905, § 6158; Civ. C. 1877, § 1728; R. C. 1899, § 4708.]

As to right to mortgage property adversely held. *Galbraith v. Payne*, 13 N. D. 164, 96 N. W. 258.

§ 6735. May confer power of sale. A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security. [R. C. 1905, § 6159; Civ. C. 1877, § 1729; R. C. 1899, § 4709.]

§ 6736. Such power a trust. A power of sale under a mortgage is a trust and as to real property can be executed only in the manner prescribed by the code of civil procedure. [R. C. 1905, § 6160; Civ. C. 1877, § 1730; R. C. 1899, § 4710.]

Mortgagor may grant power of sale in trust for benefit of both parties. *Robinson v. McKinney*, 4 D. 290, 29 N. W. 658.

Mortgagor empowered to confer power of sale upon mortgagee or any other person. *Brown v. Comonow*, 17 N. D. 84, 114 N. W. 728.

As to remedy of power of sale in mortgage. *Olson v. Casselman*, 15 N. D. 34, 105 N. W. 1105.

Mortgage of realty may be complete without power of sale; only a mortgage with express power of sale may be foreclosed by advertisement. *Grant Co. v. Col. & U. S. Mort. Co.*, 3 S. D. 390, 53 N. W. 746.

Must sell in manner pointed out in instrument. *Everett v. Buchanan*, 2 D. 249, 6 N. W. 439.

A mortgage of real estate may be complete without power of sale, but unless containing such power cannot be foreclosed by advertisement. *Grant Co. v. Mortgage Co.*, 3 S. D. 390, 53 N. W. 746.

Power of sale is a power coupled with an interest and not terminated with death of mortgagor. *Reilly v. Phillips*, 4 S. D. 604, 57 N. W. 780; *Grandin v. Emmons*, 10 N. D. 223, 86 N. W. 723.

Removal of building from mortgaged property does not destroy lien thereon after security on lot has been exhausted. *Trust Co. v. Parmalee*, 5 S. D. 341, 58 N. W. 811.

Does power of sale in a mortgage or deed of trust confer an interest which prevents its revocation by death of mortgagor. 70 L.R.A. 135.

Foreclosure by exercise of power of sale. 92 Am. St. Rep. 573.

Necessity for sales under powers to be for reasonable price. 103 Am. St. Rep. 51.

Right of mortgagee to exercise power of sale during pendency of mortgage foreclosure or of action for debt secured. 2 B. R. C. 841.

Effect on mortgage lien of sale under the mortgage. 58 Am. Dec. 569.

Remedies of mortgagee to reach surplus proceeds after judicial or other sale. 88 Am. St. Rep. 359.

§ 6737. Requisites of power of attorney to execute. A power of attorney to execute a mortgage must be in writing subscribed, acknowledged or proved, certified and recorded in like manner as powers of attorney for grants of real property. [R. C. 1905, § 6161; Civ. C. 1877, § 1730; R. C. 1899, § 4711.]

Power of attorney to sell and convey not power to mortgage. *Morris v. Ewing*, 8 N. D. 99, 76 N. W. 1047.

§ 6738. Lien on everything grant would pass. A mortgage is a lien upon everything that would pass by a grant of the property and upon nothing more. [R. C. 1905, § 6162; Civ. C. 1877, § 1731; R. C. 1899, § 4712.]

§ 6739. Against all claiming under mortgagor. Exception. A mortgage is a lien upon the property mortgaged in the hands of every one claiming under the mortgagor subsequently to its execution, except purchasers and incumbrancers in good faith without notice and for value and except as otherwise provided by article 3 of this chapter. [R. C. 1905, § 6163; Civ. C. 1877, § 1732; R. C. 1899, § 4713.]

Court of equity will restore senior mortgage satisfied by mistake to first lien where junior mortgagee had notice of its existence. *Upton v. Hugos*, 7 S. D. 476, 64 N. W. 523; *Ricker v. Stott*, 13 S. D. 208, 83 N. W. 47.

One obtaining title through attachment is not purchaser in good faith, so as to defeat prior unrecorded deed which is in fact a mortgage. *Murphy v. Bank*, 13 S. D. 501, 83 N. W. 575; *Kohn v. Lapham*, 13 S. D. 78, 82 N. W. 408.

Lien of chattel mortgage properly filed is paramount to that of agister for subsequently pasturing mortgaged stock. *Wright v. Sherman*, 3 S. D. 290, 52 N. W. 1093, 17 L.R.A. 792; *First Nat. Bank v. Scott*, 7 N. D. 312, 75 N. W. 254.

§ 6740. Mortgagee not entitled to possession. A mortgage does not entitle the mortgagee to the possession of the property, unless authorized by the express terms of the mortgage; but after the execution of a mortgage the mortgagor may agree to such change of possession without a new consideration. No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the mortgagee's security. [R. C. 1905, § 6164; Civ. C. 1877, § 1733; R. C. 1899, § 4714.]

Mortgagor entitled to possession until foreclosure and time of redemption has expired. *Shimerda v. Wohlford*, 13 S. D. 155, 82 N. W. 393; *Yankton B. & L. Ass'n v. Dowling*, 10 S. D. 535, 74 N. W. 436; *McKay v. Shotwell*, 6 D. 124, 50 N. W. 622.

Bill of sale to secure a debt constitutes a mortgage as between parties, and does not entitle mortgagee to possession. *Rosenbaum v. Ross*, 4 S. D. 184, 56 N. W. 114.

Receiver may be appointed to take possession of property on foreclosure. *Roberts v. Parker*, 14 S. D. 323, 85 N. W. 591.

Mortgagee cannot take possession of land before foreclosure in absence of clause expressly permitting it. *McClory v. Ricks*, 11 N. D. 38, 88 N. W. 1042.

Necessity of mortgagor's consent to possession by mortgagee. *Nash v. Northwest Land Co.*, 15 N. D. 566, 108 N. W. 792.

A mortgagee's possession under an illegal foreclosure with the knowledge and acquiescence of the mortgagor is that of a trustee and he must account and surrender possession after net rents, issues and profits extinguish the debt and taxes paid. *Finlayson v. Peterson*, 11 N. D. 45, 89 N. W. 855.

Duties and liabilities of mortgagee in possession. 4 Am. St. Rep. 69.

§ 6741. Foreclosure. A mortgagee may foreclose the right of redemption of the mortgagor in the manner prescribed by the code of civil procedure. [R. C. 1905, § 6165; Civ. C. 1877, § 1734; R. C. 1899, § 4715.]

Right to subject equity of redemption to execution on judgment for the mortgage debt. 11 Am. Dec. 193.

§ 6742. Record of assignment. How record operates. An assignment of a mortgage may be recorded in like manner as a mortgage and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor. [R. C. 1905, § 6166; Civ. C. 1877, § 1735; R. C. 1899, § 4716.]

Assignment of real estate mortgage is proper instrument for record. *Merrill v. Luce*, 6 S. D. 354, 61 N. W. 43, 55 Am. St. Rep. 844.

As to similar provision in Cal. Civ. Code, § 2934, see *Adler v. Sargent*, 109 Cal. 42, 41 Pac. 799; *Rodgers v. Peckham*, 120 Cal. 238, 52 Pac. 483.

§ 6743. Of what such record not notice. When the mortgage is executed as security for money due or to become due on a promissory note, bond or other instrument designated in the mortgage, the record of the assignment of the mortgage is not of itself notice to a mortgagor, his heirs or personal representatives so as to invalidate any payment made by them or either of them to the person holding such note, bond or other instrument. [R. C. 1905, § 6167; Civ. C. 1877, § 1735; R. C. 1899, § 4717.]

Neglect to take and record assignment cannot prejudice an innocent purchaser. *Pickford v. Peebles*, 7 S. D. 166, 63 N. W. 779.

Though contract is one between Minnesota parties, the Minnesota recording statute does not discharge mortgage debt, and cannot affect mortgage as contract for security upon lands in this state. *Cosgrave v. McAvay*, 24 N. D. 343, 139 N. W. 693.

As to similar provision in Cal. Civ. Code, § 2935, see *Rodgers v. Peckham*, 120 Cal. 238, 52 Pac. 483.

§ 6744. Real estate mortgages, how discharged by certificate. A recorded mortgage must be discharged upon the record by the register of deeds having custody thereof on the presentation to him of a certificate of discharge, signed by the mortgagee, his executors, administrators, guardians, trustees, assigns or personal representatives, properly acknowledged or proved and certified as prescribed by the chapter on recording transfers, stating that the mortgage has been paid in full, or otherwise satisfied and discharged, and authorizing the officer to cancel the same of record, giving a brief description of the mortgage; provided, however, that any person acting as personal representative of the mortgagee as aforesaid, must first file and have recorded a power of attorney in the register's office where such mortgage is recorded, showing his authority to discharge mortgages in behalf and for the mortgagee and in his name and stead. A certificate of the satisfaction of a mortgage may be made in substantially the following form:

This certifies that a certain mortgage executed by..... of mortgagor to of mortgagee, dated the day of, A. D. 19.., upon the (here describe the property covered by the mortgage) and recorded in the office of the register of deeds in and for the county of and state of North Dakota, in book of mortgages on page is paid and satisfied; and hereby authorize and require said register of deeds to discharge the same of record in his office.

Witness hand this day of, A. D., 190..

(Acknowledgment.) [R. C. 1905, § 6168; Civ. C. 1877, § 1735; R. C. 1899, § 4719; 1901, ch. 125; 1905, ch. 154.]

As to similar provision in Cal. Civ. Code, § 2937, see *Beal v. Stevens*, 72 Cal. 451, 14 Pac. 186; *Woodward v. Brown*, 119 Cal. 283, 63 Am. St. Rep. 108, 51 Pac. 2, 542.

§ 6745. Discharge by foreign executor or administrator. When an executor or administrator shall be appointed in any other state or foreign country, on the estate of any person not a resident of this state at the time of his decease, and no executor or administrator thereon shall have been appointed in this state, such foreign executor or administrator, upon filing in the office of the register of deeds of any county in which any mortgage held by the estate of such deceased person is filed or recorded an authenticated copy of his appointment, may execute, acknowledge and deliver a certificate of discharge of such mortgage the same as and with like effect as executors and administrators appointed under the laws of this state may do. [R. C. 1905, § 6169; R. C. 1895, § 4720.]

§ 6746. Discharge by heir or legatee. Any heir or legatee of such deceased person, residing within or without the state, upon recording in the office of the register of deeds an authenticated copy of the judgment or decree of the court, transferring to such heir or legatee the ownership of any such mortgage may, in like manner and with like effect, satisfy or release such mortgage. [R. C. 1905, § 6170; R. C. 1895, § 4721.]

§ 6747. Discharge by foreign guardian of minor. Any guardian appointed in any other state or foreign country of a minor holding and owning a mortgage upon property in this state, upon filing in the office of the register of deeds of the county in which the property is situated an authenticated copy of his appointment as guardian and the same proof of the ownership of such mortgage as is required in the last section, may in like manner and with like effect satisfy or release such mortgage. [R. C. 1905, § 6170; R. C. 1895, § 4722.]

§ 6748. Such certificate must be recorded. A certificate of the discharge of a mortgage and a proof or acknowledgment thereof must be recorded at length and a reference made in the record to the book and page where the mortgage is recorded and in the minute of the discharge made upon the record of the mortgage, to the book and page where the discharge is recorded. [R. C. 1905, § 6172; Civ. C. 1877, § 1735; R. C. 1899, § 4723.]

Notary public is presumed to fill blanks in an acknowledgment. *Jones v. Trust Co.*, 7 S. D. 122, 63 N. W. 553.

Presumptions that certificate of officer on discharge was proper. *Jones v. Trust Co.*, 7 S. D. 122, 63 N. W. 553.

Tender of amount due on mortgage, and its deposit in bank as provided by law, is payment and satisfaction and renders mortgagee liable for this penalty. *Kronebusch v. Raumin*, 6 D. 243, 42 N. W. 656.

Demand made in another state upon mortgagee and his refusal or neglect there to execute and discharge same does not subject such mortgagee to penalty, but renders him liable for consequential damages. *Jones v. Trust Co.*, 7 S. D. 122, 63 N. W. 553.

Forfeiture can be recovered only by counting expressly upon the statute. *Greenberg v. Bank*, 5 N. D. 483, 67 N. W. 597; *Peckham v. Van Bergen*, 10 N. D. 43, 84 N. W. 566.

§ 6749. When mortgage satisfied mortgagee must on demand discharge. Penalty. When any mortgage or lien upon property has been satisfied the owner of such mortgage or lien must immediately upon demand of the owner of the property execute and deliver to him a certificate of the discharge thereof and must acknowledge the execution thereof so as to entitle it to be recorded or he must enter satisfaction or cause satisfaction of such mortgage or lien to be entered of record; and any owner of any mortgage or lien who refuses to execute or deliver to the owner of the property covered by the mortgage or lien the certificate of discharge and to acknowledge the execution thereof or to enter satisfaction or cause satisfaction to be entered of the mortgage or lien as provided by law, is liable to the owner of such property or his assignee or legal representative for all damages which he or they may sustain by reason of such refusal, and shall also forfeit to them the sum of one hundred dollars; provided, however, that when a mortgage or lien upon personal property has been satisfied, the owner of such mortgage or lien must within thirty days thereafter cause a certificate of discharge thereof to be trans-

mitted to the office of the register of deeds of the county where such mortgage or lien is of record, and any owner of any mortgage or lien who fails to cause a certificate of discharge thereof to be so transmitted shall be liable to the owner of such property, and his assignee or legal representative in damage in the sum of ten dollars for each and every satisfaction not so transmitted. [1907, ch. 176; R. C. 1905, § 6173; Civ. C. 1877, § 1735; R. C. 1895, § 4724.]

Tender of amount due and deposit of same in bank if not accepted acts as payment of note and makes this section operative. *Kronebusch v. Raumin*, 6 D. 243, 42 N. W. 656.

Where a party seeks to recover statutory penalty must rely on specific statute giving penalty. *Greenberg v. Bank*, 5 N. D. 483, 67 N. W. 597; *Peckham v. Van Bergen*, 10 N. D. 43, 84 N. W. 566.

Penalty to be recovered only upon a strict contract upon failure to comply with request. *Peckham v. Van Bergen*, 10 N. D. 43, 84 N. W. 566.

Demand of satisfaction of mortgagee on payment of mortgage in another state does not make him liable to penalty. His liability will be amount of damage caused by failure to satisfy. *Jones v. Trust Co.*, 7 S. D. 122, 63 N. W. 553.

Complaint in action for failure to release paid mortgage must allege that expense of release was paid or tendered. *Mader v. Piano Mfg. Co.*, 17 S. D. 553, 97 N. W. 843.

ARTICLE 2.—MORTGAGE OF REAL PROPERTY.

§ 6750. Form. A mortgage of real property may be made in substantially the following form:

This mortgage made the day of, in the year..... by A. B., of, mortgagor, to C. D., of, mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (here describe the property) as security for the payment to him of dollars, on or before the day of, in the year....., with interest thereon (or as security for the payment of an obligation, describing it, etc.). A. B.

[R. C. 1905, § 6174; Civ. C. 1877, § 1736; R. C. 1899, § 4725.]

§ 6751. When devisee must satisfy mortgage out of his property. When real property, subject to a mortgage, passes by succession or will, the successor or devisee must satisfy the mortgage out of his own property without resorting to the executor or administrator of the mortgagor, unless there is an express direction in the will of the mortgagor that the mortgage shall be otherwise paid. [R. C. 1905, § 6175; Civ. C. 1877, § 1737; R. C. 1899, § 4726.]

§ 6752. Executed, etc., like grant. Mortgages of real property may be acknowledged or proved, certified and recorded in like manner and with like effect as grants thereof. [R. C. 1905, § 6176; Civ. C. 1877, § 1738; R. C. 1899, § 4727.]

§ 6753. To whom record notice. The record of a mortgage duly made operates as notice to all subsequent purchasers and incumbrancers. [R. C. 1905, § 6177; Civ. C. 1877, § 1739; R. C. 1899, § 4728.]

§ 6754. Separate paper showing grant intended as mortgage must be recorded. Every grant of real property or of any estate therein which appears by any other writing to be intended as a mortgage within the meaning of chapter 86 of this code must be recorded as a mortgage; and if such grant and other writing explanatory of its true character are not recorded together at the same time and place, the grantee can derive no benefit from such record. [R. C. 1905, § 6178; Civ. C. 1877, § 1740; R. C. 1899, § 4729.]

Deed absolute in form, although intended as mortgage, is properly recorded in record of deeds. *Merchants' State Bank v. Tufts*, 14 N. D. 238, 116 Am. St. Rep. 682, 103 N. W. 760.

§ 6755. Defeasance must be recorded. When a grant of real property purports to be an absolute conveyance, but is intended to be defeasible on the performance of certain conditions such grant is not defeated or affected

as against any person other than the grantee or his heirs or devisees or persons having actual notice unless an instrument of defeasance duly executed and acknowledged, shall have been recorded in the office of the register of deeds of the county where the property is situated. [R. C. 1905, § 6179; Civ. C. 1877, § 1741; R. C. 1899, § 4730.]

Action to have trust deed declared a mortgage. *McKenna v. Whittaker*, 9 S. D. 442, 69 N. W. 587.

Purported absolute deed cannot be defeated by parol defeasance as against mortgagee without actual notice. *Patnode v. Deschenes*, 15 N. D. 100, 106 N. W. 573.

Mortgagee without actual notice of rights of vendee in possession under contract for defeasance, is innocent purchaser. *Gray v. Harvey*, 17 N. D. 1, 113 N. W. 1034.

"Any other person" as used in statute means subsequent purchasers and incumbrancers. *Valley v. First Nat. Bank*, 14 N. D. 580, 5 L.R.A.(N.S.) 387, 116 Am. St. Rep. 700, 106 N. W. 127.

ARTICLE 3.—MORTGAGE OF PERSONAL PROPERTY.

§ 6756. Form. A mortgage of personal property may be made in substantially the following form:

This mortgage made the day of, in the year by A. B., of, by occupation, mortgagor, to C. D., of, by occupation a....., mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (here describe the property) as security for the payment to him of dollars, on (or before) the day of, in the year, with interest thereon (or security for the payment of a note or obligation, describing it, etc.). A. B.

[R. C. 1905, § 6180; Civ. C. 1877, § 1742; R. C. 1899, § 4731.]

Sufficiency of description. *Bank v. Oium*, 3 N. D. 193, 54 N. W. 1034, 44 Am. St. Rep. 533; *Nichols Shepard Co. v. Barnes*, 3 Dak. 148, 14 N. W. 110; *Bank v. Koehel*, 8 S. D. 391, 66 N. W. 933; *Russell & Co. v. Amundson*, 4 N. D. 112, 59 N. W. 477; *Crow v. Zollars*, 11 S. D. 203, 76 N. W. 924; *Bank v. Elevator Co.*, 14 S. D. 276, 85 N. W. 219; *Coughran v. Sundback*, 9 S. D. 483, 70 N. W. 644; *Advance Thresher Co. v. Schmidt*, 9 S. D. 489, 70 N. W. 646.

Statute applies to chattel mortgage on unplanted crop. *Schweinberg v. Elevator Co.*, 9 N. D. 113, 81 N. W. 35; *Donovan v. Elevator Co.*, 7 N. D. 513, 74 N. W. 809, 66 Am. St. Rep. 674; *Nichols Shepard Co. v. Barnes*, 3 Dak. 148, 14 N. W. 110; *Hostetter v. Elevator Co.*, 4 N. D. 357, 61 N. W. 49; *Bank v. Mann et al.*, 2 N. D. 456, 51 N. W. 946; *Bank v. Elevator Co.*, 6 Dak. 357, 43 N. W. 806; *Bank v. Hanson*, 3 N. D. 465, 57 N. W. 345; *Best Brewing Co. v. Elevator Co.*, 5 Dak. 62, 37 N. W. 763.

Provision in lease making rent lien on furniture construed as chattel mortgage. *Greeley v. Winsor*, 1 S. D. 117, 45 N. W. 325; *Peet v. Insurance Co.*, 7 S. D. 410, 64 N. W. 206; *Esshom v. Hotel Co.*, 7 S. D. 74, 63 N. W. 229.

Description of machine must be definite to bind earnings paid without notice of existence of mortgage. *Machine Co. v. Skau*, 10 S. D. 636, 75 N. W. 199.

Description of crop and land in crop mortgage. *Coughran v. Sundback*, 9 S. D. 483, 70 N. W. 644; *Advance Thresher Co. v. Schmidt*, 9 S. D. 489, 70 N. W. 646.

Lease making rents a lien on personal property operates as chattel mortgage. *Greeley v. Winsor*, 1 S. D. 117, 45 N. W. 325, 36 Am. St. Rep. 720; *Peet v. Ins. Co.*, 7 S. D. 410, 64 N. W. 206; *Esshom v. Hotel Co.*, 7 S. D. 74, 63 N. W. 229.

Description of property on sale or mortgage of future crops. 23 L.R.A. 458.

Curing of insufficient or inaccurate description by chattel mortgagee taking possession before any specific right or lien of creditors has attached. 25 L.R.A.(N.S.) 117.

Validity of verbal chattel mortgage. 7 L.R.A.(N.S.) 418.

Pre-existing debt as consideration for chattel mortgage. 33 L.R.A. 305.

As to similar provision in Cal. Civ. Code, § 2955, see *Glenn v. Arnold*, 56 Cal. 631; *Raventas v. Green*, 57 Cal. 254; *Martin v. Thompson*, 63 Cal. 3; *Duffey v. Shields*, 63 Cal. 332; *Hitchcock v. Hassett*, 71 Cal. 331, 12 Pac. 228; *Grangers' Business Asso. v. Clark*, 84 Cal. 201, 23 Pac. 1081; *Blaisdell v. McDowell*, 91 Cal. 285, 25 Am. St. Rep. 178, 27 Pac. 656; *Harms v. Silva*, 91 Cal. 636, 27 Pac. 1088; *Re Fischer*, 94 Cal. 523, 29 Pac. 951; *Barker v. Maskell*, 101 Cal. 9, 35 Pac. 641; *San Francisco Breweries v. Schurtz*, 104 Cal. 420, 38 Pac. 92; *Works v. Merritt*, 105 Cal. 467, 38 Pac. 1109; *Bank of Ukiah v. Gibson*, 5 Cal. Unrep. 11, 39 Pac. 1069; *Bank of Ukiah v. Moore*, 106 Cal. 673, 39 Pac. 1071; *Rohrbough v. Johnson*, 107 Cal. 144, 40 Pac. 37; *Bank of Ukiah v. Gibson*, 109 Cal. 197, 41 Pac. 1008, 1010; *Simpson v. Ferguson*, 112 Cal. 180, 53 Am. St. Rep. 201, 40 Pac. 104, 44 Pac. 484; *Scott v. Hotchkiss*, 115

Cal. 89, 47 Pac. 45; First Nat. Bank v. Erreca, 116 Cal. 81, 58 Am. St. Rep. 133, 47 Pac. 926; Locke v. Klunker, 123 Cal. 231, 55 Pac. 993; Bishop v. McKillican, 124 Cal. 321, 71 Am. St. Rep. 68, 57 Pac. 76; Alferitz v. Borgwardt, 126 Cal. 201, 58 Pac. 460; McLeod v. Barnum, 131 Cal. 605, 63 Pac. 924; Perkins v. Maier & Z. Brewery, 133 Cal. 496, 65 Pac. 1030.

§ 6757. Conditional sales must be in writing and filed. All reservations of the title to personal property, as security for the purchase money thereof, shall, when the possession of such property is delivered to the vendee, be void as to subsequent creditors without notice and purchasers and incumbrancers in good faith and for value, unless such reservation is in writing and filed and indexed the same as a mortgage of personal property. In indexing such instruments the register of deeds shall treat the purchaser as mortgagor and the vendor as mortgagee. [R. C. 1905, § 6181; R. C. 1895, § 4732.]

Failure to file contract of conditional sale, effect of. Thompson v. Armstrong, 11 N. D. 198, 91 N. W. 39.

Not unconstitutional as depriving persons of property without due process of law. Pringle v. Canfield, 19 S. D. 506, 104 N. W. 223.

Applicable to sale with provision that goods are held in trust by buyer as security for purchase price. Webber v. Conklin, 20 S. D. 52, 104 N. W. 675.

Reservation of title is not void as to one obtaining possession of property before filing of contract with register of deeds when he does not claim to be subsequent creditor without notice or purchaser or incumbrancer in good faith. Rock Island Plow Co. v. Western Implement Co., 21 N. D. 608, 132 N. W. 351.

The trustee in bankruptcy is neither a subsequent creditor without notice nor a purchaser or incumbrancer in good faith for value within this section. In re Pierce, 157 Fed. 755.

Necessity of recording instrument creating lien or reserving title to personal property in state to which property is subsequently removed. 64 L.R.A. 356; 35 L.R.A. (N.S.) 385.

Effect of failure to record contract of conditional sale on vendor's right to relief in case of purchaser's bankruptcy. 38 L.R.A. (N.S.) 554.

Recordation of lien on fixtures as personalty as notice to mortgagee of realty. 1 B. R. C. 691.

§ 6758. Void as to whom, unless filed. A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and incumbrancers of the property in good faith for value unless the original or an authenticated copy thereof is filed by depositing the same in the office of the register of deeds of the county where the property mortgaged, or any part thereof, is at such time situated. [R. C. 1905, § 6182; Civ. C. 1877, § 1744; R. C. 1899, § 4733.]

Original must be filed in some county; certified copy not constructive notice if original returned to mortgagee; copy filed in other county must be certified to by register. Rosenbaum v. Foss, 4 S. D. 184, 56 N. W. 114; Kimball Co. v. Kirby, 4 S. D. 152, 55 N. W. 1110.

Withholding from files to allow mortgagor to purchase goods is fraud. Jewett v. Sundback, 5 S. D. 111, 58 N. W. 20.

Making and filing equivalent to change in possession of property. Richert v. Simons, 6 D. 239, 42 N. W. 657.

Lien superior to that of agister attaching after execution and filing. First Nat. Bank v. Scott, 7 N. D. 312, 75 N. W. 254; Wright v. Sherman, 3 S. D. 367, 53 N. W. 425.

On property removed from one state to another need not be refiled unless required by statute. Wilson v. Rustad, 1 N. D. 330, 75 N. W. 260, 66 Am. St. Rep. 649.

Purchaser at mortgage sale of real estate cannot thereby acquire rights superior to subsequent mortgage on crop without notice. Bank v. Swan, 2 N. D. 225, 50 N. W. 357.

Failure to file does not render void as to mortgagor. Deering v. Hanson, 7 N. D. 288, 75 N. W. 249.

Good where made, good here. Wilson v. Rustad, 7 N. D. 330, 75 N. W. 260.

Words "In good faith for value" apply only to subsequent purchasers and incumbrancers and not to creditors. Kimball v. Kirby, 4 S. D. 152, 55 N. W. 1110; Noyes v. Brace, 8 S. D. 190, 65 N. W. 1071.

Failure to promptly file chattel mortgage not a badge of fraud. Mercantile Co. v. Gardner, 5 S. D. 246, 58 N. W. 557.

Mortgage first executed but unrecorded subject to one subsequently executed without notice for value but first recorded. Walter A. Wood Co. v. Lee, 9 S. D. 69, 68 N. W. 170.

Chattel mortgage taken in foreign state not filed as required by such state not good against purchasers in state to which property is removed. *Carroll v. Nisbet*, 9 S. D. 497, 70 N. W. 634.

Execution levied on property covered by unrecorded mortgage is prior lien though execution debt was contracted prior to execution of mortgage. *Pierson v. Hickey*, 16 S. D. 46, 91 N. W. 339. (This was a divided opinion.)

Unfiled chattel mortgage void as to creditors after its execution. *Noyes v. Brace*, 8 S. D. 190, 65 N. W. 1071.

Unrecorded contract of conditional sale is void as to vendee's creditors only upon proof that they are such. *Thompson v. Armstrong*, 11 N. D. 198, 91 N. W. 39.

Effect of recording on validity of mortgage of merchandise leaving mortgagor in possession with power of sale. 18 L.R.A. 610.

Retroactive effect of filing chattel mortgages for record in regard to liens acquired on the same property after the execution of the mortgage. 33 L.R.A. 163.

Failure to record chattel mortgage as fraud on other creditors. 31 L.R.A. 638.

Necessity of recording mortgage of future crops. 23 L.R.A. 463.

When local law deemed to require registering or recording of a transfer within section 60a of the bankruptcy law. 5 L.R.A.(N.S.) 148; 18 L.R.A.(N.S.) 1233.

Effect of chattel mortgagee taking possession before any specific right or lien of creditors has attached to cure failure to record. 25 L.R.A.(N.S.) 115.

Sufficiency of record notice of mortgage on chattels to be manufactured or acquired as independent articles and not as the increase or fruits of existing property. 18 L.R.A. 303.

Necessity of filing or recording chattel mortgage in state where property located. 64 L.R.A. 361.

Necessity of recording mortgage in state to which property is subsequently removed. 64 L.R.A. 356; 6 L.R.A.(N.S.) 940; 35 L.R.A.(N.S.) 386.

As to similar provision in Cal. Civ. Code, § 2957, see *Berson v. Nunan*, 63 Cal. 550; *Wood v. Franks*, 67 Cal. 32, 7 Pac. 50; *Meherin v. Oaks*, 67 Cal. 57, 7 Pac. 47; *Beamer v. Freeman*, 84 Cal. 554, 24 Pac. 169; *Harms v. Silva*, 91 Cal. 636, 27 Pac. 1088; *Yost v. Commercial Bank*, 94 Cal. 494, 29 Pac. 858; *San Francisco Breweries v. Schurtz*, 104 Cal. 420, 38 Pac. 92; *Adlard v. Rodgers*, 105 Cal. 327, 38 Pac. 889; *Works v. Merritt*, 105 Cal. 467, 38 Pac. 1109; *Cardenas v. Miller*, 108 Cal. 250, 49 Am. St. Rep. 84, 39 Pac. 783, 41 Pac. 472; *Bank of Ukiah v. Gibson*, 5 Cal. Unrep. 11, 39 Pac. 1069; *Bank of Ukiah v. Moore*, 106 Cal. 673, 39 Pac. 1071; *Fassett v. Wise*, 115 Cal. 316, 36 L.R.A. 505, 1095, 47 Pac. 47; *Lemon v. Wolff*, 121 Cal. 272, 53 Pac. 801; *Bishop v. McKillican*, 124 Cal. 321, 71 Am. St. Rep. 68, 57 Pac. 76; *Ruggles v. Cannedy*, 127 Cal. 290, 46 L.R.A. 371, 53 Pac. 911, 59 Pac. 827; *First Nat. Bank v. Menke*, 128 Cal. 103, 60 Pac. 675; *Alferitz v. Scott*, 130 Cal. 474, 62 Pac. 735; *McLeod v. Barnum*, 131 Cal. 605, 63 Pac. 924; *Talcott v. Hurlbert*, 143 Cal. 4, 76 Pac. 647.

§ 6759. Filing, notice to whom. The filing of a mortgage of personal property in conformity with the provisions of this article operates as notice thereof to all subsequent purchasers and incumbrancers of so much of said property as is at the time mentioned in the preceding section, situated in the county or counties wherein such mortgage or an authenticated copy thereof is filed. [R. C. 1905, § 6183; Civ. C. 1877, § 1745; R. C. 1899, § 4734.]

As to similar provision in Cal. Civ. Code, § 2963, see *Bishop v. McKillican*, 124 Cal. 321, 71 Am. St. Rep. 68, 57 Pac. 76.

§ 6760. Where property in transit deemed to be. For the purposes of this article property in transit from the possession of the mortgagee to the county of the residence of the mortgagor or to a location for use is during a reasonable time for transportation to be taken as situated in the county in which the mortgagor resides, or where it is intended to be used. For a like purpose personal property used in conducting the business of a common carrier is to be taken as situated in the county in which the principal office or place of business of the carrier is located. [R. C. 1905, § 6184; Civ. C. 1877, § 1746; R. C. 1899, § 4735.]

As to similar provision in Cal. Civ. Code, § 2960, see *Bishop v. McKillican*, 124 Cal. 321, 71 Am. St. Rep. 68, 57 Pac. 76.

§ 6761. Valid only as to property in county. Filing in other counties. A single mortgage of personal property embracing several things of such character, or so situated, that by the provisions of this article, separate mortgages upon them would be required to be filed in different counties is only valid in respect to the things as to which it is duly filed; but a copy of the original mortgage may be authenticated by the register of deeds in

whose office it is filed, and such copy be filed in any other county with the same effect as to the property therein that the original could have been. [R. C. 1905, § 6185; Civ. C. 1877, § 1747; R. C. 1899, § 4736.]

Valid only in county where original or copy filed. *Kimball v. Kirby*, 4 S. D. 152, 52 N. W. 1110; *Rosenbaum v. Foss*, 4 S. D. 184, 56 N. W. 114. (Last case reversed on other grounds, 7 S. D. 83.)

As to similar provision in Cal. Civ. Code, § 2959, see *Berson v. Nunan*, 63 Cal. 550; *Fassett v. Wise*, 115 Cal. 316, 36 L.R.A. 505, 1095, 47 Pac. 47; *Bishop v. McKillican*, 124 Cal. 321, 71 Am. St. Rep. 68, 57 Pac. 76.

§ 6762. How renewed. A mortgage of personal property ceases to be valid as against creditors of the mortgagor, and subsequent purchasers or incumbrancers in good faith after the expiration of three years from the filing thereof, except as hereinafter provided, unless within ninety days next preceding the expiration of such term a copy of the mortgage, and a statement of the amount of existing debt for which the mortgagee or his assignee claims a lien sworn to and subscribed by him, his agent or attorney, are filed anew in the office of the register of deeds in the county in which the mortgage was originally filed, and in like manner the mortgage and statement of debt must be again filed every three years or it ceases to be valid as against the parties above mentioned; provided, that mortgages of the personal property belonging to street car companies, telephone companies and telegraph companies need not be renewed; and, provided further, that trust deeds or other trust conveyances or instruments executed to secure bonds of corporations need not be renewed. [1911, ch. 191; R. C. 1905, § 6186; Civ. C. 1877, § 1748; 1881, ch. 25, § 1; 1890, ch. 41, § 1; R. C. 1895, § 4737; 1905, ch. 60.]

Failure to refile does not render void as against mortgagor. *Deering & Co. v. Hanson*, 7 N. D. 288, 75 N. W. 249.

Keeping crop mortgage alive by refile. *Merchants' Nat. Bank v. Mann*, 2 N. D. 456, 51 N. W. 946.

§ 6763. Chattel mortgage, how executed. A mortgage of personal property must be signed by the mortgagor in the presence of two witnesses who must sign the same as witnesses thereto, or acknowledge the execution of the same before some official qualified to take acknowledgments. And every mortgagee must surrender to the mortgagor at the time of the execution of the mortgage a correct copy of the original mortgage so signed, with witnesses or acknowledgment shown thereon. And the mortgagor must surrender to the mortgagee a receipt which shall be attached to the original mortgage showing that the mortgagee has surrendered to him a copy of such mortgage, and said receipt must accompany the mortgage when presented to the register of deeds and filed therewith. Otherwise said mortgage shall not be filed as a chattel mortgage by the register of deeds. [1913, ch. 66; R. C. 1905, § 6187; Civ. C. 1877, § 1749; R. C. 1899, § 4738; 1903, ch. 133.]

Witnesses only required for purpose of filing. *Walter A. Wood Co. v. Lee*, 4 S. D. 495, 57 N. W. 238.

Subscribing witnesses must be called to prove execution of mortgage, or their absence accounted for. *Brynjolfson v. Elevator Co.*, 6 N. D. 450, 71 N. W. 555, 66 Am. St. Rep. 612.

Mortgagee may be witness to chattel mortgage. *Fisher v. Porter*, 11 S. D. 311, 77 N. W. 112.

Mortgagee disqualified from being witness to chattel mortgage. *Donovan v. Elevator Co.*, 8 N. D. 585, 80 N. W. 772, 46 L.R.A. 721, 73 Am. St. Rep. 779.

Requirement as to witnesses met by words "in the presence of," and signatures of two persons as witnesses. *First Nat. Bank v. Elevator Co.*, 4 S. D. 409, 57 N. W. 77.

Proof of execution of chattel mortgage has not been dispensed with by statute. *Lander v. Proppe*, 6 D. 64, 50 N. W. 400.

In action between mortgagee and mortgagor, not necessary to show that the execution of chattel mortgage was witnessed. *J. I. Case Thresh. Mach. Co. v. Olson*, 10 N. D. 170, 86 N. W. 718.

Chattel mortgage which is not acknowledged or witnessed according to law is not entitled to be filed. *Pease v. Magill*, 17 N. D. 166, 115 N. D. 260.

Effect of chattel mortgagee taking possession before any specific right or lien of creditors has attached to cure original defect in execution. 25 L.R.A.(N.S.) 110.

As to similar provision in Cal. Civ. Code, § 2922, see *Dingley v. Bank of Ventura*, 57 Cal. 467; *London & S. F. Bank v. Bandmann*, 120 Cal. 220, 65 Am. St. Rep. 179, 52 Pac. 583; *Daniels v. Johnson*, 129 Cal. 415, 79 Am. St. Rep. 123, 61 Pac. 1107.

§ 6764. Duty of register of deeds. Cancellation. The register of deeds for each of the several counties must receive and file all such instruments as are offered to him and must keep the same in his office in regular and orderly file for the public information and must not permit them or any of them to be removed from his office until cancelled, except as hereafter provided. All instruments shall be kept in the regular files of his office for three years from the date of filing or date of filing the last renewal of the same and thereafter shall be placed in a separate file provided for that purpose. Provided, further, that all chattel mortgages may be destroyed ten years after date of filing or date of filing of last renewal. Every such mortgage may be cancelled by the register of deeds upon presentation to him of a receipt for the sum, money or property secured, or an acknowledgment of satisfaction thereof signed by the mortgagee. [1911, ch. 259; R. C. 1905, § 6188; Civ. C. 1877, § 1750; R. C. 1899, § 4739.]

§ 6765. Registry index. Every register of deeds with whom any such mortgage or authenticated copy thereof is filed must indorse a number upon the same in regular order together with the time of receiving the same and must enter the name of every party thereto in a book kept for that purpose alphabetically, placing mortgagors and mortgagees under a separate head and stating in separate columns, opposite each name, the number indorsed upon the mortgage, the date thereof and of the filing, the amount secured thereby, a brief of the substance thereof not otherwise entered and the time at which it is due. A mortgage is not to be deemed defectively filed by reason of any errors in the copy filed which do not tend to mislead a party interested; and the negligence of the officer with whom a mortgage is filed does not prejudice the rights of the mortgagee. [R. C. 1905, § 6189; Civ. C. 1877, § 1751; R. C. 1899, § 4740.]

Lienors are not affected by failure of register to properly number the liens. *Schouweiler v. McCaull*, 18 S. D. 70, 99 N. W. 95.

§ 6766. When mortgagee may take and dispose of property. If the mortgagor voluntarily removes or permits the removal of the mortgaged property from the county in which it was situated at the time it was mortgaged, the mortgagee may take possession and dispose of the property as a pledge for the payment of the debt, though the debt is not due. [R. C. 1905, § 6190; Civ. C. 1877, § 1752; R. C. 1899, § 4741.]

Lien waived and mortgage defeated by consent of mortgagee to a private sale. *Peterson v. St. Anthony & Dakota Elevator Co.*, 9 N. D. 55, 81 N. W. 59.

§ 6767. Where ship mortgage recorded. No mortgage of any ship or vessel, or part thereof, of the United States shall be valid against any person, other than the mortgagor, his heirs and devisees and persons having actual notice thereof, unless such mortgage is recorded in the office of the collector of customs where such vessel is registered or enrolled. [R. C. 1905, § 6191; Civ. C. 1877, § 1756; R. C. 1899, § 4742.]

§ 6768. Provisions inapplicable to ship mortgages. Sections 6758 to 6766 inclusive of this article do not apply to any mortgage of a ship or vessel, or any part thereof, which is required as above by act of congress to be recorded in a particular place or manner. [R. C. 1905, § 6192; Civ. C. 1877, § 1756; R. C. 1899, § 4743.]

ARTICLE 4.—SATISFACTION OF LIEN OR MORTGAGE BEFORE MATURITY.

§ 6769. Satisfaction, how effected. Any lien or mortgage upon property may be paid or satisfied before the date of maturity if the mortgagor so desires, providing that the full amount which would otherwise be due on date of maturity shall first be tendered or delivered in satisfaction thereof. [1907, ch. 175.]

Effect of unaccepted tender on lien of mortgage. 33 L.R.A. 231; 23 L.R.A.(N.S.) 403.

CHAPTER 88.

PLEDGE.

§ 6770. Defined. Pledge is a deposit of personal property by way of security for the performance of another act. [R. C. 1905, § 6193; Civ. C. 1877, § 1757; R. C. 1899, § 4744.]

Shares of stock in corporation may be pledged. *Van Cise v. Bank*, 4 D. 485, 33 N. W. 897.

Definition and nature of pledge. 49 Am. Dec. 730.

Setting aside pledged or mortgaged property retained by pledgor or mortgagor on his own premises or under his own control as a delivery or change of possession. 25 L.R.A.(N.S.) 525.

How far may pledge be effectual of which the pledgor's agent is made depository. 25 L.R.A. 577.

§ 6771. What contracts deemed pledge. Every contract by which the possession of personal property is transferred as security only is to be deemed a pledge. [R. C. 1905, § 6194; Civ. C. 1877, § 1758; R. C. 1899, § 4745.]

Retaining property of another for debt due does not constitute a pledge. *Taylor v. Jones*, 3 N. D. 235, 55 N. W. 593.

The law of collateral securities. 32 Am. St. Rep. 711.

As to similar provision in Cal. Civ. Code, § 2987, see *Irwin v. McDowell*, 4 Cal. Unrep. 329, 34 Pac. 708.

§ 6772. Lien dependent on possession. The lien of a pledge is dependent on possession and no pledge is valid until the property pledged is delivered to the pledgee or to a pledge holder as hereinafter prescribed. [R. C. 1905, § 6195; Civ. C. 1877, § 1759; R. C. 1899, § 4746.]

Lien of pledge is dependent upon possession. *Willard v. Monarch Elevator Co.*, 10 N. D. 400, 87 N. W. 996; *Purdin v. Archer*, 4 S. D. 54, 54 N. W. 1043.

Effect of surrender of pledged property on rights of pledgee. 39 L.R.A.(N.S.) 887.

Priority as between lien of corporation and pledgee of corporate stock. 39 L.R.A.(N.S.) 292.

As to similar provision in Cal. Civ. Code, § 2988, see *Palmtag v. Doutrick*, 59 Cal. 154, 43 Am. Rep. 245; *Hitchcock v. Hassett*, 71 Cal. 331, 12 Pac. 228; *Maier v. Freeman*, 112 Cal. 8, 53 Am. St. Rep. 151, 44 Pac. 357; *McFall v. Buckeye Grangers' Warehouse Assn.*, 122 Cal. 468, 68 Am. St. Rep. 47, 55 Pac. 253.

§ 6773. Includes increase. The increase of property pledged is pledged with the property. [R. C. 1905, § 6196; Civ. C. 1877, § 1760; R. C. 1899, § 4747.]

§ 6774. Lien may be pledged. One who has a lien upon property may pledge it to the extent of his lien. [R. C. 1905, § 6197; Civ. C. 1877, § 1761; R. C. 1899, § 4748.]

§ 6775. By one allowed to assume apparent ownership. One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it cannot set up his own title to defeat a pledge of the property made by the other to a pledgee, who received the property in good faith in the ordinary course of business and for value. [R. C. 1905, § 6198; Civ. C. 1877, § 1762; R. C. 1899, § 4749.]

Right to have trust property wrongfully pledged by a trustee for his individual benefit redeemed by money belonging to his insolvent estate. 6 L.R.A.(N.S.) 487.

As to similar provision in Cal. Civ. Code, § 2991, see *Palmtag v. Doutrick*, 59 Cal. 154, 43 Am. Rep. 245; *Shafer v. Lacy*, 121 Cal. 574, 54 Pac. 72.

§ 6776. To secure another's obligation. Property may be pledged as security for the obligation of another person than the owner and in so doing the owner has all the rights of a pledgor for himself except as hereinafter stated. [R. C. 1905, § 6199; Civ. C. 1877, § 1763; R. C. 1899, § 4750.]

§ 6777. Deposit with pledge holder. A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged who, if he accepts the deposit, is called a pledge holder. [R. C. 1905, § 6200; Civ. C. 1877, § 1764; R. C. 1899, § 4751.]

§ 6778. **Withdrawal of property pledged for another.** One who pledges property as security for the obligation of another cannot withdraw the property pledged otherwise than as a pledgor for himself might; and, if he receives from the debtor a consideration for the pledge, he cannot withdraw it without his consent. [R. C. 1905, § 6201; Civ. C. 1877, § 1765; R. C. 1899, § 4752.]

§ 6779. **Exoneration of pledge holder.** A pledge holder for reward cannot exonerate himself from his undertaking; and a gratuitous pledge holder can do so only by giving reasonable notice to the pledgor and pledgee to appoint a new pledge holder and in case of their failure to agree by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for his care of the same. [R. C. 1905, § 6202; Civ. C. 1877, § 1766; R. C. 1899, § 4753.]

§ 6780. **Pledge holder must enforce pledgee's rights.** A pledge holder must enforce all the rights of the pledgee, unless authorized by him to waive them. [R. C. 1905, § 6203; Civ. C. 1877, § 1767; R. C. 1899, § 4754.]

As to similar provision in Cal. Civ. Code, § 2996, see *Faulkner v. First Nat. Bank*, 130 Cal. 258, 62 Pac. 463.

§ 6781. **Liability of pledgee or pledge holder.** A pledgee, or a pledge holder for reward, assumes the duties and liabilities of a depositary for reward. [R. C. 1905, § 6204; Civ. C. 1877, § 1768; R. C. 1899, § 4755.]

Use of pledged property forbidden, unless consented to by pledgor. *Hawkins v. Hubbard*, 2 S. D. 631, 51 N. W. 774.

Duty of pledgee as to care of thing pledged. 17 L.R.A. 193; 83 Am. St. Rep. 392.

§ 6782. **Liability of gratuitous pledge holder.** A gratuitous pledge holder assumes the duties and liabilities of a gratuitous depositary. [R. C. 1905, § 6205; Civ. C. 1877, § 1769; R. C. 1899, § 4756.]

§ 6783. **Pledgee's rights on fraudulent misrepresentation of value.** When a debtor has obtained credit, or an extension of time by a fraudulent misrepresentation of the value of the property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented; and in default thereof may recover his debt immediately, though it is not actually due. [R. C. 1905, § 6206; Civ. C. 1877, § 1770; R. C. 1899, § 4757.]

§ 6784. **Sale when performance due.** When performance of the act for which a pledge is given is due in whole or in part, the pledgee may collect what is due him by a sale of the property pledged, subject to the rules and exceptions hereinafter prescribed. [R. C. 1905, § 6207; Civ. C. 1877, § 1771; R. C. 1899, § 4758.]

Implied authority of pledgee to sell corporate stock. 43 L.R.A. 742.

Wrongful sale of pledged property or collateral as larceny. 31 L.R.A. (N.S.) 999.

Pledgee's conversion of pledged property by invalid sale. 43 L.R.A. 737.

Remedies of pledgees. 79 Am. Dec. 499.

As to similar provision in Cal. Civ. Code, § 3000, see *Stewart v. Naud*, 125 Cal. 596, 58 Pac. 186; *Merchants' Nat. Bank v. Escondido Irrig. Dist.*, 144 Cal. 329, 77 Pac. 937.

§ 6785. **Demand necessary.** Before property pledged can be sold and after performance of the act for which it is security is due the pledgee must demand performance thereof from the debtor, if the debtor can be found. [R. C. 1905, § 6208; Civ. C. 1877, § 1772; R. C. 1899, § 4759.]

As to similar provision in Cal. Civ. Code, § 3001, see *Hill v. Finigan*, 62 Cal. 426; *Bendel v. Crystal Ice Co.*, 82 Cal. 199, 22 Pac. 1112; *Stewart v. Naud*, 125 Cal. 596, 58 Pac. 186.

§ 6786. **Notice to pledgor of sale.** A pledgee must give actual notice to the pledgor of the time and place at which the property pledged will be sold at such a reasonable time before the sale as will enable the pledgor to attend. [R. C. 1905, § 6209; Civ. C. 1877, § 1773; R. C. 1899, § 4760.]

Notice of sale must be given. *Stanford v. McGill*, 6 N. D. 536, 72 N. W. 938, 38 L.R.A. 760.

As to similar provision in Cal. Civ. Code, § 3002, see *Bendel v. Crystal Ice Co.*, 82 Cal. 199, 22 Pac. 1112; *Stewart v. Naud*, 125 Cal. 596, 58 Pac. 186.

§ 6787. **Waiver of such notice.** Notice of sale may be waived by a pledgor at any time; but is not waived by a mere waiver of demand of performance. [R. C. 1905, § 6210; Civ. C. 1877, § 1774; R. C. 1899, § 4761.]

As to similar provision in Cal. Civ. Code, § 3003, see *Bendel v. Crystal Ice Co.*, 82 Cal. 199, 22 Pac. 1112; *Stewart v. Naud*, 125 Cal. 596, 58 Pac. 186.

§ 6788. **How demand waived.** A debtor or pledgor waives a demand of performance as a condition precedent to a sale of the property pledged by a positive refusal to perform after performance is due, but cannot waive it in any other manner except by contract. [R. C. 1905, § 6211; Civ. C. 1877, § 1775; R. C. 1899, § 4762.]

As to similar provision in Cal. Civ. Code, § 3004, see *Bendel v. Crystal Ice Co.*, 82 Cal. 199, 22 Pac. 1112; *Stewart v. Naud*, 125 Cal. 596, 58 Pac. 186.

§ 6789. **Sale by public auction.** The sale by a pledgee of property pledged must be made by public auction in the manner and upon the notice to the public usual at the place of sale in respect to auction sales of similar property and must be for the highest obtainable price. [R. C. 1905, § 6212; Civ. C. 1877, § 1776; R. C. 1899, § 4763.]

Sale must be at public auction. *Stanford v. McGill*, 6 N. D. 536, 72 N. W. 938, 38 L.R.A. 760; *Everett v. Buchanan*, 2 D. 249, 6 N. W. 439; *Lane v. Starr*, 1 S. D. 107, 45 N. W. 212.

Sale of personal property by pledgee or mortgagee, after default, not at public sale and on public notice, is conversion of property, which extinguishes lien. *Walklin v. Horawill*, 24 S. D. 191, 123 N. W. 668.

As to similar provision in Cal. Civ. Code, § 3005, see *Stewart v. Naud*, 125 Cal. 596, 58 Pac. 186.

§ 6790. **Evidence of debt.** A pledgee may collect when due any evidence of debt pledged to him; he may also sell any evidence of debt pledged to him to secure the performance of an original obligation, if at the time of making such original obligation the pledgor shall have authorized in writing such sale. Before such evidence of debt can be sold and after the maturity of the original obligation, the pledgee must demand, in writing, the performance thereof from the debtor if he can be found. Notice of the sale of such evidence of debt must be given by publication once, and at least six days prior to such sale, in a newspaper published at the place of sale, if there is one, otherwise in a newspaper in the county in which such sale is to be made, and if there is no newspaper in the county, or upon the written request of the pledgor, notice shall be given by posting the same in five public places in such county for at least ten days prior to such sale. The notice of sale must specify the names of the pledgor and pledgee and the assignee, if any, the date, maturity and amount of the original obligation and the amount claimed to be due thereon, a description of the evidence of debt to be sold, which shall contain the names of the makers, the date and maturity of such obligation to be sold, and the time and place of sale. Such sale may be made by the pledgee, his agent or attorney. A report of such sale must be made and filed, substantially as required by section 8128 in chattel mortgage foreclosures, and when so filed shall have the same force and effect. [R. C. 1905, § 6213; 1897, ch. 109; R. C. 1899, § 4764.]

Evidence of debt when pledged must be collected, and cannot be sold. *Deering & Co. v. Russell*, 5 N. D. 319, 65 N. W. 691.

Implied authority of pledgee to sell bonds. 43 L.R.A. 743.

Extent of recovery by pledgee on note. 44 L.R.A. 243.

Authority of pledgee to compromise obligations held as collateral security. 28 L.R.A.(N.S.) 980.

Right of one who takes commercial paper of corporation as security for an individual debt of officer. 31 L.R.A.(N.S.) 169.

Holder of bill or note as collateral security as a bona fide holder. 31 L.R.A.(N.S.) 287.

Effect of failure of holder to make demand or give notice of dishonor of paper held as collateral or conditional payment. 68 L.R.A. 482.

Duty of pledgee of stock to sell at maturity of debt. 3 L.R.A.(N.S.) 1199.

Diligence required of one who holds negotiable paper as collateral security. 34 Am. Dec. 451.

Rights and remedies of parties to collateral securities. 32 Am. St. Rep. 711.

As to similar provision in Cal. Civ. Code, § 3006, see *Kelly v. Matlock*, 85 Cal. 122, 24 Pac. 642; *McArthur v. Magee*, 114 Cal. 126, 45 Pac. 1068; *Stewart v. Naud*, 125 Cal. 596, 58 Pac. 186.

§ 6791. When pledgor may require sale. Whenever property pledged can be sold for a price sufficient to satisfy the claim of the pledgee, the pledgor may require it to be sold and its proceeds to be applied to such satisfaction when due. [R. C. 1905, § 6214; Civ. C. 1877, § 1778; R. C. 1899, § 4765.]

As to similar provision in Cal. Civ. Code, § 3007, see *Stewart v. Naud*, 125 Cal. 596, 58 Pac. 186.

§ 6792. Application of proceeds. After a pledgee has lawfully sold property pledged, or otherwise collected its proceeds he may deduct therefrom the amount due under the principal obligation and the necessary expenses of sale and collection; and must pay the surplus to the pledgor on demand. [R. C. 1905, § 6215; Civ. C. 1877, § 1779; R. C. 1899, § 4766.]

Effect of application to indebtedness of proceeds of sale of collateral security upon running of statute of limitations. 27 L.R.A.(N.S.) 843.

Garnishment of claim to surplus on pledge. 59 L.R.A. 368.

As to similar provision in Cal. Civ. Code, § 3008, see *Stewart v. Naud*, 125 Cal. 596, 58 Pac. 186.

§ 6793. Same. When property pledged is sold by order of the pledgor before the claim of the pledgee is due the latter may retain out of the proceeds all that can possibly become due under his claim until it becomes due. [R. C. 1905, § 6216; Civ. C. 1877, § 1780; R. C. 1899, § 4767.]

As to similar provision in Cal. Civ. Code, § 3009, see *Stewart v. Naud*, 125 Cal. 596, 58 Pac. 186.

§ 6794. When pledgee cannot purchase. A pledgee or pledge holder cannot purchase the property pledged except by direct dealing with the pledgor. [R. C. 1905, § 6217; Civ. C. 1877, § 1781; R. C. 1899, § 4768.]

As to inability of personal property lienor to purchase at own foreclosure sale. *Reeves & Co. v. Bruening*, 16 N. D. 398, 114 N. W. 313.

As to similar provision in Cal. Civ. Code, § 3010, see *Stewart v. Naud*, 125 Cal. 596, 58 Pac. 186.

§ 6795. Foreclosure. Instead of selling property pledged as hereinbefore provided a pledgee may foreclose the right of redemption by a judicial sale under the direction of a competent court; and in that case may be authorized by the court to purchase at the sale. [R. C. 1905, § 6218; Civ. C. 1877, § 1782; R. C. 1899, § 4769.]

As to similar provision in Cal. Civ. Code, § 3011, see *Stewart v. Naud*, 125 Cal. 596, 58 Pac. 186; *Farmers' & M. Bank v. Copey*, 134 Cal. 287, 66 Pac. 324.

CHAPTER 89.

BOTTOMRY.

§ 6796. Defined. Bottomry is a contract by which a ship or its freightage is hypothecated as security for a loan, which is to be repaid only in case the ship survives a particular risk, voyage or period. [R. C. 1905, § 6219; Civ. C. 1877, § 1783; R. C. 1899, § 4770.]

Bottomry as supporting maritime lien. 70 L.R.A. 418.

§ 6797. Hypothecation by owner of ship. The owner of a ship may hypothecate it or its freightage upon bottomry for any lawful purpose and at any time and place. [R. C. 1905, § 6220; Civ. C. 1877, § 1784; R. C. 1899, § 4771.]

§ 6798. By master for what only. The master of a ship may hypothecate it upon bottomry only for the purpose of procuring repairs or supplies which are necessary for accomplishing the objects of the voyage or for securing the safety of the ship. [R. C. 1905, § 6221; Civ. C. 1877, § 1785; R. C. 1899, § 4772.]

§ 6799. Same; when only. The master of a ship can hypothecate it upon bottomry only, when he cannot otherwise relieve the necessities of the ship and is unable to reach adequate funds of the owner or to obtain any upon the personal credit of the owner and when previous communication with him is precluded by the urgent necessity of the case. [R. C. 1905, § 6222; Civ. C. 1877, § 1786; R. C. 1899, § 4773.]

§ 6800. **Hypothecation of freightage by master.** The master of a ship may hypothecate freightage upon bottomry under the same circumstances as those which authorize an hypothecation of the ship by him. [R. C. 1905, § 6223; Civ. C. 1877, § 1787; R. C. 1899, § 4774.]

§ 6801. **Interest higher than legal rate.** Upon a contract of bottomry the parties may lawfully stipulate for a rate of interest higher than that allowed by the law upon other contracts. But a competent court may reduce the rate stipulated when it appears unjustifiable and exorbitant. [R. C. 1905, § 6224; Civ. C. 1877, § 1788; R. C. 1899, § 4775.]

§ 6802. **When enforceable, though unauthorized.** A lender upon a contract of bottomry made by the master of a ship as such may enforce the contract though the circumstances necessary to authorize the master to hypothecate the ship did not in fact exist, if after due diligence and inquiry the lender had reasonable grounds to believe and did in good faith believe in the existence of such circumstances. [R. C. 1905, § 6225; Civ. C. 1877, § 1789; R. C. 1899, § 4776.]

§ 6803. **Certain stipulation as to liability void.** A stipulation in a contract of bottomry imposing any liability for the loan independent of the maritime risks is void. [R. C. 1905, § 6226; Civ. C. 1877, § 1790; R. C. 1899, § 4777.]

§ 6804. **Recovery in case of loss.** In case of a total loss of the thing hypothecated from a risk to which the loan was subject the lender upon bottomry can recover nothing; in case of a partial loss he can recover only to the extent of the net value to the owner of the part saved. [R. C. 1905, § 6227; Civ. C. 1877, § 1791; R. C. 1899, § 4778.]

§ 6805. **When loan due.** Unless it is otherwise expressly agreed a bottomry loan becomes due immediately upon the termination of the risk, although a term of credit is specified in the contract. [R. C. 1905, § 6228; Civ. C. 1877, § 1792; R. C. 1899, § 4779.]

§ 6806. **Lien lost by delay in enforcing.** A bottomry lien is independent of possession and is lost by omission to enforce it within a reasonable time. [R. C. 1905, § 6229; Civ. C. 1877, § 1793; R. C. 1899, § 4780.]

§ 6807. **Preferred to all liens except what.** A bottomry lien, if created out of a real or apparent necessity in good faith, is preferred to every other lien or claim upon the same thing, excepting only a lien for seamen's wages, a subsequent lien of material men for supplies or repairs indispensable to the safety of the ship and a subsequent lien for salvage. [R. C. 1905, § 6230; Civ. C. 1877, § 1794; R. C. 1899, § 4781.]

§ 6808. **When last preferred.** Of two or more bottomry liens on the same subject the latter in date has preference if created out of necessity. [R. C. 1905, § 6231; Civ. C. 1877, § 1795; R. C. 1899, § 4782.]

CHAPTER 90.

RESPONDENTIA.

§ 6809. **Defined.** Respondentia is a contract by which a cargo or some part thereof, is hypothecated as security for a loan, the repayment of which is dependent on maritime risks. [R. C. 1905, § 6232; Civ. C. 1877, § 1796; R. C. 1899, § 4783.]

Respondentia as supporting maritime lien. 70 L.R.A. 429.

Acceptance of commercial paper as discharge of lien for material and supplies. 35 L.R.A. (N.S.) 94.

§ 6810. **Owner may hypothecate.** The owner of the cargo may hypothecate it upon respondentia at any time and place and for any lawful purpose. [R. C. 1905, § 6233; Civ. C. 1877, § 1787; R. C. 1899, § 4784.]

§ 6811. **When master may.** The master of a ship may hypothecate its cargo upon respondentia only in a case in which he would be authorized to

hypothecate the ship and freightage, but is unable to borrow sufficient money thereon for repairs or supplies, which are necessary for the successful accomplishment of the voyage; and he cannot do so even in such case if there is no reasonable prospect of benefiting the cargo thereby. [R. C. 1905, § 6234; Civ. C. 1877, § 1798; R. C. 1899, § 4785.]

§ 6812. **Other sections applicable.** The provisions of sections 6801 to 6808 apply equally to loans on respondentia. [R. C. 1905, § 6235; Civ. C. 1877, § 1799; R. C. 1899, § 4786.]

§ 6813. **Owner of ship must repay owner of cargo.** The owner of a ship is bound to repay the owner of its cargo all which the latter is compelled to pay under a contract of respondentia made by the master in order to discharge its lien. [R. C. 1905, § 6236; Civ. C. 1877, § 1800; R. C. 1899, § 4787.]

CHAPTER 91.

MECHANICS' LIENS.

§ 6814. **Who may have. For what. Duty of material man.** Any person who shall perform any labor upon, or furnish any materials, machinery or fixtures for the construction or repair of any work of internal improvement, or for the erection, alteration or repair of any building or other structure upon lands or in making any other improvements thereon, including fences, sidewalks, pavings, wells, grades, drains or excavations under a contract with the owner of such land, his agent, contractor or subcontractor, or with the consent of such owner, shall upon compliance with the provisions of this chapter have for his labor done, or materials, fixtures or machinery furnished, a lien upon such building, erection or improvement, and upon the land belonging to such owner on which the same is situated, or to improve which said work was done, or the things furnished, to secure the payment for such labor, machinery, material or fixtures, provided no person furnishing material, machinery or fixtures for any of the purposes aforesaid, shall be entitled to a lien under this chapter unless he shall keep an itemized account thereof, separate and apart from all other items of account against the purchaser, and has made a written demand for payment of such account at least fifteen days prior to the filing of the lien, and in the case of furnishing such materials, machinery or fixtures to a contractor or subcontractor no liens shall be allowed therefor unless the party furnishing the same shall keep a separate account against said contractor or subcontractor of the material, machinery or fixtures so furnished to be used in the construction, alteration, repair or improvement of the property of each separate person (except in cases where the property is owned by several persons jointly or as cotenants, in which case such joint owners or cotenants shall be deemed a person within the meaning of this act), and the mingling of charges in one account for material, machinery or fixtures to be used in the construction, alteration, repair or improvement of the property of different persons (except in cases of joint owners or all owners in common) shall defeat the right to a lien against either of such persons, provided, further, that no person who furnishes any material, machinery or fixtures as aforesaid to a contractor or subcontractor shall be entitled to file such lien under this chapter unless he notifies the owner or one of the owners, in case of joint owners, of the premises upon or for which the same is to be used, by registered letter immediately after the making of such contract to so furnish material or machinery or fixtures to such contractor or subcontractor, that he is about to furnish the same and the probable charge therefor, provided, further, that where the work or material for which mechanics' lien is being claimed was furnished under contract with the contractor or subcontractor, the property owner shall not be liable to lien claimants to an aggregate amount greater than the contract price he was to pay

such contractor or subcontractor. The owner shall be presumed to have consented to the furnishing of such labor or material or machinery or fixtures if at the time, he had knowledge thereof and did not give notice of his objections thereto to the person entitled to such lien. The provisions of this chapter shall not be construed to apply to claims or contracts for lightning rods or any of their attachments. [1911, ch. 187; 1909, ch. 158; R. C. 1905, § 6237; 1899, ch. 109; R. C. 1899, § 4788.]

Lien not destroyed by repeal of law. *Craig v. Herzman*, 9 N. D. 140, 81 N. W. 288.

Who may have mechanics' lien. *Pinkerton v. Le Beau*, 3 S. D. 440, 54 N. W. 97; *Sutton v. Min. Co.*, 14 S. D. 33, 84 N. W. 211; *Albright v. Smith*, 2 S. D. 577, 51 N. W. 590; *Fullerton v. Leonard*, 3 S. D. 118, 52 N. W. 325; *Kehoe v. Hanson*, 8 S. D. 198, 65 N. W. 1075, 59 Am. St. Rep. 759; *Hartum Co. v. Gordon*, 2 N. D. 246, 50 N. W. 708, 83 Am. St. Rep. 776.

Amendment of statute does not change right. *Mahon v. Surerus*, 9 N. D. 57, 81 N. W. 64.

Supervising architect furnishing plans and specifications is entitled to mechanics' lien. *Friedlander v. Taintor*, 14 N. D. 393, 116 Am. St. Rep. 697, 104 N. W. 527, 9 A. & E. Ann. Cas. 96.

Right of materialman furnishing lumber to vendee of land under contract for purchase thereof to lien on building. *Salzer Lumber Co. v. Claffin*, 16 N. D. 601, 113 N. W. 1036.

As to when materialman acquires no mechanics' lien under statute. *Christianson Drug Co. v. Hughes*, 18 N. D. 282, 122 N. W. 384.

Contractor is entitled to mechanics' lien for drilling and casing well on land. *Rolewitch v. Harrington*, 20 S. D. 375, 6 L.R.A.(N.S.) 550, 107 N. W. 207.

Payment to contractor within time limited for filing liens will not defeat subcontractor's lien. *Red Riv. Lumb. Co. v. Children of Israel*, 7 N. D. 46, 73 N. W. 203; *Albright v. Smith*, 2 S. D. 577, 51 N. W. 590; *Albright v. Smith*, 3 S. D. 631, 54 N. W. 816.

Fraudulently filing lien for greater amount than due defeats lien. *Bohn Mfg. Co. v. Keenan*, 15 S. D. 377, 89 N. W. 1009.

Statement may be verified by agent. *Fullerton v. Leonard*, 3 S. D. 118, 52 N. W. 325.

Description of property; sufficiency of. *Howe & Co. v. Smith*, 6 N. D. 432, 71 N. W. 552.

Subcontractor is entitled to direct lien for materials furnished under contract between contractor and owner. *Robertson Lumber Co. v. State Bank*, 14 N. D. 511, 105 N. W. 719.

Materialman is not entitled to lien where he filed his statement of account more than four months after last item of material. *Smith v. Dunn*, 26 S. D. 129, 128 N. W. 493.

Person who has paid consideration for land, though it is deeded to another, is "owner" thereof. *Anderson Lumber Co. v. Spears*, 25 S. D. 624, 127 N. W. 643.

Person furnishing materials for building on married woman's land, pursuant to contract with husband, is entitled to lien whether or not agency was disclosed to him. *H. C. Behrens Lumber Co. v. Lager*, 26 S. D. 160, 128 N. W. 698, Ann. Cas. 1913A, 1128.

Authorizes filing of lien against two or more buildings and land upon which they stand, where labor or material is furnished under entire contract. *Robertson Lumber Co. v. Clarke*, 24 N. D. 134, 138 N. W. 984.

Mere personal knowledge of owner that particular person is furnishing material to contractor does not supply statutory notice upon which one furnishing material can predicate mechanics' lien. *North Dakota Lumber Co. v. Bulger*, 19 N. D. 516, 125 N. W. 883.

If lienor can trace materials into one of several buildings of two or more separate owners, he is limited to lien thereon, and owner of adjacent building is not subjected to burden of such other's debt. *Meyer Lumber Co. v. Trygstad*, 122 N. D. 558, 134 N. W. 714.

Owner must keep advised whether material used in his building is paid for or not, and if he pays contractor during the ninety days after material furnished, he does so at his peril. *Langworthy Lumber Co. v. Hunt*, 19 N. D. 433, 122 N. W. 865.

"Owner" of real estate on whose interest mechanics' lien will attach is person for whose immediate use and benefit building is made. *Johnson v. Soliday*, 19 N. D. 463, 126 N. W. 99.

Mechanics' lien for sinking well. 6 L.R.A.(N.S.) 550; 43 L.R.A.(N.S.) 559.

Right to a lien for labor in preparing materials in manufactured form, under a statute giving a lien for work or labor performed on a building or structure. 30 L.R.A.(N.S.) 82.

Food furnished contractor for employes and teams as material giving lien on railroad. 15 L.R.A.(N.S.) 509.

Effect of death of principal contractor on rights of subcontractor or materialman to a lien, or to payment by owner. 20 L.R.A.(N.S.) 45.

Effect of bankruptcy of contractor on right of laborer or materialman to enforce lien against property improved. 26 L.R.A.(N.S.) 409.

Payment to contractors or subcontractor as affecting liens of subordinate claimants. 20 L.R.A. 560.

Right to statutory lien on property of third person for rental of personal property let to contractor for use in work of a lienable nature. 16 L.R.A.(N.S.) 585.
Right to mechanics' lien for labor or material furnished on order of architect before abandonment of contract by contractor. 29 L.R.A.(N.S.) 89.
Explosives as materials used in improving real property for purpose of mechanics' lien. 2 L.R.A.(N.S.) 288.
Heating apparatus as part of realty for purpose of mechanics' lien. 1 B. R. C. 982.
Mechanics' lien for materials furnished for structure, but not actually used. 31 L.R.A.(N.S.) 749; 64 Am. Dec. 678.
Mechanics' lien for materials wholly or partially consumed in process of work, but not becoming a part of the structure. 36 L.R.A.(N.S.) 866.
Mechanics' lien upon premises for an improvement not placed thereon but having a physical or beneficial connection therewith. 42 L.R.A.(N.S.) 354.
Mechanics' lien for services of architect. 16 L.R.A. 600; 36 L.R.A.(N.S.) 354.
Right to mechanics' lien when without fault of the owner the building is not completed. 43 Am. St. Rep. 900.
May stipulations in contracts destroy the lien of subcontractors and materialmen. 19 Am. St. Rep. 699.
Waiver of mechanics' lien. 41 Am. Dec. 221.
Lien of materialmen. 79 Am. Dec. 268.
Effect of death of owner before filing claim for mechanics' lien. 43 Am. St. Rep. 778.
Mechanics' lien upon building erected by vendee. 62 L.R.A. 380.
Statute giving liens for improvements made under contracts with owner. 23 L.R.A.(N.S.) 601.
Requiring another to make improvements upon land at his own expense as a consent by the owner which will subject his interest to a lien. 11 L.R.A.(N.S.) 764.
Mechanics' lien under contract made or performed in another state. 38 L.R.A. 410.
Constitutionality of statute giving mechanics' lien contrary to agreement of contractor. 36 L.R.A.(N.S.) 574.
Contractor's bonds as substitutes for mechanics' liens. 27 L.R.A.(N.S.) 579.
Does building contractor's bond indemnify owner against mechanics' liens, when not expressly mentioned. 24 L.R.A.(N.S.) 1075.
As to similar provision in Wis. Stat. 1898, § 3314, see *Chapman Valve Mfg. Co. v. Oconto Water Co.*, 89 Wis. 264, 46 Am. St. Rep. 830, 60 N. W. 1004; *Standard Oil Co. v. Lane*, 75 Wis. 636, 7 L.R.A. 191, 44 N. W. 644.

§ 6815. Notice to be filed. Every person who shall be entitled to have a mechanics' lien for material under the provisions of section 6237 of the Revised Codes for 1905 and acts amendatory thereto [section 6814 herein], and who wishes to avail himself of the provisions of said section, shall, in addition to the requirements of said section, file with the clerk of the district court of the county in which such land, building or improvement is situated, a notice in writing, giving the name of the possessor of the land, a description of the property to be charged with the lien, the date of the contract, and that he will claim and thereafter file a verified account thereof, as provided by statute, and perfect a mechanic's lien against the said described building, improvements or premises according to law, in the event the same shall not have been paid. This notice shall be signed by such person so entitled to such mechanics' lien or by authorized agent. The clerk of court shall file and record such notice in a book to be entitled the "book of mechanics' liens notice" upon the receipt of a fee of twenty-five cents for filing and indexing the same. A mechanics' lien shall be void against the owner or holder of any mortgage or deed or conveyance, whose mortgage, deed or conveyance shall have been filed and recorded prior to the filing for record of the herein prescribed notice of mechanics' liens. [1913, ch. 209, § 1.]

§ 6816. Notice and consent of owner required. Every person who shall be entitled to a mechanics' lien for material under the provisions of said chapter and acts amendatory thereto, and who wishes to avail himself of the provisions of said section shall in addition to the requirements of said section file with his lien a statement to the effect that the owner of the premises has consented that said lien may be filed, which statement must be signed by the owner of said premises, and which statement must be made in duplicate and duplicate delivered to the owner of the premises, and both original and duplicate notice be signed on or before the time the first material is furnished; provided, that when the owner of the premises has consented that a lien may

be filed against the premises by a contractor it shall not be necessary for any subcontractor or material man to obtain any further consent to the filing of liens for materials furnished for the improvement of said premises. Such notice must be substantially in the following form:

I hereby acknowledge that notice has been given me that a mechanic's lien may be filed for material furnished, under my contract with (name of contractor or person furnishing material) made on this day of, 191.., and I hereby consent that such lien may be filed as security for material furnished to me (character of improvement). [1913, ch. 209, § 2.]

§ 6817. Penalty for filing unlawful lien. Whoever signs and files a mechanic's lien under the provisions of section 6237 of the Revised Codes of 1905 and acts amendatory thereto [section 6814 herein], and knowing and willfully includes in said lien classes of said material for which the law does not permit the filing of a lien, shall be guilty of a misdemeanor. [1913, ch. 209, § 3.]

§ 6818. Single contract for several buildings. If labor is done or materials furnished under a single contract for several buildings, erections or improvements, the person furnishing the same shall be entitled to a lien therefor as follows:

1. If such buildings, erections or improvements are upon a single farm, tract or lot upon all such buildings, erections and improvements and the farm, tract or lot upon which the same are situated.

2. If such buildings, erections or improvements are upon separate farms, tracts or lots, upon all such buildings, erections and improvements and the farms, tracts or lots upon which the same are situated; but upon the foreclosure of such lien the court may in the cases provided for in this subdivision apportion the amount of the claim among the several farms, tracts or lots in proportion to the enhanced value of the same produced by means of such labor or materials, if such apportionment is necessary to protect the rights of third persons. [R. C. 1905, § 6238; R. C. 1895, § 4789.]

Subcontractor is entitled to joint lien only, where builder made joint contract with adjoining lot owner. *Stoltze v. Hurd*, 20 N. D. 412, 30 L.R.A.(N.S.) 1219, 128 N. W. 115, Ann. Cas. 1912C, 871.

Mechanics' lien where building covers adjoining lots held in severalty. 30 L.R.A.(N.S.) 1219.

Right to file a single mechanics' lien against several buildings. 17 L.R.A. 314.

§ 6819. On railway contracts. Every person who furnishes any labor, skill or material for constructing, altering or repairing any line of railway or any improvement or structure appertaining to any line of railway by virtue of any contract with the owner, his agent, contractor or subcontractor shall have a lien upon such line of railway and the right of way thereof and upon all bridges, depots, offices and other structures appertaining to such line of railway and all franchises, privileges and immunities granted to the owner of such line of railway for the construction and operation thereof to secure the payment for such labor, skill and materials upon filing a statement of his demand therefor in accordance with the provisions of the next section within ninety days from the last day of the month in which such labor or material was furnished; but a failure to file the same within the time aforesaid shall not defeat the lien except to the extent specified in the next section. [R. C. 1905, § 6239; C. Civ. P. 1877, § 657; R. C. 1895, § 4790.]

Owner's liability limited to amount due under contract at time services were performed. *Adams v. Ry. Co.*, 10 S. D. 239, 72 N. W. 577.

Lien is lost unless filed within proper time. *Congdon & Henry Hardware Co. v. Ry. Co.*, 14 S. D. 575, 86 N. W. 633; *Wis. Trust Co. v. Rob. & Cary Co.*, 68 Fed. 778, 15 C. C. A. 668.

Sufficient to describe that portion of road on which subcontractor was employed *Adams v. Ry. Co.*, 12 S. D. 424, 81 N. W. 960.

§ 6820. Account to be filed with clerk. Every person, who wishes to avail himself of the provisions of this chapter, shall file with the clerk of the district court of the county or judicial subdivision in which the property to be charged

with the lien is situated and within ninety days after all the things aforesaid shall have been furnished or the labor done a just and true account of the demand due him after allowing all credits and containing a correct description of the property to be charged with such lien and verified by affidavit; but a failure to file the same within the time aforesaid shall not defeat the lien, except as against purchasers or incumbrancers in good faith and for value whose rights accrue after the ninety days and before any claim for the lien is filed, or as against the owner except the amount paid to the contractor after the expiration of the ninety days and before the filing of the same. [R. C. 1905, § 6240; C. Civ. P. 1877, § 662; R. C. 1895, § 4791.]

Mechanics' lien notice need not state name of owner. *Red Riv. Lumb. Co. v. Children of Israel*, 7 N. D. 46, 73 N. W. 203.

Account upon which lien is based. *Turner v. St. John*, 8 N. D. 245, 78 N. W. 340; *Pinkerton v. Le Beau*, 3 S. D. 440, 54 N. W. 97.

Correction of lien after filing. *Sarles v. Sharlow*, 5 D. 100, 37 N. W. 748.

Lien for greater sum than is due; effect of. *McCormack v. Phillips*, 4 D. 506, 34 N. W. 39.

Description of property; sufficiency of. *Howe & Co. v. Smith*, 6 N. D. 432, 71 N. W. 552; *Laird-Norton Co. v. Hopkins*, 6 S. D. 217, 60 N. W. 857.

A mechanics' lien is superior to a mortgage made and recorded within ninety days, though the holder of the lien failed to file his account within ninety days after the completion of the performance of his contract. *Wisconsin Trust Co. v. Robinson & Cary Co.*, 68 Fed. 778.

Error in fixing amount due under lien will not affect its validity. *Robertson Lumber Co. v. Clarke*, 24 N. D. 134, 138 N. W. 984.

Materialman is not entitled to lien where he filed his statement of account more than four months after last item of material. *Smith v. Dunn*, 26 S. D. 129, 128 N. W. 493.

Materialman cannot obtain lien by filing affidavit and statement of account more than four months after last item of material. *Smith v. Dunn*, 26 S. D. 129, 128 N. W. 493.

Where claim complied with statute, and contained error as to matter which need not have been mentioned, it was sufficient as against subsequent purchaser and incumbrancer. *H. C. Behrens Lumber Co. v. Lager*, 26 S. D. 160, 128 N. W. 698, Ann. Cas. 1913A, 1128.

Effect on mechanics' lien of failure of description of land in affidavit of claim on buildings distinct from land. 62 L.R.A. 382.

Effect of filing excessive mechanics' lien. 29 L.R.A.(N.S.) 306.

Intentional or fraudulent overstatement in mechanics' liens. 29 L.R.A.(N.S.) 317.

First and last days in computing time for filing mechanics' liens. 49 L.R.A. 236.

Work done, or material furnished, in perfecting original work, as lienable items to establish period for filing claim. 12 L.R.A.(N.S.) 864.

Right to tack different contracts to perform labor or furnish material for purpose of extending time to file lien. 15 L.R.A.(N.S.) 299.

Effect of addition of new items to extend time for filing mechanics' lien. 35 L.R.A.(N.S.) 902.

§ 6821. Duty of clerk of court. The clerk of the district court shall indorse upon every account the date of its filing, and shall make an abstract thereof in a book to be kept by him for that purpose, and properly indexed, containing the date of its filing, the name of the person filing the lien, the amount of such lien, the name of the person against whose property the lien is filed, and a description of the property to be charged with the same. He shall also make and keep a tract index in which shall be entered a description of all property covered or charged with the lien. [1907, ch. 167; R. C. 1905, § 6241; C. Civ. P. 1877, § 663; R. C. 1895, § 4792.]

§ 6822. Priority of mechanics' liens. Liens under the provisions of this chapter shall have priority in the following order:

1. For manual labor.
2. For materials.
3. Subcontractors, other than manual laborers.
4. Original contractors.

Liens in the same class filed within the ninety days shall share ratably in the security; but liens in the same class filed thereafter shall have priority in the order of the filing of the accounts thereof as aforesaid. Liens under the provisions of this chapter shall be preferred to all other liens or incumbrances

upon such building, erection or other improvement and the land on which the same is situated, or to improve which the labor was done or things furnished, or either of them, filed or docketed subsequent to the commencement of such building, erection or other improvement. [R. C. 1905, § 6242; C. Civ. P. 1877, § 664; R. C. 1895, § 4793.]

Waiver of priority by laches. *Bastien v. Barras*, 10 N. D. 29, 84 N. W. 559.

Lien superior to mortgage executed after commencement of building. *Haxtum Steam Heater Co. v. Gordon*, 2 N. D. 246, 50 N. W. 708, 33 Am. St. Rep. 776.

Mechanics' lien will not attach to interest of vendor under executory contract of sale whose vendee is in possession, and who erects building. *Johnson v. Soliday*, 19 N. D. 463, 126 N. W. 99.

Relation back of subcontractor's lien to the date of that of the original contractor. 16 L.R.A. 335.

Priority of mechanics' lien over mortgage for advances. 14 L.R.A. 307.

Priority of claims against property in hands of receiver over mechanics' liens. 3 L.R.A.(N.S.) 1013.

Rights of seller of fixtures, retaining title thereto or lien thereon, as against holder of mechanics' lien. 1 B. R. C. 673.

§ 6823. Land subject to lien. The entire land upon which any such building, erection or other improvement is situated, or to improve which the labor was done or things furnished, including that portion of the same not covered therewith, shall be subject to all liens created by this chapter to the extent of all the right, title and interest owned therein by the owner thereof for whose immediate use or benefit such labor was done or things furnished and when the interest owned in such land by such owner of such building, erection or other improvement is only a leasehold interest, the forfeiture of such lease for the nonpayment of rent or for noncompliance with any of the other stipulations therein shall not forfeit or impair such lien so far as it concerns such buildings, erections and improvements, but the same may be sold to satisfy such lien and be removed within thirty days after the sale thereof by the purchaser. [R. C. 1905, § 6243; C. Civ. P. 1877, § 665; R. C. 1895, § 4794.]

Mortgage given before completion of building subject to mechanics' lien though contract for building may have been changed if building when completed is substantially same as contemplated. *Haxtum Steam Co. v. Gordon et al.*, 2 N. D. 246, 50 N. W. 708.

Mechanics' lien. Priority of mortgage, when. *Lumber Co. v. Danner*, 3 N. D. 470, 57 N. W. 343.

Does not impair obligations of a subsisting mortgage. *Craig v. Herzman*, 9 N. D. 140, 81 N. W. 288.

The rule of prospective operation does not apply to statutes of procedure. *Craig v. Herzman*, 9 N. D. 140, 81 N. W. 288.

To foreclose lien upon building and sell apart from land must show leasehold interest or existing liens upon land. *Gull River Lumber Co. v. Briggs*, 9 N. D. 485, 84 N. W. 349.

"Owner" of real estate on whose interest mechanics' lien will attach is person for whose immediate use and benefit building is made. *Johnson v. Soliday*, 19 N. D. 463, 126 N. W. 99.

Lien claim properly filed when owner conveyed premises attaches both to land and building in preference to purchaser's title. *H. C. Behrens Lumber Co. v. Lager*, 26 S. D. 160, 128 N. W. 698, Ann. Cas. 1913A, 1128.

Estates and interests affected by mechanics' lien. 45 Am. Dec. 678.

Buildings and other property subject to mechanics' lien. 78 Am. Dec. 694.

Mechanics' lien on buildings distinct from land. 62 L.R.A. 369.

When mechanics' lien may include property in addition to that upon which work was performed. 65 Am. St. Rep. 165.

Effect upon rights of owner of lien on building of its wrongful removal and attachment to third person's land without former's consent. 14 L.R.A.(N.S.) 435.

Removal, removability or destruction of work or improvement as affecting lien on the property improved. 41 L.R.A.(N.S.) 296.

Mechanics' lien on landlord's interest for labor or materials furnished tenant for the building or improvement removable by tenant. 6 L.R.A.(N.S.) 485.

Mechanics' liens on claim or interest in public lands for debts contracted before issuance of patent. 34 L.R.A.(N.S.) 409.

Extent of land to which mechanics' lien attaches. 26 L.R.A.(N.S.) 836.

Mechanics' lien on public property. 35 L.R.A. 141; 20 L.R.A.(N.S.) 261; 41 L.R.A.(N.S.) 815; 27 Am. Rep. 83.

§ 6824. **Buildings on homesteads.** Whenever any work or labor is done, or materials furnished for the erection or construction of any building or improvement upon lands held or occupied under a filing under any of the land laws of the United States, and by virtue of any contract with the party so holding or occupying said lands, the party so furnishing such work or labor, or materials, shall upon compliance with the provisions of this chapter have a lien upon such building or improvement for the value of the work and labor, or materials, so furnished, and the party enforcing such lien may have such building or improvement sold on execution and may remove the same from such land within a time to be fixed by the court. [R. C. 1905, § 6244; 1901, ch. 101.]

Party in possession under contract of purchase may subject property to mechanics' lien. *Pinkerton v. Le Beau*, 3 S. D. 440, 54 N. W. 97.

Priority to mortgage; sale of building. *James River Lumb. Co. v. Danner*, 3 N. D. 470, 57 N. W. 343; *Laird-Norton Co. v. Herker*, 6 S. D. 509, 62 N. W. 104; *Craig v. Herzman*, 9 N. D. 140, 81 N. W. 288; *Gull River Lumb. Co. v. Briggs*, 9 N. D. 485, 84 N. W. 349.

Lien upon building on homestead. *Mahon v. Surerus*, 9 N. D. 57, 81 N. W. 64; *McCormack v. Phillips*, 4 D. 506, 34 N. W. 39; *Morgan v. Beuthein*, 10 S. D. 650, 75 N. W. 204, 65 Am. St. Rep. 733.

Right to remove building from land covered by homestead filing. *Mahon v. Surerus*, 9 N. D. 57, 81 N. W. 64.

§ 6825. **Action to enforce.** Any person having a lien by virtue of this chapter may bring action to enforce the same in the district court in the county or judicial subdivision in which the property is situated, and any number of persons claiming liens against the same property may join in the same action, and when separate actions are commenced, the court may consolidate them; provided, however, that before such lien holder may enforce such lien as herein provided, he shall give ten days' written notice to the record owner of property affected, of his intentions so to do, which notice shall be made by personal service, or by registered letter directed to the person's last known address. Provided, further, that if notice is given by registered letter, that twenty days' notice from date of registry receipt must be given before beginning action to enforce such lien. Whenever in the sale of the property subject to the lien there is a deficiency of the proceeds, judgment may be entered for the deficiency in like manner and with like effect as in actions for the foreclosure of mortgages. [1913, ch. 208; R. C. 1905, § 6245; C. Civ. P. § 667; 1883, ch. 83, § 1; R. C. 1895, § 4706; 1905, ch. 130.]

Subcontractors having liens must be made parties to foreclosure. *Grand Island & W. C. R. Co. v. Sweeney*, 103 Fed. 342, 4 C. C. A. 255; *Sweeney v. Ry. Co.*, 61 Fed. 3; *Southard v. Smith*, 8 S. D. 230, 66 N. W. 316; *Rust-Owen Lumb. Co. v. Fitch*, 3 S. D. 213, 52 N. W. 879.

Nonresident contractor is not necessary party to action by subcontractor to enforce mechanics' liens. *Burgi v. Rudgers*, 20 S. D. 646, 108 N. W. 253.

Enlargement of remedy for enforcing a mechanics' lien after sale under foreclosure of a mortgage, subject to the lien, does not impair obligation of the contract with the mortgagee or the purchaser on foreclosure. *Red River Valley Nat. Bank v. Craig*, 181 U. S. 548, 45 L.ed. 994, 21 Sup. Ct. Rep. 703.

Lienor is not required to exhaust his remedy at law before resorting to security of lien. *Erickson v. Russ*, 21 N. D. 208, 32 L.R.A.(N.S.) 1072, 129 N. W. 1025.

Contractor as a necessary party to a bill to enforce a mechanics' lien. 33 L.R.A.(N.S.) 69.

Right of subcontractor or materialman to personal judgment against owner. 14 L.R.A.(N.S.) 1036; 24 L.R.A.(N.S.) 321.

Recovering personal judgment against owner as waiver of mechanics' lien. 32 L.R.A.(N.S.) 1073.

Personal judgment in action to enforce mechanics' lien on public property. 35 L.R.A. 145.

§ 6826. **Requiring suit to be commenced.** Upon the written demand of the owner, his agent or contractor, served on the person holding the lien, requiring him to commence suit to enforce such lien, such suit shall be commenced within thirty days thereafter, if the debt for which the lien is

security is due, and if not due, within thirty days after the same becomes due or the lien shall be forfeited. [R. C. 1905, § 6246; C. Civ. P. 1877, § 668; R. C. 1899, § 4797.]

§ 6827. Assignment of claims. All claims for which liens may be or have been filed and rights of action to recover therefor under this chapter may be assigned by an instrument in writing and such assignment shall vest in the assignee all rights and remedies herein given, subject to all defenses that might have been interposed, if such assignment had not been made. [R. C. 1905, § 6247; C. Civ. P. 1877, § 668; R. C. 1899, § 4797.]

As to joinder of cause of action for equitable relief forfeiting mechanics' lien with one to recover penalty for failure to release lien on demand. *Sheets v. Prosser*, 16 N. D. 180, 112 N. W. 72.

Assignment of mechanics' liens. 49 Am. St. Rep. 530.

§ 6828. Owner defined. Every person for whose immediate use and benefit any building, erection or improvement is made, having the capacity to contract, including guardians of minors or other persons, shall be included in the word "owner" thereof. [R. C. 1905, § 6248; C. Civ. P. 1877, § 669; R. C. 1899, § 4798.]

Party residing upon land, for whose immediate use a house is built, is an "owner." *Mahon v. Surerus*, 9 N. D. 57, 81 N. W. 64; *Gull River Lumb. Co. v. Briggs*, 9 N. D. 485, 84 N. W. 349.

Owner of real estate on whose interest mechanics' lien will attach is person for whose immediate use and benefit building is made. *Johnson v. Soliday*, 19 N. D. 463, 126 N. W. 99.

Mortgagee as owner within mechanics' lien laws. 39 L.R.A.(N.S.) 84.

Right to mechanics' lien for improvements made on infant's land by authority of guardian. 15 L.R.A.(N.S.) 1159.

§ 6829. Satisfaction filed when, where and how. Penalty. Every holder or owner of a mechanic's lien shall within twenty days after the payment of the same cause to be filed a properly executed satisfaction of such lien and file the same with the clerk of the district court of the county in which such lien has been filed, which satisfaction shall be filed and entered by said clerk without fee or charge. Every person, firm or corporation failing to comply with the provisions of this section shall be subject to a fine of not less than ten or more than fifty dollars and in addition thereto the costs and damages sustained by reason of such failure. [R. C. 1905, § 6249; C. Civ. P. 1877, § 670; R. C. 1895, § 4799; 1905, ch. 131.]

As to allegations of complaint in action to recover penalty imposed by statute. *Sheets v. Prosser*, 16 N. D. 180, 112 N. W. 72.

§ 6830. Subcontractor defined. All persons furnishing things or doing work provided for by this chapter shall be considered subcontractors, except such as have therefor contracts directly with the owner, proprietor, his agent or trustee. [R. C. 1905, § 6250; C. Civ. P. 1877, § 671; R. C. 1899, § 4800.]

Who are subcontractors. *Adams v. Ry.*, 10 S. D. 239, 72 N. W. 587.

One furnishing materials under contract with contractor as subcontractor. *Robertson Lumber Co. v. Bank of Edinburg*, 14 N. D. 511, 105 N. W. 719.

§ 6831. When taking collateral security does not impair right. The taking of collateral or other security for an indebtedness, for which a lien might be claimed under the provisions of this chapter, shall in no way impair the right to such lien, unless such security shall be by express agreement given and received in lieu of such lien. [R. C. 1905, § 6251; R. C. 1895, § 4801.]

Waiver of mechanics' liens by taking notes or other securities. 41 Am. St. Rep. 761.

Acceptance of commercial paper as extinguishment of mechanics' lien. 35 L.R.A.(N.S.) 93.

Recovering personal judgment against owner as waiver of mechanics' lien. 33 L.R.A.(N.S.) 1073.

Effect of discharge in bankruptcy on mechanics' lien. 42 L.R.A.(N.S.) 395.

Waiver of laborer's lien by attachment or execution. 50 L.R.A. 722.

CHAPTER 92.

BONDS FOR LABOR AND MATERIAL FOR PUBLIC BUILDINGS.

§ 6832. Bonds from contractors on public improvements. It shall be the duty of every public officer or board authorized to enter into a contract for the erection, repair, alteration or betterment of any public building or any other public improvements before entering into any such contract, to take from the contractor a good and sufficient bond for an amount at least equal to the price stated in the contract, conditioned to be void if the contractor and all subcontractors shall pay all bills and claims on account of labor or materials furnished in and about the performance of said contract, including all demands of subcontractors, said bond to stand as security for all such bills, claims and demands until the same are fully paid. The obligee in said bond shall be the state of North Dakota; but any person having any lawful claim against the contractor, or any subcontractor, on account of labor or materials, or both, furnished in and about the performance of said contract, may institute an action to recover the same in his own name upon said bond, in the same manner and with like effect as though the said bond were made payable to him. [R. C. 1905, § 6252; 1901, ch. 133, § 1.]

Liability of sureties on contractor's bond to laborers or materialmen not entitled to a lien, when bond is conditioned against liens or claims. 9 L.R.A.(N.S.) 889.

Effect of invalidity of contract for public work upon the liability of the contractor's bondsmen for material, etc., furnished in carrying out the contract. 13 L.R.A.(N.S.) 793.

Effect of surrender or discharge, by owner of property, of bond given by contractor conditioned for the payment of materialmen and laborers upon the right of the latter to recover thereon. 18 L.R.A.(N.S.) 455.

Does building contractor's bond indemnify owner against mechanics' liens, when not expressly mentioned. 24 L.R.A.(N.S.) 1075.

Contractor's bonds as substitutes for mechanics' liens. 27 L.R.A.(N.S.) 579.

Does bond of highway contractor cover personal injuries to members of public. 34 L.R.A.(N.S.) 152.

§ 6833. Personally liable for bills. Any officer and the members of any board who shall fail to take such a bond before entering into such a contract shall be personally liable for all such bills, claims and demands which shall not be paid within thirty days after the completion of the work. [R. C. 1905, § 6253; 1901, ch. 133, § 2.]

§ 6834. Sureties. When the penal sum of said bond is five thousand dollars or under, the same shall be signed by at least two sureties, each of whom shall justify in the full amount of said bond. When the penal sum of said bond is in excess of five thousand dollars and not greater than twenty thousand dollars, said bond shall be signed by at least four sureties, who shall justify in the amount thereof. And when said penal sum is in excess of twenty thousand dollars and not greater than fifty thousand dollars, said bond shall be signed by at least eight sureties, each of whom shall justify in at least one-half the amount of said bond; but it shall be sufficient in any case if said bond is signed by a reputable surety company authorized to enter into such an obligation. [R. C. 1905, § 6254; 1901, ch. 133, § 3.]

§ 6835. Bond shall be filed. Before said contract is entered into, said bond, duly signed and acknowledged, with the proper affidavits of justification attached thereto, shall be filed in the office of the clerk of the district court of the county in which such contract is to be performed, and approved by said clerk, to be kept as one of the permanent records of the office. [R. C. 1905, § 6255; 1901, ch. 133, § 4.]

CHAPTER 93.

MINER'S LIEN.

§ 6836. **Lien for work or material furnished.** Every miner or other person, who at the request of the owner, or his agent, of any lode, lead, ledge, mine or deposit bearing gold, cinnabar or copper, or of any coal bank or mine, or at the request of any contractor or subcontractor, shall perform any labor whatever on such mine or furnish any timber, rope, nails or any other materials for timbering shafts or levels for the mine owned by such owner, or who shall furnish any kind of materials for erecting any windlass, whims or any other hoisting apparatus or machinery, or for any car track, cars, tunnels, drifts or openings thereon, or shall perform any labor in any tunnel shall have a lien upon such lode, lead, ledge, mine, deposit, bank or tunnel to secure the payment of the same. [R. C. 1905, § 6256; 1879, ch. 41, § 1; R. C. 1895, § 4805.]

§ 6837. **Attested account to owner. Amount of claim deducted from payment to contractor.** Any miner or other person doing and performing any work or furnishing any material as specified in the last section, under a contract either express or implied between the owner of any mine or his agent and any contractor working on such mine, whether such work shall be performed or materials furnished as miner, laborer or otherwise whose demand for work so performed or materials so furnished has not been paid, may deliver to the owner of such mine or tunnel or to his agent or superintendent, an attested account of the amount in value of the work and labor thus performed or of the materials thus furnished and remaining unpaid, and thereupon such owner or his agent shall retain out of the first subsequent payments to such contractor the amount so due for such work and labor or materials furnished for the benefit of the person so performing or furnishing the same. [R. C. 1905, § 6257; 1879, ch. 41, § 2; R. C. 1895, § 4806.]

§ 6838. **Duty of owner when account presented.** Whenever any account for labor performed or materials furnished as specified in the last preceding section shall be placed in the hands of the owner of any mine or tunnel or his agent, it shall be the duty of such owner or agent to furnish such contractor with a copy of such papers, so that if there is any disagreement between such contractor or his subcontractor and the creditor of either, as the case may be, they may by amicable adjustment or by arbitration ascertain the sum due if any; and if such contractor or subcontractor shall not within ten days after the receipt of such papers give such owner or his agent written notice that he intends to dispute the claim, or if ten days after giving such notice he shall refuse or neglect to have the matter adjusted as aforesaid, he shall be considered as assenting thereto; and such owner or his agent may pay the same when it becomes due and for that purpose may deduct the amount out of any moneys due such contractor, who may in like manner deduct such amount from any money due by him to his subcontractors in case such account or demand is against such subcontractor for work and labor performed or materials furnished as aforesaid. [R. C. 1905, § 6258; 1879, ch. 41, § 3; R. C. 1895, § 4807.]

§ 6839. **Amount due contractors recovered from the owner.** The amount which may be due from any contractor to his creditor may be recovered from such owner by the creditor of such contractor in an action at law to the extent in value of any balance due by the owner to his contractor under the contract with him at the time of the notice first given as aforesaid, or subsequently according to such contract or under the same. [R. C. 1905, § 6259; 1879, ch. 41, § 4; R. C. 1895, § 4808.]

§ 6840. **Account to be made and filed with clerk.** Any person entitled to a lien under this chapter shall make an account in writing of the items of

labor, skill, machinery and material furnished, as the case may be, and after making oath thereto shall within sixty days from the time of completing such labor or furnishing the last item of machinery, materials or other things, file the same in the office of the clerk of the district court of the county or subdivision in which the lode, lead, ledge, mine, deposit, bank or tunnel may be situated, for or upon which labor, skill, machinery or material shall have been furnished; and also file at the same time a correct description of the property to be charged with such lien, which account and description so made and filed shall be recorded in a separate book to be provided for that purpose by such clerk of court, and thereupon the same shall from the time of the completion of the work of furnishing the last item of machinery or material, and for one year thereafter, operate as a lien on the property charged in such description; when any work and labor has been performed or materials furnished as aforesaid under a written contract, the same or a copy thereof shall be filed with such account and description; provided, that all lien claims for labor performed or materials furnished shall be concurrent liens upon the property charged, and shall be paid pro rata out of the proceeds arising from the sale thereof, if the same shall be sold or upon settlement without sale. [R. C. 1905, § 6261; 1879, ch. 41, § 5; R. C. 1899, § 4809.]

§ 6841. **Foreclosure.** Any person holding such lien may foreclose the same in the same manner as a mechanic's lien; but in all actions instituted for the foreclosure of such lien, all persons claiming liens upon the property charged shall be made parties to such action, and the rights of all parties shall be determined by the court, and such order made in regard thereto as shall preserve and protect the rights of all parties. [R. C. 1905, § 6261; 1879, ch. 41, § 6; R. C. 1895, § 4810.]

§ 6842. **Satisfaction must be granted when lien paid.** Any person who shall have filed his account and perfected his lien under the provisions of this chapter and shall have received satisfaction of his claim or demand and the legal cost of his proceedings thereunder, shall upon the request of any person interested, and within six days after such request, enter satisfaction of his lien in the office where such account and lien is of record, which shall forever thereafter discharge, defeat and release the same; and if any person holding a lien as aforesaid shall receive satisfaction as hereinbefore specified, or having been tendered the amount due on his claim or demand with legal costs, shall not within six days after receiving such satisfaction or tender of payment, enter satisfaction as aforesaid, he shall forfeit and pay to the persons aggrieved double the amount of damages which may have been sustained in consequence of such failure or neglect, if he shall have been requested in such case to enter satisfaction as aforesaid. [R. C. 1905, § 6262; 1879, ch. 41, § 7; R. C. 1899, § 4811.]

§ 6843. **Chapter applies to oil wells, etc.** The provisions of this chapter shall apply to oil wells, or springs, iron and lead mines, as well as all other mines not herein specified, so far as the same may be applicable. [R. C. 1905, § 6263; 1879, ch. 41, § 8; R. C. 1899, § 4812.]

CHAPTER 94.

LIENS FOR KEEPING AND PASTURING STOCK.

§ 6844. **Who may have.** Any farmer, ranchman or herder of cattle, tavern keeper or livery stable keeper, to whom any horses, mules, cattle or sheep shall be intrusted for the purpose of feeding, herding, pasturing or ranching shall have a lien upon said horses, mules, cattle or sheep for the amount that may be due for such feeding, herding, pasturing or ranching, and shall be authorized to retain possession of such horses, mules, cattle or sheep until the said amount is paid; provided, that these provisions shall not be construed

to apply to stolen stock. [R. C. 1905, § 6264; C. Civ. P. 1877, § 672; R. C. 1899, § 4813.]

Lien not lost because temporarily in possession of owner. *Welsh v. Barnes*, 5 N. D. 277, 65 N. W. 875.

Lien of chattel mortgage superior to pasture lien. *Wright v. Sherman*, 3 S. D. 290, 52 N. W. 1093, 17 L.R.A. 792; *First Nat. Bank v. Scott*, 7 N. D. 312, 75 N. W. 254.

Lien on animals for cost of keeping. 17 L.R.A. 792.

Taking of animal by general owner for purpose of defeating lien as larceny. 12 L.R.A.(N.S.) 94.

Waiver of lien by attachment or execution. 50 L.R.A. 720.

Right of servant to the common-law possessory lien or its statutory substitute, for services in connection with property. 42 L.R.A.(N.S.) 731.

§ 6845. Lien only against owner. The provisions of this chapter shall not be construed to give any farmer, ranchman or herder of cattle, tavern keeper or livery stable keeper any lien upon horses, mules, cattle or sheep put into their keeping for the purposes mentioned in the previous section, when said property was not owned by the person intrusting the same at the time of delivering them into the possession of said farmer, ranchman, herder, tavern keeper or livery stable keeper. [R. C. 1905, § 6265; C. Civ. P. 1877, § 673; R. C. 1899, § 4814.]

As to similar provision in Cal. Civ. Code, § 3051, see *Johnson v. Perry*, 53 Cal. 351; *Lowe v. Woods*, 100 Cal. 408, 38 Am. St. Rep. 301, 34 Pac. 959; *Michaelson v. Fish*, 1 Cal. App. 116, 81 Pac. 661.

§ 6846. Priority over other liens. Such lien shall have priority over all other liens on such property for ten days after the receipt of the same and shall thereafter have priority over all other liens on such property, if the person to whom such property is intrusted as in this chapter provided shall within such ten days:

1. Serve upon the holder of an earlier lien upon such property, if known and a resident of this state, written notice that such property has been intrusted to him for some one of the purposes mentioned in section 6844, specifying which, and by whom; or,

2. If the residence of the holder of any such lien is unknown or he is not a resident of this state, publish for one week in some newspaper published in the county in which such property is being kept and if there is no such newspaper then in a newspaper published at the seat of government, a notice of the kind provided for in subdivision 1 of this section. [R. C. 1905, § 6266; R. C. 1895, § 4815.]

Priority as between lien of chattel mortgage and lien acquired by furnishing food or care to animals. 17 L.R.A. 792; 12 L.R.A.(N.S.) 310.

CHAPTER 95.

LIENS FOR SERVICE OF SIRES.

§ 6847. Filing statement of pedigree prerequisite. Every owner of a sire charging a service fee, in order to have a lien for service upon the offspring of any such sire under the provisions of this chapter, shall file a statement, verified by oath, to the best of his knowledge and belief, with the commissioner of agriculture and labor, giving the name, age, description and pedigree or breeding of such sire, so far as known, as well as the terms and conditions upon which he is advertised for service. [R. C. 1905, § 6267; 1899, ch. 146, § 1; R. C. 1899, § 4816.]

§ 6848. Certificate of commissioner of agriculture. Filing and posting. The commissioner of agriculture and labor, upon receipt of the statement specified in the last section, shall issue a certificate to the owner thereof, who shall file a copy of such certificate with the register of deeds of the county or counties in which such sire shall stand for service, and copies of such certificate shall also be posted conspicuously in all places where such sire shall stand for service, which certificate shall state the name, age, description,

pedigree and ownership of such sire and the terms and conditions upon which the sire is advertised for service. Such certificate shall be procured and filed prior to the service of such sire, and all certificates procured and posted according to this section shall be operative as long as the terms and conditions remain the same. The original certificate shall follow the sire in all changes of ownership and all transfers shall be recorded in the office of the commissioner of agriculture and labor and a bill of sale filed with the register of deeds as is provided for the filing of the original certificate, and that the provisions of this chapter so far as relates to the filing of the statement aforesaid have been complied with, and the commissioner of agriculture and labor shall have the power to charge one dollar for each certificate and recording thereof, and twenty-five cents for all copies of certificates, and twenty-five cents for filing certificate with register of deeds, and twenty-five cents for recording each transfer. [R. C. 1905, § 6268; 1899, ch. 146, § 2; R. C. 1899, § 4817.]

§ 6849. Procedure to obtain lien. The owner of any sire receiving such certificate shall have a lien upon the offspring of such sire and upon the female served, upon filing at any time within eight months after the service, in the office of the register of deeds of the county in which such female is kept at the time of service, a statement of the account thereof together with a description of the female served. Such lien shall exist for a period of three years from the date of filing the statement and shall have priority over all other liens and incumbrances upon the offspring and the female served. [R. C. 1905, § 6269; 1899, ch. 146, § 3; R. C. 1899, § 4818.]

§ 6850. Foreclosure. After the expiration of nine months from the filing of the lien, or at any time after an attempt shall be made to dispose of the female, or remove her from the county, the lien may be enforced by a sale of the property covered thereby, upon the notice and in the manner provided for the foreclosure of mortgages upon personal property and the cost and fees for such foreclosure shall be the same as are provided in section 8132 of the code of civil procedure. [R. C. 1905, § 6270; 1899, ch. 146, § 4; R. C. 1899, § 4819.]

CHAPTER 96.

SEED LIEN.

§ 6851. Seed liens, who may have. Any person who shall furnish to another seed to be sown or planted on the lands owned or contracted to be purchased, used, occupied or rented by him, shall upon filing the statement provided for in the next section, have a lien upon all the crop produced from the seed so furnished, to secure the payment of the purchase price thereof. [R. C. 1905, § 6271; 1887, ch. 150, § 1; R. C. 1895, § 4820; 1901, ch. 181.]

Necessary averments of complaint. *Lavin v. Bradley*, 1 N. D. 291, 47 N. W. 384; *First Nat. Bank v. Elevator Co.*, 10 S. D. 167, 72 N. W. 402; *Joslyn v. Smith*, 2 N. D. 53, 49 N. W. 382.

Enforcement; right of possession. *Black v. Elevator Co.*, 7 N. D. 129, 73 N. W. 90.

§ 6852. Procedure to obtain lien. Any person entitled to a lien under this chapter shall within thirty days after the seed is furnished file in the office of the register of deeds of the county in which the seed is to be sown or planted a statement in writing, verified by oath, showing the kind and quantity of seed, its value, the name of the person to whom furnished and a description of the land upon which the same is to be or has been planted or sown. Unless the person entitled to the lien shall file such statement within the time aforesaid he shall be deemed to have waived his right thereto. [R. C. 1905, § 6272; 1887, ch. 150, § 3; R. C. 1895, § 4821.]

The "account in writing" must embrace description of land on which seed has been or is to be planted. Omission of description is fatal to the lien. *Lavin v. Bradley*, 1 N. D. 291, 47 N. W. 384.

One furnishing seed grain is entitled to lien for full price thereof although only part of seed is sown. *Schlösser v. Moores*, 16 N. D. 185, 112 N. W. 78.

Description of land in seed lien may include more than one tract and quantity include seed for all. *Schouweiler v. McCaull*, 18 S. D. 70, 99 N. W. 95.

§ 6853. Priority. The lien given by this chapter shall, as to the crops covered thereby, have priority over all other liens and incumbrances thereon, except liens given by chapter 97. [R. C. 1905, § 6273; 1887, ch. 150, § 2; R. C. 1895, § 4822.]

CHAPTER 97.

THRESHING LIEN.

§ 6854. Who may have. Any owner or lessee of a threshing machine who threshes grain for another therewith shall, upon filing the statement provided for in the next section, have a lien upon such grain for the value of his services in threshing the same from the date of the commencement of the threshing. [R. C. 1905, § 6274; 1889, ch. 88, § 1; R. C. 1895, § 4823.]

Proof necessary to establish lien. *Martin v. Hawthorne*, 5 N. D. 66, 63 N. W. 893. Not unconstitutional as depriving grain buyer of property without due process of law. *Hahn v. Sleepy Eye Mill Co.*, 21 S. D. 324, 112 N. W. 843.

§ 6855. Procedure to obtain lien. Any person entitled to a lien under this chapter shall, within thirty days after the threshing is completed, file in the office of the register of deeds of the county in which the grain was grown a statement in writing, verified by oath, showing the amount and quantity of grain threshed, the price agreed upon for threshing the same, the name of the person for whom the threshing was done and a description of the land upon which the grain was grown. Unless the person entitled to the lien shall file such statement within the time aforesaid he shall be deemed to have waived his right thereto. [R. C. 1905, § 6275; 1889, ch. 88, § 2; R. C. 1895, § 4824.]

Only owner and operator entitled to lien; notice must contain description of land. *Parker v. First Nat. Bank*, 3 N. D. 87, 54 N. W. 313; *Anderson v. Alseth*, 6 S. D. 566, 62 N. W. 436; *Martin v. Hawthorn*, 3 N. D. 412, 57 N. W. 87.

Quantity of each grain threshed need not be stated in thresher's lien, when total is stated. *Mitchell v. Monarch Elevator Co.*, 15 N. D. 495, 107 N. W. 1085, 11 A. & E. Ann. Cas. 1001.

Lien must be executed in duplicate and filed in both counties, where grain is grown in two counties. *Gorthy v. Jarvis*, 15 N. D. 509, 108 N. W. 39.

Failure to set forth "the amount and quantity of grain threshed" in statement filed with clerk of court fatal to lien. *Moher v. Raamusson*, 12 N. D. 71, 95 N. W. 152.

§ 6856. Priority. Such lien shall have priority over all other liens and incumbrances upon such grain. [R. C. 1905, § 6276; 1889, ch. 88, § 2; 1890, ch. 87, § 1; R. C. 1895, § 4825.]

CHAPTER 98.

FARM LABORER'S LIEN.

§ 6857. Who may have. Any person who performs services for another in the capacity of farm laborer between the first day of April and the first day of December in any year, shall have a lien on all crops of every kind grown, raised or harvested by the person for whom the services were performed during said time as security for the payment of any wages due or owing to such persons for services so performed, and said lien shall have priority over all other liens, chattel mortgages or incumbrances, excepting, however, seed grain and threshers' liens; provided, that the wages for which a lien may be obtained must be reasonable and not in excess of that which is usually charged for the same kind of work in the locality where the labor is performed; provided, further, that in case any such person without cause quits his employment before the expiration of the time for which he is employed, or if he shall be discharged for cause, then he shall not be entitled

to a lien as herein provided. [R. C. 1905, § 6277; 1895, ch. 63, § 1; R. C. 1899, § 4826.]

Female cook on farm is not entitled to lien for wages. *Lowe v. Abrahamson*, 18 N. D. 182, 19 L.R.A.(N.S.) 1039, 119 N. W. 241.

As to whether woman employed on farm as domestic was farm laborer and entitled to lien for wages. *Mead v. First Nat. Bank*, 24 N. D. 12, 138 N. W. 365.

Who is a "farm or agricultural" laborer within statute giving lien. 19 L.R.A.(N.S.) 1039.

§ 6858. How lien obtained. In order to acquire a lien, as specified in the preceding section, the person performing such services shall within thirty days after the services are fully performed, file in the office of the register of deeds of the county in which any of the real estate is situated on which any crop is grown, on which a lien is claimed, an affidavit and notice, setting forth the terms of the employment, the name of the employer, the time when the services were commenced and when ended, the wages agreed upon, if any, and if not agreed upon, then the reasonable value of the same, the terms of payment, if any, and a description of the real estate on which any crop is grown, or has been grown, or harvested, on which a lien is claimed, the amount paid him, if any, and the amount remaining unpaid, and that said laborer claims a lien for the same. [R. C. 1905, § 6278; 1895, ch. 63, § 2; R. C. 1899, § 4827; 1901, ch. 87.]

§ 6859. Duty of register. It shall be the duty of the register of deeds to file and enter said affidavit and notice in the manner required by law for filing and entering chattel mortgages, entering employers as mortgagors and laborers as mortgagees, and he shall be entitled to a fee of ten cents for filing the same. [R. C. 1905, § 6279; 1895, ch. 63, § 3; R. C. 1899, § 4828.]

§ 6860. Penalty for disposing of property covered by. If the person for whom such services were performed fails to pay for the same when due, or if he shall sell, conceal or dispose of the property covered by said lien or any part thereof, then the owner of such lien shall have the right to take full and absolute possession of all the property covered by such lien and sell the same in the same manner and upon the notice provided by law for the foreclosure of chattel mortgages and the cost and fees for foreclosing shall be the same. [R. C. 1905, § 6280; 1895, ch. 63, § 4; R. C. 1899, § 4829.]

CHAPTER 99.

OTHER LIENS.

§ 6861. Vendor's lien on realty. One who sells real property has a special or vendor's lien thereon, independent of possession, for so much of the price as remains unpaid and unsecured otherwise than by the personal obligation of the buyer. [R. C. 1905, § 6281; Civ. C. 1877, § 1801; R. C. 1899, § 4830.]

Only seller of real estate has vendor's lien thereon. *Bray v. Booker*, 6 N. D. 526, 72 N. W. 933.

Vendor's lien waived by taking collateral security. *Bray v. Booker*, 8 N. D. 347, 79 N. W. 293.

Vendor's lien for unpaid purchase money. 4 Am. St. Rep. 704; 36 Am. St. Rep. 174. The right of a vendor of real estate, upon purchaser's refusal to perform, to resell at latter's risk and hold him liable for deficiency. 8 L.R.A.(N.S.) 137.

Effect of statutory bar of action for purchase money on right to enforce vendor's lien. 39 L.R.A.(N.S.) 1171; 31 Am. Rep. 41; 95 Am. St. Rep. 663.

Deficiency decree in action to foreclose vendor's lien. 13 L.R.A.(N.S.) 874.

Vendor's lien on superstructure on railroad right of way. 66 L.R.A. 44.

Effect of payment by volunteer or stranger. 23 L.R.A. 130.

Agreement for support in consideration of conveyance as basis for equitable lien. 13 L.R.A.(N.S.) 725; 28 L.R.A.(N.S.) 607.

Vendor's lien as affecting sole and unconditional ownership. 7 L.R.A.(N.S.) 627.

Priority of vendor's lien as against purchaser at judicial sale. 21 L.R.A. 39.

Is money loaned to improve land part of the purchase price within the rule that a purchase money lien takes priority over homestead rights. 41 L.R.A.(N.S.) 89.

Rights of seller of fixtures, retaining title thereto or a lien thereon, as against lien of vendor of realty. 1 B. R. C. 670.

Remedies for enforcing lien of vendor. 17 Am. St. Rep. 232.

As to similar provision in Cal. Civ. Code, § 3046, see *Avery v. Clark*, 87 Cal. 619, 22 Am. St. Rep. 272, 25 Pac. 919; *Gessner v. Palmateer*, 89 Cal. 89, 13 L.R.A. 187, 24 Pac. 608, 26 Pac. 789; *Claiborne v. Castle*, 98 Cal. 30, 32 Pac. 807.

§ 6862. When lien waived. When a buyer of real property gives to the seller a written contract for payment of all or part of the price, an absolute transfer of such contract by the seller waives his lien to the extent of the sum payable under the contract, but a transfer of such contract in trust to pay debts and return the surplus is not a waiver of the lien. [R. C. 1905, § 6282; Civ. C. 1877, § 1802; R. C. 1899, § 4831.]

Waiver of vendor's lien. 137 Am. St. Rep. 185; 12 Am. Dec. 262; 28 Am. Dec. 199.

—by attachment or execution. 50 L.R.A. 717.

—by acceptance of commercial paper. 35 L.R.A.(N.S.) 91.

—by joining in mortgage. 35 L.R.A.(N.S.) 348.

Effect of discharge in bankruptcy on vendor's lien. 42 L.R.A.(N.S.) 295.

As to similar provision in Cal. Civ. Code, § 3047, see *Bancroft v. Cosby*, 74 Cal. 583, 16 Pac. 504; *Avery v. Clark*, 87 Cal. 619, 22 Am. St. Rep. 272, 25 Pac. 919; *Gessner v. Palmateer*, 89 Cal. 89, 13 L.R.A. 187, 24 Pac. 608, 26 Pac. 789; *Selna v. Selna*, 125 Cal. 357, 73 Am. St. Rep. 47, 58 Pac. 16.

§ 6863. Certain liens subject to creditors' rights. The liens defined in sections 6861 and 6865 shall be subject to the rights of subsequent creditors without notice, or purchasers or incumbrancers in good faith and for value. [R. C. 1905, § 6283; Civ. C. 1877, § 1803; R. C. 1895, § 4832.]

As to similar provision in Cal. Civ. Code, § 3048, see *Selna v. Selna*, 125 Cal. 357, 73 Am. St. Rep. 47, 58 Pac. 16.

§ 6864. Vendor's lien on personalty. One who sells personal property has a special lien thereon, dependent on possession for its price, if it is in his possession when the price becomes payable; and may enforce his lien in like manner as if the property was pledged to him for the price. [R. C. 1905, § 6284; Civ. C. 1877, § 1804; R. C. 1899, § 4833.]

Expense incurred in shipping cattle to market is element of damage in action for breach of agreement to buy them. *Olson v. Rydl*, 25 S. D. 268, 126 N. W. 587.

Lienor cannot purchase at his foreclosure sale of personal property. *Reeves & Co. v. Bruening*, 16 N. D. 398, 114 N. W. 313.

Law governing right to vendor's lien. 64 L.R.A. 831.

Vendor's lien for purchase price of railroad rails. 66 L.R.A. 44.

Right of vendor by conditional sale to assert lien on default of payment. 32 L.R.A. 464.

Personal liability of purchaser of personal property which is subject to a lien. 59 L.R.A. 737.

Waiver of seller's lien by attachment or execution. 50 L.R.A. 714.

Lien of vendor of personalty. 28 Am. Dec. 694; 83 Am. St. Rep. 451.

As to similar provision in Cal. Civ. Code, § 3049, see *Hewes v. Germain Fruit Co.*, 106 Cal. 441, 39 Pac. 853; *Eads v. Kessler*, 121 Cal. 244, 53 Pac. 656.

§ 6865. Purchaser's lien on realty. One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back in case of a failure of consideration. [R. C. 1905, § 6285; Civ. C. 1877, § 1805; R. C. 1899, § 4834.]

Lien of vendee. 127 Am. St. Rep. 873.

As to similar provision in Cal. Civ. Code, § 3050, see *Merrill v. Merrill*, 103 Cal. 287, 35 Pac. 768; 37 Pac. 392; *Haile v. Smith*, 113 Cal. 656, 45 Pac. 872.

§ 6866. Lien for improvement, carriage, etc., of personalty. Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by labor or skill employed for the protection, improvement, safe keeping or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service. [R. C. 1905, § 6286; Civ. C. 1877, § 1806; R. C. 1899, § 4835.]

Right of owner of garage to lien. 1 L.R.A.(N.S.) 240.

Right of servant to the common-law possessory lien or its statutory substitute for services in connection with property. 42 L.R.A.(N.S.) 731.

Right of one not in the storage business to a common-law lien for storage charge. 39 L.R.A.(N.S.) 1164.

Lien of warehouseman. 42 Am. Dec. 257.

Lien by cotenant for improvements. 29 L.R.A. 456.
 Lien by cotenant for repairs. 29 L.R.A. 459.
 Express lien for obligation to contribute to cost of party wall. 66 L.R.A. 703, 704.
 Improvement of personal property at bailee's request as creating liability against bailor of property. 38 L.R.A.(N.S.) 97.
 Maritime lien for freight. 70 L.R.A. 358, 368.
 Lien for demurrage. 3 L.R.A.(N.S.) 327.
 Waiver of lien of carrier by attachment or execution. 50 L.R.A. 721.
 Lien of artisans and tradesmen at the common law. 37 Am. Dec. 522.

§ 6867. **Factor's lien.** A factor has a general lien dependent on possession for all that is due to him as such upon all articles of commercial value that are intrusted to him by the same principal. [R. C. 1905, § 6287; Civ. C. 1877, § 1807; R. C. 1899, § 4836.]

Factor's lien; delivery of possession. *Rosenbaum v. Hayes*, 5 N. D. 476, 67 N. W. 951; *Rosenbaum v. Hayes*, 8 N. D. 461, 79 N. W. 987.

Factor's lien; how waived. *Rosenbaum v. Hayes*, 10 N. D. 311, 86 N. W. 973.

§ 6868. **Banker's lien.** A banker has a general lien dependent on possession upon all property in his hands belonging to a customer for the balance due to him from such customer in the course of the business. [R. C. 1905, § 6288; Civ. C. 1877, § 1808; R. C. 1899, § 4837.]

Lien of bank on commercial paper in its possession. *Bank of Commerce v. Humphrey*, 6 S. D. 415, 61 N. W. 444.

Lien of bank on deposits. 6 L.R.A. 227.

Lien on commercial paper purchased by bank after it has mingled trust money with its own funds. 15 L.R.A.(N.S.) 1100.

Banker's lien not founded on contract. 4 Am. St. Rep. 202; 111 Am. St. Rep. 419.
 As to similar provision in Cal. Civ. Code, § 3054, see *Anglo-Californian Bank v. Grangers' Bank*, 63 Cal. 359.

§ 6869. **Shipmaster's lien.** The master of a ship has a general lien independent of possession upon the ship and freightage for advances necessarily made, or liabilities necessarily incurred by him for the benefit of the ship, but has no lien for his wages. [R. C. 1905, § 6289; Civ. C. 1877, § 1809; R. C. 1899, § 4838.]

Contract between master and ship supporting maritime liens. 70 L.R.A. 381.

§ 6870. **Mate and seaman's lien for wages.** The mate and seamen of a ship have a general lien independent of possession upon the ship and freightage for their wages, which is superior to every other lien. [R. C. 1905, § 6290; Civ. C. 1877, § 1810; R. C. 1899, § 4839.]

Contracts with seamen supporting maritime liens. 70 L.R.A. 377.

Maritime lien for services of pilots. 70 L.R.A. 384.

§ 6871. **Officer's lien in attachment or execution.** An officer who levies an attachment or execution upon personal property acquires a special lien dependent on possession upon such property, which authorizes him to hold it until the process is discharged or satisfied, or a judicial sale of the property is had. [R. C. 1905, § 6291; Civ. C. 1877, § 1811; R. C. 1899, § 4840.]

§ 6872. **Innkeeper's lien.** The keeper of any inn or hotel, whether individual, partnership or corporation, shall have a lien on the baggage and other property in and about such inn belonging to or under the control of his guests or boarders for the proper charges due him from such guests for the accommodation, board and lodging, and for all money paid for or advanced to them not to exceed the sum of two hundred dollars, and for such other extras as are furnished at their request, and said innkeeper or hotel keeper shall have the right to detain the baggage and other property until the amount of such charges is paid, and such baggage and other property shall be exempt from attachment or execution until such innkeeper's lien and the cost of satisfying it are satisfied. [1913, ch. 183, § 5; R. C. 1905, § 6292; Civ. C. 1877, § 1062; R. C. 1895, § 4841.]

Innkeeper has no lien on property leased of third person and brought to and left at hotel by guest. *McClain v. Williams*, 11 S. D. 227, 76 N. W. 930, 49 L.R.A. 610, 74 Am. St. Rep. 791.

Innkeeper's lien. 21 L.R.A. 229; 107 Am. St. Rep. 868.

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§ 6873. Sale of property for innkeeper's lien. The innkeeper or hotel keeper shall retain such baggage and other property upon which he has a lien for a period of ninety days, at the expiration of which time, if such lien is not satisfied, he may sell such baggage and other property at public auction, after giving ten days' notice of the time and place of sale in a newspaper of circulation in the county where the inn or hotel is situated, and also by mailing a copy of such notice addressed to said guest or boarder at the place of residence registered by him in the register of such inn or hotel. [1913, ch. 183, § 6.]

§ 6874. Disposal of property sold for innkeeper's lien. And after satisfying the lien and any costs that may accrue, any residue remaining shall, on demand within six months, be paid such guest or boarder, and if not so demanded within six months from date of such sale, such residue shall be deposited by such innkeeper or hotel keeper, with the treasurer of the county in which the inn or hotel is situated, together with a statement of the innkeeper's claim and the cost of enforcing same, a copy of the published notice, and of the amounts received for the goods sold at said sale; said residue shall by said county treasurer be credited to the general revenue fund for said county, subject to a right of said guest or boarder, or his representative, to reclaim at any time within three years of the date of deposit with said treasurer. [1913, ch. 183, § 7.]

§ 6875. Attorney's lien. An attorney has a lien for a general balance of compensation in and for each case upon:

1. Any papers belonging to his client which have come into his hands in the course of his professional employment in the case for which the lien is claimed.

2. Money in his hands belonging to his client in the case.

3. Money due his client in the hands of the adverse party, or attorney of such party, in an action or proceeding in which the attorney claiming the lien was employed from the time of giving notice in writing to such adverse party or the attorney of such party, if the money is in the possession or under the control of such attorney, which notice shall state the amount claimed and in general terms for what services.

4. After judgment in any court of record such notice may be given and the lien made effective against the judgment debtor by entering the same in the judgment docket opposite the entry of the judgment. [R. C. 1905, § 6293; R. C. 1899, § 4842.]

Entry of notice is notice to none except judgment debtor. *Clark v. Sullivan*, 3 N. D. 280, 55 N. W. 733.

Attorney must show possession in course of professional employment to establish lien. *Winans v. Grable*, 18 S. D. 182, 99 N. W. 1110.

Lien attaches not only to judgment, but to cause of action on bond on appeal therefrom. *Leighton v. Serveson*, 8 S. D. 350, 66 N. W. 938.

Lien cannot be defeated by judgment debtor's right of set-off. *Hroch v. Aultman & Taylor Co.*, 3 S. D. 477, 54 N. W. 269.

Lien is dormant until actively asserted. *Pirie v. Harkness*, 3 S. D. 178, 52 N. W. 581; *Hroch v. Aultman & Taylor Co.*, 3 S. D. 477, 54 N. W. 269.

Judgment on appeal for costs against plaintiff may be set off pro tanto against a similar judgment in the same action in plaintiff's favor, regardless of lien. *Lindsay v. Pettigrew*, 8 S. D. 244, 66 N. W. 321.

Liens of attorneys. 31 Am. Dec. 755; 51 Am. St. Rep. 251.

Attorney's lien on cause of action for tort. 3 L.R.A.(N.S.) 379.

Attorney's lien on fund in bastardy proceedings. 11 L.R.A.(N.S.) 630.

Effect of agreement giving attorney employed by personal representative lien on subject-matter in litigation on liability of estate to him. 25 L.R.A.(N.S.) 75.

Right of attorney, under local statute, to a lien upon money in the hands of an adverse party to a suit in proceeding in another state. 31 L.R.A.(N.S.) 1215.

Right of attorney who takes case on contingent fee or for certain percentage to implied or equitable lien on fund recovered. 27 L.R.A.(N.S.) 634.

Constitutionality of statutes providing for attorneys' liens. 40 L.R.A.(N.S.) 529.

Dismissal of suit to defeat attorney's lien or claims to compensation. 5 L.R.A.(N.S.) 390.

Waiver of attorney's lien by taking security. 2 B. R. C. 58.

Assignment of judgment to attorney defeating lien. 23 L.R.A. 339.

Assignment of judgment as affecting attorney's lien thereon. 37 L.R.A. (N.S.) 226.

§ 6876. Release by bond. Any person interested may release such lien by executing a bond in a sum double the amount claimed, or in such sum as may be fixed by a judge, payable to the attorney with security to be approved by the clerk of the court, conditioned to pay the amount finally due the attorney for his services, which amount may be ascertained by suit on the bond. Such lien will be released unless the attorney within ten days after demand therefor, furnishes any party interested a full and complete bill of particulars of the services and amount claimed for each item or written contract with the party for whom the services were rendered. [R. C. 1905, § 6294; R. C. 1899, § 4843.]

On judgment releasing attorney's lien on judgment on giving of bond for payment thereof. *Mosteller v. Holborn*, 21 S. D. 547, 114 N. W. 693.

§ 6877. Lien for repairs of personalty. Any blacksmith or machinist having an established place of business within the state who makes, alters or repairs any engine, threshing machine or well machine at the request of the owner or legal possessor of the property, shall have a lien upon the same for his reasonable charges for work done and materials furnished, until the charges are paid, and said lien shall have priority over all other liens, chattel mortgages or incumbrances against said personal property; provided, however, that any person entitled to a lien, under this section, shall, within thirty days after materials are furnished or labor performed in altering or repairing such personal property, file in the office of the register of deeds of the county a statement in writing, verified by oath, showing the labor performed, materials furnished, the price agreed on for the same, if no price is agreed on then state the reasonable value thereof, the name of the person for whom the work or labor was performed, or to whom materials were furnished, or both, and descriptions of the property upon which the lien was claimed; provided, that when the person retains possession of this property so altered or repaired no statement is required to be filed as above provided; provided, that if any person makes, alters or repairs more than one article of personal property for the same owner or legal possessor thereof, he may include all such articles of personal property so made, altered or repaired, within thirty days preceding the filing thereof, in the same statement, and the statement so made shall have the same force and effect as to each article enumerated therein as though a separate statement had been filed for each of said articles so made, altered or repaired. Unless the person entitled to said lien shall file such statement within the time aforesaid, he shall be deemed to have waived his right thereto; provided, further, that the person holding such lien on property that has been previously incumbered by mortgage, before the foreclosure of same, shall give to the record holder of such mortgage twenty days' notice in writing of his intention to foreclose said lien before beginning action or proceedings for foreclosure of the same, which notice may be served by sending same in a registered letter addressed to such lien holder at his last known post office address; and provided, further, that the holder of any mortgage against property on which the lien herein provided for, shall have been filed, may at any time previous to sale, pay off the amount due on such lien, the holder thereof shall assign the same to such person and thereafter he shall be entitled to all the rights that the person filing said lien would have been had the same not been paid. [1907, ch. 168; R. C. 1905, § 6295; Civ. C. 1877, § 1814; R. C. 1895, § 4844.]

Mechanic's lien for repairs properly perfected superior to prior mortgage lien. *Gaar, Scott & Co. v. Clements*, 4 N. D. 559, 62 N. W. 640.

Mechanic's lien for repair of engine. *Gaar, Scott & Co. v. Clements*, 4 N. D. 559, 62 N. W. 640; *Burdick v. Marshall*, 8 S. D. 308, 66 N. W. 462.

CHAPTER 100.

FILING AND FORECLOSING LIENS ON PERSONAL PROPERTY.

§ 6878. **Liens foreclosed, how.** Upon default being made in the payment of a debt secured by a lien upon personal property, such lien may be foreclosed upon the notice, and in the manner provided for the foreclosure of mortgages upon personal property, and the holder of such lien shall be entitled to the possession of the property covered thereby for the purpose of foreclosing the same. The costs and fees for such foreclosure shall be the same as are provided in section 8132. A report of such foreclosure shall be made in the manner set forth in section 8128; provided, that when the lien has not been filed in the office of any register of deeds, then a report of such sale shall be filed in the office of the register of deeds of the county wherein the property is sold. Such liens may also be foreclosed by action as provided in chapter 29 of the code of civil procedure. [R. C. 1905, § 6296; R. C. 1895, § 4845; 1903, ch. 120.]

Report of sale on foreclosure to be filed within ten days. *Martin v. Hawthorne*, 5 N. D. 66, 63 N. W. 895.

§ 6879. **Duty of register of deeds as to liens filed.** It shall be the duty of the register of deeds to file and index any statement or lien upon personal property, required by law to be filed in his office, the same as a mortgage upon personal property, the person filing the lien being treated as mortgagee and the person against whom the lien is filed as mortgagor. [R. C. 1905, § 6297; R. C. 1895, § 4846.]

Lienors are not affected by failure of register to properly number the liens. *Schouweiler v. McCaull*, 18 S. D. 70, 99 N. W. 95.

CHAPTER 101.

DISCHARGE OF LIENS.

The title of the following section constituting this chapter, as enacted in Laws 1911, ch. 178, is as follows: "An act regulating the discharge of liens, not dependent upon possession and to provide for the release of liens, filed of record against real property, and personal property, and the giving of an undertaking for the payment thereof."

§ 6880. **Discharge of record upon notice, affidavit and undertaking.** That whenever any mechanics' lien, lien for the service of sires, seed liens, threshing lien, farm laborer's lien, miner's lien, shall have been heretofore, or may be hereafter filed against the real property or personal property of a resident of North Dakota, the officer having control of the record of said lien shall discharge the same of record by making an entry on the margin of the record thereof, as follows:

"Discharged by Undertaking," and the officer shall date and sign the discharge, and thereafter said lien shall be void and of no effect.

Provided, that the owner of said lien real or personal property shall first cause to be filed with said officer the affidavit of the owner of said property, or the owner of a substantial interest therein, or, of his agent or attorney, setting forth an interest in said property, and that the said owner has a defense against the collection of said lien, or a part thereof, and that there exists a disagreement between the parties affecting the amount or validity of said lien, and that the lienor desires a discharge of said lien of record.

Provided, that the owner of said property, or the owner of an interest in said property, as aforesaid, shall first file with the officer having control of the records of said lien, an undertaking with two sureties thereon, providing that the owner of said property, aforesaid, will pay any amount the lien claimant shall recover thereon, and all costs, and said sureties shall each

justify in at least the amount of said lien. The lien claimant, his agent or attorney shall be served with a copy of said affidavit, a copy of said undertaking and a notice stating the day, hour and place where the application will be made for the release of said lien. The lien claimant shall have notice of said application to be served in the manner following: If personal, there shall be five days' notice, and the proof of the service of notice shall be the same as required of a summons in a civil action. If service be made by registered letter, ten days' notice shall be given from the date of mailing of the letter, and the proof of the service by registered letter shall be the postmaster's receipt, and an affidavit showing that a copy of the notice, undertaking and affidavit of interest was inclosed in said letter, and that the same was properly addressed to the lien claimant, sealed, and sufficient postage attached thereto to carry the same to its destination, and such service on the agent or attorney of the lien claimant shall be sufficient. At the time and place specified in the notice for the hearing, the lien claimant, his agent or attorney, may except to the sufficiency of the surety, and if an exception be made to the sufficiency of the surety, the surety shall justify before the officer named in the original notice, and the statute governing justification under bail and arrest shall govern the justification of the sureties. If said sureties, or other surety fail to justify within ten days from the date named for the hearing of said application, then said application shall be dismissed. If no exception is taken to the sufficiency of the surety, or if the surety justify as herein provided, and if said officer approve said undertaking, then said lien shall be discharged of record, as herein provided.

The officer before whom said proceedings are had shall be entitled to charge not exceeding one dollar to be paid in advance by the applicant, and if said officer be the clerk of the district court, he shall record the notice, affidavit and undertaking in the order book and if the officer be the register of deeds, he shall record said notice, affidavit and undertaking in his book of miscellaneous records, and certified copies of said documents shall be prima facie evidence of the matters therein contained in the courts of North Dakota. [1911, ch. 178.]

CHAPTER 102.

STOPPAGE IN TRANSIT.

§ 6881. **When authorized.** A seller or consignor of property, whose claim for its price or proceeds has not been extinguished, may, upon the insolvency of the buyer or consignee becoming known to him after parting with the property, stop it while on its transit to the buyer or consignee, and resume possession thereof. [R. C. 1905, § 6298; Civ. C. 1877, § 1815; R. C. 1899, § 4847.]

Right exists even while goods are in warehouse before delivery. *Powell v. McKechnie*, 3 D. 319, 19 N. W. 410.

Right of stoppage in transitu, when and by whom it may be exercised. 29 Am. Dec. 384; 19 Am. Rep. 87; 1 Am. St. Rep. 312.

When right of stoppage in transitu terminates. 60 Am. Rep. 51.

Waiver of stoppage in transitu by attachment or execution. 50 L.R.A. 721.

Effect on stoppage in transitu of contract to ship goods f. o. b. 62 L.R.A. 805.

Right of stoppage in transitu after reshipment. 34 L.R.A.(N.S.) 31.

§ 6882. **Insolvency defined.** A person is insolvent, within the meaning of the last section, when he ceases to pay his debts in the manner usual with persons of his business, or when he declares his inability or unwillingness to do so. [R. C. 1905, § 6299; Civ. C. 1877, § 1816; R. C. 1899, § 4848.]

§ 6883. **When transit ends.** The transit of property is at an end when it comes into the possession of the consignee, or into that of his agent, unless

§§ 6883-6886

such agent is
[R. C. 1905,
§ 6884. How
to the carrier
thereof. (R.
§ 6885. Not
rescind a sale,
1905, § 6302;

employed me
6300; effect
of
rescission
but it is
Civ. C. 1877,

TITLE I.—NEGOTIABLE INSTRUMENTS

ARTICLE 1. FORM AND INTERPRETATION.

1. FORM AND INTERPRETATION, §§ 6886-6908.
2. CONSIDERATION, §§ 6909-6914.
3. NEGOTIATION, §§ 6915-6935.
4. RIGHTS OF TRANSFER, §§ 6936-6944.
5. LIABILITIES OF TRANSFER, §§ 6945-6954.
6. PRESENTMENT, §§ 6955-6973.
7. NOTICE OF DISCHARGE, §§ 6974-7003.
8. DISCHARGE, §§ 7004-7010.

TITLE II.—BILLS OF EXCHANGE

ARTICLE 1. FORM AND INTERPRETATION.

1. FORM AND INTERPRETATION, §§ 7011-7016.
2. ACCEPTANCE, §§ 7017-7027.
3. PRESENTMENT, §§ 7028-7035.
4. PROTEST, §§ 7036-7044.
5. ACCEPTANCE FOR HONOR, §§ 7045-7054.
6. PAYMENT FOR HONOR, §§ 7055-7061.
7. BILLS IN A SET, §§ 7062-7067.

TITLE III.

ARTICLE 1. PROMISSORY NOTES AND CHECKS, §§ 7068-7073.

TITLE IV.

ARTICLE 1. GENERAL PROVISIONS, §§ 7074-7080.

Chapter 88, Civil Code, R. C. 1899, the old law relating to negotiable instruments was repealed by Laws 1905, ch. 138, with the proviso "that all actions that are now pending under the provisions of said chapter shall in no manner be affected by this repeal." Chapter 103 herein, consisting of Laws 1899, ch. 113, which constituted R. C. 1899, Civil Code, chapter 100, and R. C. 1905, Civil Code, chapter 90, takes the place of said chapter 88.

TITLE I.

NEGOTIABLE INSTRUMENTS IN GENERAL.

ARTICLE 1.—FORM AND INTERPRETATION.

§ 6886. Instruments must conform to specific requirements. An instrument to be negotiable must conform to the following requirements:

1. It must be in writing and signed by the maker or drawer.
2. Must contain an unconditional promise or order to pay a sum certain in money.
3. Must be payable on demand, or at a fixed or determinable future time.
4. Must be payable to order or to bearer; and,

CIVIL CODE.

ly to forward the property to the consignee.
§ 1877, § 1817; R. C. 1899, § 4849.]
Page in transit can be effected only by notice
of the property, or by taking actual possession
sale. Stoppage in transit does not of itself
ans of enforcing the lien of the seller. [R. C.
1819; R. C. 1899, § 4851.]

CHAPTER 103.

NEGOTIABLE INSTRUMENTS.

ARTICLE 1. FORM AND INTERPRETATION.

§§ 6886-6908.
§§ 6909-6914.
§§ 6915-6935.
§§ 6936-6944.
§§ 6945-6954.
§§ 6955-6973.
§§ 6974-7003.

ARTICLE 1. FORM AND INTERPRETATION, §§ 7004-7010.

ARTICLE 1. PROMISSORY NOTES AND CHECKS, §§ 7068-7073.

ARTICLE 1. GENERAL PROVISIONS, §§ 7074-7080.

Chapter 88, Civil Code, R. C. 1899, the old law relating to negotiable instruments was repealed by Laws 1905, ch. 138, with the proviso "that all actions that are now pending under the provisions of said chapter shall in no manner be affected by this repeal." Chapter 103 herein, consisting of Laws 1899, ch. 113, which constituted R. C. 1899, Civil Code, chapter 100, and R. C. 1905, Civil Code, chapter 90, takes the place of said chapter 88.

ARTICLE 1.—FORM AND INTERPRETATION.

§ 6886. Instruments must conform to specific requirements. An instrument to be negotiable must conform to the following requirements:

5. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty. [R. C. 1905, § 6303; 1899, ch. 113, § 1.]

Innocent purchaser of negotiable municipal bonds may enforce payment. *City of Pierre v. Duncomb*, 106 Fed. 611, 45 C. C. A. 499; *Nat. Life Ins. Co. v. Board of Education*, 62 Fed. 778, 10 C. C. A. 637; *Board of Education v. McLean*, 106 Fed. 817, 45 C. C. A. 658.

Affixing corporate seal to corporation's note does not destroy its negotiability. *Landauer v. Implement Co.*, 10 S. D. 205, 72 N. W. 467.

Implied notice to maker of transfer. *Hollinshead v. Stuart & Co.*, 8 N. D. 35, 77 N. W. 89, 42 L.R.A. 659.

Township warrants not negotiable instruments. *Gilman v. Township of Gilby*, 8 N. D. 627, 80 N. W. 889, 73 Am. St. Rep. 791.

City warrants are not negotiable instruments in sense that they are not subject to lawful defenses, though in hands of innocent purchasers. *Watson v. City of Huron*, 97 Fed. 449, 38 C. C. A. 264; *Hubbell v. Town of Custer City*, 15 S. D. 55, 87 N. W. 520.

Conflict of laws concerning negotiability. 91 Am. St. Rep. 718, 733; 61 L.R.A. 205; 19 L.R.A.(N.S.) 667.

2. Stipulation for attorney's fees, though void, does not destroy negotiability. *Chandler v. Kennedy*, 8 S. D. 56, 65 N. W. 439; *National Bank v. Feeney*, 9 S. D. 550, 70 N. W. 874, 46 L.R.A. 732.

Stipulation for attorney and collection fees destroys negotiability. *Garretson v. Purdy*, 3 D. 178, 14 N. W. 100; *First Nat. Bank v. Laughlin*, 4 N. D. 391, 61 N. W. 473.

Promissory note "with exchange and cost of collection" not negotiable. *Second Nat. Bank v. Basuler*, 65 Fed. 58, 12 C. C. A. 517.

Provision for payment of exchange destroys negotiability. *Flagg v. School District*, 4 N. D. 30, 58 N. W. 499, 25 L.R.A. 363.

Provision for payment of costs renders note nonnegotiable. *Johnson v. Schar*, 9 S. D. 536, 40 N. W. 838.

Stipulation for discount fee paid before due makes note nonnegotiable. *Nat. Bank v. Feeney*, 12 S. D. 156, 80 N. W. 186, 76 Am. St. Rep. 594, 46 L.R.A. 732.

Negotiability not affected by provision for additional rate of interest after maturity. *Merrill v. Hurley*, 6 S. D. 592, 62 N. W. 958, 55 Am. St. Rep. 859; *Hollinshead v. Stuart*, 8 N. D. 35, 77 N. W. 89.

Note "with interest from date until paid at ten per cent, eight if paid when due," is not negotiable. *Hegeler v. Comstock*, 1 S. D. 138, 45 N. W. 331, 8 L.R.A. 393.

Note is not negotiable which contains the following provision: "Payee's ownership of goods account of which this note is given, the account thereof, and the contract conditions of original sale, are not affected by accepting this note until receipt of full amount due thereon." *Fleming v. Sherwood*, 24 N. D. 144, 43 L.R.A.(N.S.) 945, 139 N. W. 101.

Unconditional promise to pay is essential to negotiable instruments. 42 Am. Rep. 366.

Negotiability as affected by provision for discount in event of payment before maturity. 40 L.R.A.(N.S.) 177.

Payments indorsed on note as affecting negotiability. 38 L.R.A. 823.

3. Negotiability of note unaffected by provision waiving notice of protest and consenting to extension of time. *First Nat. Bank v. Buttery*, 17 N. D. 326, 16 L.R.A.(N.S.) 878, 116 N. W. 341, 17 A. & E. Ann. Cas. 52.

Negotiability as affected by uncertainty of time of maturity. 1 L.R.A.(N.S.) 1120.

— as affected by provision permitting extension of time. 16 L.R.A.(N.S.) 878; 33 L.R.A.(N.S.) 738.

Provision for renewal as affecting negotiability. 31 L.R.A. 234.

Provision accelerating maturity. 35 L.R.A.(N.S.) 390.

Negotiability of note payment of which depends on termination of life. 27 L.R.A.(N.S.) 1017.

4. Promissory note not negotiable unless payable to order or to bearer. *Searles v. Seipp*, 6 S. D. 472, 61 N. W. 804.

§ 6887. Sum payable within the meaning of this chapter. The sum payable is a sum certain within the meaning of this chapter, although it is to be paid:

1. With interest; or
2. By stated installments; or
3. By stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due; or
4. With exchange, whether at a fixed rate or at the current rate; or,
5. With costs of collection or an attorney's fee, in case payment shall not be made at maturity. [R. C. 1905, § 6304; 1899, ch. 113, § 2.]

4. Provision for exchange as affecting negotiability. 27 L.R.A. 222.

5. Effect of provision for attorney's fee on negotiability. 21 Am. Rep. 212.

Effect of stipulation for attorney's fees in mortgage upon negotiability of note secured thereby. 26 L.R.A.(N.S.) 217.

§ 6888. Unqualified order or promise to pay. An unqualified order or promise to pay is unconditional within the meaning of this chapter, though coupled with:

1. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or

2. A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not conditional. [R. C. 1905, § 6305; 1899, ch. 113, § 3.]

Negotiability of note payable out of particular fund. 35 L.R.A. 647; 3 L.R.A.(N.S.) 231.

§ 6889. Payable at determinable future time. An instrument is payable at a determinable future time, within the meaning of this chapter, which is expressed to be payable:

1. At a fixed period after date or sight; or

2. On or before a fixed or determinable future time specified therein; or

3. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect. [R. C. 1905, § 6306; 1899, ch. 113, § 4.]

2. Note payable on or before certain date is regarded as payable on date named. State ex rel. Bithulitic & Contracting Co. v. Murphy, 20 N. D. 427, 128 N. W. 303.

Negotiability of note payment of which depends on termination of life. 27 L.R.A.(N.S.) 1017.

§ 6890. When not negotiable. An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

1. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or

2. Authorizes a confession of judgment if the instrument be not paid at maturity; or

3. Waives the benefit of any law intended for the advantage or protection of the obligor; or

4. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal. [R. C. 1905, § 6307; 1899, ch. 113, § 5.]

1. Recital in note as to security as affecting negotiability. 32 L.R.A.(N.S.) 858.

§ 6891. Validity and negotiable character. The validity and negotiable character of an instrument are not affected by the fact that:

1. It is not dated; or

2. Does not specify the value given, or that any value has been given therefor; or

3. Does not specify the place where it is drawn or the place where it is payable; or

4. Bears a seal; or

5. Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument. [R. C. 1905, § 6308; 1899, ch. 113, § 6.]

Reservation of title of property as affecting negotiability of note for purchase price. 43 L.R.A. 277; 43 L.R.A.(N.S.) 945.

Reference to extrinsic agreement as affecting negotiability. 30 L.R.A.(N.S.) 40.

§ 6892. Payable on demand. An instrument is payable on demand:

1. Where it is expressed to be payable on demand, or at sight, or on presentation; or

2. In which no time for payment is expressed.

Where an instrument is issued, accepted or indorsed when overdue, it is, as regards the person so issuing, accepting or indorsing it, payable on demand. [R. C. 1905, § 6309; 1899, ch. 113, § 7.]

As to negotiability of instrument in which no time for payment is expressed. First Nat. Bank v. Buttery, 17 N. D. 326, 16 L.R.A.(N.S.) 878, 116 N. W. 341, 17 A. & E. Ann. Cas. 52.

§ 6893. **Payable to order.** The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of:

1. A payee who is not maker, drawer or drawee; or
2. The drawee or maker; or
3. The drawee; or
4. Two or more payees jointly; or
5. One or some of several payees; or
6. The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty. [R. C. 1905, § 6310; 1899, ch. 113, § 8.]

§ 6894. **Payable to bearer.** The instrument is payable to bearer:

1. When it is expressed to be so payable; or
2. When it is payable to a person named therein or bearer; or
3. When it is payable to the order of a fictitious or nonexistent person, and such fact was known to the person making it so payable; or
4. When the name of the payee does not purport to be the name of any person; or
5. When the only or last indorsement is an indorsement in blank. [R. C. 1905, § 6311; 1899, ch. 113, § 9.]

§ 6895. **Instrument need not follow language of chapter.** The instrument need not follow the language of this chapter, but any terms are sufficient which clearly indicate an intention to conform to the requirements thereof. [R. C. 1905, § 6312; 1899, ch. 113, § 10.]

§ 6896. **Where instrument is dated.** Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance or indorsement as the case may be. [R. C. 1905, § 6313; 1899, ch. 113, § 11.]

§ 6897. **When instrument is not invalid.** The instrument is not invalid for the reason only that it is ante-dated or post-dated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery. [R. C. 1905, § 6314; 1899, ch. 113, § 12.]

§ 6898. **Undated instruments.** Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date. [R. C. 1905, § 6315; 1899, ch. 113, § 13.]

Alteration of date to correct mistake. 32 L.R.A.(N.S.) 517.

§ 6899. **Incomplete blank may be filled up.** Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed, may be enforced against any person who became a party thereto prior to its completion, it

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must be filled up strictly in accordance with the authority given and within a reasonable time. But if such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in accordance with the authority given and within a reasonable time. [R. C. 1905, § 6316; 1899, ch. 113, § 14.]

644. Right of an innocent payee to recover on a note signed in blank and intrusted to a third person, who exceeds his authority in filling up the blanks before delivery to the payee. 13 Am. Dec. 669.

§ 6900. When an incomplete instrument has not been delivered it will not, if completed and negotiated, be effectual, must be made either by or under the authority of the party making, drawing, accepting or indorsing, as the case may be, and in such case only, and not for the purpose of transferring the instrument to a party whose signature appears thereon. But when the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable thereon, a valid and intentional delivery by him is presumed until the contrary is proved. [R. C. 1905, § 6318; 1899, ch. 113, § 16.]

§ 6901. Incomplete negotiable instrument and as regards parties, and in such case only, and not for the purpose of transferring the instrument to a party whose signature appears thereon, a valid and intentional delivery thereof by all parties prior to him so as to make them liable thereon, a valid and intentional delivery by him is presumed until the contrary is proved. [R. C. 1905, § 6318; 1899, ch. 113, § 16.]

§ 6902. Ambiguous language. Where the language of the instrument is ambiguous, or there are omissions therein, the following rules of construction apply:

1. Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain reference may be had to the figures to fix the amount.

2. Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof.

3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued.

4. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail.

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election.

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser.

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon. [R. C. 1905, § 6319; 1899, ch. 113, § 17.]

§ 6903. Liability of signer. No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly

accordance with the authority given and within a reasonable time. But if such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in accordance with the authority given and within a reasonable time. [R. C. 1905, § 6316; 1899, ch. 113, § 14.]

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3. Where the instrument is not dated, it will be considered to be dated as of the time it was issued.

4. Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail.

5. Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election.

6. Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser.

7. Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon. [R. C. 1905, § 6319; 1899, ch. 113, § 17.]

§ 6903. Liability of signer. No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly

provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name. [R. C. 1905, § 6320; 1899, ch. 113, § 18.]

§ 6904. **Signature may be made by agent.** The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency. [R. C. 1905, § 6321; 1899, ch. 113, § 19.]

Liability of principal on negotiable paper executed by an agent. 21 L.R.A.(N.S.) 1046.

Payment by principal of previous drafts drawn upon him by his agent without authority, as implied authority to draw another. 34 L.R.A.(N.S.) 440.

Circumstances sufficient to put one taking paper from guardian on inquiry. 29 L.R.A.(N.S.) 365.

§ 6905. **Additions to signatures.** Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability. [R. C. 1905, § 6322; 1899, ch. 113, § 20.]

Liability of one who signs note as indorser adding words indicating representative capacity to his signature. 42 L.R.A.(N.S.) 25, 28, 32.

§ 6906. **"Procuration."** A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority. [R. C. 1905, § 6323; 1899, ch. 113, § 21.]

§ 6907. **Indorsement by corporation.** The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon. [R. C. 1905, § 6324; 1899, ch. 113, § 22.]

§ 6908. **Forged signature.** Where a signature is forged or made without authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority. [R. C. 1905, § 6325; 1899, ch. 113, § 23.]

Ratification of forged instrument. 36 L.R.A.(N.S.) 1006.

Liability of person whose signature is forged on commercial paper. 36 L.R.A. 539.

Forgery of bill or note by obtaining signature through trick or fraud. 1 L.R.A.(N.S.) 1075.

Forgery of renewal obligation as affecting original agreement. 33 L.R.A. 628.

Liability upon paper given in renewal of forged paper. 23 L.R.A.(N.S.) 1234.

Forgery of part of signatures of makers or sureties as defense against bona fide holder by makers whose signatures were genuine. 13 L.R.A.(N.S.) 426.

Right of drawee of forged paper to recover money paid thereon. 10 L.R.A.(N.S.) 49; 25 L.R.A.(N.S.) 1308; 29 L.R.A.(N.S.) 100.

Delay in giving notice of forgery as estoppel of true owner to recover against party who has paid paper on a forged indorsement. 40 L.R.A.(N.S.) 653.

ARTICLE 2.—CONSIDERATION.

§ 6909. **Consideration.** Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value. [R. C. 1905, § 6326; 1899, ch. 113, § 24.]

Name of payee on back of note does not prove indorsement. *Vickery v. Burton*, 6 N. D. 245, 69 N. W. 193.

Presumption that indorsement was for valuable consideration. *Stone v. Crow*, 2 S. D. 525, 51 N. W. 335.

Presumption that holder of negotiable paper is indorsee in due course, overcome by evidence that instrument was unlawfully put in circulation. *Landauer v. Implement Co.*

§§ 6903-6916
 10 S. D. 205, 76 N. W. 467; D.
 Hancock Mut. Life Ins. Co. v.
 Burden is on holder of bank
 that he took paper for value in
 Stour Falls Nat. Bank, 150 U.
 Compromise of a controversy
 Glynn v. Scott, 4 N. D. 18, 58
 Right of bona fide holder to
 Effect of knowledge of consi-
 deration as required by statute
 Effect of its consideration as
 Necessity of new consideration
 or guarantor, after execution
 1034.

§ 6910. Value is consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes consideration. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all payment of which depends on termination of life. 27

§ 6911. Value for consideration is a defense pro tanto whether the failure is against any person not a holder in due course; and against transferee after maturity. 46

§ 6912. Lien on instrument. Where the holder has a lien on the instrument by contract or by implication of law, he is deemed a holder for value in respect to all payment of which depends on termination of life. 27

§ 6913. Absence of consideration as defense against transferee after maturity. 46

§ 6914. Accommodation party. An accommodation party is one who has signed the instrument as maker, drawer, acceptor or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party. [R. C. 1905, § 6331; 1899, ch. 113, § 29.]

Rights inter se of accommodation parties to commercial paper. 28 L.R.A.(N.S.) 1039.
 Right of accommodation party who is obliged to pay bill or note, to recover from the accommodated party. 37 L.R.A.(N.S.) 783.
 Availability of defense of party to accommodation paper as against transferee after maturity. 46 L.R.A. 772.
 Effect of transfer after maturity of accommodation paper which has been diverted from the use for which it was intended by the accommodating party. 11 L.R.A.(N.S.) 1034.
 Liability of national bank on accommodation guaranty by it. 32 L.R.A.(N.S.) 545.

inn v. Nat. Bank, 11 S. D. 305, 77 N. W. 111; John City of Huron, 80 Fed. 652.
 Cashier's check issued without consideration, to show without notice of fraud in its inception. Thompson v. 231, 37 L.ed. 1063, 14 S. Ct. R. 94.
 is a good consideration for a promissory note. Me- W. 460.
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 eration by purchaser of note which did not indicate the required by statute. 24 L.R.A.(N.S.) 1057.
 on to bind third person who signs as surety, indorser d delivery of original note by principal. 44 L.R.A.(N.S.)

tion. Value is any consideration sufficient to support a simple contract. An antecedent or pre-existing debt constitutes consideration. Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all payment of which depends on termination of life. 27

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ARTICLE 3.—NEGOTIATION.

§ 6915. Negotiation. An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery. [R. C. 1905, § 6332; 1899, ch. 113, § 30.]

§ 6916. Indorsements. The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser,

without additional words, is a sufficient indorsement. [R. C. 1905, § 6333; 1899, ch. 113, § 31.]

To destroy negotiability by indorsement, words showing that purpose must be used. *Merrill v. Hurley*, 6 S. D. 592, 62 N. W. 938, 55 Am. St. Rep. 859.

When payee of negotiable promissory note transfers it by indorsing thereon guaranty of payment, purchaser is an indorsee within rule protecting innocent purchaser. *Dunham v. Peterson*, 5 N. D. 414, 67 N. W. 293, 36 L.R.A. 232, 57 Am. St. Rep. 556.

Indorsement of forged instrument as uttering or publishing. 8 L.R.A.(N.S.) 1178. Indorser's duty to see that spaces on commercial paper are filled so as to prevent raising. 21 L.R.A.(N.S.) 402.

Liability for transferring note to bona fide holder so as to cut off defenses. 27 L.R.A. 519.

Assignor of promissory note as indorser. 36 L.R.A. 117.

Conflict of laws as to validity of transfer of commercial paper. 2 B. R. C. 304.

What law governs as to sufficiency of indorsement or assignment of bill or note. 61 L.R.A. 222.

— as to liability of, and defenses available to, indorser. 61 L.R.A. 212.

— as to character and liability of irregular indorser. 61 L.R.A. 200; 19 L.R.A.(N.S.) 668.

Parol evidence to vary effect of indorsement. 7 Am. St. Rep. 366.

Admissibility of parol evidence as between indorser and indorsee that unrestricted indorsement was made merely to transfer title to the owner. 28 L.R.A.(N.S.) 530.

Right to show by parol evidence that indorsement unrestricted in form was for purpose of collection only. 17 L.R.A.(N.S.) 838.

Necessity of new consideration to bind third person who signs as indorser after execution and delivery of original note by principal. 44 L.R.A.(N.S.) 481.

Right of indorser to offset obligation as against assignee of debt due from him to the principal. 46 L.R.A.(N.S.) 62.

Are conveyances by indorsers within statute as to fraudulent conveyances. 47 L.R.A.(N.S.) 321.

§ 6917. **Indorsement of entire instrument.** The indorsement must be an indorsement of the entire instrument. An indorsement, which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue. [R. C. 1905, § 6334; 1899, ch. 113, § 32.]

§ 6918. **Special or blank indorsements.** An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional. [R. C. 1905, § 6335; 1899, ch. 113, § 33.]

Transfer of title to note by indorsement in form of guaranty. 36 L.R.A. 232; 41 L.R.A.(N.S.) 1009.

§ 6919. **Indorsement in blank.** A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer, and may be negotiated by delivery. [R. C. 1905, § 6336; 1899, ch. 113, § 34.]

Rights of owner of negotiable paper indorsed in blank as against bona fide purchaser from one unlawfully in possession thereof. 19 L.R.A.(N.S.) 107.

Indorsement in blank by a person other than the payee or holder. 29 Am. St. Rep. 297.

§ 6920. **May convert blank indorsement.** The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement. [R. C. 1905, § 6337; 1899, ch. 113, § 35.]

§ 6921. **Restrictive indorsements.** An indorsement is restrictive which either:

1. Prohibits the further negotiation of the instrument; or,
2. Constitutes the indorsee the agent of the indorser; or,
3. Vests the title in the indorsee in trust for or to the use of some other person. But the mere absence of words implying power to negotiate does not make an indorsement restrictive. [R. C. 1905, § 6338; 1899, ch. 113, § 36.]

§§ 6922-6933

§ 6922. Rights of indorsee to receive payment or to bring any action thereon.

1. To receive payment or to bring any action thereon.
2. To transfer his rights to another.
3. To authorize another to do so.

§ 6923. Qualified indorsement.

But all subsequent indorsements are qualified indorsements, unless the indorser adds words indicating that he intends to make the indorsement restrictive.

§ 6924. Conditional indorsement.

Where an indorsement is conditional, the instrument may be negotiated by delivery to any person to whom an instrument so indorsed is payable, or the proceeds thereof, subject to the rights of the indorser.

§ 6925. Payable to order.

Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

§ 6926. Indorsement as cashier.

Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation or the indorsement of the officer.

§ 6927. Misspelled names.

Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he thinks fit, his proper signature.

§ 6928. Negative personal liability.

Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

§ 6929. Indorsements after date of maturity.

Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

§ 6930. Presumption of indorsement.

Except where the contrary appears every indorsement is presumed prima facie to have been made at the place where the instrument is dated.

§ 6931. Restrictive indorsement.

An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

§ 6932. Privilege of holder.

The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorse-

ment confers upon the indorsee the right to receive payment or to bring any action thereon.

Where an indorsement is restrictive, the indorsee acquires only the title of the first indorsee.

A qualified indorsement constitutes the title to the instrument. It may be made by signature the words "without recourse" or any such words.

Such an indorsement does not impair the negotiable character of the instrument.

Where an indorsement is conditional, the instrument may be negotiated by delivery to any person to whom an instrument so indorsed is payable, or the proceeds thereof, subject to the rights of the indorser.

Where an instrument is payable to the order of two or more payees or indorsees who are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

Where an instrument is drawn or indorsed to a person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer; and may be negotiated by either the indorsement of the bank or corporation or the indorsement of the officer.

Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he thinks fit, his proper signature.

Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

Except where the contrary appears every indorsement is presumed prima facie to have been made at the place where the instrument is dated.

An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorse-

ment is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument. [R. C. 1905, § 6350; 1899, ch. 113, § 48.]

§ 6934. Transfers without indorsement. Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferrer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferrer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as of the time when the indorsement is actually made. [R. C. 1905, § 6351; 1899, ch. 113, § 49.]

§ 6935. May reissue instruments. When an instrument is negotiated back to a prior party, such party may, subject to the provisions of this chapter, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable. [R. C. 1905, § 6352; 1899, ch. 113, § 50.]

ARTICLE 4.—RIGHTS OF THE HOLDER.

§ 6936. Holder of negotiable note may sue. The holder of a negotiable instrument may sue thereon in his own name; and payment to him in due course discharges the instrument. [R. C. 1905, § 6353; 1899, ch. 113, § 51.]

§ 6937. Holder of instrument. Conditions. A holder in due course is a holder who has taken the instrument under the following conditions:

1. That it is complete and regular upon its face.
 2. That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact.
 3. That he took it in good faith and for value.
 4. That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.
- [R. C. 1905, § 6354; 1899, ch. 113, § 52.]

One who takes check for gambling debt is not holder in due course. *Drinkall v. Movins State Bank*, 11 N. D. 10, 57 L.R.A. 341, 95 Am. St. Rep. 341, 88 N. W. 724.

In determining whether plaintiff is holder in due course of note given to state bank, and by it assigned to its president, relationship of indorsee to payee must be considered with and as supplementing negotiable instruments act. *McCarty v. Kepreta*, 24 N. D. 395, 48 L.R.A.(N.S.) 65, 139 N. W. 992.

Bank deemed holder in bad faith where cashier knew that premium note was not to be effective until defendant's application for insurance was accepted. *Citizens' State Bank v. Garceau*, 22 N. D. 576, 134 N. W. 882.

Purchaser of two overdue notes secured by chattel mortgage and who takes assignment of such mortgage which shows that it is given to secure seven other notes not due, and recites that all will become due upon default in payment of any note, is affected with notice as to all notes, and takes none of them before maturity. *Rowe v. Scott*, 28 S. D. 145, 132 N. W. 695.

Taking note from maker as constructive notice of the accommodation character of an irregular indorsement and lack of authority for such indorsement. 2 L.R.A.(N.S.) 525.

Holder of accommodation paper as collateral security as a bona fide holder. 81 L.R.A.(N.S.) 296.

§ 6938. Where instrument payable on demand. Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course. [R. C. 1905, § 6355; 1899, ch. 113, § 53.]

Note which is payable on demand, and is purchased over a year after its date, will be considered to be overdue when so purchased. *McAdam v. Grand Forks Mercantile Co.*, 24 N. D. 645, 47 L.R.A.(N.S.) 246, 140 N. W. 725.

§ 6939. Where transferee receives notice. Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him. [R. C. 1905, § 6356; 1899, ch. 113, § 54.]

Bank deemed holder in bad faith where cashier knew that premium note was not to be effective until defendant's application for insurance was accepted. *Citizens' State Bank v. Garceau*, 22 N. D. 576, 134 N. W. 882.

§§ 6940—6946

§ 6940. Defective title, m
negotiates an instrument
he obtained the instrument
force and fear, or other ur
when he negotiates it in brea
to a fraud. [R. C. 1905, §
Title of indorsee of cash
unlawful means and for ille
10, 57 L.R.A. 341, 95 Am.
in determining whether
payee must be considered
excluding general law
Repreta, 24 N. D. 395, 48
Note had actual knowledge
American Nat. Bank v. L
he had actual knowledge
of defect or defect in th
instrument it is negotiated
to whom it is negotiated
defect or knowledge of
amounted to bad faith.

§ 6941. Notice of infr
What circumstances a
29 L.R.A. (N.S.) 351; 4
§ 6942. Instruments f
instrument free from an
available to prior parti
instrument for the fu
[R. C. 1905, § 6359; 189
§ 6943. Negotiable
of any holder other than
subject to the same
derives his title through
party to any fraud or illegality affecting the instrument, has all the rights of
such former holder in respect to all parties prior to the holder. [R. C. 1905,
§ 6360; 1899, ch. 113, § 58.]

As to holder having burden of showing that he took instrument in due course when
title of negotiator is shown to be defective. Kerr v. Anderson, 16 N. D. 36, 111 N. W.
614.
Bank deemed holder in bad faith where cashier knew that note was not to be effective
until defendant's application for insurance was accepted. Citizens' State Bank v.
Garceau, 22 N. D. 576, 134 N. W. 882.
§ 6944. Prima facie holder. Every holder is deemed prima facie to be a
holder in due course; but when it is shown that the title of any person who
has negotiated the instrument was defective, the burden is on the holder to
prove that he or some other person under whom he claims acquired the title
as a holder in due course. But the last mentioned rule does not apply in favor
of a party who became bound on the instrument prior to the acquisition of
such defective title. [R. C. 1905, § 6361; 1899, ch. 113, § 59.]
Every holder of negotiable instrument is prima facie holder in due course. Drinkall
v. Movins State Bank, 11 N. D. 10, 57 L.R.A. 341, 95 Am. St. Rep. 341, 88 N. W. 724.

ARTICLE 5.—LIABILITIES OF PARTIES.

§ 6945. Maker of negotiable instruments. The maker of a negotiable instru-
ment by making it engages that he will pay it according to its tenor; and
admits the existence of the payee and his then capacity to indorse. [R. C.
1905, § 6362; 1899, ch. 113, § 60.]
Proof of incorporation of payee of note is unnecessary in suit on note by indorsee.
Grover v. Muralt, 23 N. D. 576, 137 N. W. 830.
§ 6946. Drawer may limit his liability. The drawer by drawing the instru-
ment admits the existence of the payee and his then capacity to indorse; and
engages that on due presentation the instrument will be accepted and paid,

or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negating or limiting his own liability to the holder. [R. C. 1905, § 6363; 1899, ch. 113, § 61.]

§ 6947. Admissions of acceptor. The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits:

1. The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and,
2. The existence of the payee and his then capacity to indorse. [R. C. 1905, § 6364; 1899, ch. 113, § 62.]

§ 6948. Effect of signature upon an instrument. A person placing his signature upon an instrument otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity. [R. C. 1905, § 6365; 1899, ch. 113, § 63.]

§ 6949. Liability of indorser. When a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser in accordance with the following rules:

1. If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.
2. If the instrument is payable to the order of the maker or drawer or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.
3. If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee. [R. C. 1905, § 6366; 1899, ch. 113, § 64.]

In case of indorsement of demand note more than one year after its date indorsee can recover from indorser only consideration he has actually paid. *McAdam v. Grand Forks Mercantile Co.*, 24 N. D. 645, 47 L.R.A. (N.S.) 246, 140 N. W. 725.

Although parties to note may be cosureties as to payee of note, yet if they are not such as between themselves contribution will not lie, under section 6686, Revised Codes. *Harris v. Jones*, 23 N. D. 488, 136 N. W. 1080.

Character under uniform negotiable instrument law of one who places name on back of note prior to or at time of delivery. 14 L.R.A. (N.S.) 842.

§ 6950. Qualified indorsement, warrants. Every person negotiating an instrument by delivery or by a qualified indorsement, warrants:

1. That the instrument is genuine and in all respects what it purports to be.
2. That he has good title to it.
3. That all prior parties had capacity to contract.
4. That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee. The provisions of subdivision 3 of this section do not apply to persons negotiating public or corporate securities, other than bills and notes. [R. C. 1905, § 6367; 1899, ch. 113, § 65.]

§ 6951. Indorsers without qualifications. Every indorser who indorses without qualification, warrants to all subsequent holders in due course:

1. The matters and things mentioned in subdivisions 1, 2 and 3 of the next preceding section; and,
2. That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment, it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. [R. C. 1905, § 6368; 1899, ch. 113, § 66.]

Holder of negotiable paper writing above his indorsement contract of guaranty is indorser with enlarged liability. *Dunham v. Peterson*, 5 N. D. 414, 67 N. W. 293, 36 L.R.A. 232, 57 Am. St. Rep. 556.

§§ 6951-6957

Every indorser contra Warner v. Bank, 6 S. D. Guarantor is estopped Co. v. Heiser, 6 S. D. 429
 Oral promise of indorser S. D. 544, 67 N. W. 61
 Indorsee may show payment. 10 L.R.A. (N.S.) 151.
 Against maker and indorser Ann. Cas. 151.
 As to signature of 106, 112 N. W. 557.
 Implied warranty by ment. 10 L.R.A. (N.S.) 151.

§ 6952. All the liabilities incurred by an indorser on an instrument in the order in which he indorses an indorser. § 6953. Joint payees, that as between or among payees or joint indorsers severally. [R. C. 1905, ch. 113, § 67.]
 Although parties to such as between them Harris v. Jones, 23 N. W. 1090.
 § 6954. Negotiation of an instrument without section 6950, unless he is acting only as agent.

ARTICLE 6.—PRESENTMENT FOR PAYMENT.

§ 6955. Presentation of the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there its maturity, such ability and willingness are equivalent to a tender of payment at upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers. [R. C. 1905, § 6372; 1899, ch. 113, § 70.]
 Demand not necessary before suit to recover. Acme Harvester Co. v. Butterfield, 12 S. D. 91, 80 N. W. 170.
 What law governs demand and protest of negotiable paper. 61 L.R.A. 216, 217.
 Necessity for demand when paper held as collateral or conditional payment. 68 L.R.A. 487.
 Effect of loss or note to recover from accommodated maker. 37 L.R.A. (N.S.) 785.
 Presentment to joint makers to hold indorsers of note. 36 L.R.A. 703.
 Demand required where notes are payable in specific articles. 46 Am. Rep. 307.
 Demand when maker is out of the state. 13 Am. Dec. 346.

§ 6956. Where payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof. [R. C. 1905, § 6373; 1899, ch. 113, § 71.]
 Demand and notice necessary to render demand notes overdue. 46 L.R.A. 807.
 § 6957. Presentment, how made. Presentment for payment, to be sufficient, must be made:
 1. By the holder, or by some person authorized to receive payment on his behalf.
 2. At a reasonable hour on a business day.
 3. At a proper place as herein defined.

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Negotiable Instruments.

that negotiable paper will be paid unless exonerated. 52, 60 N. W. 746.
 to deny signature of maker. Austin, Tomlinson & Webster, 61 N. W. 445.
 waiving notice of dishonor not binding. Schmitz v. Min. Co., 21 S. D. 480, 113 N. W. 721, 16 A. & E.
 waiver of protest subsequent to execution of note in suit. Dewey v. Sibert, 21 S. D. 480, 113 N. W. 721, 16 A. & E.
 contract of indorsement. Farquhar Co. v. Higham, 16 N. D. 542.
 one passing worthless paper of third person without indorsement incurred in certain cases. Where a person places instrument negotiable by delivery he incurs all the liabilities of an indorser. [R. C. 1905, § 6369; 1899, ch. 113, § 67.]
 As respects one another, indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that they indorse for themselves they have agreed otherwise. Joint payees who indorse are deemed to indorse jointly and severally. [R. C. 1905, § 6370; 1899, ch. 113, § 68.]
 Indorsement may be cosureties as to payee of note, yet if they are not joint indorsers, contribution will not lie under section 6886, Revised Codes. 488, 136 N. W. 1080.
 Where a broker or other agent negotiates an instrument, he incurs all the liabilities prescribed by section 6950, unless he discloses the name of his principal, and the fact that he is acting only as agent. [R. C. 1905, § 6371; 1899, ch. 113, § 69.]

4. To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made. [R. C. 1905, § 6374; 1899, ch. 113, § 72.]

As to sufficiency of presentment of note. *Nelson v. Grondakl*, 13 N. D. 363, 100 N. W. 1093.

Validity of presentment of bill or note by telephone. 34 L.R.A. (N.S.) 417.

Presentation and payment through clearing house. 25 L.R.A. 826.

§ 6958. Payment at proper place. Presentment for payment is made at the proper place:

1. Where a place of payment is specified in the instrument and it is there presented.

2. Where no place of payment is specified but the address of the person to make payment is given in the instrument and it is there presented.

3. Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment.

4. In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence. [R. C. 1905, § 6375; 1899, ch. 113, § 73.]

§ 6959. Instrument must be exhibited. The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it. [R. C. 1905, § 6376; 1899, ch. 113, § 74.]

Necessity of actual presentation of commercial paper to effect its dishonor. 13 L.R.A. (N.S.) 303.

§ 6960. Instrument payable at bank. Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient. [R. C. 1905, § 6377; 1899, ch. 113, § 75.]

§ 6961. Where person primarily liable. Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative if such there be, and if with the exercise of reasonable diligence he can be found. [R. C. 1905, § 6378; 1899, ch. 113, § 76.]

Presentment and demand of bills and notes in case of death of prior obligor. 23 L.R.A. 711.

Contingency of claim against, as affecting limitation of time for presentation against estate of deceased indorser. 58 L.R.A. 87.

§ 6962. Liability as partners. Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm. [R. C. 1905, § 6379; 1899, ch. 113, § 77.]

§ 6963. Liability of persons not partners. Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all. [R. C. 1905, § 6380; 1899, ch. 113, § 78.]

§ 6964. When presentment for payment not required. Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument. [R. C. 1905, § 6381; 1899, ch. 113, § 79.]

§ 6965. Charge of indorser. Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation, and he has no reason to expect that the instrument will be paid if presented. [R. C. 1905, § 6382; 1899, ch. 113, § 88.]

§ 6966. Delay in presentment, when excused. Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct

§§ 6966-6974
 or negligence. When the c
 be made with reasonable di
 Lost draft; laches of draw
 Gilby v. Farnsworth, 7 N. D.
 § 6967. Presentment, wh
 dispensed with:
 1. Where after the exerc
 by this chapter cannot be n
 2. Where the drawee is n
 3. By waiver of presentm
 L.R.A. (N.S.) 639.
 Waiver of demand of
 Effect of statement by i
 payment of presentment to
 § 6968. When instrume
 nonpayment when:
 1. It is duly presented
 obtained; or,
 2. Presentment is excu
 1905, § 6385; 1899, ch. 1
 § 6969. Dishonored b
 chapter, when the inst
 right of recourse to all parties
 [R. C. 1905, § 6386; 189
 § 6970. Negotiable instrum
 instrument is payable
 of maturity falls upon Sunday,
 next succeeding business day. Instruments falling due on Saturday are to
 be presented for payment on the next succeeding business day, except that
 instruments payable on demand may, at the option of the holder, be presented
 for payment before twelve o'clock noon on Saturday when that entire day
 is not a holiday. [R. C. 1905, § 6387; 1899, ch. 113, § 85.]
 Section not applicable to instruments entitled to days of grace; note payable on
 Sunday is due three days thereafter. Morris v. Bailey, 10 S. D. 507, 79 N. W. 443.

§ 6971. Payable after date. Where the instrument is payable at a fixed
 period after date, after sight or after the happening of a specified event, the
 time of payment is determined by excluding the day from which the time is
 to begin to run, and by including the date of payment. [R. C. 1905, § 6388;
 1899, ch. 113, § 86.]

§ 6972. Instrument payable at bank. Where the instrument is made pay-
 able at a bank it is equivalent to an order to the bank to pay the same for the
 account of the principal debtor thereon. [R. C. 1905, § 6389; 1899, ch.
 113, § 87.]

§ 6973. Payment after maturity. Payment is made in due course when it
 is made at or after the maturity of the instrument to the holder thereof in good
 faith and without notice that his title is defective. [R. C. 1905, § 6390; 1899,
 ch. 113, § 88.]

ARTICLE 7.—NOTICE OF DISHONOR.

§ 6974. Notice of dishonor. Except as herein otherwise provided, when a
 negotiable instrument has been dishonored by nonacceptance or nonpayment,
 notice of dishonor must be given to the drawer and to each indorser and any
 drawer or indorser to whom such notice is not given is discharged. [R. C.
 1905, § 6391; 1899, ch. 113, § 89.]

Effect of failure of holder to make demand or give notice of dishonor of paper held
 as collateral or conditional payment. 68 L.R.A. 482.

§ 6975. **Notice by holder.** The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up would have a right to reimbursement from the party to whom the notice is given. [R. C. 1905, § 6392; 1899, ch. 113, § 90.]

§ 6976. **Notice by agent.** Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not. [R. C. 1905, § 6393; 1899, ch. 113, § 91.]

Notice of dishonor; agent or subagent may give; notice inures to benefit of all whose right to give notice had not at that time been lost. *Ashe v. Beasley*, 6 N. D. 191, 69 N. W. 188.

§ 6977. **Notice on behalf of holder.** Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given. [R. C. 1905, § 6394; 1899, ch. 113, § 92.]

§ 6978. **In behalf of party, in certain cases.** Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given. [R. C. 1905, § 6395; 1899, ch. 113, § 93.]

§ 6979. **In case of dishonored instrument.** Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon, or he may give notice to his principal. If he give notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder. [R. C. 1905, § 6396; 1899, ch. 113, § 94.]

§ 6980. **Misdescription does not vitiate.** A written notice need not be signed and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby. [R. C. 1905, § 6397; 1899, ch. 113, § 95.]

§ 6981. **Written or oral notice.** The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails. [R. C. 1905, § 6398; 1899, ch. 113, § 96.]

§ 6982. **Notice of dishonor, to whom given.** Notice of dishonor may be given either to the party himself or to his agent in that behalf. [R. C. 1905, § 6399; 1899, ch. 113, § 97.]

To whom should notice of protest or nonpayment be given after appointment of receiver, assignee or other representative of insolvent? 61 L.R.A. 900.

§ 6983. **Notice to personal representative.** When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased. [R. C. 1905, § 6400; 1899, ch. 113, § 98.]

§ 6984. **In case of partners.** Where the parties to be notified are partners notice to any one partner is notice to the firm, even though there has been a dissolution. [R. C. 1905, § 6401; 1899, ch. 113, § 99.]

§ 6985. **Joint parties.** Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others. [R. C. 1905, § 6402; 1899, ch. 113, § 100.]

§ 6986. **Bankruptcy or insolvency.** Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of cred-

§§ 6986-6994
 itors, notice may be given
 assignee. [R. C. 1905, § 640
 § 6987. Notice as soon as
 as soon as the instrument is
 after provided, must be give
 1905, § 6404; 1899, ch. 113, §
 § 6988. When notice must
 son to receive notice reside i
 following times:

1. If given at the place o
2. If given before the close of
3. If sent by mail, it m

on the day following.
 usual course on the

§ 6989. How notice giv
 receive notice reside in d

1. If sent by mail, it n
2. If given otherwise t

mail the day following t
 venient hour on that day
 2. If given have been r

notice would have been r
 in the post office within
 1905, § 6406; 1899, ch. 113, § 104.]

§ 6990. How notice of
 addressed and deposited in
 due notice, notwithstanding any miscarriage in the mails. [R. C. 1905,
 § 6407; 1899, ch. 113, § 105.]

§ 6991. Notice in post office. Notice is deemed to have been deposited in
 the post office when deposited in any branch post office or in any letter box
 under the control of the post office department. [R. C. 1905, § 6408; 1899,
 ch. 113, § 106.]

§ 6992. Notice to antecedent parties. Where a party receives notice of
 dishonor, he has, after the receipt of such notice, the same time for giving
 notice to antecedent parties that the holder has after the dishonor. [R. C.
 1905, § 6409; 1899, ch. 113, § 107.]

§ 6993. Notice must be sent to proper address. Where a party has added
 an address to his signature, notice of dishonor must be sent to that address;
 but if he has not given such address, then the notice must be sent as follows:

1. Either to the post office nearest to his place of residence, or to the post
2. If he live in one place, and have his place of business in another, notice
3. If he is sojourning in another place, notice may be sent to the place where

he is so sojourning.
 But where the notice is actually received by the party within the time
 specified in this chapter, it will be sufficient, though not sent in accordance
 with the requirements of this section. [R. C. 1905, § 6410; 1899, ch. 113, § 108.]

§ 6994. Notice of dishonor may be waived. Notice of dishonor may be
 waived, either before the time of giving notice has arrived, or after the omis-
 sion to give due notice, and the waiver may be express or implied. [R. C.
 1905, § 6411; 1899, ch. 113, § 109.]

Necessity for new consideration to support waiver of failure to give notice. 29
 L.R.A. 305; 3 L.R.A.(N.S.) 1079.

either to the party himself or to his trustee or
 § 6403; 1899, ch. 113, § 101.]

instrument is dishonored. Notice may be given
 dishonored; and unless delay is excused as herein-
 within the times fixed by this chapter. [R. C.
 1905, § 6402.]

be given. Where the person giving and the per-
 in the same place, notice must be given within the

business of the person to receive notice, it must
 business hours on the day following.

ce, it must be given before the usual hours of rest

must be deposited in the post office in time to reach
 day following. [R. C. 1905, § 6405; 1899, ch. 113,

Where the person giving and the person to
 different places, the notice must be given within the

must be deposited in the post office in time to go by
 the day of dishonor, or if there be no mail at a con-
 by the next mail thereafter.

than received in due course of mail, if it had been deposited
 the time prescribed in the last subdivision. [R. C.
 1905, § 6406; 1899, ch. 113, § 104.]

Where notice of dishonor is duly
 the post office, the sender is deemed to have given
 notwithstanding any miscarriage in the mails. [R. C. 1905,
 § 6407; 1899, ch. 113, § 105.]

Notice is deemed to have been deposited in
 any branch post office or in any letter box
 the post office department. [R. C. 1905, § 6408; 1899,
 ch. 113, § 106.]

Where a party receives notice of
 the receipt of such notice, the same time for giving
 the holder has after the dishonor. [R. C.
 1899, ch. 113, § 107.]

Where a party has added
 signature, notice of dishonor must be sent to that address;
 such address, then the notice must be sent as follows:

1. Either to the post office nearest to his place of residence, or to the post
2. If he live in one place, and have his place of business in another, notice
3. If he is sojourning in another place, notice may be sent to the place where

he is so sojourning.
 But where the notice is actually received by the party within the time
 specified in this chapter, it will be sufficient, though not sent in accordance
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Notice of dishonor may be waived. Notice of dishonor may be
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 sion to give due notice, and the waiver may be express or implied. [R. C.
 1905, § 6411; 1899, ch. 113, § 109.]

Necessity for new consideration to support waiver of failure to give notice. 29
 L.R.A. 305; 3 L.R.A.(N.S.) 1079.

§ 6995. **Waiver binding.** Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only. [R. C. 1905, § 6412; 1899, ch. 113, § 110.]

Indorsee may show parol waiver of protest subsequent to execution of note in suit against maker and indorser. *Dewey v. Siebert*, 21 S. D. 480, 113 N. W. 721, 16 A. & E. Ann. Cas. 151.

§ 6996. **Definition of "waiver."** A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of a formal protest, but also of presentment and notice of dishonor. [R. C. 1905, § 6413; 1899, ch. 113, § 111.]

§ 6997. **Notice of dishonor, when dispensed with.** Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it cannot be given to or does not reach the parties sought to be charged. [R. C. 1905, § 6414; 1899, ch. 113, § 112.]

§ 6998. **Delay in giving notice.** Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence. [R. C. 1905, § 6415; 1899, ch. 113, § 113.]

§ 6999. **When notice not required.** Notice of dishonor is not required to be given to the drawer in either of the following cases:

1. Where the drawer and drawee are the same person.
2. Where the drawee is a fictitious person or a person not having capacity to contract.
3. Where the drawer is the person to whom the instrument is presented for payment.
4. Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument.
5. Where the drawer has countermanded payment. [R. C. 1905, § 6416; 1899, ch. 113, § 114.]

§ 7000. **Notice not required to be given an indorser in certain cases.** Notice of dishonor is not required to be given to an indorser in either of the following cases:

1. Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument.
2. Where the indorser is the person to whom the instrument is presented for payment.
3. Where the instrument was made or accepted for his accommodation. [R. C. 1905, § 6417; 1899, ch. 113, § 115.]

§ 7001. **Nonacceptance.** Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted. [R. C. 1905, § 6418; 1899, ch. 113, § 116.]

§ 7002. **In case of omission.** An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission. [R. C. 1905, § 6419; 1899, ch. 113, § 117.]

§ 7003. **Protested for nonacceptance.** Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment as the case may be; but protest is not required, except in the case of foreign bills of exchange. [R. C. 1905, § 6420; 1899, ch. 113, § 118.]

ARTICLE 8.—DISCHARGE OF NEGOTIABLE INSTRUMENTS.

§ 7004. **When negotiable discharged.** A negotiable instrument is discharged:

1. By payment in due course by or on behalf of the principal debtor.

§§ 7004-7009

2. By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation.

3. By the intentional cancellation thereof by the holder.

4. By any other act which will discharge a simple contract for the payment of money.

5. When the principal debtor becomes the holder of the instrument at or after maturity in his own right. [R. C. 1905, § 6421; 1899, ch. 113, § 119.]

6. Obligation of party extinguished as in contract generally. Taylor v. Bank, 6 S. D. 511, 62 N. W. 99.

§ 7005. Discharged, secondarily. A person secondarily liable on the instrument discharges the instrument.

1. By any act which constitutes cancellation of his signature by the holder.

2. By the intentional payment made by a prior party.

3. By a release of the principal debtor, unless the holder's right of recourse is expressly reserved.

4. By a valid tender of payment made by a prior party.

5. By any agreement binding upon the holder to extend the time of payment, unless the holder's right to enforce the instrument, unless made expressly reserved. [R. C. 1905, § 6422; 1899, ch. 113, § 120.]

6. By any agreement to postpone the holder's right to enforce the instrument, unless made expressly reserved. [R. C. 1905, § 6422; 1899, ch. 113, § 120.]

7. By any agreement to postpone the holder's right to enforce the instrument, unless made expressly reserved. [R. C. 1905, § 6422; 1899, ch. 113, § 120.]

8. By any agreement to postpone the holder's right to enforce the instrument, unless made expressly reserved. [R. C. 1905, § 6422; 1899, ch. 113, § 120.]

9. By any agreement to postpone the holder's right to enforce the instrument, unless made expressly reserved. [R. C. 1905, § 6422; 1899, ch. 113, § 120.]

§ 7006. Secondarily liable. Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except:

1. Where it is payable to the order of a third person, and has been paid by the drawer; and,

2. Where it was made or accepted for accommodation, and has been paid by the party accommodated. [R. C. 1905, § 6423; 1899, ch. 113, § 121.]

§ 7007. Holder may renounce his rights. The holder may expressly renounce his rights against any party to the instrument, before, at or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon. [R. C. 1905, § 6424; 1899, ch. 113, § 122.]

§ 7008. Cancellation. A cancellation made unintentionally, or under a mistake, or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been cancelled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority. [R. C. 1905, § 6425; 1899, ch. 113, § 123.]

§ 7009. Negotiable instruments, when altered. Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration and subsequent indorsers. But when an instrument has been materially altered and is in the hands of a holder in due course, not

a party to the alteration, he may enforce payment thereof according to its original tenor. [R. C. 1905, § 6426; 1899, ch. 113, § 124.]

Erasure of a material part of note after delivery without consent of maker, if fraudulently done, extinguishes the note as a legal obligation and debt evidenced by it. *First Nat. Bank v. Laughlin*, 4 N. D. 391, 61 N. W. 473.

Duty of indorser, maker or surety to see that spaces on commercial paper are filled so as to prevent raising. 21 L.R.A.(N.S.) 402.

Alteration as affecting question whether commercial paper operates as payment of debt. 35 L.R.A.(N.S.) 76.

Erasure, marks and defects as putting purchaser of negotiable paper on inquiry. 29 L.R.A.(N.S.) 376.

§ 7010. Alterations or changes. Any alteration which changes:

1. The date.
2. The sum payable, either for principal or interest.
3. The time or place of payment.
4. The number or the relations of the parties.
5. The medium or currency in which payment is to be made.

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration. [R. C. 1905, § 6427; 1899, ch. 113, § 125.]

Erasing or otherwise cancelling or obliterating a material provision without the substitution of new matter. 32 L.R.A.(N.S.) 519.

Change to correct a mistake in designation of party. 31 L.R.A.(N.S.) 127.

Alteration by insertion of interest clause in note. 2 L.R.A.(N.S.) 217.

1. Alteration of date to correct mistake. 32 L.R.A.(N.S.) 517.

3. Materiality of alteration of instrument by inserting place of payment. 31 L.R.A.(N.S.) 643.

TITLE II.

BILLS OF EXCHANGE.

See also sections 7081-7125.

ARTICLE 1.—FORM AND INTERPRETATION.

§ 7011. Bill of exchange. Form and interpretation. A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer. [R. C. 1905, § 6428; 1899, ch. 113, § 126.]

See section 7081.

§ 7012. Does not operate as an assignment. A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof and the drawee is not liable on the bill unless and until he accepts the same. [R. C. 1905, § 6429; 1899, ch. 113, § 127.]

Detention of bill of exchange or check by drawee as acceptance thereof. 17 L.R.A.(N.S.) 1266.

§ 7013. Joint drawees. A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession. [R. C. 1905, § 6430; 1899, ch. 113, § 128.]

§ 7014. Inland or foreign bill. An inland bill of exchange is a bill which is, or on its face purports to be both drawn and payable within this state. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill. [R. C. 1905, § 6431; 1899, ch. 113, § 129.]

§ 7015. Drawer and drawee. Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note. [R. C. 1905, § 6432; 1899, ch. 113, § 130.]

§ 7016. Referee in case of need. The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in

§§ 7016—7026
 case of need, that is to say
 or nonpayment. Such pers
 the option of the holder to
 may see fit. [R. C. 1905, §

§ 7017. **Acceptance of a**
 by the drawee of his assent
 be in writing and signed b
 will perform his promise
 [R. C. 1905, § 6434; 1899,
 Liability of bank on claim
 1143.

§ 7018. **Holder of a bi**
 acceptance may require, m
 such request is refused, m
 1899, ch. 113, § 133.]

§ 7019. **Acceptor not**
 on a paper other than th
 favor of a person to who
 the bill for value. [R. C.
 § 7020. **Unconditional**
 accept a bill before it
 every person who, upon
 1905, § 6437; 1899, ch. 113, § 135.]

§ 7021. **Drawee allowed**
 four hours after presentment
 the bill; but the acceptance
 1905, § 6438; 1899, ch. 113, § 136.]

§ 7022. **When drawee**
 delivered for acceptance
 hours after such delivery,
 to return the bill accepted
 to have accepted the same.
 [R. C. 1905, § 6439; 1899, ch. 113, § 137.]

§ 7023. **May be accepted**
 fore it has been signed by
 when it is overdue, or after
 accept, or by nonpayment.
 by nonacceptance and the
 absence of any different
 of the date of the first
 [R. C. 1905, § 6440; 1899, ch. 113, § 138.]

§ 7024. **Acceptance,**
 or qualified. A general
 of the drawer. A qualified
 the bill as drawn. [R. C.
 § 7025. **General**
 is a general acceptance unless
 there only and not elsewhere.
 [R. C. 1905, § 6442; 1899, ch. 113, § 140.]

§ 7026. **Qualified**
 1. Conditional, that is to
 2. Partial, that is to say,
 3. Local, that is to say,
 4. Qualified as to time.

in case the bill is dishonored by nonacceptance
 on is called the referee in case of need. It is in
 resort to the referee in case of need or not as he
 6433; 1899, ch. 113, § 131.]

ARTICLE 2.—ACCEPTANCE.

bill. The acceptance of a bill is the signification
 to the order of the drawer. The acceptance must
 the drawee. It must not express that the drawee
 by any other means than the payment of money.
 h. 113, § 132.]

med contract of acceptance external to check. 8 L.R.A.(N.S.)

to accept an order or bill of exchange. 26 L.R.A. 620.

The holder of a bill presenting the same for
 that the acceptance be written on the bill and if
 treat the bill as dishonored. [R. C. 1905, § 6435;

necessarily bound. Where an acceptance is written
 bill itself, it does not bind the acceptor, except in
 it is shown and who, on the faith thereof, receives
 1905, § 6436; 1899, ch. 113, § 134.]

promise. An unconditional promise in writing to
 the faith thereof, receives the bill for value. [R. C.
 § 135.]

drawee allowed twenty-four hours. The drawee is allowed twenty-
 four hours after presentment in which to decide whether or not he will accept
 the bill; but the acceptance if given dates as of the day of presentation. [R. C.

drawee destroys bill. Where a drawee to whom a bill is
 destroys the same, or refuses within twenty-four
 hours after such delivery, or within such other period as the holder may allow,
 to return the bill accepted or nonaccepted to the holder, he will be deemed
 to have accepted the same. [R. C. 1905, § 6439; 1899, ch. 113, § 137.]

May be accepted before being signed. A bill may be accepted be-
 fore it has been signed by the drawer, or while otherwise incomplete, or
 when it is overdue, or after it has been dishonored by a previous refusal to
 accept, or by nonpayment. But when a bill payable after sight is dishonored
 by nonacceptance and the drawee subsequently accepts it, the holder, in the
 absence of any different agreement, is entitled to have the bill accepted as
 of the date of the first presentment. [R. C. 1905, § 6440; 1899, ch. 113, § 138.]

Acceptance, general or qualified. An acceptance is either general
 or qualified. A general acceptance assents without qualification to the order
 of the drawer. A qualified acceptance in express terms varies the effect of
 the bill as drawn. [R. C. 1905, § 6441; 1899, ch. 113, § 139.]

General acceptance. An acceptance to pay at a particular place
 is a general acceptance unless it expressly states that the bill is to be paid
 there only and not elsewhere. [R. C. 1905, § 6442; 1899, ch. 113, § 140.]

Qualified acceptance. An acceptance is qualified which is:
 1. Conditional, that is to say, which makes payment by the acceptor de-
 pendent on the fulfillment of a condition therein stated.
 2. Partial, that is to say, an acceptance to pay part only of the amount
 for which the bill is drawn.
 3. Local, that is to say, an acceptance to pay only at a particular place.
 4. Qualified as to time.

5. The acceptance of some one or more of the drawees, but not of all. [R. C. 1905, § 6443; 1899, ch. 113, § 141.]

Reference to consideration for draft as making acceptance conditional. 38 L.R.A. (N.S.) 747.

§ 7027. **Holder may refuse qualified acceptance.** The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance, he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken, the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must within a reasonable time express his dissent to the holder, or he will be deemed to have assented thereto. [R. C. 1905, § 6444; 1899, ch. 113, § 142.]

ARTICLE 3.—PRESENTMENT FOR ACCEPTANCE.

§ 7028. **Acceptance, where made.** Presentment for acceptance must be made:

1. Where the bill is payable after sight, or in any other case where presentment for acceptance is necessary in order to fix the maturity of the instrument; or,

2. Where the bill expressly stipulates that it shall be presented for acceptance; or,

3. Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable. [R. C. 1905, § 6445; 1899, ch. 113, § 143.]

§ 7029. **Holder must accept or negotiate.** Except as herein otherwise provided, the holder of a bill which is required by the next preceding section to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fail to do so, the drawer and all indorsers are discharged. [R. C. 1905, § 6446; 1899, ch. 113, § 144.]

§ 7030. **Presentment must be made at reasonable hour.** Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person authorized to accept or refuse acceptance on his behalf; and:

1. Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only.

2. Where the drawee is dead, presentment may be made to his personal representative.

3. Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee. [R. C. 1905, § 6447; 1899, ch. 113, § 145.]

§ 7031. **Bills may be presented any day except holidays.** A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 6957 and 6970. When Saturday is not otherwise a holiday presentment for acceptance may be made before twelve o'clock noon on that day. [R. C. 1905, § 6448; 1899, ch. 113, § 146.]

§ 7032. **Payments, when excused.** Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers. [R. C. 1905, § 6449; 1899, ch. 113, § 147.]

§§ 7033-7040

§ 7033. Dishonored by cause and a bill may be the following cases:

1. Where the drawee is a person not having capacity.
2. Where after the exercise of reasonable diligence, presentment cannot be made.
3. Where although presentment has been made, the drawee has refused on some other ground.

§ 7033a. When dishonored. Place of presentment of bill. *Warner v. Bank*

1. When it is duly presented by this chapter prescribed by this chapter.
2. When presentment is refused or cannot be obtained; or, [R. C. 1905, § 6451; 1899, ch. 113, § 148.]

§ 7034. When bill is accepted and is not a bill as dishonored by nonacceptance or he loses the right of recourse again. [R. C. 1905, § 6452; 1899, ch. 113, § 149.]

§ 7035. Right of recourse. When a bill is duly presented for acceptance and is not a bill as dishonored by nonacceptance or he loses the right of recourse again. [R. C. 1905, § 6453; 1899, ch. 113, § 150.]

§ 7036. Protest for nonpayment. Where a bill is duly presented for acceptance and is not a bill as dishonored by nonacceptance or he loses the right of recourse again. [R. C. 1905, § 6454; 1899, ch. 113, § 151.]

§ 7037. Protest must be attached to bill. The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it and must specify:

1. The time and place of presentment.
2. The fact that presentment was made and the manner thereof.
3. The cause or reason for protesting the bill.
4. The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found. [R. C. 1905, § 6455; 1899, ch. 113, § 153.]

§ 7038. Protest, how made. Protest may be made by:

1. A notary public; or,
2. By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses. [R. C. 1905, § 6456; 1899, ch. 113, § 154.]

§ 7039. Protest must be made on day of dishonor. When a bill is dishonored, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting. [R. C. 1905, § 6457; 1899, ch. 113, § 155.]

§ 7040. At place where dishonored. A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business or residence of some person other than the drawee, has been

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Negotiable Instruments.

nonacceptance. Presentment for acceptance is excused where the drawee is dead, or has absconded, or is a fictitious person or is a person who has no capacity to contract by bill.

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dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary. [R. C. 1905, § 6458; 1899, ch. 113, § 156.]

§ 7041. **Protest for nonpayment.** A bill which has been protested for nonacceptance may be subsequently protested for nonpayment. [R. C. 1905, § 6459; 1899, ch. 113, § 157.]

§ 7042. **Acceptor, in case he is a bankrupt.** Where the acceptor has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers. [R. C. 1905, § 6460; 1899, ch. 113, § 158.]

§ 7043. **When protest dispensed with.** Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence. [R. C. 1905, § 6461; 1899, ch. 113, § 159.]

§ 7044. **Bills lost or destroyed.** Where a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof. [R. C. 1905, § 6462; 1899, ch. 113, § 160.]

ARTICLE 5.—ACCEPTANCE FOR HONOR.

§ 7045. **Acceptance for honor.** Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security and is not overdue, any person not being a party already liable thereon, may, with the consent of the holder, intervene and accept the bill *supra* protest for the honor of any party liable thereon or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party. [R. C. 1905, § 6463; 1899, ch. 113, § 161.]

§ 7046. **Must be in writing.** An acceptance for honor *supra* protest must be in writing and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor. [R. C. 1905, § 6464; 1899, ch. 113, § 162.]

§ 7047. **Acceptance, when deemed for the honor of the drawer.** Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer. [R. C. 1905, § 6465; 1899, ch. 113, § 163.]

§ 7048. **Acceptor, when liable to the holder.** The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted. [R. C. 1905, § 6466; 1899, ch. 113, § 164.]

§ 7049. **What the acceptor for honor engages to do.** The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance, provided, it shall not have been paid by the drawee, and provided also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given to him. [R. C. 1905, § 6467; 1899, ch. 113, § 165.]

§ 7050. **Bill payable after sight.** Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor. [R. C. 1905, § 6468; 1899, ch. 113, § 166.]

§ 7051. **Dishonored bill, when accepted for honor.** Where a dishonored bill has been accepted for honor *supra* protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for

§§ 7051-7063

payment to the acceptor for honor or
 § 6469; 1899, ch. 113, § 167.]
 § 7052. Presentment for payment,
 to the acceptor for honor must be made
 1. If it is to be presented in the place
 was made, it must be presented in some o-
 2. If it is to be presented in the place
 protested, then it must be forwarded
 [R. C. 1905, § 6470; 1899, ch. 113, §
 § 7053. Delay in making presentment
 where there is delay in making pres-
 referee in case of need. [R. C. 1905,
 § 7054. When protested for nonpay-
 the acceptor for honor it must be pro-
 1905, § 6472; 1899, ch. 113, § 170.]

ARTICLE 6.—PA

§ 7055. Payment for honor. When
 payment, any person may intervene a-
 any person liable thereon or for the
 it was drawn. [R. C. 1905, § 6473;
 § 7056. Notarial act of honor. In
 order to operate as such and not
 attested by a notarial act of honor
 form an extension to it. [R. C. 1905,
 § 7057. Founded on a declaration made by
 founded on a declaration made by
 that he pays. [R. C. 1905, § 6475
 § 7058. In case two or more per-
 honor he pays. [R. C. 1905, § 6476;
 more persons offer to pay a bill for
 whose payment will discharge the
 preference. [R. C. 1905, § 6476;
 § 7059. Where a bill has been
 for honor all parties subsequent
 discharged, but the payor for honor
 the rights and duties of the hold-
 pays and all parties liable to the
 § 175.]
 § 7060. Where holder refuses
 a bill refuses to receive payment
 against any party who would have
 1905, § 6478; 1899, ch. 113, § 17
 § 7061. Rights of payor for honor
 holder the amount of the bill
 dishonor, is entitled to receive
 1905, § 6479; 1899, ch. 113, § 1
 Payment to agent ostensibly au-
 Kellogg, 8 S. D. 596, 67 N. W. 68

ARTICLE 7.—BILLS IN A SET.

§ 7062. Bills drawn in sets.
 the set being numbered and c-
 whole of the parts constitute one
 § 7063. Two or more parts
 negotiated to different holder

referee in case of need. [R. C. 1905,

how made. Presentment for payment
 as follows:

where the protest for nonpayment
 than the day following its maturity.
 place than the place where it was
 in the time specified in section 6406.

The provisions of section 6383 apply
 ment to the acceptor for honor or
 471; 1899, ch. 113, § 169.]
 nt. When the bill is dishonored by
 ted for nonpayment by him. [R. C.

ENT FOR HONOR.

a bill has been protested for non-
 pay it supra protest for the honor of
 nor of the person for whose account
 1899, ch. 113, § 171.]

payment for honor supra protest in
 mere voluntary payment must be
 which may be appended to the protest or
 474; 1899, ch. 113, § 172.]

The notarial act of honor must be
 payee for honor or by his agent in
 to pay the bill for honor and for whose
 1899, ch. 113, § 173.]

offer to pay a bill. Where two or
 honor of different parties, the person
 parties to the bill is to be given the
 ch. 113, § 174.]

paid for honor. Where a bill has been paid
 party for whose honor it is paid are
 subrogated for, and succeeds to, both
 to the bill as regards the party for whose honor he
 latter. [R. C. 1905, § 6477; 1899, ch. 113

to receive payment. Where the holder of
 supra protest, he loses his right of recourse
 discharged by such payment. [R. C.

The payor for honor on paying to the
 nor the notarial expenses incidental to its
 and the bill itself and the protest. [R. C.

both the bill itself and the protest. [R. C.

authorized to receive payment binds principal. Reid v

7. BILLS IN A SET.

Where a bill is drawn in a set, each part of
 containing a reference to the other parts, the
 bill. [R. C. 1905, § 6480; 1899, ch. 113, § 178.]

Where two or more parts of a set are
 set. in due course, the holder whose title first

accrues is as between such holders the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him. [R. C. 1905, § 6481; 1899, ch. 113, § 179.]

§ 7064. **Two or more parts indorsed.** Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills. [R. C. 1905, § 6482; 1899, ch. 113, § 180.]

§ 7065. **Acceptance may be written.** The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill. [R. C. 1905, § 6483; 1899, ch. 113, § 181.]

§ 7066. **Acceptor liable to holder, when.** When the acceptor of a bill drawn in a set pays it without requiring the part bearing his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon. [R. C. 1905, § 6484; 1899, ch. 113, § 182.]

§ 7067. **When the whole bill is discharged.** Except as herein otherwise provided where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged. [R. C. 1905, § 6485; 1899, ch. 113, § 183.]

TITLE III.

ARTICLE 1.—PROMISSORY NOTES AND CHECKS.

See also sections 7126-7133.

§ 7068. **Negotiable promissory note.** A negotiable promissory note within the meaning of this chapter is an unconditional promise in writing made by one person to another signed by the maker engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to order or to bearer. Where a note is drawn to the maker's own order, it is not complete until indorsed by him. [R. C. 1905, § 6486; 1899, ch. 113, § 184.]

See section 7126.

§ 7069. **A check defined.** A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of this chapter applicable to a bill of exchange payable on demand apply to a check. [R. C. 1905, § 6487; 1899, ch. 113, § 185.]

See section 7131.

§ 7070. **Check must be presented within reasonable time.** A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay. [R. C. 1905, § 6488; 1899, ch. 113, § 186.]

Burden of proof is upon person claiming injury caused by delay in presenting check for payment. *Pickett v. Thomas J. Baird Investment Co.*, 22 N. D. 343, 133 N. W. 1026, 2 N. C. C. A. 722.

Effect of transfer of check on time for presentment. 10 L.R.A.(N.S.) 1153.

Time allowed for mailing check or notice of dishonor, as affected by the hour at which the mail closes or departs. 4 L.R.A.(N.S.) 132.

Effect of loss of check upon right of holder to recover against maker without presentment. 14 L.R.A.(N.S.) 616.

Release of indorser of check by delay in presenting it. 23 L.R.A. 785.

Effect on drawer's liability of delay in presenting check where drawee remains solvent. 53 L.R.A. 432; 38 L.R.A.(N.S.) 255.

§ 7071. **Certified checks.** Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance. [R. C. 1905, § 6489; 1899, ch. 113, § 187.]

Certification of check as release of drawer or indorser. 9 L.R.A.(N.S.) 698; 29 L.R.A.(N.S.) 205.

Certifying check as payment of debt for which given. 35 L.R.A.(N.S.) 35.

Effect of transfer without indorsement of worthless certified check of third person. 10 L.R.A.(N.S.) 536.

Right of drawer to stop payment of certified check. 20 L.R.A.(N.S.) 290.

§§ 7072-7080

§ 7072. **Drawer, when not liable.** Where the holder of a check procures and all indorsers are discharged from liability thereon. [R. C. 1905, § 6490; 1899, ch. 113, § 188.]

§ 7073. **Check does not operate as an assignment.** A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check. [R. C. 1905, § 6491; 1899, ch. 113, § 189.]

TITLE

ARTICLE 1.—GENERAL PROVISIONS.

§ 7074. **Negotiable instruments law.** This chapter shall be known as the negotiable instruments law. [R. C. 1905, § 6492; 1899, ch. 113, § 190.]

§ 7075. **Definitions of terms.** In this chapter, unless the context otherwise requires:

"Acceptance" means an acceptance completed by delivery or notification of persons carrying on the business of banking, whether incorporated or not.

"Action" includes counterclaim and or not.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and note.

"Delivery" means the transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument, complete in form to a person who takes it as a holder.

"Issue" means the first delivery of an instrument, whether incorporated or not.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration, whether incorporated or not.

"Written" includes printed, and instrument, complete in form to a person who takes it as a holder.

§ 7076. **Person primarily liable on an instrument.** The person "primarily" liable on an instrument is the person by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily" liable. [R. C. 1905, § 6494; 1899, ch. 113, § 192.]

Terms "primarily liable" and "secondarily liable" as used in section, have reference to remedy provided by law for enforcement of obligation itself, rather than to character and limits of obligation. [R. C. 1905, § 6497; 1899, ch. 113, § 195.]

Bank v. Bellamy, 19 N. D. 509, 35 L.R.A. (N.S.)

§ 7077. **"Reasonable" and "unreasonable" time.** In determining what is a "reasonable time" or an "unreasonable time" regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case. [R. C. 1905, § 6495; 1899, ch. 113, § 193.]

§ 7078. **Sundays or holidays.** Where the day, or the last day, for doing any act herein required or permitted by the act may be done on the next succeeding secular or business day. [R. C. 1905, § 6496; 1899, ch. 113, § 194.]

§ 7079. **When provisions of chapter do not apply.** The provisions of this chapter do not apply to negotiable instruments made and delivered prior to the taking effect hereof. [R. C. 1905, § 6497; 1899, ch. 113, § 195.]

§ 7080. **Rules of the law merchant.** In any case not provided for in this chapter the rules of the law merchant shall govern. [R. C. 1905, § 6498; 1899, ch. 113, § 196.]

CHAPTER 104.

BILLS OF EXCHANGE.

- ARTICLE 1. FORM AND INTERPRETATION OF A BILL, §§ 7081-7087.
2. DAYS OF GRACE, § 7088.
 3. PRESENTMENT FOR ACCEPTANCE, §§ 7089-7093.
 4. ACCEPTANCE, §§ 7094-7100.
 5. ACCEPTANCE OR PAYMENT FOR HONOR, §§ 7101-7105.
 6. PRESENTMENT FOR PAYMENT, §§ 7106-7109.
 7. EXCUSE OF PRESENTMENT AND NOTICE, §§ 7110-7112.
 8. FOREIGN BILLS, §§ 7113-7125.

See also sections 7011-7067.

ARTICLE 1.—FORM AND INTERPRETATION OF A BILL.

§ 7081. **Defined.** A bill of exchange is an instrument, negotiable in form, by which one, who is called the drawer, requests another, called the drawee, to pay a specified sum of money. [R. C. 1905, § 6499; Civ. C. 1877, § 1882; R. C. 1899, § 4914.]

See section 7011.

§ 7082. **Additional drawee.** A bill of exchange may give the name of any person in addition to the drawee to be resorted to in case of need. [R. C. 1905, § 6500; Civ. C. 1877, § 1883; R. C. 1899, § 4915.]

§ 7083. **Drawn in parts.** A bill of exchange may be drawn in any number of parts, each part stating the existence of the others and all forming one set. [R. C. 1905, § 6501; Civ. C. 1877, § 1884; R. C. 1899, § 4916.]

§ 7084. **Bound to execute in three parts.** An agreement to draw a bill of exchange binds the drawer to execute it in three parts, if the other party to the agreement desires it. [R. C. 1905, § 6502; Civ. C. 1877, § 1885; R. C. 1899, § 4917.]

§ 7085. **Presentment, etc., of one sufficient.** Presentment, acceptance or payment of a single part in a set of a bill of exchange is sufficient for the whole. [R. C. 1905, § 6503; Civ. C. 1877, § 1886; R. C. 1899, § 4918.]

§ 7086. **Where payable.** A bill of exchange is payable:

1. At the place where by its terms it is made payable; or,
2. If it specifies no place of payment, then at the place to which it is addressed; or,
3. If it is not addressed to any place, then at the place of residence or business of the drawee, or wherever he may be found. If the drawee has no place of business, or if his place of business or residence cannot with reasonable diligence be ascertained, presentment for payment is excused and the bill may be protested for nonpayment. [R. C. 1905, § 6504; Civ. C. 1877, § 1887; R. C. 1899, § 4919.]

As between drawer and payee the place of performance is the place where bill is drawn. *Warner v. Bank*, 6 S. D. 152, 60 N. W. 746.

§ 7087. **Drawer's rights.** The rights and obligations of the drawer of a bill of exchange are the same as those of the first indorser of any other negotiable instrument. [R. C. 1905, § 6505; Civ. C. 1877, § 1888; R. C. 1899, § 4920.]

ARTICLE 2.—DAYS OF GRACE.

§ 7088. **No days of grace.** Days of grace are not allowed. [R. C. 1905, § 6506; Civ. C. 1877, § 1889; R. C. 1895, § 4921.]

Note payable on Sunday not entitled to four days of grace. *Morris v. Bailey*, 10 S. D. 507, 74 N. W. 443.

Note from which it cannot be ascertained how interest is to be figured is non-negotiable and not entitled to grace. *Davis v. Brady*, 17 S. D. 511, 97 N. W. 719.

ment; in which case the bill is payable immediately without regard to its terms. [R. C. 1905, § 6514; Civ. C. 1877, § 1897; R. C. 1899, § 4929.]

Personal liability of one who signs note as acceptor by adding words indicating representative capacity to his signature. 42 L.R.A.(N.S.) 28, 33, 44.

§ 7097. When acceptance upon separate instrument binding. The acceptance of a bill of exchange by a separate instrument binds the acceptor to one, who upon the faith thereof has the bill for value or other good consideration. [R. C. 1905, § 6515; Civ. C. 1877, § 1898; R. C. 1899, § 4930.]

§ 7098. When unconditional promise to accept sufficient. An unconditional promise in writing to accept a bill of exchange is a sufficient acceptance thereof, in favor of every person who upon the faith thereof has taken the bill for value or other good consideration. [R. C. 1905, § 6516; Civ. C. 1877, § 1899; R. C. 1899, § 4931.]

§ 7099. When acceptance may be cancelled. The acceptor of a bill of exchange may cancel his acceptance at any time before delivering the bill to the holder and before the holder has with the consent of the acceptor transferred his title to another person who has given value for it upon the faith of such acceptance. [R. C. 1905, § 6517; Civ. C. 1877, § 1900; R. C. 1899, § 4932.]

§ 7100. What acceptance admits. The acceptance of a bill of exchange admits the signature of the drawer, but does not admit the signature of any indorser to be genuine. [R. C. 1905, § 6518; Civ. C. 1877, § 1901; R. C. 1899, § 4933.]

ARTICLE 5.—ACCEPTANCE OR PAYMENT FOR HONOR.

§ 7101. When. On the dishonor of a bill of exchange by the drawee, and, in case of a foreign bill after it has been duly protested, it may be accepted or paid by any person for the honor of any party thereto. [R. C. 1905, § 6519; Civ. C. 1877, § 1902; R. C. 1899, § 4934.]

§ 7102. Holder is bound to accept payment but not acceptance. The holder of a bill of exchange is not bound to allow it to be accepted for honor, but is bound to accept payment for honor. [R. C. 1905, § 6520; Civ. C. 1877, § 1903; R. C. 1899, § 4935.]

§ 7103. How made. Reimbursement. An acceptor or payor for honor must write a memorandum upon the bill, stating therein for whose honor he accepts or pays and must give notice to such parties with reasonable diligence of the fact of such acceptance or payment. Having done so he is entitled to reimbursement from such parties and from all parties prior to them. [R. C. 1905, § 6521; Civ. C. 1877, § 1904; R. C. 1899, § 4936.]

§ 7104. Presentment and notice of dishonor of bill so accepted. A bill of exchange which has been accepted for honor must be presented at its maturity to the drawee for payment and notice of its dishonor by him must be given to the acceptor for honor in like manner as to an indorser; after which the acceptor for honor must pay the bill. [R. C. 1905, § 6522; Civ. C. 1877, § 1905; R. C. 1899, § 4937.]

§ 7105. Acceptance does not excuse notice. The acceptance of a bill of exchange for honor does not excuse the holder from giving notice of its dishonor by the drawee. [R. C. 1905, § 6523; Civ. C. 1877, § 1906; R. C. 1899, § 4938.]

ARTICLE 6.—PRESENTMENT FOR PAYMENT.

§ 7106. At place specified by bill. If a bill of exchange is by its terms payable at a particular place and is not accepted on presentment, it must be presented at the same place for payment when presentment for payment is necessary. [R. C. 1905, § 6524; Civ. C. 1877, § 1907; R. C. 1899, § 4939.]

Necessity of actual presentation of commercial paper to effect its dishonor. 13 L.R.A.(N.S.) 303.

§ 7107. At place fixed by acceptance. A bill of exchange, accepted payable at a particular place, must be presented at that place for payment when

§§ 7107-7116
 presentment for payment is necessary at [R. C. 1905, § 6525; Civ. C. 1877, § 1908]
 § 7108. Of bill payable at sight. If a demand without interest is not duly on the proper place for such presentment exonerated, unless such presentment is made within a definite time within 1877, § 1909; R. C. 1899, § 4941.]
 for payment. Warner v. Bank, 6 S. D. 152, 7 N. D. 6, 72 N. W. 901, 38 L.R.A. 843.
 Instrument reciting "Due W. C. R. the day of June, 1893, to him or order," is applicable to creditor's failure to collect toba Mortg. & Invest. Co. v. Weiss, 18 S. A. & E. Ann. Cas. 868.
 § 7109. Mere delay does not exonerate of exchange payable with interest at sight any party thereto. [R. C. 1905, § 652 § 4942.]
 As to similar provision in Cal. Civ. Code, 362, 16 Pac. 19.

ARTICLE 7.—EXCUSE OF PRESENTMENT AND NOTICE.

§ 7110. Incapacity to accept. The acceptance is excused if the drawee has § 6528; Civ. C. 1877, § 1911; R. C. 1899 § 7111. Delay from uncontrollable cause. Delay in the presentment of a bill of exchange for acceptance is excused when caused by circumstances over which the holder has no control. [R. C. 1905, § 6529; Civ. C. 1877, § 1912; R. C. 1899, § 4944.]
 § 7112. By drawee's forbidding or a bill of exchange for acceptance are excused as to the drawer if he forbids the drawee to accept or pay the bill; or if at the time of payment the drawee would accept or pay the bill; R. C. 1899, § 4945.]

ARTICLE 8.—

§ 7113. Inland bill defined. An inland bill is one drawn and payable within this state. All other bills are foreign. [R. C. 1905, § 6531; Civ. C. 1877, § 1914; R. C. 1899, § 4946.]

§ 7114. Notice of dishonor only. A foreign bill of exchange can be given only by notice of its dishonor. [R. C. 1905, § 6532; Civ. C. 1877, § 1915; R. C. 1899, § 4947.]
 Failure to give notice of protest to the drawee would accept or pay the bill; R. C. 1899, § 4945.]

§ 7115. Protest made by whom. A protest must be made by a notary public or a reputable person in the presence of two witnesses. [R. C. 1905, § 6533; Civ. C. 1877, § 1916; R. C. 1899, § 4948.]

§ 7116. Form of protest. The protest must be made by an instrument in writing, giving a literal copy of the bill, stating the presentment and the manner of dishonor, the absence of the drawee or acceptor to pay, or the inability of the drawee to pay, and in case of refusal, the reason assigned, thereon, or annexing the original in which it was made, the presentment, or the refusal to accept, and in case of refusal, the reason assigned, to give a binding acceptance; a

and need not be presented elsewhere. [R. C. 1899, § 4940.]
 bill of exchange payable at sight or presented for payment within ten days after the time in which it could with reasonable diligence be transmitted to the place of payment, the drawer and indorsers are excused. [R. C. 1905, § 6526; Civ. C. 1877, § 1908.]

Each bill of exchange should be presented to the place of payment within ten days after the time in which it could with reasonable diligence be transmitted to the place of payment, the drawer and indorsers are excused. [R. C. 1905, § 6526; Civ. C. 1877, § 1908.]

of . . . payable at this office on 20th day of June, 1893, to him or order," is applicable to creditor's failure to collect toba Mortg. & Invest. Co. v. Weiss, 18 S. A. & E. Ann. Cas. 868.

Mere delay in presenting a bill or on demand does not exonerate Civ. C. 1877, § 1910; R. C. 1899, § 4942.]

3214, see Machado v. Fernandez, 74 Cal.

FOREIGN BILLS.

inland bill of exchange is one drawn and payable within this state. All other bills are foreign. [R. C. 1905, § 6531; Civ. C. 1877, § 1914; R. C. 1899, § 4946.]

by protest. Notice of the dishonor of a foreign bill of exchange constituted such bill only by notice of its protest. [R. C. 1905, § 6532; Civ. C. 1877, § 1915; R. C. 1899, § 4947.]

Protest must be made by a notary public or a reputable person in the presence of two witnesses. [R. C. 1905, § 6533; Civ. C. 1877, § 1916; R. C. 1899, § 4948.]

est must be made by an instrument in writing, giving a literal copy of the bill, stating the presentment and the manner of dishonor, the absence of the drawee or acceptor to pay, or the inability of the drawee to pay, and in case of refusal, the reason assigned, thereon, or annexing the original in which it was made, the presentment, or the refusal to accept, and in case of refusal, the reason assigned, to give a binding acceptance; a

if any; and finally protesting against all the parties to be charged. [R. C. 1905, § 6534; Civ. C. 1877, § 1917; R. C. 1899, § 4949.]

§ 7117. **Where protest made.** A protest for nonacceptance must be made in the city or town in which the bill is presented for acceptance and a protest for nonpayment, in the city or town in which it is presented for payment. [R. C. 1905, § 6535; Civ. C. 1877, § 1918; R. C. 1899, § 4950.]

§ 7118. **When protest must be noted.** A protest must be noted on the day of the presentment or on the next business day, but it may be written out at any time thereafter. [R. C. 1905, § 6536; Civ. C. 1877, § 1919; R. C. 1899, § 4951.]

§ 7119. **Protest by what excused.** The want of protest of a foreign bill of exchange or delay in making the same is excused in like cases with the want or delay of presentment. [R. C. 1905, § 6537; Civ. C. 1877, § 1920; R. C. 1899, § 4952.]

§ 7120. **Notice of, how given.** Notice of protest must be given in the same manner as notice of dishonor, except that it may be given by the notary who makes the protest. [R. C. 1905, § 6538; Civ. C. 1877, § 1921; R. C. 1899, § 4953.]

§ 7121. **When notice of dishonor same as inland bill.** If a foreign bill of exchange on its face waives protest, notice of dishonor may be given to any party thereto in like manner as of an inland bill, except that if any indorser of such a bill expressly requires protest to be made by a direction written on the bill at or before his indorsement, protest must be made and notice thereof given to him and to all subsequent indorsers. [R. C. 1905, § 6539; Civ. C. 1877, § 1922; R. C. 1899, § 4954.]

§ 7122. **Requisites to reimbursement on payment for dishonor.** One who pays a foreign bill of exchange for honor must declare before payment in the presence of a person authorized to make protest for whose honor he pays the same in order to entitle him to reimbursement. [R. C. 1905, § 6540; Civ. C. 1877, § 1923; R. C. 1899, § 4955.]

§ 7123. **To whom and when damages allowed.** Damages are allowed as hereinafter prescribed as a full compensation for interest accrued before notice of dishonor, re-exchange, expenses and all other damages in favor of holders for value only upon bills of exchange drawn or negotiated within this state and protested for nonacceptance or nonpayment. [R. C. 1905, § 6541; Civ. C. 1877, § 1924; R. C. 1899, § 4956.]

§ 7124. **Rates of damages.** Damages are allowed under the last section upon bills drawn upon any person:

1. If drawn upon any person in this state, two dollars upon each one hundred dollars of the principal sum specified in the bill.

2. If drawn upon any person out of this state, but in the states of Nebraska, Iowa, Minnesota, South Dakota, Wisconsin, Illinois, Missouri and Montana, three dollars upon each one hundred dollars of the principal sum specified in the bill.

3. If drawn upon any person in any of the United States or territories other than those above named, five dollars upon each one hundred dollars of the principal sum specified in the bill.

4. If drawn upon any person in any place in a foreign country, ten dollars upon each one hundred dollars of the principal sum specified in the bill.

And from the time of notice of dishonor and demand of payment lawful interest must be allowed upon the aggregate amount of the principal sum specified in the bill and the damages mentioned as above. [R. C. 1905, § 6542; Civ. C. 1877, § 1925; R. C. 1899, § 4957.]

§ 7125. **How damages estimated in United States money; in foreign money.** If the amount of a protested bill of exchange is expressed in money of the United States, damages are estimated upon such amount without regard to the rate of exchange. If the amount of a protested bill of exchange is ex-

pressed in foreign money, damages are
bill at the time of protest in the place n
negotiated and where such bills are cur
C. 1877, §§ 1926, 1927; R. C. 1899, § 495

105.

PROMISSORY NOTE. A promissory note whereby the signer promises to pay a sum of money to the bearer or assigns thereof at a certain time or times, either on demand or at a fixed date, with or without grace, and which may or may not be payable by installments. See section 7068.
Note made under a bill of exchange upon which it cannot be ascertained whether it is drawn upon a bank or other institution, or upon an individual, is a promissory note. [R.]

§ 7126. Defined. A promissory note whereby the signer promises to pay \$ 6544; Civ. C. 1877, § 1928; R. C. 1899, § 7068.
 Note from which it cannot be ascertained negotiable and not entitled to grace. [R. C. 1899, § 7068.]
 § 7127. When a bill of exchange upon a bill of exchange, but drawn upon is to be deemed a promissory note. [R. C. 1899, § 4960.]
 § 7128. Bill accepted by other than acceptor with the consent of the parties thereto for honor, becomes a promissory note. [R. C. 1899, § 4961.]

whereby Civ. C. 1899, § 4961.1
 § 6544; Civ. C. 1899, § 4961.1
 See section 70 which
 Note from and not entitled
 negotiable and not entitled
 § 7127. When a bill of exchange
 of a bill of exchange, but drawn
 is to be deemed a promissory note.
 R. C. 1899, § 4960.]
 § 7128. Bill accepted by other than
 change, if accepted with the consent of
 drawee or an acceptor for the honor, becom
 such person and all prior parties thereto
 Civ. C. 1877, § 1930; R. C. 1899, § 4961.1
 § 7129. Other laws applicable. Cha
 code apply to promissory note
 1899, § 4962.1
 demand or at
 six months

change, or an drawee or an such person and all R. C. applica Civ. C. 1877, § 1930; R. C. § 7129. Other laws promissory of this code apply to promissory § 1931; R. C. 1899, § 4962.] § 7130. When indorsers exonerated sory note, payable or demand or at sented for payment within six months are exonerated unless such presentme C. 1877, § 1932; R. C. 1899, § 4963.]

106.

§ 7131. Defined. A check is a bill of exchange payable to order or to bearer, or a person described as such, on demand without interest. [R. C. 1901, § 4964.] See section 7069. Holder of check may sue bank to recover money deposited. Turner v. Hotchkiss, 187 F. 2d 101, 8 A. & E. 2d 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898

See section 7069.
Holder of check may sue bank to re-
has funds deposited. Turner v. Hot
Rep. 804, 101 N. W. 348, 5 A. & E. A.

§ 7132. Subject to provisions on
all the provisions of this code conce-
1. The drawer and indorsers are
to the extent of the injury which th-
2. An indorsee after its apparent
dishonor, acquires a title equal to th-
3. No days of grace are allowed o-
§ 1934; R. C. 1899, § 4965.]
Contract of drawer of check is to

§ 7133. Bank's liability to depositor.

a depositor for the payment by it
thirty days after the return to the
such depositor shall notify the bank

[1909, ch. 44.]

estimated upon the value of a similar
nearest to the place where the bill was
recently sold. [R. C. 1905, § 6543; Civ.
3.]

an instrument negotiable in form
 C ified sum of money. [R. C. 1905,
 4959.]

how interest is to be figured is non-Brady, 17 S. D. 511, 97 N. W. 719.

note. An instrument in the form ☐ accepted by the drawer himself, 1905, § 6545; Civ. C. 1877, § 1929;

wee becomes note. A bill of exchange owner by a person other than the in effect the promissory note of e exonerated. [R. C. 1905, § 6546;

103 and sections 7088 and 7109
[R. C. 1905, § 6547; Civ. C. 1877,

Light or demand note. If a promise without interest, is not duly pre-
ceded by its date, the indorsers thereof
are excused. [R. C. 1905, § 6548: Civ.]

Bill of exchange drawn upon a bank or
upon the face thereof, and payable on
demand, § 6549; Civ. C. 1877, § 1933; R. C. 1899,

over same on its refusing payment, where maker
Sprints Nat. Bank, 18 S. D. 498, 112 Am. St.
937.

Exceptions. A check is subject to bills of exchange, except that: (1) bills generated by delay in presentment only exonerate the drawer; (2) bills do not suffer thereby.

mat-
b of an
checks. [R. C. 1905, § 6550; Civ. C. 1877,

pay **if** check is dishonored. Warner v. Bank, 6

limited. No bank shall be liable to
forger or raised check unless within
of a depositor of the voucher of such payment,
the check so paid is forged or raised.

CHAPTER 107.

BONDS, BANK NOTES AND CERTIFICATES OF DEPOSIT.

§ 7134. **Bank note negotiable after payment.** A bank note remains negotiable even after it has been paid by the maker. [R. C. 1905, § 6551; Civ. C. 1877, § 1935; R. C. 1899, § 4966.]

§ 7135. **Title by transfer before and after dishonor equal.** A transferee of a bond, bank note or certificate of deposit after its apparent maturity or actual dishonor within his knowledge acquires a title equal to that of a transferee before such event. [R. C. 1905, § 6552; Civ. C. 1877, § 1936; R. C. 1899, § 4967.]

Certificate of deposit payable to order of depositor does not mature, and action not maintainable, until demand. *Tobin v. McKinney*, 15 S. D. 257, 88 N. W. 572.

Sufficiency of evidence to sustain title. *First Nat. Bank v. Dickson*, 6 D. 301, 50 N. W. 124.

CHAPTER 108.

GENERAL PROVISIONS.

§ 7136. **Benefit of provisions of law may be waived.** Except when it is otherwise declared, the provisions of [the foregoing fifty-seven chapters] of this code in respect to the rights and obligations of parties to contracts are subordinate to the intention of the parties, when ascertained in the manner prescribed by the articles on the interpretation of contracts; and the benefit thereof may be waived by any party entitled thereto, unless such waiver would be against public policy. [R. C. 1905, § 6553; Civ. C. 1877, § 1937; R. C. 1899, § 4968.]

As to waiver of a cause of action or right of action, see section 6002.

"The foregoing fifty-seven chapters" here printed in brackets is the language of the corresponding section in R. C. 1905, R. C. 1899 and R. C. 1895. In the present compilation, however, by reason of the interpolation of new chapters, "the foregoing fifty-seven chapters" are chapters 48-107, inclusive, excepting chapters 81, 82 and 101.

CHAPTER 109.

RELIEF IN GENERAL.

§ 7137. **Compensation defined. In what cases relief given.** As a general rule compensation is the relief or remedy provided by the law of this state for the violation of private rights and the means of securing their observance; and specific and preventive relief may be given in no other cases than those specified in chapter 110 of this code. [R. C. 1905, § 6554; Civ. C. 1877, § 1938; R. C. 1899, § 4969.]

Railroad cannot be enjoined from operating road on its own property until payment of damages to other property in neighborhood. *Hyde v. Minnesota, D. & P. R. Co.*, 24 S. D. 386, 123 N. W. 849.

As to similar provision in Cal. Civ. Code, § 3274, see *Spreckels v. Hawaiian Commercial & S. Co.*, 117 Cal. 377, 49 Pac. 353.

§ 7138. **Conditions of relief from forfeiture.** Whenever by the terms of an obligation a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom upon making full compensation to the other party, except in case of a grossly negligent, willful or fraudulent breach of duty. [R. C. 1905, § 6555; Civ. C. 1877, § 1939; R. C. 1899, § 4970.]

Contract for sale of land providing for forfeiture in case of default within this section. *Barnes v. Clement*, 12 S. D. 270, 80 N. W. 301.

As to when party is entitled to be relieved from forfeiture under contract. *Bennett v. Gaspell*, 15 N. D. 239, 107 N. W. 45.

As to similar provision in Cal. Civ. Code, § 3275, see *Parsons v. Smilie*, 97 Cal. 647, 32 Pac. 702.

§§ 7139-7142

CHAPTER

COMPENSATORY

ARTICLE

1. DAMAGES IN GENERAL, §§ 71
2. MEASURE OF DAMAGES, §§ 71
3. DAMAGES FOR WRONGS, §§ 71
4. GENERAL PROVISIONS, §§ 71
5. SPECIFIC AND PREVENTIVE RELIEF, §§ 71
6. POSSESSION OF REAL AND PERSONAL PROPERTY, §§ 71
7. SPECIFIC PERFORMANCE OF CONTRACTS, §§ 71
8. REVISION AND RESCISSION OF INSTRUMENTS, §§ 71
9. CANCELLATION OF INSTRUMENTS, §§ 71
10. PREVENTIVE RELIEF, §§ 721

ARTICLE 1.—DAMAGES

§ 7139. Damages for any injury. Every person who suffers detriment from the unlawful act or omission of another is entitled to compensation therefor in money, which is determined by the court.

Civ. C. 1877, § 1940; R. C. 1899, § 4971.1
N. D. 406, 79 N. W. 869; Jackson v. Bell, 10 S. D. 417, 73 N. W. 915.
Action for malicious prosecution and for damages for abutting owner for damages for illegal levy by school treasurer issuing illegal warrant.

Sees. 10 S. D. 417, 73 N. W. 915.
Liability of abutting owner for damages for illegal levy by school treasurer issuing illegal warrant.
N. D. 173, 73 N. W. 427.
Damages recoverable for time and money expended in recovering property.

and fair compensation for time and money expended in recovering property.
33 N. W. 465.
Land owner is not liable in damages for destruction of building by fire, until after county commissioners have prescribed time and manner of destruction.
258, Ann. Cas. 1913D, 429, 1 N. C. C. 772.

§ 7140. Detriment defined. Detriment is a loss or harm suffered in person or property. [R. C. 1905, § 6557; Civ. C. 1877, § 1941; R. C. 1899, § 4972.]
§ 7141. Damages resulting after action commenced. Damages may be awarded in a judicial proceeding for detriment resulting after the commencement thereof or certain to result therefrom. [R. C. 1905, § 6558; Civ. C. 1877, § 1942; R. C. 1899, § 4973.]

As to right of plaintiff in action for rent up to disposition of appeal. [R. C. 1905, § 6559; Civ. C. 1877, § 1943; R. C. 1899, § 4974.]
As to similar provision in Cal. Civ. Code, § 3283, see Hicks v. Drew, 117 Cal. 305, 49 Pac. 189.

§ 7142. Interest on damages. Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him at the time the cause of action accrues, is entitled to interest thereon from that day, except during such time as the debtor is prevented by law or by the act of God from paying the debt. [R. C. 1905, § 6559; Civ. C. 1877, § 1943; R. C. 1899, § 4974.]

One rendering services is entitled to interest on wages from conclusion of work. [R. C. 1905, § 6559; Civ. C. 1877, § 1943; R. C. 1899, § 4974.]
Right to interest on damages.
—on damages for personal injuries.
—on damages for injuries to property.
—on damages for injury by dangerous things.
—on unliquidated damages.
—on claim for penalty against bank.
L.R.A. 707.
—on claims allowed in bankruptcy.
Governing law with respect to interest on claims.
Purchaser's right of interest on bonds.
88.

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RELIEF.

7145.

7164.

7176.

7184.

EF, §§ 7185-7188.

AL PROPERTY, §§ 7189-7191.

GATIONS, §§ 7192-7201.

TRACTS, §§ 7202-7208.

§§ 7209, 7210.

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IN GENERAL.

person who suffers detriment from the unlawful act or omission of another is entitled to compensation therefor in money, which is determined by the court.

imprisonment. Kaeppler v. Bank, 8 D. 257, 58 N. W. 671.
liable to innocent purchaser. Whitbeck v.

street obstruction. Heckman v. Evenson,

iff is value of property at time of levy, expended. Keith v. Haggard, 4 D. 438,

or failure to destroy noxious weeds, under section 257, until after county commissioners have prescribed time and manner of destruction. Langer v. Goode, 21 N. D. 462, 131 N. W. 772.

ment is a loss or harm suffered in person or property. [R. C. 1905, § 6557; Civ. C. 1877, § 1941; R. C. 1899, § 4972.]

action commenced. Damages may be awarded in a judicial proceeding for detriment resulting after the commencement thereof or certain to result therefrom. [R. C. 1905, § 6558; Civ. C. 1877, § 1942; R. C. 1899, § 4973.]

for possession of property and rent, to recover damages. [R. C. 1905, § 6559; Civ. C. 1877, § 1943; R. C. 1899, § 4974.]
McLain v. Code, § 3283, see Hicks v. Drew, 117 Cal. 305, 49 Pac. 189.

very person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him at the time the cause of action accrues, is entitled to interest thereon from that day, except during such time as the debtor is prevented by law or by the act of God from paying the debt. [R. C. 1905, § 6559; Civ. C. 1877, § 1943; R. C. 1899, § 4974.]

on wages from conclusion of work. [R. C. 1905, § 6559; Civ. C. 1877, § 1943; R. C. 1899, § 4974.]

Right to interest on damages.
—on damages for personal injuries.
—on damages for injuries to property.
—on damages for injury by dangerous things.
—on unliquidated damages.
—on claim for penalty against bank.
L.R.A. 707.

—on claims allowed in bankruptcy.
Governing law with respect to interest on claims.
Purchaser's right of interest on bonds.
88.

29 L.R.A.(N.S.) 887.
damages. 56 L.R.A. 303; 62 L.R.A. 37.
of warranty on sale of seeds. 37 L.R.A.(N.S.)

Right of purchaser upon rescinding contract for breach of warranty to recover interest. 27 L.R.A.(N.S.) 928.

As to similar provision in Cal. Civ. Code, § 3287, see *Easterbrook v. Farquharson*, 110 Cal. 311, 42 Pac. 811.

§ 7143. When interest in discretion of jury. In an action for the breach of an obligation not arising from contract and in every case of oppression, fraud or malice interest may be given in the discretion of the jury. [R. C. 1905, § 6560; Civ. C. 1877, § 1944; R. C. 1899, § 4975.]

Question of interest should be left to discretion of jury. *Uhe v. C. M. & St. P. Ry. Co.*, 3 S. D. 563, 54 N. W. 601; *Uhe v. C. M. & St. P. Ry. Co.*, 4 S. D. 505, 57 N. W. 484; *Johnson v. N. P. Ry. Co.*, 1 N. D. 354, 48 N. W. 227; *Bailey v. C. M. & St. P. Ry. Co.*, 3 S. D. 531, 54 N. W. 596, 19 L.R.A. 653.

The question of allowing interest in mandamus to compel execution of deed is for the jury. *Hollister v. Donahoe*, 16 S. D. 206, 92 N. W. 12.

In tort actions allowance of interest is discretionary and not obligatory upon jury. *Seckerson v. Sinclair*, 24 N. D. 625, 140 N. W. 239.

As to similar provision in Cal. Civ. Code, § 3288, see *Coburn v. Goodall*, 72 Cal. 498, 1 Am. St. Rep. 75, 14 Pac. 190; *Hewes v. Germain Fruit Co.*, 106 Cal. 441, 39 Pac. 853.

§ 7144. When accepting principal waives interest. Accepting payment of the whole principal as such waives all claims to interest, unless interest is expressly provided for in the contract. [R. C. 1905, § 6561; Civ. C. 1877, § 1945; R. C. 1895, § 4976.]

§ 7145. When jury may give exemplary damages. In any action for the breach of an obligation not arising from contract, when the defendant has been guilty of oppression, fraud or malice, actual or presumed, the jury in addition to the actual damages may give damages for the sake of example and by way of punishing the defendant. [R. C. 1905, § 6562; Civ. C. 1877, § 1946; R. C. 1899, § 4977.]

Jury should be instructed that exemplary damages are to be assessed only when fraud or malice exists. *Lindblom v. Sonsteli*, 10 N. D. 140, 86 N. W. 357.

Exemplary damages not recoverable in action against city. *Larson v. City of Grand Forks*, 3 D. 307, 19 N. W. 414.

Master liable for exemplary damages because of servant's wrongful act, though unauthorized. *Fell v. N. P. Ry. Co.*, 44 Fed. 248.

May recover in recovery of specific property. *Holt v. Van Eps*, 1 D. 193, 46 N. W. 689.

Widow cannot recover exemplary damages for death of husband from intoxication in suit against liquor dealer and bondsman. *Garrigan v. Thompson*, 17 S. D. 132, 95 N. W. 294.

Exemplary damages not recoverable in malpractice action in absence of presumption of malice. *Baxter v. Campbell*, 17 S. D. 475, 97 N. W. 386.

Exemplary damages may be given in action for breach of obligation not arising from contract where defendant has been guilty of oppression, fraud or malice. *Bailey v. Walton*, 24 S. D. 118, 123 N. W. 701.

Demurrer to answer in libel must be overruled, if facts showing mitigating circumstances are alleged, irrespective of whether either justification or privilege is shown. *Williams v. Black*, 24 S. D. 501, 124 N. W. 728.

Charge in assault action that plaintiff was not entitled to exemplary damages, unless it was shown that defendant was prompted by "a wish to vex, annoy and injure" plaintiff, and that assault was malicious, was proper. *Bogue v. Gunderson*, 30 S. D. 1, 137 N. W. 595.

Necessity of actual malice to justify exemplary damages for tort. 16 L.R.A.(N.S.) 440.

Punitive damages, when allowable. 27 Am. Dec. 684; 28 Am. St. Rep. 870.

— for act punishable criminally. 50 Am. Dec. 771.

— for death by negligence. 17 L.R.A. 72.

— for act of servant or agent. 62 Am. Dec. 379; 101 Am. St. Rep. 730.

— for willful or malicious acts of servant or agent. 27 L.R.A. 193; 10 L.R.A.(N.S.) 403.

— for infringing trademark, tradename or copyright where amount of actual damages not established. 37 L.R.A.(N.S.) 533.

— for maintaining nuisance. 3 L.R.A.(N.S.) 1119.

— against municipality for injury by defect or obstruction in street. 20 L.R.A.(N.S.) 764.

— against telegraph company for handling libelous message. 9 L.R.A.(N.S.) 141.

— against newspaper proprietor for libel published without his knowledge or consent. 26 L.R.A. 779.

§§ 7145-7146

Punitive damages for wanton failure to transport baggage. 9 L.R.A. (N.S.) 1218.
for carrying passenger beyond destination. 17 L.R.A. (N.S.) 1230; 41 L.R.A. (N.S.) 960.

746. — for placing white passenger in a passenger. 32 L.R.A. (N.S.) 1201.
— for assault by carrier's servant on passenger's explanation as to his contract, as
Refusal of conductor to listen to passenger's expulsion. 17 L.R.A. (N.S.) 344.
Exemplary damages in action for malicious prosecution or for abuse of process in suing
out attachment for collection of debt only. L.R.A. (N.S.) 272.
Want of probable cause to believe alleged round of attachment as condition of action
for wrongful attachment where exemplary damages are sought. 38 L.R.A. (N.S.) 127.
Corporation's liability for punitive damages. 59 Am. St. Rep. 589.
Expense of litigation for punitive damages it, of punitive or exemplary damages. 4
L.R.A. (N.S.) 907.
Expense of interest on exemplary damages. 18 L.R.A. 457.
Allowance of provision in Cal. Civ. Co. § 3294, see Yerian v. Linkletter, 80 Cal.
As to similar provision in Jones v. Sanders, 138 Cal. 5, 71 Pac. 506; Maher v. Wilson, 139 Cal.
135, 22 Pac. 70; Greenberg v. Western Tl. Asso., 140 Cal. 357, 73 Pac. 1050.

ARTICLE 2.— MEASURES OF DAMAGES.

§ 7146. Compensation for detriment resulting. Damages must be certain. F
from contract the measure of damages provided by this code, is the amount which for all the detriment proximately caused recovered for a breach of contract to both their nature and origin. [R. C. R. C. 1899, § 4978.]

Measure of damages for breach of contract. 22 N. D. 594, 135 N. W. 4.
ham v. Halverson, 22 N. D. 594, 135 N. W. 4.
If contract is silent upon measure of damages, the measure is the amount which the injured party has not been damaged by the breach. Russell v. Olson, 22 N. D. 594, 135 N. W. 4.
One who wrongfully puts end to a contract incurred. Russell v. Olson, 22 N. D. 594, 135 N. W. 4.
Damages to credit or business not Webber, 4 D. 240, 29 N. W. 671.

For failure to complete building. Seim v. Kra. 4 D. 240, 29 N. W. 671.
For agent's fraudulent representation. Roberts v. Holliday. 4 D. 240, 29 N. W. 671.
For breach of contract, amount in loss sustained. Roberts v. Holliday. 4 D. 240, 29 N. W. 671.
For breach of fraudulent representation. Burris, 10 S. D. 430, 73 N. W. 9.

Measure for breach of obligation N. P. Ry. Co., 43 Fed. 900.
Recovery for breach of obligation performance on both sides. Cranmer v. Tubbs, 7 S. D. 488, 64 N. W. 534.
Only nominal damages recoverable. Hudson v. Archer, 9 S. D. 430, 73 N. W. 9.

Measure of damages for failure to increase in cost of putting in plan. 99 N. W. 77.

Measure of damages where owner promises to pay interest, and both fail to perform. Welch, 21 S. D. 151, 110 N. W. 11.

As being common-law rule for v. Cooley, 13 N. D. 204, 100 N. W. 5.

As to sufficiency of counterclaim. Steel & I. Co. v. Hann, 18 N. D. 5.

Expense incurred in shipping. breach of agreement to buy them. Conflict of laws as to measure of damages on breach of contract. 53 L.R.A. 108.

Right to interest on damages damages paid or retained under executory contract. Duty to prevent or reduce damages after breach of contract. 4 L.R.A. (N.S.) 755.

Effect of provision for forfeiture to prevent recovery of any other damages. 1658

transport baggage. 9 L.R.A. (N.S.) 1218.
on. 17 L.R.A. (N.S.) 1230; 41 L.R.A. (N.S.) 960.

for colored persons. 41 L.R.A. (N.S.) 960.
passenger. 32 L.R.A. (N.S.) 1201.
passenger's explanation as to his contract, as
passenger's expulsion. 17 L.R.A. (N.S.) 344.
prosecution or for abuse of process in suing
L.R.A. (N.S.) 272.

round of attachment as condition of action
damages are sought. 38 L.R.A. (N.S.) 127.
59 Am. St. Rep. 589.

it, of punitive or exemplary damages. 4
ges. 18 L.R.A. 457.

§ 3294, see Yerian v. Linkletter, 80 Cal.
5, 71 Pac. 506; Maher v. Wilson, 139 Cal.
Asso., 140 Cal. 357, 73 Pac. 1050.

OF DAMAGES.

proximately caused or naturally resulting from the breach of an obligation arising except when otherwise expressly provided, shall compensate the party aggrieved thereby, or which in the ordinary course of things would be likely to result therefrom. No damages can be recovered which are not clearly ascertainable in 1905, § 6563; Civ. C. 1877, §§ 1947, 1948;

contract is the same as at common law. Needham v. W. 203.

of damages for breach thereof, statutory rule L.R.A. (N.S.) 1217, 133 N. W. 1030.
contract of employment is estopped from denying extent of actual loss and outlay fairly D. 89, 129 N. W. 93.

recovered on attachment bond. Thompson v. 21 N. W. 93.

within time agreed is reasonable rental value for S. D. 530, 83 N. W. 583.

use, 13 S. D. 530, 83 N. W. 583.

on as to location of real estate, measure is actual D. 576, 74 N. W. 1034.

10 S. D. 576, 74 N. W. 1034.

may be submitted to the jury. Nebraska Land Co. 19.

as to value of land, is resultant loss. Glaspel v. 19.

limited to what could have been gained by full Kohn, 7 S. D. 247, 64 N. W. 125; Davis v. 19.

mer v. 19.

unless clearly ascertainable in both nature and N. W. 541.

240, 68 N. W. 541.

to furnish materials for heating plant on time is Hickok v. W. E. Adams Co., 18 S. D. 14, 19.

later. 19.

of mortgaged land agrees to pay taxes and another fail to perform, resulting in loss of land. Gardner v. 10.

10. of damages on breach of contract. Hayes measure 250.

for damages for refusal to deliver goods. Scully 250.

for market is element of damage in action for Rydl, 25 S. D. 268, 126 N. W. 587.

528, 123 N. W. 587.

also for breach of contract. 56 L.R.A. 301, 303.

damages of contract. 28 L.R.A. (N.S.) 24, 46, 82.

for breach of contract. 53 L.R.A. 108.

damages on damages paid or retained under executory contract, of sums after breach of contract. 4 L.R.A. (N.S.) 755.

damages 1658

Measure of damages for breach of contract to furnish water for irrigation. 19 L.R.A.(N.S.) 938; 31 L.R.A.(N.S.) 743.

As to similar provision in Cal. Civ. Code, §§ 3300, 3301, see *Muldoon v. Lynch*, 66 Cal. 536, 6 Pac. 417; *Friend & T. Lumber Co. v. Miller*, 67 Cal. 464, 8 Pac. 40; *Smith v. Los Angeles & P. R. Co.*, 98 Cal. 210, 33 Pac. 53; *Cederberg v. Robison*, 100 Cal. 93, 34 Pac. 625; *Westwater v. Grace Church*, 140 Cal. 339, 73 Pac. 1055.

§ 7147. To pay money, amount due with interest. The detriment caused by the breach of an obligation to pay money only is deemed to be the amount due by the terms of the obligation with interest thereon. [R. C. 1905, § 6564; Civ. C. 1877, § 1949; R. C. 1899, § 4979.]

For delay in payment of money, interest only. *North Star B. & S. Co. v. Stebbins*, 3 S. D. 540, 54 N. W. 593.

Vendor in land contract was not entitled to interest on purchase money in excess of legal interest. *Smith v. Johnson*, 30 S. D. 200, 138 N. W. 18.

§ 7148. Dishonor of foreign bills. For the dishonor of foreign bills of exchange the damages are prescribed by sections 7124 and 7125 of this code. [R. C. 1905, § 6565; Civ. C. 1877, § 1950; R. C. 1899, § 4980.]

§ 7149. For breach of covenants in grants. The detriment caused by the breach of a covenant of seizin, of right to convey, of warranty or of quiet enjoyment in a grant of an estate in real property is deemed to be:

1. The price paid to the grantor, or if the breach is partial only, such proportion of the price as the value of the property affected by the breach bore at the time of the grant to the value of the whole property.
2. Interest thereon for the time during which the grantee derived no benefit from the property, not exceeding six years; and,
3. Any expense properly incurred by the covenantee in defending his possession. [R. C. 1905, § 6566; Civ. C. 1877, § 1951; R. C. 1899, § 4981.]

Statutory rule not inflexible, but subject to same variations as pre-existent common-law rule. *Bowne v. Wolcott*, 1 N. D. 415, 48 N. W. 336.

Only covenants that run with land are of warranty, and for further assurance. *Gale v. Frazier*, 4 D. 196, 30 N. W. 138.

This statute not applicable to covenants against incumbrances. *Loiseau v. Threlstad*, 14 S. D. 257, 85 N. W. 189.

Measure of damages for breach of warranty of title. 24 Am. St. Rep. 266.

—for breach of warranty by existence of unexpired lease. 35 L.R.A.(N.S.) 779.

—for breach of covenant of quiet enjoyment. 58 Am. Rep. 606; 53 Am. St. Rep. 116.

—for breach of covenant in grant of water power. 67 L.R.A. 405.

—for tenant's breach of covenant to repair, in action brought after expiration of the term. 16 L.R.A.(N.S.) 210.

—for misrepresentation in the sale of real property. 123 Am. St. Rep. 776.

§ 7150. Against incumbrances. The detriment caused by the breach of a covenant against incumbrances in a grant of an estate in real property is deemed to be the amount which has been actually expended by the covenantee in extinguishing either the principal or interest thereof; not exceeding in the former case a proportion of the price paid to the grantor, equivalent to the relative value at the time of the grant of the property affected by the breach as compared with the whole; or, in the latter case, interest on a like amount. [R. C. 1905, § 6567; Civ. C. 1877, § 1952; R. C. 1899, § 4982.]

Right of grantee in deed with covenant against incumbrance to damages on paying off mortgage. *Dahl v. Stakke*, 12 N. D. 325, 96 N. W. 353.

§ 7151. Of agreement to convey realty. The detriment caused by the breach of an agreement to convey an estate in real property is the difference between the price agreed to be paid and the value of the estate agreed to be conveyed at the time of the breach and the expenses properly incurred in examining the title with interest thereon, and in preparing to enter upon the land and the amount paid on the purchase price, if any, with interest thereon from the time of the breach. [R. C. 1905, § 6568; Civ. C. 1877, § 1953; R. C. 1895, § 4983.]

Complaint to recover damages for breach of contract to convey real estate; ground for damages must be stated. *Narregang v. Trust Co.*, 7 S. D. 574, 64 N. W. 1129; *Coates v. Arthur*, 5 S. D. 274, 58 N. W. 675.

Rescission by purchaser for seller's fraud as affecting former's right to recover damages, other than loss of contract. 31 L.R.A.(N.S.) 910.

§ 7156. Same when title not in buyer. The detriment caused by the breach of a buyer's agreement to accept and pay for personal property, the title to which is not vested in him, is deemed to be:

1. If the property has been resold pursuant to section 6864 the excess, if any, of the amount due from the buyer under the contract, over the net proceeds of the resale; or,

2. If the property has not been resold in the manner prescribed by section 6864 the excess, if any, of the amount due from the buyer under the contract over the value to the seller together with the excess, if any, of the expenses properly incurred in carrying the property to market over those which would have been incurred for the carriage thereof, if the buyer had accepted it. [R. C. 1905, § 6573; Civ. C. 1877, § 1958; R. C. 1899, § 4988.]

Not applicable to conditional sale to prevent recovery by seller of purchase price, where buyer has accepted article sold. *Manganese Steel Safe Co. v. First State Bank*, 25 S. D. 119, 125 N. W. 572.

Applicable to breach of agreement to buy personal property. *Talbot v. Boyd*, 11 N. D. 81, 88 N. W. 1026.

As giving remedy on refusal to receive property under contract of sale. *Reeves v. Bruening*, 13 N. D. 157, 100 N. W. 241.

Inapplicable where property has been delivered to vendee. *Dowagiac Mfg. Co. v. Mahon*, 13 N. D. 516, 101 N. W. 903.

Vendor cannot treat sale as absolute on breach of contract to buy chattels and sue for purchase price. *Dowagiac Mfg. Co. v. White Rock Lumber & Hardware Co.*, 18 S. D. 105, 99 N. W. 854.

Vendor who forecloses lien and purchases property held for vendee without vendee's consent to purchase cannot recover under statute. *Reeves & Co. v. Bruening*, 16 N. D. 398, 114 N. W. 313.

Recovery of damages on breach of contract to buy goods. *Fountain City Drill Co. v. Lindquist*, 22 S. D. 7, 114 N. W. 1098.

Expense incurred in shipping cattle to market is element of damage in action for breach of agreement to buy them. *Olson v. Rydl*, 25 S. D. 268, 126 N. W. 587.

Measure of damage is not changed where plaintiff sold machinery to defendant for resale providing that title to all should remain in plaintiff till sold in regular course of business, because defendant sold part of it and settled therefor. *Dowagiac Mfg. Co. v. White Rock Lumber & Hardware Co.*, 26 S. D. 374, 128 N. W. 334.

Order for machinery given to plaintiff's agent, providing that it was subject to plaintiff's approval, did not become binding contract until approval and acceptance. *Thomas Mfg. Co. v. Lyons*, 29 S. D. 600, 137 N. W. 340.

Resale to fix damage for refusal of purchaser to accept goods. 42 L.R.A.(N.S.) 670.

Measure of damages for breach by vendee of contract of sale of article having no market price. 57 L.R.A. 204.

— for purchaser's refusal to accept goods specially manufactured for him. 4 L.R.A.(N.S.) 740; 18 L.R.A.(N.S.) 613.

As to similar provision in Cal. Civ. Code, § 3311, see *Hill v. McKay*, 94 Cal. 5, 29 Pac. 406.

§ 7157. Breach of warranty of title to personalty. The detriment caused by the breach of a warranty of the title of personal property sold is deemed to be the value thereof to the buyer, when he is deprived of its possession, together with any costs which he has become liable to pay in an action brought for the property by the true owner. [R. C. 1905, § 6574; Civ. C. 1877, § 1959; R. C. 1899, § 4989.]

Reasonable attorney fees are recoverable as damages in defending title to property at request of mortgagor, who sold property which was subject to mortgage. *St. Anthony & D. Elevator Co. v. Dawson*, 20 N. D. 18, 126 N. W. 1013, Ann. Cas. 1912B, 1337.

Measure of damages on failure of title to property sold. 53 Am. Rep. 788.

Right of purchaser of goods to recover costs and other expenses incurred by him in defending a collateral action, as damages for breach of the seller's warranty. 20 L.R.A.(N.S.) 492.

§ 7158. Same of quality of personalty. The detriment caused by the breach of warranty of the quality of personal property is deemed to be the excess, if any, of the value which the property would have had at the time to which the warranty referred if it had been complied with, over its actual value at that time. [R. C. 1905, § 6575; Civ. C. 1877, § 1960; R. C. 1899, § 4990.]

§§ 7158-7161

For breach of warranty on sale is different if as warranted, and actual value. N. W. 942, 44 L.R.A. 438; Hermon v. Silson, 9 S. D. 576, 70 N. W. 835.

If no evidence to contrary presumed the price if as warranted. Aultman & Co. v. & Co. v. Ferguson, 8 S. D. 458, 66 N. W. 1081.

Question of value not established by opinion of medicine, care and feed will be warranty of value must refer to time when proof of damages for breach of warranty action for damages for breach of implied N. D. 331, 104 N. W. 516.

Measure of damages for breach of loss of this section, and that evidence of loss of Christiernson v. Hendrie & B. Mfg. & Sup. Amount of recovery depends on amount purchased on warranty, 28 S. D. 145, 132 ranty. Rowe v. Scott, 5 L.R.A.(N.S.) 115

Price at which goods are resold as aff Measure of, in actions for breach of warranty for breach of warranty on sale of a May purchaser recover damages for an where one article is substituted for an L.R.A.(N.S.) 298.

Damages recoverable for breach of personal injuries as element of damage 1047.

Purchaser's election to rescind for breach seller. 27 L.R.A.(N.S.) 925.

Profits lost in consequence of breach use as element of damages. 2 B. R. C. As to similar provision in Cal. Civ. 103 Cal. 415, 42 Am. St. Rep. 125, 37

§ 7159. Same of fitness of persons of a warranty of the fitness of an article purpose is deemed to be that which with a fair compensation for the use it for such purpose. [R. C. 1905, § 4991.]

As to similar provision in Cal. Civ. 3 Pac. 889.

§ 7160. Breach of carrier's obligation caused by the breach of a carrier passengers is deemed to be the duty a right to charge for the carriage pay for the same service when it Civ. C. 1877, § 1962; R. C. 1899,

Measure of damages for carrier's 32 L.R.A. 545.

What injuries may be deemed to waiting passenger. 33 L.R.A.(N.S.) Damages incident to attempt to recovery for failure to stop train Passenger's duty to minimize damage L.R.A.(N.S.) 1087.

Measure of damages for failure § 7161. Same to deliver freight of a carrier's obligation to deliver his own use, is deemed to be the at which it should have been

between what property would have been Western Twine Co. v. Wright, 11 S. D. 521, 78 r, 15 S. D. 476, 90 N. W. 141; Fargo Gas . 1066, 37 L.R.A. 593; Seiberling v. Mortin-

property would have been worth contract n, 1 N. D. 402, 48 N. W. 336.

of witness as to value to him. Aultman 1081.

cluded in measure of damages on breach of n v. Calder, 16 N. D. 248, 113 N. W. 103.

property was delivered under warranty in Houghton Implement Co. v. Doughty, 14

warranty on sale of engine was governed by fits was inadmissible in action for breach. Co., 26 S. D. 519, 128 N. W. 603.

e in due course, of notes given for goods f maker's damage for breach of such war- W. 695.

g measure of damage for breach of war- ty of soundness. 40 Am. Dec. 303.

tract of sale. 18 L.R.A. 385.

37 L.R.A.(N.S.) 85.

of warranty or fraud as to both articles, at his request, and both are defective.

warranty in selling diseased animals. 34 for breach of warranty. 3 L.R.A.(N.S.)

of warranty as affecting recovery against warranty of machinery purchased for vendee's

§ 3313, see Shearer v. Park Nursery Co., 412.

The detriment caused by the breach of personal property for a particular defined by the last section, together

h is incurred by an effort in good faith to loss incurred by an effort in good faith to 5, § 6576; Civ. C. 1877, § 1961; R. C. 1899,

Av. Code, § 3314, see Correio v. Lynch, 65 Cal. 273,

ation to accept freight, etc. The detriment s obligation to accept freight, messages or difference between the amount which he had e and the amount it would be necessary to ought to be performed. [R. C. 1905, § 6577; § 4992.]

s default or delay as to transportation of passenger. the proximate result of failure to stop street car for 1007.

destination by other means as an element of reac h intending passenger. 8 L.R.A.(N.S.) 880.

for i from carrier's default of duty towards him. 2 nages

to furnish cars. 8 L.R.A.(N.S.) 112.

ht, etc. The detriment caused by the breach ver freight, when he has not converted it to thereof at the place and on the day he value delivered, deducting the freightage to which

he would have been entitled if he had completed the delivery. [R. C. 1905, § 6578; Civ. C. 1877, § 1963; R. C. 1899, § 4993.]

Right to recover expenses or damages incidental to loss of baggage. 7 L.R.A.(N.S.) 188.

Amount of carrier's liability for loss of goods. 2 L.R.A.(N.S.) 773.

Time of notice to warrant special damages for failure of carrier to deliver property. 3 L.R.A.(N.S.) 1111.

Effect of misrepresentation as to character, quantity or value of goods by shipper on his right to recover for loss. 23 L.R.A.(N.S.) 745.

§ 7162. For detriment caused by carrier's delay. The detriment caused by a carrier's delay in the delivery of freight is deemed to be the depreciation in the intrinsic value of the freight during the delay and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in the intrinsic value at the place where it ought to have been delivered and between the day at which it ought to have been delivered and the day of its actual delivery. [R. C. 1905, § 6579; Civ. C. 1877, § 1964; R. C. 1899, § 4994.]

Right to recover expenses or damages incidental to delay in delivering baggage. 7 L.R.A.(N.S.) 188.

Allowance of interest on damages to property injured, delayed or lost in transportation. 18 L.R.A. 451.

Measure of damages for carrier's delay in delivery of receptacles for perishable goods. 24 L.R.A.(N.S.) 134.

—for preventing exhibition or show by breach of contract of carriage. 4 L.R.A.(N.S.) 569.

Damages recoverable in action by addressee of telegram for delay in delivery. 30 L.R.A.(N.S.) 1133.

§ 7163. Breach of warranty of agent's authority. The detriment caused by the breach of a warranty of an agent's authority is deemed to be the amount which could have been recovered and collected from his principal if the warranty had been complied with and the reasonable expenses of legal proceedings taken in good faith to enforce the act of the agent against his principal. [R. C. 1905, § 6580; Civ. C. 1877, § 1965; R. C. 1899, § 4995.]

As to liability of one assuming to act as agent. *Kennedy v. Stonehouse*, 13 N. D. 232, 100 N. W. 258, 3 A. & E. Ann. Cas. 217.

§ 7164. Of promise to marry. The damages for the breach of a promise of marriage rest in the sound discretion of the jury. [R. C. 1905, § 6581; Civ. C. 1877, § 1966; R. C. 1899, § 4996.]

Measure of damages for breach of promise to marry. 41 L.R.A.(N.S.) 840.

Right to prove seduction in aggravation of damages in breach of promise case. 4 L.R.A.(N.S.) 616; 36 L.R.A.(N.S.) 388.

Necessity of averring seduction in order to recover therefor in an action for breach of promise. 33 L.R.A.(N.S.) 702.

Mitigation of damages for breach of promise of marriage. 26 L.R.A. 432.

ARTICLE 3.—DAMAGES FOR WRONGS.

§ 7165. Compensation for detriment proximately caused, anticipated or not. For the breach of an obligation not arising from contract the measure of damages, except when otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not. [R. C. 1905, § 6582; Civ. C. 1877, § 1967; R. C. 1899, § 4997.]

Measure of damages in tort is the same as at common law. *Needham v. Halverson*, 22 N. D. 594, 135 N. W. 203.

Damages recoverable even when the injury is proximate, and could not be reasonably anticipated. *Ouverson v. City of Grafton*, 5 N. D. 281, 65 N. W. 676.

Section fixes general measure for class of cases named. *Uhe v. C. M. & St. P. Ry. Co.*, 4 S. D. 505, 57 N. W. 484.

As to right to recover special damages in rearing sucking colt due to defendant's killing of dam. *McDonell v. Minneapolis, St. P. & S. Ste. M. R. Co.*, 17 N. D. 606, 118 N. W. 819.

Measure of damages in trespass action. *Peterson v. Conlan*, 18 N. D. 205, 119 N. W. 387.

As to when exemplary damages will be awarded for assault. *Shoemaker v. Sonju*, 15 N. D. 518, 108 N. W. 42, 11 A. & E. Ann. Cas. 1173.

Measure of damages for total injury
collapse of building caused by excavation
and place of injury with interest. Slatter
Measure of damages against promoters
against municipality for injury

L.R.A.(N.S.) 763.
recoverable from landlord for injury

831.
for personal injury by dog. 37 L.R.A.

in action for malicious prosecu-
L.R.A.(N.S.) 207.

for libel or slander reflecting on
L.R.A.(N.S.) 351.

for death caused by negligence. 17
for negligent killing of collateral re-
in action under federal employers'

for disinterment of dead bodies. 42
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for forcing cropper from premises.

for obstructing water of stream.
for an unintentional trespass. 54
for removal of lateral or subjecen

for mining and carrying away co-
for injury to or destruction of
L.R.A.(N.S.) 168; 37 L.R.A.(N.S.) 976.

for injury to, or destruction of, t-
or firewood. 11 L.R.A.(N.S.) 930; 28 L.R.A.

for wrongful cutting or destructio-
for the destruction of property h-
tion. 62 Am. St. Rep. 791.

for withholding or destroying evi-
589.
for enticement of servant. 5 L.R.A.

Damages recoverable in action by m-
L.R.A.(N.S.) 38.

Wife's right to recovery for loss of co-
band. 24 L.R.A.(N.S.) 1024.

Husband's right at common law to
necessitated by negligent killing of his
Special damages which will sustain an
with unchastity. 24 L.R.A.(N.S.) 577

Damages against telegraph company
141.
Condition of place of imprisonment

damages for false imprisonment.
Extent of trespasser's liability for
Counsel fees and other expenses of

recoverable in an action for tort. 28
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inflicting the injury is liable. 48 L.R.A.

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Is minor's right to damages for m-
minority. 18 L.R.A.(N.S.) 1205; 39 L.R.A.

Recovery of damages for miscarriage
Right to recover for miscarriage re-
L.R.A.(N.S.) 49; 22 L.R.A.(N.S.) 1073

Right to recover for mental sufferin-
flicted. 25 L.R.A.(N.S.) 976.
Mental suffering of husband as ele-
L.R.A.(N.S.) 674.

Mental anguish as element of dama-
her character or reputation for chasti-
Loss of profits as element of dama-

as element of damages for wro-
for infringement of patents, co-
§ 7166. For wrongful occupation

wrongful occupation of real proper-
7173, 7174 and 7175 is deemed to
for the time of such occupation, n-

commencement of the action or p-

ice in plaintiff's ice house by reason
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v. Rhud, 23 N. D. 274, 136 N. W. 237.
corporations. 18 L.R.A.(N.S.) 1131.
from defect or obstruction in street.

tenant from defect in premises. 34 L.R.A.
A.(N.S.) 865.
for wrongful search of premises. 33

egrity or responsibility of merchant. 44
R.A. 71; 12 Am. St. Rep. 375.
ive. 11 L.R.A.(N.S.) 623.

bility act. 47 L.R.A.(N.S.) 80.
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public election. 31 L.R.A.(N.S.) 1106.

L.R.A.(N.S.) 714.
R.A. 892.
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port. 68 L.R.A. 701.

3 Am. Rep. 282.
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(N.S.) 757; 37 L.R.A.(N.S.) 1115.

standing timber. 18 L.R.A.(N.S.) 244.
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to which adversary is entitled. 34 L.R.A.

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consortium resulting from negligent injury to hus-

recover for loss of time and funeral expenses
an wife. 9 L.R.A.(N.S.) 1193.
an action for libel or slander in charging a woman

for handling libelous message. 9 L.R.A.(N.S.)
and treatment while in custody as elements of
L.R.A.(N.S.) 291.

consequential injuries. 53 L.R.A. 626.
bringing suit as part of compensatory damages
L.R.A.(N.S.) 761.

following personal injury for which person
R.A.(N.S.) 93.
child for death of mother. 19 L.R.A.(N.S.) 128.

negligent killing of parent limited to period of
L.R.A.(N.S.) 1156.
age. 32 L.R.A. 142.

resulting from fright caused by wrongful act. 3
1073; 24 L.R.A.(N.S.) 1159.
resulting caused by assault where no bodily injury is in-

element of damages for criminal conversation. 16
damages for trespass on person of a woman affecting
astity. 33 L.R.A.(N.S.) 98.

ages for tort. 52 L.R.A. 33.
wrongful attachment. 46 L.R.A.(N.S.) 470.
copyrights or trademarks. 51 L.R.A. 801.

tion of realty. The detriment caused by the
erty in cases not embraced in sections 7167
to be the value of the use of the property

not exceeding six years next preceding the
proceeding to enforce the right to damages

and the costs, if any, of recovering the possession. [R. C. 1905, § 6583; Civ. C. 1877, § 1968; R. C. 1899, § 4998.]

Land owner may recover, though there is no agreement to pay rent. *Parkinson v. Shew*, 12 S. D. 171, 80 N. W. 189.

Owner of land may recover for wrongful use. *Hegar v. Degroat*, 3 N. D. 354, 56 N. W. 150; *Olson v. Huntamer*, 6 S. D. 364, 61 N. W. 479.

One who occupies property wrongfully, without lease, is liable for damage or detriment caused by such occupation. *Baldwin v. Bohl*, 23 S. D. 395, 122 N. W. 247.

§ 7167. For willful detention of realty. For willfully holding over real property by a person who entered upon the same as guardian or trustee for an infant, or by right of an estate terminable with any life or lives after the termination of the trust or particular estate without the consent of the party immediately entitled after such termination, the measure of damages is the value of the profits received during such holding over. [R. C. 1905, § 6584; Civ. C. 1877, § 1969; R. C. 1899, § 4999.]

§ 7168. For conversion of personalty. The detriment caused by the wrongful conversion of personal property is presumed to be:

1. The value of the property at the time of the conversion with the interest from that time; or,

2. When the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the verdict without interest, at the option of the injured party; and,

3. A fair compensation for the time and money properly expended in pursuit of the property. [R. C. 1905, § 6585; Civ. C. 1877, § 1970; 1885, ch. 42, § 1; R. C. 1899, § 5000.]

Rule of damages for conversion, highest market value. *Pickert v. Rugg*, 1 N. D. 230, 46 N. W. 446; *Thompson v. Schaetzel*, 6 D. 284, 42 N. W. 765; *Town v. Elevator Co.*, 8 N. D. 200, 77 N. W. 608.

There are qualifications of the general rule. *Lovejoy v. Bank*, 5 N. D. 623, 67 N. W. 956.

Unexplained delay of eleven months in commencing action not prosecution with reasonable diligence, and highest market price not recoverable. *First Nat. Bank v. Elevator Co.*, 8 N. D. 430, 79 N. W. 874.

For illegal levy is the value of the property at the time, and fair compensation for its pursuit. *Keith v. Haggart*, 4 D. 438, 33 N. W. 465.

Election to follow first rule by demanding interest. *Rosum v. Hodges*, 1 S. D. 308, 47 N. W. 140, 9 L.R.A. 817; *Torrey v. Peck*, 13 S. D. 538, 83 N. W. 585; *Straw v. Jenks*, 6 D. 414, 43 N. W. 941.

For conversion of notes is amount converted and interest. *Gillespie v. Evans*, 10 S. D. 234, 72 N. W. 576.

Question of reasonable diligence in commencing action one of law. *First Nat. Bank v. Bank*, 9 N. D. 319, 83 N. W. 221.

Proof of value of converted property at time or subsequent to conversion required. *Catlett v. Stokes*, 21 S. D. 108, 110 N. W. 84.

As to when special damages on conversion of property are allowed. *Aronson v. Oppergard*, 16 N. D. 595, 114 N. W. 377.

In action for conversion of grain plaintiff must show value of grain as on date of conversion. *Citizens' Nat. Bank v. Osborne-McMillan Elevator Co.*, 21 N. D. 335, 131 N. W. 266.

Measure of damages in trover for injury to, or destruction of, trees. 19 L.R.A. 654.

—in action in nature of trover, for unlawful cutting or destruction of standing timber. 18 L.R.A.(N.S.) 247.

—in actions of trespass or trover for property taken by mistake. 36 Am. Rep. 770.

Loss of profits as element of damages for conversion. 52 L.R.A. 51.

—for wrongful conversion of logs or timber. 18 L.R.A.(N.S.) 250.

As to similar provision in Cal. Civ. Code, § 3336, see *Fairbanks v. Williams*, 58 Cal. 241; *Arzaga v. Villalba*, 85 Cal. 191, 24 Pac. 656.

§ 7169. Presumption cannot be repelled. The presumption declared by the last section cannot be repelled in favor of one whose possession was wrongful from the beginning by his subsequent application of the property to the benefit of the owner without his consent. [R. C. 1905, § 6586; Civ. C. 1877, § 1971; R. C. 1899, § 5001.]

§ 7170. For conversion by superior lien holder. One having a mere lien on personal property cannot recover greater damages for its conversion from one having a right thereto superior to his after his lien is discharged than

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the amount secured by the lien and the 7168 for loss of time and expenses. [R. C. 1899, § 5002.]

Recoverable by one having special interest N. D. 50, 76 N. W. 504.

Measure of damages in trover when the own Am. Dec. 678.

Measure of damages for pledgee's conversion 768.

Damages recoverable by conditional vend converts the same after partial payment of t

As to similar provision in Cal. Civ. Code, 27 Pac. 601.

§ 7171. For seduction. The damages cretion of the jury. [R. C. 1905, § 658 § 5003.]

Mental anguish as element of damages 99.

§ 7172. Exemplary for injuries for an mals, being subjects of property, commi in disregard of humanity, exemplary d § 6589; Civ. C. 1877, § 1974; R. C. 1899,

§ 7173. For tenant's failure to surre tenant to give up the premises held by intention to do so, the measure of dama otherwise to pay. [R. C. 1905, § 6590; C

As to similar provision in Cal. Civ. Code 58 Pac. 130.

§ 7174. For tenant's willful holding property by a tenant after the end of his duly given and demand of possession m the yearly value of the property for t compensation for the detriment occasio C. 1877, § 1976; R. C. 1899, § 5006.]

As to similar provision in Cal. Civ. C 563, 58 Pac. 130.

§ 7175. For forcible exclusion from cluding a person from the possession of is three times such a sum as would co him by the act complained of. [R. C. 1899, § 5007.]

Recovery of three times actual damages. Inapplicable to one holding possession S. D. 395, 122 N. W. 247.

Actual application of physical force un v. Lubenow, 12 N. D. 95, 95 N. W. 442.

§ 7176. For wrongful injuries to tim trees or underwood upon the land of a of damages is three times such a sum detriment, except when the trespass mitted under the belief that the lan the wood was taken by the authority a highway; in which case the damag ment. [R. C. 1905, § 6593; Civ. C. 187

Damages for injury to, or destruction L.R.A.(N.S.) 244.

Loss of profits as element of damages or timber. 18 L.R.A.(N.S.) 250.

As to similar provision in Cal. Civ. C 41 Pac. 293; Wagoner v. Silva, 139 Ca

Compensatory Relief.

compensation allowed by section 1905, § 6587; Civ. C. 1877, § 1972;

property. Second Nat. Bank v. Bank, 8

of a special interest is the plaintiff. 52

of property by invalid sale. 43 L.R.A.

of personalty from third person who purchase price. 10 L.R.A.(N.S.) 458.

338, see Irwin v. McDowell, 91 Cal. 119,

seduction rest in the sound dis- Civ. C. 1877, § 1973; R. C. 1899,

cases of seduction. 33 L.R.A.(N.S.)

s. For wrongful injuries to ani- willfully or by gross negligence

es may be given. [R. C. 1905, § 5004.]

premises. For the failure of a when he has given notice of his

is double the rent which he ought 1877, § 1975; R. C. 1899, § 5005.]

4, see Jack v. Sinsheimer, 125 Cal. 563,

over. For willfully holding over real is term and after notice to quit has been

made the measure of damages is double the time of withholding in addition to

oned thereby. [R. C. 1905, § 6591; Civ. § 3345, see Jack v. Sinsheimer, 125 Cal.

realty. For forcibly ejecting or ex- of real property the measure of damages

compensate for the detriment caused to 1905, § 6592; Civ. C. 1877, § 1977; R. C.

Olson v. Huntamer, 6 S. D. 364, 61 N. W. 479. under claim of right. Baldwin v. Bohl, 23

unnecessary to constitute forcible entry. Wegner

timber. For wrongful injuries to timber, another, or removal thereof, the measure

sum as would compensate for the actual was casual and involuntary, or com-

and belonged to the trespasser, or when of highway officers for the purposes of

ges are a sum equal to the actual detri- 1877, § 1978; R. C. 1899, § 5008.]

tion of trees. 15 L.R.A. 612; 19 L.R.A. 653; 18 ges for wrongful destruction or conversion of logs

Code, § 3346, see Stewart v. Sefton, 108 Cal. 197, Cal. 559, 73 Pac. 433.

ARTICLE 4.—GENERAL PROVISIONS.

§ 7177. What value of property to seller deemed to be. In estimating damages the value of property to a seller thereof is deemed to be the price which he could have obtained therefor in the market nearest to the place at which it should have been accepted by the buyer and at such time after the breach of the contract as would have sufficed with reasonable diligence for the seller to effect a resale. [R. C. 1905, § 6594; Civ. C. 1877, § 1979; R. C. 1899, § 5009.]

Rule is fixed by this statute, unless vendor proceeds under section 6864. *Stanford v. McGill*, 6 N. D. 536, 72 N. W. 938, 38 L.R.A. 760; *Minn. Thresh. Mach. Co. v. McDonald*, 10 N. D. 408, 87 N. W. 933.

Expense incurred in shipping cattle to market is element of damage in action for breach of agreement to buy them. *Olson v. Rydl*, 25 S. D. 268, 126 N. W. 587.

As to similar provision in Cal. Civ. Code, § 3353, see *Hill v. McKay*, 94 Cal. 5, 29 Pac. 406; *Hewes v. Germain Fruit Co.*, 106 Cal. 441, 39 Pac. 853; *Tustin Fruit Asso. v. Earl Fruit Co.*, 6 Cal. Unrep. 37, 53 Pac. 693; *Peterson Bros. v. Mineral King Fruit Co.*, 140 Cal. 624, 74 Pac. 162.

§ 7178. What to buyer or owner. In estimating damages, except as provided by sections 7179 and 7180, the value of property to a buyer or owner thereof deprived of its possession is deemed to be the price at which he might have bought an equivalent thing in the market nearest to the place where the property ought to have been put into his possession and at such time after the breach of duty upon which his right to damages is founded as would suffice with reasonable diligence for him to make such a purchase. [R. C. 1905, § 6595; Civ. C. 1877, § 1980; R. C. 1899, § 5010.]

Not applicable to case where delivery is made and damages result from breach of warranty of fitness. *Needham v. Halverson*, 22 N. D. 594, 135 N. W. 203.

Section does not apply to property without market value. *Patterson v. Plummer*, 10 N. D. 95, 86 N. W. 111.

Statute embodies common-law rule of full compensation without punishment. *Pickert v. Rugg*, 1 N. D. 230, 46 N. W. 446.

As to sufficiency of counterclaim for damages for refusal to deliver goods. *Scully Steel & I. Co. v. Hann*, 18 N. D. 528, 123 N. W. 275.

As to similar provision in Cal. Civ. Code, § 3354, see *Bullard v. Stone*, 67 Cal. 477, 8 Pac. 17; *Marriner v. Dennison*, 91 Cal. 555, 27 Pac. 927, 1091.

§ 7179. When peculiar value to person deemed value. When certain property has a peculiar value to a person recovering damages for deprivation thereof, or injury thereto, that may be deemed to be its value against one who had notice thereof before incurring a liability to damages in respect thereof, or against a willful wrongdoer. [R. C. 1905, § 6596; Civ. C. 1877, § 1981; R. C. 1899, § 5011.]

Where carrier has no notice of peculiar value to owner of article, only its market value can be recovered for its loss. *Hess v. South Dakota C. R. Co.*, 30 S. D. 538, 139 N. W. 334.

§ 7180. Value of title papers. For the purpose of estimating damages the value of an instrument in writing is presumed to be equal to that of the property to which it entitles its owner. [R. C. 1905, § 6597; Civ. C. 1877, § 1982; R. C. 1899, § 5012.]

Value of choses in action presumed to be amount due on their face. *Anderson v. Bank*, 6 N. D. 497, 72 N. W. 916; *Holt v. Van Eps*, 1 D. 198, 46 N. W. 689; *Cosand v. Bunker*, 2 S. D. 294, 50 N. W. 84; *Grigsby v. Day*, 9 S. D. 585, 70 N. W. 881; *Wylly v. Grigsby*, 11 S. D. 491, 78 N. W. 957.

So far as applicable to certificate of stock in national bank, presumptive value of stock is its par or nominal value. *Patterson v. Plummer*, 10 N. D. 95, 86 N. W. 111.

§ 7181. When exclusive of exemplary damages. The damages prescribed by this chapter are exclusive of exemplary damages and interest except when those are expressly mentioned. [R. C. 1905, § 6598; Civ. C. 1877, § 1983; R. C. 1899, § 5013.]

As to similar provision in Cal. Civ. Code, § 3357, see *Hewes v. Germain Fruit Co.*, 106 Cal. 441, 39 Pac. 853.

§ 7182. Cannot recover more than would be gained by performance. Notwithstanding the provisions of this chapter, no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides except in the cases specified in the

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subdivisions on exemplary damages and 6581, 6588 and 6589. [R. C. 1905, § 6599 § 5014.]

Contract itself must furnish measure of damages. N. W. 125; Bowers v. Graves & Vinton Co., 8 A. & E. Ann. Cas. 1057. As to measure of damages for deceit. Bear 103 N. W. 632, 8 A. & E. Ann. Cas. 1057.

§ 7183. Damages must be reasonable. Reasonable and when an obligation of any kind is incurred, the damages must be reasonable and grossly oppressive damages can be no more than reasonable damages can be. C. 1877, § 1985; R. C. 1899, § 5015.]

§ 7184. Nominal damages. When a breach of contract causes no appreciable detriment to the party affected, he may recover nominal damages. Keith v. H. [R. C. 1905, § 6601; Civ. C. 1877, § 1986; R. C. 1899, § 5016.] Recovery of nominal damages for breach of contract. Raymond v. Edelb. 73 Pac. 418. As to when party is entitled to nominal damages from breach of contract. As to similar provision in Cal. Civ. Code.

ARTICLE 5.—SPECIFIC AND PREVENTIVE RELIEF.

§ 7185. When specific relief given. Specific relief may be given in the cases specified in this article and in the following two articles and no others. [R. C. 1905, § 6602; Civ. C. 1877, § 1987; R. C. 1899, § 5017.]

§ 7186. How given. Specific relief is given in the following three cases: 1. By taking possession of a thing and delivering it to a claimant. 2. By compelling a party himself to do that which ought to be done; or, 3. By declaring and determining the rights of parties, otherwise than by an award of damages. [R. C. 1905, § 6603; Civ. C. 1877, § 1988; R. C. 1899, § 5018.]

By cancellation of instrument. Nation v. Cameron, 2 D. 347, 11 N. W. 525. § 7187. How preventive relief given. Preventive relief is given by prohibiting a party from doing that which ought not to be done. [R. C. 1905, § 6604; Civ. C. 1877, § 1989; R. C. 1899, § 5019.]

§ 7188. Neither given to enforce penal law. Neither specific nor preventive relief can be granted to enforce a penalty or forfeiture or to enforce a penal law, except in a case of nuisance, or in any case. [R. C. 1905, § 6605; Civ. C. 1877, § 1990; R. C. 1899, § 5020.] Neither this nor preceding section applies to action to quiet title and recover land. Pier v. Lee, 14 S. D. 600, 86 N. W. 642.

ARTICLE 6.—POSSESSION OF REAL AND PERSONAL PROPERTY.

§ 7189. Method of recovery. A person entitled to specific real property or of a claim to title which ought to be perfected, may recover the same in the manner prescribed by the code of civil procedure, either by a judgment for its possession to be executed by the sheriff, or by a judgment requiring the other party to perfect the title and to deliver possession of the property. [R. C. 1905, § 6606; Civ. C. 1877, § 1991; R. C. 1899, § 5021.]

§ 7190. Method of recovery. A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by the code of civil procedure. [R. C. 1905, § 6607; Civ. C. 1877, § 1992; R. C. 1899, § 5022.]

§ 7191. Specific delivery compellable. Any person having the possession or control of a particular article of personal property of which he is not the owner may be compelled to deliver it to the owner. [R. C. 1905, § 6608; Civ. C. 1877, § 1993; R. C. 1899, § 5023.]

REAL AND PERSONAL PROPERTY.

person entitled to specific real property or of a claim to title which ought to be perfected, may recover the same in the manner prescribed by the code of civil procedure, either by a judgment for its possession to be executed by the sheriff, or by a judgment requiring the other party to perfect the title and to deliver possession of the property. [R. C. 1905, § 6606; Civ. C. 1877, § 1991; R. C. 1899, § 5021.]

person entitled to the immediate possession of specific personal property may recover the same in the manner provided by the code of civil procedure. [R. C. 1905, § 6607; Civ. C. 1877, § 1992; R. C. 1899, § 5022.]

Any person having the possession of personal property of which he is not the owner may be compelled to deliver it to the owner. [R. C. 1905, § 6608; Civ. C. 1877, § 1993; R. C. 1899, § 5023.]

owner may be compelled specifically to deliver it to the person entitled to its immediate possession. [R. C. 1905, § 6608; Civ. C. 1877, § 1993; R. C. 1899, § 5023.]

ARTICLE 7.—SPECIFIC PERFORMANCE OF OBLIGATIONS.

§ 7192. **When compelled.** Except as otherwise provided in this article the specific performance of an obligation may be compelled. [R. C. 1905, § 6609; Civ. C. 1877, § 1994; R. C. 1899, § 5024.]

Courts of equity will neither decree nor enforce specific performance of contracts requiring the determination of questions of fact for each alleged violation. *Kidd v. McGinnis*, 1 N. D. 331, 48 N. W. 221.

Specific performance decreed in case of *Plummer v. Kelly*, 7 N. D. 88, 73 N. W. 70. Conditions may be varied, when. *Ross v. Page*, 11 N. D. 458, 92 N. W. 822.

Consideration and mutual assent in contract essential to specific performance. *Kastor v. Mason*, 13 N. D. 107, 99 N. W. 1083.

Damages in lieu of specific performance. 20 L.R.A. 752.

Equitable enforcement for limited time to prevent public inconvenience, of contract which is against public policy. 1 L.R.A.(N.S.) 1032.

Effect of incapacity specifically to perform. 12 L.R.A. 240; 16 L.R.A. 614.

Right to specific performance or injunction during lifetime of one who has conveyed, or is about to convey, property in violation of his agreement to leave the same, at his death, to the complainant. 18 L.R.A.(N.S.) 218.

Specific performance of oral contract to devise land in consideration of performing services or furnishing support where no possession is taken or improvements made. 38 L.R.A.(N.S.) 752.

—of oral contract to convey real estate in consideration of making improvements, where possession not taken. 33 L.R.A.(N.S.) 534.

—of contract to provide for intended husband or wife. 12 L.R.A.(N.S.) 232.

—of agreement on part of third person to make provision for parties to contemplated marriage. 7 L.R.A.(N.S.) 734.

—of contract to make will, or to leave property, in consideration of services to continue during promisor's lifetime, as affected by brevity of period elapsing before promisor's death. 9 L.R.A.(N.S.) 157.

—of contract to give child share of estate in consideration of surrender of child to promisor, as affected by noncompliance with statute prescribing mode of adoption. 8 L.R.A.(N.S.) 1130.

—of promise by beneficiary to pay proceeds of life insurance policy to third person. 40 L.R.A.(N.S.) 692.

—of contract between husband and wife to compromise pending or contemplated divorce suit. 60 L.R.A. 412.

—of contracts for the sale of corporate stock. 135 Am. St. Rep. 689; 50 L.R.A. 508; 31 L.R.A.(N.S.) 500.

—of contract to give security. 6 L.R.A.(N.S.) 585.

Sufficiency of possession alone as ground for granting specific performance of parol gift of, or contract to convey, real property. 8 L.R.A.(N.S.) 870.

Specific performance of oral lease void under statute of frauds after lessee's entry into possession and making improvements. 3 L.R.A.(N.S.) 852.

Tender or payment of consideration as condition precedent to suit to enforce contract to convey realty consummated by vendor's exercise of option. 24 L.R.A.(N.S.) 91.

Inadequacy of consideration as ground for refusing specific performance. 15 Am. Dec. 299; 14 L.R.A.(N.S.) 317.

Lack of consideration as defense to action for specific performance of contract for sale of corporate stock. 50 L.R.A. 507; 31 L.R.A.(N.S.) 498.

Necessity in a complaint for specific performance of alleging facts showing adequacy of consideration for contract sought to be enforced. 19 L.R.A.(N.S.) 178.

Laches or delay as bar to suit for specific performance. 54 Am. Dec. 132; 50 L.R.A. 508; 31 L.R.A.(N.S.) 500.

Delay of infant or feme covert in paying purchase price or bringing suit as bar to action for specific performance of contract for sale of land of which time is not of the essence. 25 L.R.A.(N.S.) 639.

Jurisdiction of equity to decree specific performance of contract affecting real estate in other state or country. 69 L.R.A. 681; 23 L.R.A.(N.S.) 924.

May jurisdiction of suit for specific performance of a contract for conveyance of land within the territorial jurisdiction rest upon constructive service of process against a nonresident. 23 L.R.A.(N.S.) 1135.

As to similar provision in Cal. Civ. Code, § 3384, see *Krouse v. Woodward*, 110 Cal. 638, 42 Pac. 1084.

§ 7193. **Remedy mutual. When neither can be compelled.** Neither party to an obligation can be compelled specifically to perform it, unless the other party thereto has performed, or is compellable specifically to perform every-

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thing to which the former is entitled and completely or nearly so, together with full compensation. [R. C. 1905, § 6610; Civ. C. performance. In order to give right to enforcement of remedy. J. I.

there must be mutuality of remedy. 28 S. D. 432, 134 N. W. 819. Specific performance of land contract cannot be by contract. Uglund v. Kolb, 23 N. D. 158, 187, § 1995; R. C. 1899, § 5025.] Specific performance only action maintain arrived before suit is brought for price. She Written acceptance of offer for withdrawal 6 S. D. 47, 60 N. W. 164. Party must be able to perform "completely 4 S. D. 312, 56 N. W. 1071. Inapplicable to contract mutual as to obligation. N. D. 572, 98 N. W. 411. Performance by party seeking to enforce requisite where there is no mutuality of remedy 118 N. W. 1051.

Action for specific performance may be land signed only by vendor. Beddow v. Fl Specific performance will not be decreed u way v. Kitzman, 28 S. D. 577, 134 N. W. Necessity of mutuality of remedy and wh Enforcement of option contracts. 21 L.R.A. Right to specific performance of option of obligation. 6 L.R.A.(N.S.) 403. Tender or payment of consideration as a performance of a contract to convey realty option. 24 L.R.A.(N.S.) 91. Mutuality of remedy as affecting juris contract for sale of stock. 50 L.R.A. 506 Mutuality of obligation as a condition o contract. 6 L.R.A.(N.S.) 391; 38 L.R.A.(When purchaser at judicial sale compe Specific performance of contract signed 2 L.R.A.(N.S.) 884. As to similar provision in Cal. Civ. C. 27 Pac. 515; Krouse v. Woodward, 110

§ 7194. Presumption as to relief for that the breach of an agreement to transfer relieved by pecuniary compensation to transfer personal property can be thus 1877, § 1996; R. C. 1899, § 5026.]

Contract for lease of realty for ninety Spear, 12 S. D. 108, 80 N. W. 166. Vendee of land cannot be required to free from doubt. Black Hills Bank v. K Presumption that breach of agreement relieved by pecuniary compensation, is n 111 N. W. 546.

As to action for damages for breach Miller, 23 S. D. 16, 119 N. W. 1014. Allegation that remedy at law is inad performance of contract to sell land. S When specific performance of a valid because the property is of any particula As to similar provision in Cal. Civ. Co., 123 Cal. 1, 43 L.R.A. 199, 69 Am. 5 Cal. Unrep. 961, 52 Pac. 729.

§ 7195. Specific performance com one. A party who has signed a writt to perform it, though the other part formed or offers to perform it on h for enforcing specific performance. R. C. 1899, § 5027.] Written contract to sell land enfor Gire v. Harris, 14 S. D. 537, 86 N. W. 1057, 65 Am. St. Rep. 723.

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Compensatory Reli

er the same obligation, either com mpensation for any want of entire 1877, § 1995; R. C. 1899, § 5025.] ontract by decreeing specific performance ase Threshing Mach. Co. v. Farnsworth, be enforced unless both parties are bound 34 N. W. 879. le where time for delivery of deed has v. Mikkelsen, 5 N. D. 22, 63 N. W. 210. nds both parties. Townsend v. Kennedy, nearly so." Black Hills Bank v. Kellogg,

ion and remedy. Pederson v. Dibble, 12 specific performance of contract, is pre- Knudtson v. Robinson, 18 N. D. 12, tained upon contract for conveyance of 22 N. D. 53, 132 N. W. 637. contract is definite in its terms. Shum-

27 Am. St. Rep. 173. 11; 118 Am. St. Rep. 592. purchase as affected by lack of mutuality

a condition precedent to a suit for the specific ummated by the vendee's exercise of an adiction of action for specific performance of L.R.A.(N.S.) 496. of right to specific performance of a continuing (N.S.) 452.

to complete purchase. 21 L.R.A. 45. beneficiary but not by holder of legal title.

Code, § 3386, see Lattin v. Hazard, 91 Cal. 87, Cal. 638, 42 Pac. 1084.

transferring. It is to be presumed nsfer real property cannot be adequately and that the breach of an agreement to us relieved. [R. C. 1905, § 6611; Civ. C.

ty-nine years is a transfer. First Nat. Bank v.

to accept deed, unless vendor has title reasonably Kellogg, 4 S. D. 312, 56 N. W. 1071. to transfer real property cannot be adequately not conclusive. Nelson v. Lybeck, 21 S. D. 223,

of contract to transfer personalty. Lumley v.

adequate, is unnecessary in complaint for specific Steensland v. Noel, 28 S. D. 522, 134 N. W. 207. contract will be refused, the refusal not being

id contract class. 128 Am. St. Rep. 382. Code, § 3387, see Glock v. Howard & W. Colony

Am. St. Rep. 17, 55 Pac. 713; Aikman v. Sanborn,

ompelled though contract signed only by itten contract may be compelled specifically rty has not signed it, if the latter has per- his part and the case is otherwise proper [R. C. 1905, § 6612; Civ. C. 1877, § 1997;

orceable against owner, though signed only by him. W. 624; McPherson v. Fargo, 10 S. D. 611, 74 N. W.

Action for specific performance may be maintained upon contract for conveyance of land signed only by vendor. *Beddow v. Flage*, 22 N. D. 53, 132 N. W. 637.

Right of party not bound because he did not sign the contract, to enforce specific performance against a party who did sign. 6 L.R.A.(N.S.) 397; 28 L.R.A.(N.S.) 680.

§ 7196. Compelled though penalty imposed or damages liquidated. A contract otherwise proper to be specifically enforced may be thus enforced, though a penalty is imposed or the damages are liquidated for its breach and the party in default is willing to pay the same. [R. C. 1905, § 6613; Civ. C. 1877, § 1998; R. C. 1899, § 5028.]

Right to specific performance as affected by provision for liquidated damages. 2 L.R.A.(N.S.) 210.

Stipulation for liquidated damages in contract not to engage in business, as affecting equitable jurisdiction to enjoin breach thereof. 10 L.R.A.(N.S.) 204.

As to similar provision in Cal. Civ. Code, § 3389, see *Glock v. Howard & W. Colony Co.*, 123 Cal. 1, 43 L.R.A. 199, 69 Am. St. Rep. 17, 55 Pac. 713; *Fleishman v. Woods*, 135 Cal. 256, 67 Pac. 276; *Aikman v. Sanborn*, 5 Cal. Unrep. 961, 52 Pac. 729.

§ 7197. What obligations cannot be enforced. The following obligations cannot be specifically enforced:

1. An obligation to render personal service.
2. An obligation to employ another in personal service.
3. An agreement to submit a controversy to arbitration.
4. An agreement to perform an act which the party has not power lawfully to perform when required to do so.
5. An agreement to procure the act or consent of the wife of the contracting party or of any other third person; or,
6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable. [R. C. 1905, § 6614; Civ. C. 1877, § 1999; R. C. 1899, § 5029.]

1. Right to mandatory injunction to compel specific performance of contract for services. 20 L.R.A. 167.

Specific performance of contracts of service considered with reference to the general principles which define the limits of equitable jurisdiction. 6 L.R.A.(N.S.) 1115.

Of contracts calling for services of a personal nature. 140 Am. St. Rep. 55.

3. Specific performance of agreement to submit to arbitration. 15 L.R.A. 142.

6. Certainty in contract requisite for specific performance. 26 Am. Dec. 661.

Uncertainty as to time, as affecting right to specific performance. 2 L.R.A.(N.S.) 221.

§ 7198. When it cannot be enforced against one. Specific performance cannot be enforced against a party to a contract in any of the following cases:

1. If he has not received an adequate consideration for the contract.
2. If it is not as to him just and reasonable.
3. If his assent was obtained by misrepresentation, concealment, circumvention or unfair practice of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled; or,
4. If his assent was given under the influence of mistake, misapprehension or surprise, except that when the contract provides for compensation in case of mistake, a mistake within the scope of such provision may be compensated for and the contract specifically enforced in other respects, if proper to be so enforced. [R. C. 1905, § 6615; Civ. C. 1877, § 2000; R. C. 1899, § 5030.]

As to similar provision in Cal. Civ. Code, § 3391, see *Kelly v. Central P. R. Co.*, 74 Cal. 557, 5 Am. St. Rep. 470, 16 Pac. 386; *Morrill v. Everson*, 77 Cal. 114, 19 Pac. 190; *Ward v. Yorba*, 123 Cal. 447, 56 Pac. 58.

1. Specific performance of contract for sale of land worth one thousand six hundred dollars for consideration of five hundred and fifty dollars will not be decreed. *Phelean v. Neary*, 22 S. D. 265, 117 N. W. 142.

3. Fraudulent expression of opinion as a defense to specific performance. 35 L.R.A. 433.

Fraud as defense to specific performance of contract for sale of corporate stock. 50 L.R.A. 508; 31 L.R.A.(N.S.) 500.

Specific performance in case of misrepresentation as to location of property. 38 L.R.A.(N.S.) 306.

Effect of concealment or misrepresentation of fact affecting value of real estate by purchaser who seeks specific performance. 30 L.R.A.(N.S.) 753.

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4. Effect of mistake of fact by defendant contract induced thereby. 15 L.R.A. (N.S.)
 Right to specific performance as affected of purchaser. 32 L.R.A. (N.S.) 125.

§ 7199. Same in favor of one. Spec in favor of a party who has not fully ar precedent on his part to the obligation failure to perform is only partial and of being fully compensated, in which c pelled upon full compensation being mad Civ. C. 1877, § 2001; R. C. 1899, § 5031.

Substantial performance of building con omissions. Aldrich v. Wilmarth, 3 S. D. 9 S. D. 144, 68 N. W. 200.

Purchaser of 7-foot, not required to rec 4 S. D. 297, 56 N. W. 905.

Contract to convey land "by good and deed containing an exception of a mortga 915.

Failure of purchaser to promptly perf will not prevent specific performance of c Case Threshing Mach. Co. v. Farnsworth

§ 7200. Cannot be when title imperf erty cannot be specifically enforced i the buyer a title free from reasonable § 2002; R. C. 1899, § 5032.]

Purchaser of land cannot be compelle Easton v. Lockhart, 10 N. D. 181, 86 N. 312, 56 N. W. 1071.

Written contract not expressing agre Co., 14 S. D. 312, 85 N. W. 588.

Reformation of deed of probate judge 83, 48 N. W. 835.

Purchaser under contract for sale of to accept property with cloud on title.

Allowing vendor reasonable time to 30 L.R.A. (N.S.) 25.

Right of vendee to specific performa vendor is unable to convey good and L.R.A. (N.S.) 1195.

§ 7201. When enforced against su tion in respect to real property wou ticular person it may be in like ma claiming under him by a title create a purchaser or incumbrancer in good any such person may exonerate hir person entitled to enforce the obliga § 2003; R. C. 1899, § 5033.]

As to similar provision in Cal. Civ 138, 89 Am. St. Rep. 120, 68 Pac. 587

ARTICLE 8.—REVISION

§ 7202. For fraud or mistake. W the parties, or a mistake of one pa suspected, a written contract does no it may be revised on the application intention so far as it can be done third persons in good faith and for § 2004; R. C. 1899, § 5034.]

Written contract for conveyance Creamery Co., 14 S. D. 312, 85 N. W. As to equity revising contract whi Travelers' Ins. Co., 14 N. D. 39, 10

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on right to the specific performance of 81.
 by vendor's ignorance of race or characte

ic performance cannot be enforced fairly performed all the conditions f the other party, except when his ther entirely immaterial or capable specific performance may be com- for the default. [R. C. 1905, § 6616;

et entitles to pay, though there are slight 54 N. W. 811.
 substantial compliance. Hulst v. Asso.,

6-foot binder. Osborne & Co. v. Martin, 6-foot binder. Osborn & Co. v. Martin, Fletcher v. Arnett, 4 S. D. 615, 57 N. W.

which is capable of exact compensation, t at suit of assignee of purchaser. J. I. D. 432, 134 N. W. 819.

An agreement for the sale of prop- or of a seller who cannot give to doubt. [R. C. 1905, § 6617; Civ. C. 1877,

accept deed, unless title reasonably clear. 697; Black Hills Bank v. Kellogg, 4 S. D.

may be revised. Littlejohn v. Creamery

to lot in town site. McVeagh v. Burns, 2 S. D.

real property not liable in damages for refusing Godfrey v. Rosenthal, 17 S. D. 452, 97 N. W. 365.

perfect title by decree for specific performance.

with abatement from purchase price, where and unincumbered title. 10 L.R.A. (N.S.) 117; 38

subsequent holder. Whenever an obliga- should be specifically enforced against a par-

manner enforced against any other person subsequently to the obligation, except

good faith and for value and except also that himself by conveying all his estate to the

himself by conveying all his estate to the obligation. [R. C. 1905, § 6618; Civ. C. 1877,

Civ. Code, § 3395, see Blakeman v. Miller, 136 Cal. 587.

AND RESCISSION OF CONTRACTS.

When through fraud, or mutual mistake of party which the other at the time knew or not truly express the intention of the parties, ion of a party aggrieved so as to express that one without prejudice to rights acquired by for value. [R. C. 1905, § 6619; Civ. C. 1877,

ce of title may be reformed, when. Littlejohn v. W. 588.
 which, by mistake, describes too much land. Benesh v. 103 N. W. 405.

Jurisdiction of equity to cancel instrument on ground of fraud. 5 L.R.A.(N.S.) 1036.
 Power of equity to take jurisdiction of suit to cancel insurance policy for fraud, and to enjoin action at law on the policy. 12 L.R.A.(N.S.) 881.
 Jurisdiction of suit to reform deed of land in another state or country. 69 L.R.A. 685.
 Reformation of deeds as against persons not in being. 8 L.R.A.(N.S.) 66.
 Relief from deed prepared by grantee which does not protect the grantor's rights. 18 L.R.A.(N.S.) 1089.

Reformation of instruments on the ground of mistake. 30 Am. St. Rep. 621; 117 Am. St. Rep. 227.

Reformation of contract because of mistake of law as to its effect. 28 L.R.A.(N.S.) 900.

Reformation of insurance policy for mistake of soliciting agent. 11 L.R.A.(N.S.) 357.
 Reformation of mortgage after foreclosure. 39 L.R.A.(N.S.) 90.

As to similar provision in Cal. Civ. Code, § 3399, see *Higgins v. Parsons*, 65 Cal. 280, 3 Pac. 881; *Peasley v. McFadden*, 68 Cal. 611, 10 Pac. 179; *Cleghorn v. Zumwalt*, 83 Cal. 155, 23 Pac. 294; *Ward v. Waterman*, 85 Cal. 488, 24 Pac. 930; *West Coast Lumber Co. v. Apfield*, 86 Cal. 335, 24 Pac. 993; *Wilson v. Moriarty*, 88 Cal. 207, 26 Pac. 85; *Stevens v. Holman*, 112 Cal. 345, 53 Am. St. Rep. 216, 44 Pac. 670; *Holt v. Holt*, 120 Cal. 67, 52 Pac. 119; *Capelli v. Dondero*, 123 Cal. 324, 55 Pac. 1057; *San Jose Ranch Co. v. San Jose Land & Water Co.*, 132 Cal. 582, 64 Pac. 1097; *Gardner v. California Guarantee Invest. Co.*, 137 Cal. 71, 69 Pac. 844; *Eureka v. Gates*, 137 Cal. 89, 68 Pac. 850; *Kee v. Davis*, 137 Cal. 456, 70 Pac. 294; *Enos v. Stewart*, 138 Cal. 112, 70 Pac. 1005; *South Tule Independent Ditch Co. v. King*, 144 Cal. 450, 77 Pac. 1032.

§ 7203. Intention to make equitable agreement presumed. For the purpose of revising a contract it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement. [R. C. 1905, § 6620; Civ. C. 1877, § 2005; R. C. 1899, § 5035.]

As to similar provision in Cal. Civ. Code, § 3400, see *San Jose Ranch Co. v. San Jose Land & Water Co.*, 132 Cal. 582, 64 Pac. 1097.

§ 7204. Court may inquire what instrument was intended to mean. In revising a written instrument the court may inquire what the instrument was intended to mean and what were intended to be its legal consequences and is not confined to the inquiry what the language of the instrument was intended to be. [R. C. 1905, § 6621; Civ. C. 1877, § 2006; R. C. 1899, § 5036.]

As to similar provision in Cal. Civ. Code, § 3401, see *Ward v. Waterman*, 85 Cal. 488, 24 Pac. 930; *San Jose Ranch Co. v. San Jose Land & Water Co.*, 132 Cal. 582, 64 Pac. 1097.

§ 7205. First revised, then enforced. A contract may be first revised and then specifically enforced. [R. C. 1905, § 6622; Civ. C. 1877, § 2007; R. C. 1899, § 5037.]

Necessity for reforming insurance policy before recovery in case of mistake. 2 L.R.A.(N.S.) 548.

Action on policy as bar to action to reform it. 12 L.R.A.(N.S.) 907.

As to similar provision in Cal. Civ. Code, § 3402, see *San Jose Ranch Co. v. San Jose Land & Water Co.*, 132 Cal. 582, 64 Pac. 1097; *Gardner v. California Guarantee Invest. Co.*, 137 Cal. 71, 69 Pac. 844; *Kee v. Davis*, 137 Cal. 456, 70 Pac. 294.

§ 7206. When adjudged. The rescission of a written contract may be adjudged on the application of a party aggrieved:

1. In any of the cases mentioned in section 5934; or,
 2. When the contract is unlawful for causes not apparent upon its face and the parties were not equally in fault; or,
 3. When the public interest will be prejudiced by permitting it to stand.
- [R. C. 1905, § 6623; Civ. C. 1877, § 2008; R. C. 1899, § 5038.]

As to equity rescinding contract which described more land than one of the parties supposed. *Benesh v. Travelers' Ins. Co.*, 14 N. D. 39, 103 N. W. 405.

Right to cancellation of contract made with foreign corporation because it has not complied with the laws entitling it to do business within the state. 21 L.R.A.(N.S.) 707.

As to similar provision in Cal. Civ. Code, § 3406, see *Joshua Hendy Mach. Works v. American Steam Boiler Ins. Co.*, 86 Cal. 248, 21 Am. St. Rep. 83, 24 Pac. 1018; *Toby v. Oregon P. R. Co.*, 98 Cal. 490, 33 Pac. 550; *Kelley v. Owens*, 120 Cal. 502, 47 Pac. 869, 52 Pac. 797; *Smith v. Blandin*, 133 Cal. 441, 65 Pac. 894; *Hartwig v. Clark*, 138 Cal. 668, 72 Pac. 149; *Donnelly v. Rees*, 141 Cal. 56, 74 Pac. 433.

§ 7207. Not for mere mistake. Rescission cannot be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to sub-

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stantially the same condition as if the
1905, § 6624; Civ. C. 1877, § 2009; R. C.
On allowing rescission of contract. Wo
Rep. 900, 115 N. W. 100.
As to similar provision in Cal. Civ. Co
56, 28 Am. St. Rep. 91, 29 Pac. 329; Toby
Maddock v. Russell, 109 Cal. 417, 42 Pac.
Cal. 161, 45 Pac. 1054, 46 Pac. 386; Kelle
797.

§ 7208. Compensation may be requi
a contract the court may require the p
make any compensation to the other w
§ 6625; Civ. C. 1877, § 2010; R. C. 189
Contract vendor who received check for
protest upon nonpayment because of bank
of check before he could cancel contract.
As to similar provision in Cal. Civ. C
56, 28 Am. St. Rep. 91, 29 Pac. 329; Toby
Kelley v. Owens, 120 Cal. 502, 47 Pac. 3

ARTICLE 9.— CANCELLATION

§ 7209. When adjudged. When a w
may cause injury to a person again
voidable, such instrument may, in an
adjudged void and the same be orde
and the record thereof canceled, whe
show its invalidity or not. [R. C. 18
1895, § 5041.]

Complaint for cancellation of fraudule
to be entitled to such relief. Nation v
Junior mortgagee has action to cancel
baum v. Foss, 4 S. D. 184, 56 N. W. 11
Cancellation of lis pendens improperly
199.

Instrument no cloud upon title if inva
gage Co., 3 S. D. 390, 53 N. W. 746; M
Instrument not invalid on its face,
Rosenbaum v. Foss, 4 S. D. 184, 56 N.
Certificate of sale not void on its face
Cancellation of instruments for forger
Cancellation notwithstanding a defens
Right to cancellation of contract ma
complied with the laws entitling it to do
Equity jurisdiction to cancel oil or g
ises. 34 L.R.A.(N.S.) 34.

Power of equity to cancel false recor
False statements as to use to which
of deed. 32 L.R.A.(N.S.) 127.
Right, as against subsequent bona
impression, induced by fraud, as to
L.R.A.(N.S.) 537.

Mistake of law as to effect of instr
28 L.R.A.(N.S.) 785.
May deed of real property executed b
avoided in an action at law. 19 L.R.A.
Power of equity to take jurisdiction
action at law on the policy. 12 L.R.A.
Retention of policy as waiver of in
67 L.R.A. 716.

As to similar provision in Cal. Civ.
Castro v. Barry, 79 Cal. 443, 21 Pac.
Bradley v. Anglo-American Gas Con
Craven, 132 Cal. 691, 64 Pac. 1091.

§ 7210. Partial cancellation. Wi
rights or obligations it may be can
residue. [R. C. 1905, § 6627; Civ.
As to similar provision in Cal. Civ.
American Steam Boiler Ins. Co., 86

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contract had not been made. [R.
1899, § 5039.]
finger v. Thomas, 22 S. D. 57, 133 Am
e, § 3407, see Goodrich v. Lathrop, 94 C
Oregon P. R. Co., 98 Cal. 490, 33 Pac. 55
39; Jurgens v. New York L. Ins. Co., 11
v. Owens, 120 Cal. 502, 47 Pac. 369, 52 Pa

d. On adjudging the rescission o
ty to whom such relief is granted to
ch justice may require. [R. C. 1905,
§ 5040.]
st payment but neglected to give notice of
solvency, was obliged to pay back amount
key v. Hoyt, 27 S. D. 561, 132 N. W. 230.
§ 3408, see Goodrich v. Lathrop, 94 Cal.
regon P. R. Co., 98 Cal. 490, 33 Pac. 550;
52 Pac. 797.

CANCELLATION OF INSTRUMENTS.

n instrument, or the record thereof,
whom such instrument is void or
brought by the party injured, be
to be delivered up for cancellation
extrinsic evidence is necessary to
§ 6626; Civ. C. 1877, § 2011; R. C.

deed should state facts showing the plaintiff
v. Cameron, 2 D. 347, 11 N. W. 525.
el prior mortgage voidable as to himself. Rosen
14.
ly filed. Hale v. Grisby, 12 S. D. 198, 80 N. W.

validity appears on face. Grant County v. Mort
v. McNight, 1 N. D. 266, 47 N. W. 375.
when evidence required to show its invalidity.
114.

Brace v. Van Eps, 12 S. D. 191, 80 N. W. 197.
92 Am. St. Rep. 272.
ery. 9 Am. St. Rep. 859.
made at law. 9 Am. St. Rep. 859.
with foreign corporation because it has not
business within the state. 21 L.R.A.(N.S.) 707.
do lease for failure to develop the leased prem
gas

14 L.R.A.(N.S.) 304.
property is to be put as ground for rescission
fide purchaser, to avoid deed because of fals
contents or character of paper signed. 3

instrument as ground of cancellation of instrument
by an incompetent not judicially declared such
R.A.(N.S.) 461.
tion of suit to cancel policy for fraud and to enjo
R.A.(N.S.) 881.
insurer's mistake or fraud as to right to cane

Civ. Code, § 3412, see Wiard v. Brown, 59 Cal. 19
ac. 946; Ingram v. Smith, 83 Cal. 234, 23 Pac. 29
Control Co., 102 Cal. 627, 36 Pac. 1011; Angus

When an instrument is evidence of differe
anceled in part and allowed to stand for t
C. 1877, § 2013; R. C. 1899, § 5042.]
v. C. 1877, § 2013; R. C. 1899, § 5042.]
Civ. Code, § 3414, see Joshua Hendy Mach. Works
6 Cal. 248, 21 Am. St. Rep. 33, 24 Pac. 1018.

ARTICLE 10.—PREVENTIVE RELIEF.

§ 7211. **How granted.** Preventive relief is granted by injunction, provisional or final. [R. C. 1905, § 6628; Civ. C. 1877, § 2014; R. C. 1899, § 5043.]

Railroad cannot be enjoined from operating road on its own property until payment of damages to other property in neighborhood. *Hyde v. Minnesota, D. & P. R. Co.*, 24 S. D. 386, 123 N. W. 849.

§ 7212. **Provisional injunctions.** Provisional injunctions are regulated by the code of civil procedure. [R. C. 1905, § 6629; Civ. C. 1877, § 2015; R. C. 1899, § 5044.]

§ 7213. **When final injunction granted.** Except when otherwise provided by this chapter, a final injunction may be granted to prevent the breach of an obligation existing in favor of the applicant:

1. When pecuniary compensation would not afford adequate relief.
2. When it would be extremely difficult to ascertain the amount of compensation which would afford adequate relief.

3. When the restraint is necessary to prevent a multiplicity of judicial proceedings; or,

4. When the obligation arises from a trust. [R. C. 1905, § 6630; Civ. C. 1877, § 2016; R. C. 1899, § 5045.]

Railroad cannot be enjoined from operating road on its own property until payment of damages to other property in neighborhood. *Hyde v. Minnesota, D. & P. R. Co.*, 24 S. D. 386, 123 N. W. 849.

Injunction in aid of lowest bidder on public contract. 26 L.R.A. 711; 30 L.R.A.(N.S.) 127.

—against trespasses on real estate. 11 Am. Dec. 498; 53 Am. Rep. 346; 99 Am. St. Rep. 731.

—against repeated trespass. 13 L.R.A.(N.S.) 173; 21 L.R.A.(N.S.) 417.

—to prevent trespass of animals or fowls. 48 L.R.A.(N.S.) 179.

—to protect trees on boundary. 46 L.R.A.(N.S.) 5.

—against breach of agreement by railroad company as to crossing provided for in deed to railroad of right of way. 48 L.R.A.(N.S.) 388.

—to prevent interference by railroad with crossing stipulated for in deed to railroad of right of way. 48 L.R.A.(N.S.) 378.

—against construction or use of crossing provided for in deed to railroad of right of way. 48 L.R.A.(N.S.) 389.

—against waste of oil or gas causing injury to neighboring wells. 48 L.R.A.(N.S.) 170.

—to prevent breach of contract. 90 Am. St. Rep. 634.

—against improper use of leased premises. 59 Am. Dec. 70.

Right to enjoin sale under a power in a mortgage against which the statute of limitations has run. 6 L.R.A.(N.S.) 510.

Doctrine of comparative injury in suit to enjoin nuisance. 31 L.R.A.(N.S.) 881; 39 L.R.A.(N.S.) 580.

As to similar provision in Cal. Civ. Code, § 3422, see *McLaughlin v. Del Re*, 64 Cal. 472, 2 Pac. 244; *Spreckels v. Hawaiian Commercial & Sugar Co.*, 117 Cal. 377, 49 Pac. 353.

1. Irreparable injury, what is within the meaning of the law of. 1 Am. St. Rep. 374.

Necessity that injury be irreparable. 43 L.R.A.(N.S.) 262.

Insufficiency of allegation of irreparable injury in action to enjoin trespass to cut timber. 22 L.R.A. 239.

As ground for injunction against collection of illegal taxes. 22 L.R.A. 704.

—as affecting right to injunction against erection, maintenance or removal of fences or gates on ground of nuisance. 7 L.R.A.(N.S.) 78.

Injunction against sale of, or proposal to sell real property to person, or for purpose regarded as undesirable. 44 L.R.A.(N.S.) 228.

—against the publication of letters. 49 Am. Dec. 180.

Injury to one's business or interests as ground for an injunction against an illegal business establishment not directly affecting other property. 45 L.R.A.(N.S.) 827.

2. Effect of stipulation for liquidated damages in contract not to engage in business, upon equitable jurisdiction to enjoin breach thereof. 10 L.R.A.(N.S.) 204.

Injunction to prevent breach of stipulation to handle or use the product of one producer only. 10 L.R.A.(N.S.) 475.

—against breach by employe of agreement not to engage in a competing business. 16 L.R.A.(N.S.) 389.

—against breach of covenant not to enter another's employment as affected by distinction between procuring specific performance of contract and preventing injury to business. 35 L.R.A.(N.S.) 119.

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Injunction to prevent employee from entering service of rival in violation of agreement. 31 L.R.A.(N.S.) 249.

3. Injunction against trespass to cut timber on ground of multiplicity of suits. L.R.A. 236.

Multiplicity of suits as ground for injunction against collection of illegal taxes. L.R.A. 703.

—as ground for injunction to compel erection, maintenance or removal of fences or gates. 7 L.R.A.(N.S.) 55.

Power of equity to take jurisdiction by personal injuries growing out of a single action against collection of illegal taxes. 491.

4. Surety's right prior to obtaining a judgment or lien to enjoin principal's transfer of property to defraud him. 15 L.R.A.(N.S.) 484.

Right to injunction during lifetime of property in violation of agreement to leave same at his death to complainant. 18 L.R.A.(N.S.) 218.

Right to injunction against transfer of husband in fraud of wife's support. 18 L.R.A.(N.S.) 1156.

§ 7214. When injunction not granted.

1. To stay a judicial proceeding pending in which the injunction is demanded prevent a multiplicity of such proceedings.

2. To stay proceedings in a court of that state.

3. To stay proceedings in any other that state.

4. To prevent the execution of a public statute by officers of the law for the public benefit.

5. To prevent the breach of a contract, the performance of which could not be specifically enforced.

6. To prevent the exercise of a public or private office in a lawful manner by the person in possession.

7. To prevent a legislative act by a municipal corporation. [R. C. 1905, § 5631; Civ. C. 1877, § 2017; R. C. 1899, § 5046; 1901, ch. 108.]

Not granted to restrain trespass upon realty except in special cases. Beatty v. Smith, 14 S. D. 24, 84 N. W. 208.

Not granted to oust defendant pending action. 7 S. D. 503, 64 N. W. 539; Cole v. Owner restrained from interfering with another's possession pending appeal cannot maintain other action for possession in justice court. Dennett v. Reisdorfer, 15 S. D. 466, 90 N. W. 138.

District court may entertain jurisdiction from destroying plaintiff's business. 15 L.R.A.(N.S.) 331, 115 N. W. 675.

—against pleading the statute of limitations. 51 Am. Dec. 700; 75 Am. Dec. 84.

As to similar provision in Cal. Civ. Code, § 3423, see People ex rel. Atty.-Gen. v. Shasta County, 75 Cal. 179, 16 Pac. 952; Spreckels v. Hawaiian Commercial & Sugar Co., 117 Cal. 377, 49 Pac. 353; Wright v. Superior Ct., 139 Cal. 469, 73 Pac. 225.

1. Right to enjoin prosecution of collusive suit in court of co-ordinate jurisdiction. 21 L.R.A.(N.S.) 581.

Application to governing body of municipality for relief, as condition of right of citizen to maintain suit to enjoin action by municipality. 8 L.R.A.(N.S.) 574.

Right to enjoin garnishment of wages because of rule of employer providing for discharge of employees whose wages are garnished. 6 L.R.A.(N.S.) 491.

Injunction against repeated garnishment of exempt wages. 10 L.R.A.(N.S.) 983.

—against criminal proceedings. 21 L.R.A. 84; 2 L.R.A.(N.S.) 631; 25 L.R.A.(N.S.) 193; 34 L.R.A.(N.S.) 454; 35 Am. St. Rep. 670.

—against sale of personal property under execution. 111 Am. St. Rep. 97; 3 L.R.A. 99.

—to prevent clouds on titles by taxes and assessments. 62 Am. Dec. 523.

—to restrain the collection of taxes and assessments. 69 Am. Dec. 198; 22 L.R.A. 699.

—against sale of property for illegal taxes. 69 Am. Dec. 198; 49 Am. Rep. 287.

—against enforcement of judgment as aid to equitable set-off against judgment creditor. 35 L.R.A.(N.S.) 142.

—against enforcement of judgment on betting and gambling contracts. 48 L.R.A. 847.

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entering service of rival in violation of ag

ber on ground of multiplicity of suits.

ction against collection of illegal taxes.

prevent erection, maintenance or remov

ause of multiplicity of actions at law fo

ct. 20 L.R.A.(N.S.) 848; 35 L.R.A.(N.S.)

ment or lien to enjoin principal's transfer

) 484.

who has conveyed or is about to convey

same at his death to complainant. 18

husband in fraud of wife's support. 18

An injunction cannot be granted:

at the commencement of the action

less such restraint is necessary to

United States.

te upon a judgment of a court of

statute by officers of the law for

contract, the performance of which could

or private office in a lawful manner

by a municipal corporation. [R. C. 1905,

§ 5046; 1901, ch. 108.]

on realty except in special cases. Beatty v. Smith,

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Code, § 3423, see People ex rel. Atty.-Gen. v.

Shasta County, 75 Cal. 179, 16 Pac. 952;

Spreckels v. Hawaiian Commercial & Sugar

Co., 117 Cal. 377, 49 Pac. 353; Wright v.

Superior Ct., 139 Cal. 469, 73 Pac. 225.

1. Right to enjoin prosecution of collu

sive suit in court of co-ordinate jurisdic

Injunction against enforcement judgment for want of jurisdiction or against judgments which are void. 31 L.R.A. 200.

— for errors and irregularities. 30 L.R.A. 700.

— for defenses existing prior to rendition. 31 L.R.A. 747.

— for matters arising subsequently to rendition. 30 L.R.A. 560.

Power of equity to enjoin enforcement of judgment in action at law, in order to retain the status quo pending an appeal from such judgment. 25 L.R.A.(N.S.) 828.

3. Injunction against action or proceedings in foreign jurisdiction. 21 L.R.A. 71; 25 L.R.A.(N.S.) 267; 56 Am. Rep. 663; 59 Am. St. Rep. 880.

— against action or proceeding in foreign jurisdiction to prevent fraud. 25 L.R.A.(N.S.) 268.

— against suit in another state to evade local exemption laws. 15 L.R.A.(N.S.) 1008.

Jurisdiction to restrain legal proceedings with respect to land in another state or country. 69 L.R.A. 689; 7 L.R.A.(N.S.) 114.

6. One having prima facie title to office will not be restrained from exercising control pending litigation. *State v. Herreid*, 10 S. D. 16, 71 N. W. 319.

Granting of temporary injunction restraining county officers from removing their offices pending determination of contest, in relation thereto was not abuse of discretion. *Shaw v. Circuit Ct.*, 27 S. D. 49, 129 N. W. 907.

7. Not granted to prevent legislative act by municipal corporation. *State v. Thorsen*, 9 S. D. 149, 68 N. W. 202, 33 L.R.A. 582.

Injunction against illegal acts of municipal and other public corporations. 2 Am. St. Rep. 92.

— against enactment of municipal ordinances. 36 Am. St. Rep. 449; 13 L.R.A. 844; 2 L.R.A.(N.S.) 152.

— against enforcement of ordinances. 118 Am. St. Rep. 372.

— against prosecutions under ordinances. 21 L.R.A. 86.

Right of taxpayer, in absence of statute, to enjoin unlawful expenditures by municipality. 36 L.R.A.(N.S.) 1.

CHAPTER 111.

SPECIAL RELATIONS OF DEBTOR AND CREDITOR.

ARTICLE 1. GENERAL PRINCIPLES, §§ 7215-7219.

2. FRAUDULENT INSTRUMENTS AND TRANSFERS, §§ 7220-7223.

ARTICLE 1.—GENERAL PRINCIPLES.

§ 7215. **Debtor defined.** A debtor within the meaning of this chapter is one who by reason of an existing obligation is or may become liable to pay money to another whether such liability is certain or contingent. [R. C. 1905, § 6632; Civ. C. 1877, § 2018; R. C. 1899, § 5047.]

Sureties on bonds are debtors within meaning of this section. *Conner v. Corson*, 13 S. D. 550, 83 N. W. 588.

As to debt and obligation not being synonymous. *Sonnesyn v. Akin*, 12 N. D. 227, 97 N. W. 557.

As to similar provision in Cal. Civ. Code, § 3429, see *Melvin v. State*, 121 Cal. 16, 53 Pac. 416.

§ 7216. **Creditor defined.** A creditor within the meaning of this chapter is one is whose favor an obligation exists by reason of which he is or may become entitled to the payment of money. [R. C. 1905, § 6633; Civ. C. 1877, § 2019; R. C. 1899, § 5048.]

Should be liberally construed in relation to fraudulent transfers. *Soly v. Aasen*, 10 N. D. 108, 86 N. W. 108.

Vendor, as to whom sale is void by reason of his mental incapacity, is a "creditor." *First Nat. Bank v. Calkins*, 16 S. D. 445, 93 N. W. 646.

"Creditor" includes one existing before chattel mortgage. *Pierson v. Hickey*, 16 S. D. 46, 91 N. W. 339.

§ 7217. **Fraud only vitiates debtor's contract.** In the absence of fraud every contract of a debtor is valid against all his creditors existing or subsequent, who have not acquired a lien on the property affected by such contract. [R. C. 1905, § 6634; Civ. C. 1877, § 2020; R. C. 1899, § 5049.]

Transfer of funds made in good faith before judgment not fraudulent. *McLaughlin v. Bank*, 6 D. 406, 43 N. W. 715.

§ 7218. **Creditors may be preferred.** A debtor may pay one creditor in preference to another, or may give to one creditor security for the payment

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of his demand in preference to another
§ 2021; R. C. 1899, § 5050.]

In absence of fraud debtor may prefer a
Shenkberg Co., 11 S. D. 620, 80 N. W. 126
Church v. Foley, 10 S. D. 74, 71 N. W. 75
N. W. 14, 24 L.R.A. 524; Red River Bank
v. Downs, 6 S. D. 319, 60 N. W. 76; First
Salemonson v. Thompson, 13 N. D. 182,
N. D. 46, 132 N. W. 412.

Debtor may execute trust deed of all his
their claims for proportion received. Joa
Debtor can prefer by giving chattel mo
fund. Cutter v. Pollock, 4 N. D. 205, 59
Preference by mortgage or sale as an a
Conveyance or transfer to indemnify s
for creditors. 31 L.R.A.(N.S.) 332.

Right of insolvent debtor to transfer h
proceeds to the claims of such creditors
Effect of taking an excessive amount
as a fraud against other creditors. 21
Right of creditor to purchase from deb
As to similar provision in Cal. Civ. C
134, 59 Pac. 393.

§ 7219. Order of resort among cre
resort to each of several funds for t
person has an interest in or is entitle
all of them, the latter may require th
funds to which the latter has no suc
impairing the right of the former to
injustice to third persons. [R. C. 1
1899, § 5051.]

Order of resort among creditors. See
201, 73 N. W. 727.

ARTICLE 2.—FRAUDULENT

§ 7220. Transfers with intent to
of property or charge thereon made
judicial proceeding taken with inte
other person of his demands is void
their successors in interest and void
of the debtor devolves in trust aga
[R. C. 1905, § 6637; Civ. C. 1877, §

Conveyance by insolvent with secre
v. Wagness, 1 N. D. 62, 44 N. W. 101
Conveyance with sole object to secur
4 N. D. 100, 58 N. W. 792.

Conveyances to defraud a creditor
N. D. 317, 70 N. W. 271; Shauer v.
Gotzian & Co., 102 Fed. 937, 43 C. C. A.

Fraudulent grantee cannot hold lan
v. Ward, 6 N. D. 317, 70 N. W. 271;
Burt v. Gotzian & Co., 102 Fed. 937, 43

Fraudulent conveyances. Knowledge
inquiry. Transfer to relative raises no
7 N. D. 276, 74 N. W. 936.

As to assignment of threshing lien,
As to chattel mortgage, see Bergman
Consent of mortgagor for mortgage
sumption of fraud. Greely v. Winsor

As to sufficiency of allegations in
bert v. McDonald, 2 S. D. 495, 51 N.
Complaint to set aside conveyance
veyed all his property. Probert v. Mc
796.

Term "creditor" includes all parti
86 N. W. 108.

A statement of the law. Young v.
796.

CODE.

Special Relation

[R. C. 1905, § 6635; Civ. C. 1

ne creditor to another. Meyer B. & S. Co.
Jones v. Meyer, 7 S. D. 152, 63 N. W. 7
Sandwich Mfg. Co. v. Max, 5 S. D. 125,
Barnes, 8 N. D. 432, 79 N. W. 880; Jew
t. Bank v. North, 2 S. D. 480, 51 N. W. 8
1 N. W. 320; Wannemacher v. Merrill,

Property for benefit of those who will can
Jordan, 21 S. D. 379, 113 N. W. 73.
ages. Creation of lien does not create tru
W. 1062.

ment for creditors. 37 L.R.A. 337.
ties or indorsers as a voluntary assignmen

sets to a third person, who is to apply the
sees fit. 21 L.R.A.(N.S.) 513.
erty from debtor in payment of a claim
(N.S.) 222.

36 L.R.A. 335.
§ 3432, see Merced Bank v. Ivett, 127 Cal.

When a creditor is entitled to
tisfaction of his claim and another
a creditor to resort to some, but not
mer to seek satisfaction from those
im so far as it can be done without
complete satisfaction and without doing

§ 6636; Civ. C. 1877, § 2022; R. C.
1905.

Bank v. Moline, Milburn, Stoddard Co., 7 N. D.

INSTRUMENTS AND TRANSFERS.

defraud creditors void. Every transfer
made, every obligation incurred and every
to delay or defraud any creditor or
against all creditors of the debtor and
against any persons upon whom the estate
the benefit of others than the debtor.

§ 2023; R. C. 1899, § 5052.]
trust void as to attaching creditors. Newell
Bank v. Crawford, 4 D. 167, 28 N. W. 855.
honest debt not fraudulent. Paulson v. Ward.

void as to all. Daisy Roller Mills v. Ward, 6
Alterton, 151 U. S. 607, 38 L.ed. 286; Burt v.
A. 59.

and as security for advances. Daisy Roller Mills
Shauer v. Alterton, 151 U. S. 607, 38 L.ed. 286;
43 C. C. A. 59.

Suspicious circumstances exciting
edge of grantee. Fluegel, Jr., v. Henschel
no presumption of fraud.

see Faber v. Wagner, 10 N. D. 287, 86 N. W. 963
man v. Jones, 10 N. D. 520, 88 N. W. 284.

agree to sell property for his own benefit raises pre
sor. 1 S. D. 117, 55 N. W. 325, 36 Am. St. Rep. 720.
complaint and answer under this section, see Pro
N. W. 212.

to defraud creditors and state that debtor has con
McDonald, 2 S. D. 495, 51 N. W. 212, 39 Am. St. Rep.

rties who have demands. Soly v. Aasen, 10 N. D. 108
v. Harris, 4 D. 367, 32 N. W. 97.

One who knowingly takes conveyance or assignment to aid or abet scheme to defraud creditors cannot hold fraudulent instrument or any interest under it. *Burt v. C. Gotzian & Co.*, 102 Fed. 937, 43 C. C. A. 59; *Herman v. McKinney*, 47 Fed. 758.

Conveyance of homestead from husband to wife not fraudulent as to creditors. *First State Bank v. O'Leary*, 13 S. D. 204, 83 N. W. 45.

Assignment made to delay or defraud creditors is void as to them. (State) *Enderlin Bank v. Rose*, 4 N. D. 319, 58 N. W. 514, 26 L.R.A. 593.

Whether transfer is fraudulent is question of intent. *Dalrymple v. Loan & Trust Co.*, 9 N. D. 306, 83 N. W. 245; *Cahn v. Bank*, 1 S. D. 237, 46 N. W. 185.

Reservation of exemptions in assignment for creditors not fraudulent. *Red River Valley Bank v. Freeman*, 1 N. D. 196, 46 N. W. 36.

Property fraudulently conveyed is subject to levy under execution. *Salemonson v. Thompson*, 13 N. D. 182, 101 N. W. 320.

Fraudulent intent is vital fact which renders conveyance void. *Stevens v. Meyers*, 14 N. D. 338, 104 N. W. 529.

Bill of sale to son without consideration with secret agreement to pay certain creditors is void as in fraud of creditors. *Hall v. Feeney*, 22 S. D. 541, 21 L.R.A.(N.S.) 513, 18 N. W. 1038.

Verdict may be directed where, upon undisputed facts, instrument on which rights of parties depends, being pledge, chattel mortgage or absolute conveyance of title, with secret reservation of interest, is void. *Walklin v. Horswill*, 24 S. D. 191, 123 N. W. 668.

Redemption of property from execution sale by judgment debtor in name of another is a fraudulent conveyance. *Lynch v. Burt*, 132 Fed. 417.

As to what are voluntary transfers, see notes, 7 Am. Dec. 362; 14 Am. Dec. 703; 28 Am. Rep. 721.

Presumption that voluntary transfers are in fraud of creditors. 119 Am. St. Rep. 556. Pre-existing debt as consideration for bona fide purchase of property not negotiable. 86 L.R.A. 161.

When will a purchaser of property for less than its value, without fraudulent intent, be regarded as a trustee for creditors. 5 L.R.A.(N.S.) 395.

Rights and title of parties under fraudulent conveyance. 34 Am. Dec. 765. Purchaser's ignorance of debtor's fraudulent intent in conveyance to him. 36 L.R.A. 338.

Effect of vendee's knowledge of fraudulent intent. 34 Am. St. Rep. 395. Effect of fraudulent conveyance on title of fraudulent grantee as to parties not creditors. 67 L. R.A. 889.

Effect of fraudulent conveyance on title of bona fide purchaser from fraudulent grantee. 67 L.R.A. 891; 28 Am. Dec. 688; 28 Am. Dec. 734.

Effect of fraudulent conveyance on title conveyed by bona fide purchaser to one having knowledge of the fraud. 67 L.R.A. 898.

Invalidation by participation in debtor's fraud of transfer for good consideration. 32 L.R.A. 33.

Participation by purchaser in vendor's fraud which will invalidate transfer for good consideration. 32 L.R.A. 33.

Participation by creditor in fraudulent intent of debtor which will make a transfer to pay or secure his debt invalid as to other creditors. 31 L.R.A. 609.

Effect of relationship to show participation by creditors in debtor's fraudulent intent. 31 L.R.A. 645.

Transfers between husband and wife as fraudulent conveyances. 19 Am. St. Rep. 657; 20 Am. St. Rep. 715; 90 Am. St. Rep. 497.

Burden of proof as to fraud against creditors in transfer from husband to wife. 56 L.R.A. 823.

Validity of arrangement for household finances as against husband's creditors. 43 L.R.A.(N.S.) 685.

Admissibility of declarations by vendor made out of court as to his purpose in making a conveyance or transfer attacked as fraudulent as against creditors. 41 L.R.A.(N.S.) 1.

Federal courts following state decisions as to questions in relation to fraudulent transfers of property. 40 L.R.A.(N.S.) 420.

Recovery of nonexempt property conveyed to avoid nonexistent or unfounded demand. 1 L.R.A.(N.S.) 1007.

Declarations of vendor, as evidence against his vendee to show fraud. 42 Am. Dec. 631. Transfers of exempt property. 20 Am. Rep. 150.

Right of grantee to avoid actions for the purchase price. 30 Am. Rep. 517. Proof of fraud. 11 Am. St. Rep. 757.

Relief from fraudulent conveyance after death of grantor. 135 Am. St. Rep. 329. Relief in equity from fraudulent conveyance at instance of one of the parties. 7 Am. St. Rep. 587.

Right of grantor to obtain relief from fraudulent conveyance. 15 Am. Dec. 599. Right of client to recover property placed in name of his attorney in order to defraud creditors. 37 L.R.A.(N.S.) 161.

As to similar provision in Cal. Civ. Code, § 3439, see *Windhaus v. Bootz*, 3 Cal. Unrep. 351, 25 Pac. 404; *Francisco v. Aguirre*, 94 Cal. 180, 29 Pac. 495; *Salisbury v. Burr*, 114

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Cal. 451, 46 Pac. 270; Murray v. Murray, 115
97, 47 Pac. 37; First Nat. Bank v. Menke, 12
131 Cal. 625, 63 Pac. 1008; Greer v. Greer, 12
135 Cal. 156, 67 Pac. 46.

§ 7221. Transfer of personalty without fraudulent. Every sale made by a vendor session or under his control and every assignment the same is accompanied by an immediate and continued change of possession of the presumed to be fraudulent and void as against assignor, or subsequent purchasers or in value, unless those claiming under such that the same was made in good faith delay or defraud such creditors, purchase § 6638; Civ. C. 1877, § 2024; 1893, ch. 78

Assignment free from fraud in inception acts. Wright v. Lee, 10 S. D. 263, 72 N. Possession may be by agent, and that a 296, 19 N. W. 417.

Filing chattel mortgage is equivalent possession. Reichert v. Simons, 6 D. 239, Transfer of personal property must be a session, or it will be void as to creditors. 286, 14 S. Ct. R. 442; Conrad v. Smith, 2 8 S. D. 398, 66 N. W. 935; Greeley v. W Rep. 720; Longley v. Daly, 1 S. D. 257, Gardiner, 5 S. D. 246, 58 N. W. 557; Noy Nat. Bank v. Comfort, 4 D. 167, 28 N. W. 815; State v. Elevator Co., 6 N. D. 41, 6 N. W. 288.

Question of change of possession is one N. W. 987; Rosenbaum v. Hayes, 8 N. D. 461, 79

Assignment accompanied by immediate Lee, 10 S. D. 263, 72 N. W. 895.

Question of fraudulent intent is one of 12 S. D. 411, 81 N. W. 732; First Nat. B

Recording of mortgage answers purpose S. D. 46, 91 N. W. 339.

Where there is transfer of title as well tion. Walklin v. Horswill, 24 S. D. 191.

Has no application to pledge of corpo in action evidenced by writing. Stat

L.R.A.(N.S.) 523, 127 N. W. 590.

Retention of possession by grantor as Sufficiency of change of possession as L.R.A. 425.

Estoppel of one who permits title to title as against latter's creditors. 30 L

Rights of purchaser of personal pro vendor, because of inconvenience of

Change of possession sufficient as Am. Dec. 340.

Is failure to take immediate possession before attachment of the particular 28 L.R.A.(N.S.) 214.

Necessity of delivery to protect purchaser interest in personalty not in his possession. L.R.A.(N.S.) 1131.

Overcoming presumption of fraud Law governing necessity of change

Necessity for change of possession creditors of former owner. 36 L.R.A

Setting aside pledged or mortgage own premises, or under his own c L.R.A.(N.S.) 525.

Effect of chattel mortgagee taking itors has attached to cure origin L.R.A.(N.S.) 110.

ing possession before any specific right or lien of cred- ginal defect in mortgage as against creditors. 25

change of possession. 64 L.R.A. 355, 361.

ion to uphold sale under chattel mortgage as against R.A.(N.S.) 1018.

aged property retained by pledgor or mortgagor on his control, as a delivery or change of possession. 25

ing possession before any specific right or lien of cred- ginal defect in mortgage as against creditors. 25

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Special Relations, E

Cal. 266, 37 L.R.A. 626, 53 Am. St. Rep
Cal. 103, 60 Pac. 675; Tuers v. Tuers
Cal. 121, 67 Pac. 20; Roberts v. Burr,

change of possession presumed of personal property in his pos- sionment of personal property, unless delivery and followed by an actual property sold or assigned, shall be inst the creditors of the vendor or mbrancers in good faith and for mbrancers or assignment make it appear without any intent to hinder, or incumbrancers. [R. C. 1905, 1; R. C. 1895, § 5053.]

not invalidated by subsequent fraudulent may be vendor. Grady v. Baker, 3 D.

ual delivery and continued change of W. 657.

anied by open and visible change in pos- uer v. Alterton, 151 U. S. 607, 38 Led.

408, 51 N. W. 720; Howard v. Dwight, 1 S. D. 117, 45 N. W. 325, 36 Am. St.

W. 247; Black Hills Mercantile Co. v. Belding, 6 S. D. 629, 62 N. W. 953; First Conrad v. Smith, 6 N. D. 337, 70 N. W.

W. 81; Morrison v. Olum, 3 N. D. 76, 54

for jury. Rosenbaum v. Hayes, 8 N. D. 461, 79 D. 311, 86 N. W. 973.

change of possession not fraudulent. Wright v. and not law. First Nat. Bank v. Calkins,

Bank v. McMillan, 9 S. D. 227, 68 N. W. 537. immediate delivery. Pierson v. Hickey, 16

well as of possession this section has no applica- 91, 123 N. W. 668.

porate stock any more than it would to any chose Bkg. & T. Co. v. Taylor, 25 S. D. 577, 29

as showing fraudulent intent. 31 L.R.A. 635. 22 as regards creditors by delivery to carrier.

real property to stand in another's name to assert L.R.A.(N.S.) 1.

property who temporarily leaves it in possession of taking immediate possession, as against subse- creditors of, the vendor. 25 L.R.A.(N.S.) 604.

against creditors and subsequent purchasers. 97 session upon sale of chattels cured by taking posses- sion of the person attacking the sale.

purchaser against creditors of seller of an undivided session. 31 L.R.A.(N.S.) 1162.

fraud flowing from retention of possession. 24

Validity of a chattel mortgage of stock of merchandise as affected by a provision or agreement giving the mortgagor the possession with power of sale. 18 L.R.A. 604; 36 L.R.A. (N.S.) 1181.

As to similar provision in Cal. Civ. Code, § 3440, see *Watson v. Rodgers*, 53 Cal. 401; *Hesthal v. Myles*, 53 Cal. 623; *Merrill v. Hurlburt*, 63 Cal. 494; *Kelly v. Murphy*, 70 Cal. 560, 12 Pac. 467; *Newell v. Desmond*, 74 Cal. 46, 15 Pac. 369; *Tregear v. Etiwanda Water Co.*, 76 Cal. 537, 9 Am. St. Rep. 245, 18 Pac. 658; *Brown v. Bank of Napa*, 77 Cal. 544, 20 Pac. 71; *Morgan v. Ball*, 81 Cal. 93, 5 L.R.A. 579, 15 Am. St. Rep. 34, 22 Pac. 331; *Bunting v. Saltz*, 84 Cal. 168, 24 Pac. 167; *Bull v. Bray*, 89 Cal. 286, 13 L.R.A. 576, 26 Pac. 873; *Brown v. O'Neal*, 95 Cal. 262, 29 Am. St. Rep. 111, 30 Pac. 538; *Freeman v. Hensley*, 3 Cal. Unrep. 536, 30 Pac. 792; *Kirk v. Roberts*, 3 Cal. Unrep. 671, 31 Pac. 620; *Porter v. Bucher*, 98 Cal. 454, 33 Pac. 335; *Banning v. Marlean*, 101 Cal. 238, 35 Pac. 772; *Howe v. Johnson*, 107 Cal. 67, 40 Pac. 42; *Brown v. Cline*, 109 Cal. 156, 41 Pac. 862; *Bank of Ukiah v. Gibson*, 109 Cal. 197, 41 Pac. 1008, 1010; *Dubois v. Spinks*, 114 Cal. 289, 46 Pac. 95; *Lilienthal v. Ballou*, 6 Cal. Unrep. 179, 55 Pac. 251; *Matteucci v. Whelan*, 123 Cal. 312, 69 Am. St. Rep. 60, 55 Pac. 990; *Feeley v. Boyd*, 143 Cal. 282, 65 L.R.A. 943, 76 Pac. 1029.

§ 7222. When only act of debtor void for fraud. A creditor can avoid the act or obligation of his debtor for fraud only when the fraud obstructs the enforcement by legal process of his right to take the property affected by the transfer or obligation. [R. C. 1905, § 6639; Civ. C. 1877, § 2025; R. C. 1899, § 5054.]

Excess of value of security over debt secured raises no presumption of fraud on that account. *Black Hills Co. v. Gardiner*, 5 S. D. 246, 58 N. W. 557.

As to similar provision in Cal. Civ. Code, § 3441, see *Blanc v. Paymaster Min. Co.*, 95 Cal. 524, 29 Am. St. Rep. 149, 30 Pac. 765.

§ 7223. When fraudulent intent question of fact. In all cases arising under section 5599 or under the provisions of this chapter the question of fraudulent intent is one of fact and not of law; nor can any transfer or charge be adjudged fraudulent solely on the ground that it was not made for a valuable consideration. [R. C. 1905, § 6640; Civ. C. 1877, § 2026; R. C. 1899, § 5055.]

Fraudulent intent must be alleged and made to appear. *Dalrymple v. Trust Co.*, 9 N. D. 306, 83 N. W. 245.

Transfer not fraudulent solely for absence of valuable consideration. *First State Bank v. O'Leary*, 13 S. D. 204, 83 N. W. 45.

Section not prevent court from directing verdict. *First Nat. Bank v. North*, 2 S. D. 480, 51 N. W. 96.

Conveyance from husband to wife while deeply in debt not necessarily fraudulent. *First State Bank v. O'Leary*, 13 S. D. 204, 83 N. W. 45.

Assignment for benefit of creditors; change of possession. *Wright v. Lee*, 10 S. D. 263, 72 N. W. 895.

Question of fraudulent intent is one of fact and not law. *Probert v. McDonald*, 2 S. D. 495, 51 N. W. 212, 39 Am. St. Rep. 796; *Dalrymple v. Trust Co.*, 9 N. D. 306, 83 N. W. 245; *Gaines v. White*, 1 S. D. 434, 47 N. W. 524; *Bergman v. Jones*, 10 N. D. 520, 88 N. W. 284; *Stevens v. Meyers*, 14 N. D. 398, 104 N. W. 529.

Fraud as to creditors may be question of law where facts are undisputed. *Hall v. Feeney*, 22 S. D. 541, 21 L.R.A. (N.S.) 513, 18 N. W. 1038.

Verdict may be directed where upon undisputed facts instrument on which rights of parties depends, being pledge, chattel mortgage or absolute conveyance of title, with secret reservation of interest, is void. *Walklin v. Horswill*, 24 S. D. 191, 123 N. W. 668.

Effect of statutes making fraud a question for the jury where mortgagor of merchandise is left in possession with power of sale. 18 L.R.A. 611.

As to similar provision in Cal. C. Code, § 3442, see *Roberts v. Burr*, 6 Cal. Unrep. 154, 54 Pac. 849; *Poulson v. Stanley*, 122 Cal. 655, 68 Am. St. Rep. 73, 55 Pac. 605; *Wolters v. Rossi*, 126 Cal. 644, 59 Pac. 143; *Gray v. Brunold*, 140 Cal. 615, 74 Pac. 303; *Re Vance*, 141 Cal. 624, 75 Pac. 323.

CHAPTER 112.

SALES AND ASSIGNMENTS.

The title of the act of 1913 constituting this chapter reads as follows: "An act to amend and re-enact chapter 221 of the Session Laws of North Dakota for 1907, entitled 'An act providing for the giving of notice by merchants to their creditors before making sale of their entire stock or business.'" Laws 1907, ch. 221, above mentioned, consisted of two sections, the first of which was evidently amended to make section 7224 here. The second section read as follows: "Present rule of evidence continued. Except as expressly provided in this act, nothing therein contained nor any act thereunder shall change or affect the present rules of evidence or the present presumptions of law."

§ 7224. Fraud to sell entire stock assignment, in bulk, of any part or merchandise and fixtures pertaining to the business of the seller, transferor or assignor of the seller, transferee or assignor, make a full detailed inventory of the sale, and purchaser, transferee or assignor, exercise of reasonable care in the purchase and assignor a written list of the seller, transferrer and assignor, and unless the purchaser, transferor or assignor, notify persons whose names and address are stated in the proposed sale and of the price, before taking possession of such goods, he shall be liable to the purchaser, transferee or assignor, for the full value of the goods, wares, merchandise and fixtures that have come into the possession by virtue of such sale.

§ 7225. Parties to whom this chapter applies. Sellers, transferrers and assignees, under this chapter, shall include corporations, associations, partnerships and individuals. But nothing contained in this chapter shall apply to sales by executors, administrators, receivers, trustees in bankruptcy or by any public officer under judicial process.

§ 7226. Accountability of purchaser, transferee or assignee, who shall, upon application of the assignor, become a receiver for all the goods, wares, merchandise and fixtures that have come into the possession by virtue of such sale.

§ 7227. Purchasers conforming to chapter shall not in any way be held accountable to any creditor of the seller, transferrer or assignor for fixtures that have come into the possession by virtue of such sale, transfer or assignment. [1913, ch. 247, § 5.]

Constitutionality of bulk-sale, transfer or assignment. 12 L.R.A.(N.S.) 160.
Applicability of statutes on sale of property. 45 L.R.A.(N.S.) 497.
Applicability of bulk-sales law to chattel mortgages. 45 L.R.A.(N.S.) 497.
What kind or classes of property to which the bulk-sales law applies. 45 L.R.A.(N.S.) 497.
Effect of misrepresentations made in violation of bulk-sales law. 39 L.R.A.(N.S.) 492.

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Sales and Assignments.

Goods, when. The sale, transfer or whole of a stock of merchandise, or the conducting of said business, otherwise and in the regular prosecution of the business, shall be void as against the assignor, unless the seller, transferrer, assignee, shall, at least five days before showing the quality and, so far as possible, the cost price to the seller, to be included in the sale; and unless demand and receive from the seller, names and addresses of the creditors with the amount of indebtedness due, transferee and assignor, under oath, of his creditors, and of his indebtedness and assignee shall, at least five days before, or by registered mail every creditor a list, or of which he has knowledge, terms and conditions thereof. [1913, ch. 247, § 3.]

Chapter applies. Sellers, transferrers and assignees, under this chapter, shall include corporations, associations, partnerships and individuals. But nothing contained in this chapter shall apply to sales by executors, administrators, receivers, trustees in bankruptcy or by any public officer under judicial process.

Not conforming hereto. Any purchaser, transferee or assignee, who shall conform to the provisions of this chapter, shall not conform to the provisions of this chapter, and be held accountable to such creditor for the goods, wares, merchandise and fixtures that have come into the possession by virtue of such sale, transfer or assignment. [1913, ch. 247, § 5.]

Not protected. Provided, however, that the purchaser, transferee or assignee, who shall conform to the provisions of this chapter, shall not conform to the provisions of this chapter, and be held accountable to any creditor of the seller, transferrer or assignor, for the goods, wares, merchandise and fixtures that have come into the possession by virtue of such sale, transfer or assignment. [1913, ch. 247, § 5.]

Application of bulk-sales law to chattel mortgages. 45 L.R.A.(N.S.) 497.
What kind or classes of property to which the bulk-sales law applies. 45 L.R.A.(N.S.) 497.
Effect of misrepresentations made in violation of bulk-sales law. 39 L.R.A.(N.S.) 492.

CHAPTER 113.

NUISANCE.

- ARTICLE 1. GENERAL PRINCIPLES, §§ 7228-7233.
 2. PUBLIC NUISANCE, §§ 7234-7239.
 3. PRIVATE NUISANCES, §§ 7240, 7241.

ARTICLE 1.—GENERAL PRINCIPLES.

7228. Nuisance defined. A nuisance consists in unlawfully doing an act or omitting to perform a duty, which act or omission either:

1. Annoys, injures or endangers the comfort, repose, health or safety of others; or,
2. Offends decency; or,
3. Unlawfully interferes with, obstructs or tends to obstruct or renders dangerous for passage any lake or navigable river, bay, stream, canal or basin, or any public park, square, street or highway; or,
4. In any way renders other persons insecure in life or in the use of property. [R. C. 1905, § 6641; Civ. C. 1877, § 2047; R. C. 1899, § 5056.]

The question of nuisance or no nuisance is always a question of fact. *Teinen v. Lally*, 10 N. D. 153, 86 N. W. 356.

Railway stockyards in residence district of town may be prohibited as nuisance, irrespective of condition in which kept. *Colton v. South Dakota Central Land Co.*, 25 S. D. 309, 28 L.R.A.(N.S.) 122, 126 N. W. 507.

Person contracting with drainage board is liable in tort for placing obstruction in street and not upon contract. *Solberg v. Schlosser*, 20 N. D. 307, 30 L.R.A.(N.S.) 1111, 127 N. W. 91.

Auction as a nuisance. 20 L.R.A.(N.S.) 972.

Auction in street as a nuisance, subject to city control. 39 L.R.A. 678.

Driving foul air against a neighbor's windows as a nuisance. 9 L.R.A.(N.S.) 695.

Stable for horses as a nuisance. 17 L.R.A.(N.S.) 1025; 32 Am. Rep. 141.

Storage of explosives as a nuisance. 16 L.R.A.(N.S.) 691; 38 L.R.A. 306.

Hospital as a nuisance. 29 L.R.A.(N.S.) 49.

Insane asylum or hospital for insane as a nuisance. 40 L.R.A.(N.S.) 647.

Undertaker's establishment as a nuisance. 31 L.R.A.(N.S.) 608.

Cemetery as a nuisance. 31 L.R.A.(N.S.) 945; 34 L.R.A.(N.S.) 565.

Dancing as a nuisance. 18 L.R.A.(N.S.) 699.

Pool selling as a nuisance. 10 L.R.A.(N.S.) 992; 21 L.R.A.(N.S.) 836.

Coasting as a nuisance. 42 L.R.A.(N.S.) 867.

Bees as a nuisance. 62 L.R.A. 133.

Spring guns, traps and other dangerous instruments on premises as a nuisance. 29 L.R.A. 158.

Projection of building or other structure over the boundary as a nuisance. 32 L.R.A.(N.S.) 1010.

Trees near boundary as a nuisance. 2 B. R. C. 901.

Noise with or without vibration incident to lawful industrial business as a nuisance. 17 L.R.A.(N.S.) 287.

Keeping of barking dogs as a nuisance. 7 L.R.A.(N.S.) 349.

Bowling alley as a nuisance. 40 L.R.A.(N.S.) 75.

Noise on street as a nuisance subject to municipal control. 39 L.R.A. 672.

Liability of railroad for creating a nuisance by noise. 32 L.R.A.(N.S.) 371.

Use of soft coal as a nuisance. 13 L.R.A.(N.S.) 465.

Coal yards as a nuisance. 32 L.R.A.(N.S.) 522.

Operation of brick kiln as a nuisance. 2 L.R.A.(N.S.) 92.

Gas plant as a nuisance. 20 L.R.A.(N.S.) 466.

Authority of the legislature to declare what are nuisances. 47 Am. St. Rep. 544.

Businesses and machinery which may be enjoined as nuisances. 51 Am. Rep. 467.

Debris in streams as nuisance. 30 Am. St. Rep. 551.

Offensive trades and manufactures as nuisance. 42 Am. Rep. 540.

Percolating of filthy water nuisance. 39 Am. Rep. 16.

§ 7229. Public nuisance. A public nuisance is one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal. [R. C. 1905, § 6642; Civ. C. 1877, § 2048; R. C. 1899, § 5057.]

§ 7234. Not legalizing public nuisance
1905, § 6647

1. Twenty years; Civ. C. 1877, § 2053
 2. Deadwood v. Hursh, 30 of ar
 3. Prescriptive right to maintain a public nuisance
 4. to maintain a public nuisance
 5. of maintain a public nuisance
 6. substance. 25 L.R.A.(N.S.) 589
 7. Remedies against.
 8. Indictment.
 9. A civil action; or,
 10. Abatement. [R. C. 1877, § 2053]
 11. A municipal corporation
 12. equity to restrain
 13. S. D. 449
 14. Municipal
 15. 588

_____ action; or, _____
_____ against. _____
_____ The _____
_____ A municipal corporation may, § 66—
_____ equity to restrain, prohibit _____
_____ S. D. 449, 66 N. W. 819, 120 Am. St. _____
_____ Municipality may enjoin _____
_____ 588, 97 N. W. 1045. _____
_____ Power of municipal corporations _____
_____ same. 27 Am. Dec. 98; _____
_____ Remedy for obstruction or destruc- _____
_____ Remedy for protection from po _____
_____ L.R.A. (N.S.) 1166. _____
_____ 1. Criminal responsibility of cor- _____
_____ of municipality for maintain _____
_____ to public health. 22 L.R.A. (N.S.) _____
_____ for maintenance of nuisance _____

Nuisance.

of statute deemed nuisance. Nothing express authority of a statute can be 4; Civ. C. 1877, § 2050; R. C. 1899,

ty for private nuisance. 1 L.R.A.(N.S.) 49.
as affecting nuisance. 20 L.R.A.(N.S.) 469.
not to be presumed. 70 L.R.A. 579.

not abating. Every successive owner continuing nuisance upon or in the use owner is liable therefor in the same it. [R. C. 1905, § 6645; Civ. C. 1877,

of nuisance. 14 Am. Dec. 336.
the act or negligence of an independent con-
sance which he did not create. 86 Am. St. Rep.

Code, § 3483, see *Castle v. Smith*, 4 Cal. Unrep.

dicted by abatement. The abatement of
right of any person to recover damages
6646; Civ. C. 1877, § 2052; R. C. 1899,

time. No lapse of time can legalize a
 tual obstruction of public right. [R. C.
 C. 1899, § 5062.]

to pollute stream with sewage or other harmful

Remedies against a public nuisance are:

48; Civ. C. 1877, § 2054; R. C. 1899, § 5063.]
 or proper circumstances invoke the aid of a court of
 press a public nuisance. *City of Huron v. Bank*,
 t. Rep. 769.

to determine what is a nuisance and to remove the
 t. Rep. 372.
 u. tion of rights of navigation. 59 L.R.A. 91.
 ollution of source of municipal water supply. 11

by servant, agent or partner. 41 L.R.A. 655.

2. How far property right necessary to sustain action for nuisance. 15 L.R.A. 689.
 Private right of action for public nuisance. 31 Am. Dec. 132; 25 Am. Rep. 533.
 Who may obtain injunction against a public nuisance. 67 Am. Dec. 203; 52 Am. Rep. 574.
 Private right of action for obstruction of navigable stream. 3 L.R.A.(N.S.) 1126; 38 L.R.A.(N.S.) 763.
 Doctrine of comparative injury in suit to enjoin nuisance. 31 L.R.A.(N.S.) 881.
 Theory of nuisance as basis of recovery by abutter for injury to property from railroad in street. 36 L.R.A.(N.S.) 756.
 Obstructions in highway preventing access to property except by a circuitous route as a special injury entitling owner to maintain action for damages or to abate the nuisance. 8 L.R.A.(N.S.) 227; 21 L.R.A.(N.S.) 75.
 Interference with one's use of a highway as a special damage which will sustain an action by him against the wrongdoer. 28 L.R.A.(N.S.) 1053.
 Right of owner to recover damages to property from nuisance, not of a permanent character, existing before the commencement or at time of the renewal of the tenancy. 3 L.R.A.(N.S.) 1060.
 Right of a municipality to maintain suit to enjoin a public nuisance. 51 L.R.A. 657.
 Injunction against nuisances in water and water courses. 40 L.R.A. 465.
 Injunction against nuisances affecting public morals, peace and good order and health and safety. 41 L.R.A. 321.
 Injunction against nuisances upon highways and streets. 42 L.R.A. 814.
 Injunction against nuisances by railroads and electrical companies. 44 L.R.A. 565.
 Right of owner or occupant of neighboring property to enjoin maintenance of house of prostitution. 11 L.R.A.(N.S.) 1060; 42 L.R.A.(N.S.) 1041.
 3. Right to abate nuisances by destruction. 26 Am. Dec. 443; 44 Am. Rep. 111.
 Right to abate nuisance by interference with fishing rights. 60 L.R.A. 524.
 Right of municipality to maintain suit to abate nuisance. 51 L.R.A. 657.
 State as proper party to maintain bill to abate nuisance in city street. 19 L.R.A.(N.S.) 1172.
§ 7236. Indictment. The remedy by indictment is regulated by the penal code and the code of criminal procedure. [R. C. 1905, § 6649; Civ. C. 1877, § 2055; R. C. 1899, § 5064.]
§ 7237. Civil action. A private person may maintain an action for a public nuisance if it is specially injurious to himself, but not otherwise. [R. C. 1905, § 6650; Civ. C. 1877, § 2056; R. C. 1899, § 5065.]
 Private action for public nuisance. 31 Am. Dec. 132; 25 Am. Rep. 533.
§ 7238. Abated by public officer. A public nuisance may be abated by any public body or officer authorized thereto by law. [R. C. 1905, § 6651; Civ. C. 1877, § 2057; R. C. 1899, § 5066.]
 Power of health authorities to require alterations of private property in a particular manner. 24 L.R.A.(N.S.) 341.
§ 7239. By private person. Any person may abate a public nuisance which is specially injurious to him by removing or, if necessary, destroying the thing which constitutes the same without committing a breach of the peace or doing unnecessary injury. [R. C. 1905, § 6652; Civ. C. 1877, § 2058; R. C. 1899, § 5067.]
 Abatement of public nuisance by a private person without suit. 124 Am. St. Rep. 591.
 Right of private citizen to destroy liquor illegally kept for sale. 26 L.R.A.(N.S.) 996.
 Special damage from awning or structure overhanging street which will sustain action by private person to abate it. 48 L.R.A.(N.S.) 173.

ARTICLE 3.—PRIVATE NUISANCES.

- § 7240. Remedies against.** The remedies against a private nuisance are:
 1. A civil action; or,
 2. Abatement. [R. C. 1905, § 6653; Civ. C. 1877, § 2059; R. C. 1899, § 5068.]
 Right of one in possession to maintain action for nuisance without proving title. 34 L.R.A.(N.S.) 560.
 Right of lessee to maintain suit to abate a nuisance affecting possession. 3 L.R.A.(N.S.) 448.
 Nuisances that will be enjoined as interfering with the comfortable enjoyment of real property. 10 Am. Rep. 674.
 Injunction against threatened nuisance. 73 Am. Dec. 113.
 Right of property owner to damages or injunction for maintenance of electric light plant in vicinity of his property. 27 L.R.A.(N.S.) 237.
 Respective liabilities of landlord and tenant for nuisances to each other and to third persons. 50 Am. Dec. 776.

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Judgment in suit to abate nuisance
L.R.A. 735.
Effect of legislative authority on remedy.
§ 7241. How person may abate.
may abate it by removing or, if ne-
stitutes the nuisance without com-
unnecessary injury. [R. C. 1905, §
§ 5069.]

Right of injured person to abate
Am. Rep. 111.
§ 7242. When notice required.
mere omission of the wrongdoer and
his land, reasonable notice must be
[R. C. 1905, § 6655; Civ. C. 1877, §

§ 7243. How to be used and applied
after set forth are intended not to
of this code, but to aid in their just
1877, § 2062; R. C. 1877, § 2078; R.
is instruction defining terms "neglige-
75, 132 N. W. 640, Ann. Cas. 1913E, 100
§ 7244. When the reason of a rule
1905, § 6657; Civ. C. 1877, § 2063;
N. W. 236, 42 L.R.A. 549; Trotter v. L.
887; Meade County v. Hoehn, 12 S. D.
57, 49 N. W. 419; Sherwood v. Barnes
§ 7245. When the reason is the
1905, § 6658; Civ. C. 1877, § 2064;
On second mortgage acting under
507, being entitled to restore same.
As applied to purchaser of mortg-
Stover, 20 S. D. 459, 129 Am. St. Re-
Purchaser holds mortgaged property
faction by mortgagee but not proper
258, 129 Am. St. Rep. 927, 105 N. W.
§ 7246. One must not change his
1905, § 6659; Civ. C. 1877, § 2065;
his benefit. Any one may waive his
§ 7247. But a law established th-
by a private agreement. [R. C. 19
§ 5075.]
Register of deeds may waive paym-
N. W. 97, 65 Am. St. Rep. 715, 6
Bond on appeal from justice
Co., 10 S. D. 633, 75 N. W. 198, 6
70 N. W. 636.
Accused which may withdraw affidavit
955, Ann. Cas. 1912A, 1070.
§ 7248. One must so use his own
of another. [R. C. 1905, § 6661;
13 N. D. 458, 101 N. W. 894.
Expression "rights of others" me-
mined by our moral and ethical st-
258, Ann. Cas. 1913D, 429, 1 N. C.

MAXIMS OF

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TER 114.

RISPRUDENCE.

The maxims of jurisprudence herein-

qualify any of the foregoing provisions

application. [R. C. 1905, § 6656; Civ. C.

1899, § 5071.]

"and negligently" in exact language of code

instruction was asked. Zilke v. Johnson, 22 N. D.

ceases, so should the rule itself. [R. C.

C. 1899, § 5072.]

cases. Troy Min. Co. v. White, 10 S. D. 475, 74

Ass., 9 S. D. 596, 70 N. W. 843, 62 Am. St. Rep.

68, 81 N. W. 886; Braithwaite v. Aiken, 2 N. D.

county, 22 N. D. 310, 134 N. W. 38.

ne the rule should be the same. [R. C.

C. 1899, § 5073.]

stake of fact in paying and releasing first mort-

ome Invest. Co. v. Clarson, 21 S. D. 72, 100 N. W.

ed property paying outstanding debt. Barry v.

941, 107 N. W. 672.

free from mortgage, where record showed satis-

ignment to another. McVay v. Tousley, 20 S. D.

932.

eleg. Co., 25 S. D. 319, 126 N. W. 621; Shearer v.

63; State v. Carlisle, 30 S. D. 475, 139 N. W. 127.

purpose to the injury of another. [R. C.

R. C. 1899, § 5074.]

advantage of a law intended solely for

for a public reason cannot be contravened

05, § 6660; Civ. C. 1877, § 2066; R. C. 1899,

ment of fees. Parrish v. Mahaney, 10 S. D. 276, 73

t not waived by agreement of parties. Brown v. Ry.

65 Am. St. Rep. 730; Smith v. Coffin, 9 S. D. 502,

of prejudice filed and thus waive disqualification of

such affidavit. State v. Ham, 24 S. D. 639, 124 N. W.

wn rights as not to infringe upon the rights

Civ. C. 1877, § 2067; R. C. 1899, § 5076.]

operty as to "injure" another. Carroll v. Rye Twp.,

means legal rights and does not include all rights deter-

standards. Langer v. Goode, 21 N. D. 462, 131 N. W.

C. C. A. 772.

1686

Railway stockyards in residence district of town may be prohibited as nuisance, irrespective of condition in which kept. *Colton v. South Dakota Central Land Co.*, 25 S. D. 309, 28 L.R.A.(N.S.) 122, 126 N. W. 507.

The application of the maxim *sic utere tuo ut alienum non laedas* to injuries by blasting. 6 L.R.A.(N.S.) 570.

§ 7249. He who consents to an act is not wronged by it. [R. C. 1905, § 6662; Civ. C. 1877, § 2068; R. C. 1899, § 5077.]

Accused cannot object to bias of officer summoning jury where he consented to his appointment. *State v. Hayes*, 23 S. D. 596, 122 N. W. 652.

On applicability of section to procure accounting as to partnership affairs. *Gorman v. Madden*, 27 S. D. 319, 131 N. W. 290.

§ 7250. Acquiescence in error takes away the right of objecting to it. [R. C. 1905, § 6663; Civ. C. 1877, § 2069; R. C. 1899, § 5078.]

Applicable to errors in procedure. *Pyke v. Jamestown*, 15 N. D. 157, 107 N. W. 359.

As to irregularity in directing verdict after receiving additional evidence without renewal of motion therefor, without objection being disregarded. *Dring v. St. Lawrence Twp.*, 23 S. D. 624, 122 N. W. 664.

"Acquiescence" means "to rest apparently satisfied without objection; a silent or passive assent." *Farr v. Semmler*, 24 S. D. 290, 123 N. W. 835.

One who expressly consents to redundant bill cannot insist as matter of right that it shall be stricken out. *Whaley v. Vidal*, 26 S. D. 300, 128 N. W. 381.

§ 7251. No one can take advantage of his own wrong. [R. C. 1905, § 6664; Civ. C. 1877, § 2070; R. C. 1899, § 5079.]

As to taking advantage of one's own wrong. 5 L.R.A. 344.

—how far abrogated by statute. 25 L.R.A. 564.

Homicide as affecting devolution of property. 3 L.R.A.(N.S.) 726; 39 L.R.A.(N.S.) 1088.

Murder of insured as affecting right to insurance. 3 L.R.A.(N.S.) 727; 28 L.R.A.(N.S.) 975.

Effect of homicide on right to probate will of fact that legatee is murderer of testator. 34 L.R.A.(N.S.) 967.

§ 7252. He who has fraudulently dispossessed himself of a thing may be treated as if he still had possession. [R. C. 1905, § 6665; Civ. C. 1877, § 2071; R. C. 1899, § 5080.]

§ 7253. He who can and does not forbid that which is done on his behalf is deemed to have bidden it. [R. C. 1905, § 6666; Civ. C. 1877, § 2072; R. C. 1899, § 5081.]

§ 7254. No one should suffer by the act of another. [R. C. 1905, § 6667; Civ. C. 1877, § 2073; R. C. 1899, § 5082.]

Relates only to law of evidence. *Carroll v. Rye Twp.*, 13 N. D. 458, 101 N. W. 894.

§ 7255. He who takes the benefit must bear the burden. [R. C. 1905, § 6668; Civ. C. 1877, § 2074; R. C. 1899, § 5083.]

No one should be allowed to rely on what is beneficial to him and repudiate what is not, in any instrument or transaction. *Christiernson v. Hendrie & B. Mfg. & Supply Co.*, 26 S. D. 519, 128 N. W. 603.

§ 7256. One who grants a thing is presumed to grant also whatever is essential to its use. [R. C. 1905, § 6669; Civ. C. 1877, § 2075; R. C. 1899, § 5084.]

§ 7257. For every wrong there is a remedy. [R. C. 1905, § 6670; Civ. C. 1877, § 2076; R. C. 1899, § 5085.]

As authorizing wife to maintain action in her own name. *King v. Hanson*, 13 N. D. 85, 99 N. W. 1085.

§ 7258. Between those who are equally in the right or equally in the wrong the law does not interpose. [R. C. 1905, § 6671; Civ. C. 1877, § 2077; R. C. 1899, § 5086.]

§ 7259. Between rights otherwise equal the earliest is preferred. [R. C. 1905, § 6672; Civ. C. 1877, § 2078; R. C. 1899, § 5087.]

§ 7260. No man is responsible for that which no man can control. [R. C. 1905, § 6673; Civ. C. 1877, § 2079; R. C. 1899, § 5088.]

§ 7261. The law helps the vigilant before those who sleep on their rights. [R. C. 1905, § 6674; Civ. C. 1877, § 2080; R. C. 1899, § 5089.]

§ 7262. The law respects form less than substance. [R. C. 1905, § 6675; Civ. C. 1877, § 2081; R. C. 1899, § 5090.]

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Maxims of Jurisprudence.

§ 7274. The incident follows the principal, not the principal the incident. [R. C. 1905, § 6687; Civ. C. 1877, § 2093; R. C. 1899, § 5102.]

§ 7275. An interpretation which gives effect is preferred to one which makes void. [R. C. 1905, § 6688; Civ. C. 1877, § 2094; R. C. 1899, § 5103.]

As to validity of election law of 1907. *Morrow v. Wipf*, 22 S. D. 146, 115 N. W. 1121.

Agreement by husband to deed land in return for mutual settlement and bill is not collusive and void. *Burgess v. Burgess*, 17 S. D. 44, 95 N. W. 279.

Statute susceptible of more than one interpretation must be given one which renders statute constitutional. *Bekker v. White River Valley R. Co.*, 28 S. D. 84, 132 N. W. 797.

§ 7276. Interpretation must be reasonable. [R. C. 1905, § 6689; Civ. C. 1877, § 2095; 1899, § 5104.]

Interpretation must be reasonable. *Redwater L. & Canal Co. v. Reed*, 26 S. D. 466, 128 N. W. 702; *State v. Donovan*, 28 S. D. 136, 36 L.R.A.(N.S.) 167, 132 N. W. 698.

§ 7277. When one of two innocent persons must suffer by the act of a third, he by whose negligence it happened must be the sufferer. [R. C. 1905, § 6690; Civ. C. 1877, § 2096; R. C. 1899, § 5105.]

Payment of interest and principal to trustee in trust deed secured by note after he has secretly transferred note and acts as agent for transferee, discharges indebtedness. *McVay v. Bridgman*, 21 S. D. 374, 112 N. W. 1138.

Purchaser holds mortgaged property free from mortgage, where record showed satisfaction by mortgagee but not prior assignment to another. *McVay v. Tousley*, 20 S. D. 258, 129 Am. St. Rep. 927, 105 N. W. 932.

See *Sweatman v. Deadwood*, 9 S. D. 380, 69 N. W. 582; *Reed v. Kellogg*, 8 S. D. 596, 67 N. W. 687; *Carroll v. Nesbit*, 9 S. D. 497, 70 N. W. 634.

CHAPTER 115.

DEFINITIONS AND GENERAL PROVISIONS.

§ 7278. Words to be understood in their ordinary sense. Words used in any statute are to be understood in their ordinary sense, except when a contrary intention plainly appears and except also that the words hereinafter explained are to be understood as thus explained. [R. C. 1905, § 6691; Civ. C. 1877, § 2097; R. C. 1899, § 5106.]

Words to be understood in their ordinary sense. *Kennedy v. Hull*, 14 S. D. 234, 85 N. W. 223; *State v. Taylor*, 7 S. D. 533, 64 N. W. 548; *Grunow v. Simonitsch*, 21 N. D. 277, 130 N. W. 835.

As to construction of statute giving "farm laborer" lien for wages. *Lowe v. Abrahamson*, 18 N. D. 182, 19 L.R.A.(N.S.) 1039, 119 N. W. 241.

As to "cause of action" against which statute of limitations does not run while party is without the state, applying to mortgage foreclosure action. *Colonial & U. S. Mortg. Co. v. Northwest Thresher Co.*, 14 N. D. 147, 70 L.R.A. 814, 116 Am. St. Rep. 642, 103 N. W. 915, 8 A. & E. Ann. Cas. 1160.

"Business college" was not such school as is referred to in section 2859, Pol. Code, in relation to sale of liquor near school. *Granger v. Lorenzen*, 28 S. D. 295, 133 N. W. 259.

It is not enough, that, through strained construction of words of ordinance in relation to wooden buildings, violation of its terms may be predicated. *Mayville v. Rosing*, 19 N. D. 98, 26 L.R.A.(N.S.) 120, 123 N. W. 393.

§ 7279. Word defined by statute has always same meaning. Whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase wherever it occurs, except when a contrary intention plainly appears. [R. C. 1905, § 6692; Civ. C. 1877, § 2098; R. C. 1899, § 5107.]

Word defined by statute has always same meaning. *Grunow v. Simonitsch*, 21 N. D. 277, 130 N. W. 835; *State ex rel. Dillman v. Weide*, 29 S. D. 109, 135 N. W. 696.

§ 7280. Degrees of care. There are three degrees of care and of diligence mentioned in this code, namely, slight, ordinary and great. The latter include the former. [R. C. 1905, § 6693; Civ. C. 1877, § 2099; R. C. 1899, § 5108.]

§ 7281. Degrees defined. Slight care or diligence is such as persons of ordinary prudence usually exercise about their own affairs of slight importance; ordinary care or diligence is such as they usually exercise about their own affairs of ordinary importance; and great care or diligence is such as

they usually exercise about their own affairs of great importance. [R. C. 1905, § 6694; Civ. C. 1877, § 2100; R. N. D. 495, 117 N. W. 857.]
As to what constitutes ordinary care after discovery of injury to stock trespassing on place of d. N. W. 779.
§ 7282. Degrees of negligence. Slight negligence; and gross negligence, namely, slight care and diligence; ordinary negligence; and gross negligence, namely, slight care and diligence. [R. C. 1905, § 6695; Civ. C. 1877, § 2101; R. C. 1899, § 5110.]
§ 7283. Degrees defined. Slight negligence; and gross negligence, namely, slight care and diligence; ordinary negligence; and gross negligence, namely, slight care and diligence. [R. C. 1905, § 6696; Civ. C. 1877, § 2102; R. C. 1899, § 5111.]
§ 7284. What children includes. Birth and by adoption. [R. C. 1905, § 5112.]
Definition of child. 27 L.R.A.(N.S.) 1158; 30 L.R.A.(N.S.) 914.
§ 7285. Debtor and creditor. Every person who owes to another the performance of an obligation is called a debtor and the one to whom he owes it is called a creditor. [R. C. 1905, § 6698; Civ. C. 1877, § 2104; R. C. 1899, § 5113.]
§ 7286. Good faith. Good faith consists in an honest intention to abstain from taking any unconscientious advantage of another even through the forms of technicalities of law together with an absence of all information or belief or technicalities of fact to be the transaction unconscientious. [R. C. 1905, § 6699; Civ. C. 1877, § 2105; R. C. 1899, § 5114.]
§ 7287. Notice classified. Actual notice consists in express information of fact. [R. C. 1905, § 6700; Civ. C. 1877, § 2106; R. C. 1899, § 5115.]
§ 7288. Actual notice. Actual notice consists in express information of fact. [R. C. 1905, § 6701; Civ. C. 1877, § 2107; R. C. 1899, § 5116.]
§ 7289. Constructive notice. Constructive notice is notice imputed by the law to a person not having actual notice. [R. C. 1905, § 6702; Civ. C. 1877, § 2108; R. C. 1899, § 5117.]
§ 7290. What deemed constructive notice. Deemed constructive notice is a particular fact and who omits to notice of circumstances sufficient to put a prudent man upon inquiry as to the fact itself. [R. C. 1905, § 6703; Civ. C. 1877, § 2109; R. C. 1899, § 5118.]

upon railway track is negligence of railway care of live stock. McBride v. Wallace, 17 Reinke v. Minneapolis, St. P. & S. Ste. M.
there are three degrees of negligence ordinary and gross. The latter include 1877, § 2101; R. C. 1899, § 5110.]
negligence consists in the want of great care, in the want of ordinary care and the want of slight care and diligence. [R. C. 1899, § 5111.]
the term children includes children by 6697; Civ. C. 1877, § 2103; R. C. 1899, 1158; 30 L.R.A.(N.S.) 914.
cept as defined and used in chapter 111 other the performance of an obligation he owes it is called a creditor. [R. C. 1899, § 5113.]
anonymous. Sonnesyn v. Akin, 12 N. D. 227, 97 consists in an honest intention to abstain advantage of another even through the er with an absence of all information or the transaction unconscientious. [R. C. 1899, § 5114.]
etermined. Friedrich v. Fergen, 15 S. D. 541, 91 90 N. W. 1045; Wood v. Conrad, 2 S. D. 334, 50 48, 84 N. W. 574; State v. Stewart, 9 N. D. 409, v. Evans, 1 D. 371, 46 N. W. 1132; Thompson v. S. Ct. R. 94.
ormation of fact. La Crosse B. & S. Co. v. Ander- uer v. Alterton, 151 U. S. 607, 38 L.ed. 286, 14 th. Hunter v. Coe, 12 N. D. 505, 97 N. W. 869.
is either actual or constructive. [R. C. 1899, § 5115.]
notice consists in express information of 1877, § 2107; R. C. 1899, § 5116.]
other insurance while agent at a place other than tice." Chaplin v. Mutual Cash Guaranty F. Ins.
constructive notice is notice imputed by the notice. [R. C. 1905, § 6702; Civ. C. 1877, active notice. Mee v. Carlson, 22 S. D. 365, 29
nd mortgage being informed that first mortgage is nd mortgagee's rights under redemption. Malmberg 339.
ctive notice. Every person who has actual t to put a prudent man upon inquiry as to make such inquiry with reasonable diligence notice of the fact itself. [R. C. 1905, § 6703; § 5118.]
icient to put prudent man upon inquiry. Shauer v. 86, 14 S. Ct. R. 442; Doran v. Dazey, 5 N. D. 167, 64

N. W. 1023, 57 Am. St. Rep. 550; Meyer v. Elevator Co., 12 S. D. 172, 80 N. W. 189; Weber v. Tschetter, 1 S. D. 205, 46 N. W. 201.

Every dealer in municipal bonds which upon their face refer to statute under which issued is bound to take notice of statute. Livingston v. School Dist., 9 S. D. 345, 69 N. W. 15; Brown v. Bon Homme County, 1 S. D. 216, 46 N. W. 173; People's Bank v. School Dist., 3 N. D. 496, 57 N. W. 787, 28 L.R.A. 642.

Notice of prior unrecorded conveyance impeaches good faith. Betts v. Letcher, 1 S. D. 182, 46 N. W. 193.

As to when party has constructive notice. Hunter v. Coe, 12 N. D. 505, 97 N. W. 862.

On notice to agent to put purchaser of note on inquiry. Rochford v. Barrett, 22 S. D. 83, 115 N. W. 522.

As to bank having notice of holder's effective title to check. Drinkall v. Movius State Bank, 11 N. D. 10, 57 L.R.A. 341, 95 Am. St. Rep. 341, 88 N. W. 724.

Insertion of clause in second mortgage "subject to any incumbrance held by first mortgagee" was sufficient to put second mortgagee upon inquiry as to whether first mortgage was paid. Aultman Engine & Thresher Co. v. Young, 25 S. D. 212, 126 N. W. 245, Ann. Cas. 1912B, 1101.

That a note was not offered for sale to indorsee thereof until shortly before its maturity and nearly three years after its date is a circumstance sufficient to put him upon inquiry. Union Nat. Bank v. Mailloux, 27 S. D. 543, 132 N. W. 168.

Actions on negotiable instruments in hands of indorsees before maturity are not governed by this section. American Nat. Bank v. Lundy, 21 N. D. 167, 129 N. W. 99.

Do not operate to alter rule that negotiable instrument law, section 6368, permits buyer to be holder in good faith, without requiring him to make inquiries. McCarty v. Kepreta, 24 N. D. 395, 48 L.R.A. (N.S.) 65, 139 N. W. 992.

What constitutes "constructive notice." 23 Am. Dec. 47; 45 Am. Rep. 184.

§ 7291. False notice cannot become valid. A notice which is false when given is not valid by the subsequent happening of the event. [R. C. 1905, § 6704; Civ. C. 1877, § 2110; R. C. 1899, § 5119.]

§ 7292. Valuation. Whenever the word "valuation" is used in any law as a basis on which the salary of a county officer is fixed, it shall mean the valuation of the county as fixed by the state board of equalization for the preceding year, and all salaries based on such valuation shall begin January first. [R. C. 1905, § 6705; 1903, ch. 203.]

§ 7293. "Paper." The word "paper" means any flexible material upon which it is usual to write. [R. C. 1905, § 6706; Civ. C. 1877, § 2111; R. C. 1899, § 5120.]

§ 7294. "Person." The word "person" except when used by way of contrast, includes not only human beings, but bodies politic or corporate. [R. C. 1905, § 6707; Civ. C. 1877, § 2112; R. C. 1899, § 5121.]

Corporation is liable in action at law for deceit to same extent as is natural person. Gunderson v. Havana-Clisde Min. Co., 22 N. D. 329, 133 N. W. 554.

Foreign corporation is incompetent to receive letters of administration upon estate of deceased person. Grunow v. Simonitsch, 21 N. D. 277, 130 N. W. 835.

§ 7295. "Several." The word "several" in relation to number means two or more. [R. C. 1905, § 6708; Civ. C. 1877, § 2113; R. C. 1899, § 5122.]

§ 7296. "Third persons." The words "third persons" include all who are not parties to the obligation or transaction concerning which the phrase is used. [R. C. 1905, § 6709; Civ. C. 1877, § 2114; R. C. 1899, § 5123.]

§ 7297. Holidays. Holidays are every Sunday; the first day of January, which is new year's day; the twelfth day of February, which is the birthday of Abraham Lincoln; the twenty-second day of February, which is the birthday of George Washington; the fourth day of July, which is the anniversary of the declaration of independence; the twenty-fifth day of December, which is Christmas day; the thirtieth day of May, which is memorial day; the first Monday in September, which is labor day; every day on which an election is held throughout the state, and every day appointed by the president of the United States or by the governor of this state for a public fast, thanksgiving or holiday. [1909, ch. 140; R. C. 1905, § 6710; 1897, ch. 86, § 1; R. C. 1899, § 5124.]

Township election day not a holiday. State v. Currie, 8 N. D. 545, 80 N. W. 475.

That thirtieth day before election falls on Sunday does not change time within which nominations must be filed. State v. Falley, 9 N. D. 464, 83 N. W. 913.

Redemption from foreclosure sale may be made on Monday when last day of year allowed therefor falls on Sunday. Styles v. Dickey, 22 N. D. 516, 134 N. W. 702.

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How far the law of holidays extends
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Service of pleading on holidays. 19
Validity of sale partially made
L.R.A.(N.S.) 1151.
Delivery on week day pursuant to
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cond day of February, the fourth day
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ss days for all purposes. [R. C. 1905,
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med on next day. Whenever an act of
of necessity or mercy, is appointed by
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upon the next business day with the same
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899, § 5127.]
nomination to public office. Anderson v. Falley,
able and lawful public custom concerning
those which are to be affected thereby,
ation is to be performed, and either known
d, general and uniform that they must be
ence thereto. [R. C. 1905, § 6714; Civ. C.
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on to create an exception to written contract. 3
sage as to time for delivery of goods where none is
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(S.) 1037.

§ 7302. "Usual." "Customary." The words "usual" and "customary" mean "according to usage." [R. C. 1905, § 6715; Civ. C. 1877, § 2120; R. C. 1899, § 5129.]

§ 7303. Valuable consideration. A valuable consideration is a thing of value parted with, or a new obligation assumed at the time of obtaining a thing, which is a substantial compensation for that which is obtained thereby. It is also called simply "value." [R. C. 1905, § 6716; Civ. C. 1877, § 2121; R. C. 1899, § 5130.]

Definition of "valuable consideration." 2 L.R.A. 530.

§ 7304. "Verdict." The word "verdict" includes not only the verdict of a jury, but also the finding upon the facts of a judge or of a referee appointed to determine the issues in a cause. [R. C. 1905, § 6717; Civ. C. 1877, § 2122; R. C. 1899, § 5131.]

Findings of court constitute part of judgment roll. Colonial Mortg. Co. v. Bradley, 4 S. D. 158, 55 N. W. 1108.

Counsel need not take exceptions to findings of fact for purposes of appeal. Kelly v. Wheeler, 22 S. D. 611, 119 N. W. 994; Lone Tree Ditch Co. v. Rapid City Electric & Gaslight Co., 16 S. D. 451, 93 N. W. 650.

§ 7305. "Year." "Month." The word "year" means a calendar year and "month" a calendar month. Fractions of a year are to be computed by the number of months, thus: half a year is six months. Fractions of a day are to be disregarded in computations which include more than one day and involve no questions of priority. [R. C. 1905, § 6718; Civ. C. 1877, § 2123; R. C. 1899, § 5132.]

§ 7306. Official newspaper defined. An official newspaper is one designated by a state or municipal legislative body, or an agent empowered by it, in which the public acts, resolves, advertisements and notices are required to be published; and wherever in the statutes of this state the term "official paper" is used in lieu of the term "official newspaper," this definition shall apply. [1909, ch. 179.]

§ 7307. Masculine includes what. Words used in the masculine gender include the feminine and neuter. [R. C. 1905, § 6719; Civ. C. 1877, § 2124; R. C. 1899, § 5133.]

Deed signed and sealed "Patrick M., Atty. in fact for Amelia B.," is deed of Amelia, although the words "he," "his," etc., are used in deed. Donovan v. Welch, 11 N. D. 113, 90 N. W. 262.

§ 7308. Singular includes what. Words used in the singular number include the plural and the plural the singular, except when a contrary intention plainly appears. [R. C. 1905, § 6720; Civ. C. 1877, § 2125; R. C. 1899, § 5134.]

As to thresher's lien being executed in duplicate and filed in two counties where grain is grown. Gorthy v. Jarvis, 15 N. D. 509, 108 N. W. 39.

Cumulative voting in election of city commissioners is not authorized where statute governing such election is purposely framed in plural to prevent cumulative voting. State ex rel. Shaw v. Thompson, 21 N. D. 426, 131 N. W. 231.

§ 7309. Other definitions. Words used in the present tense include the future as well as the present; the word "oath" includes "affirmation;" and every mode of oral statement under oath or affirmation is embraced by the term "testify," and every written one in the term "depose;" "signature" or "subscription" includes mark, when the person cannot write, his name being written near it and written by a person who writes his own name as a witness. The following words also have signification attached to them in this section, unless otherwise apparent from the context:

1. The word "property" includes property, real and personal.
2. The words "real property" are coextensive with lands, tenements and hereditaments.
3. The words "personal property" include money, goods, chattels, things in action and evidences of debt.
4. The word "will" includes codicils. [R. C. 1905, § 6721; Civ. C. 1877, § 2126; R. C. 1899, § 5135.]

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gments. McLaughlin v. Alexander, 2 S. D.

Term "personal property" includes

§ 7310. "Compound interest." 89 Am. St. Rep. 226, 49 N. W. 99. "Wills" defined.

§ 5136.] interest added to the principal as made to bear interest. [R. C. 1905.

§ 7311. "Written" and "printed" include "printing" and "writing" when the words are used by way

made in any manner, except that of a writing demands that it

1905, § 6723; Civ. C. 1877, § 2128

§ 7312. Code excludes common statutes in derogation thereof are to this code. This code establishes

view to which it relates; and its provisions to effect its objects and to

1905, § 6724; Civ. C. 1877, § 2129

97; Kingman v. O'Callaghan, 4 S. 462, 54 N. W. 322; Tripp v. City

As to construction of statute Abrahamson, 18 N. D. 182, 19 L.R.A.

Officers and stockholders of foreign corporation to return everything

rescinded by party making claim by law to be affixed to any process

word "seal" includes to any process well as upon wax or a wafer affixed

§ 7313. Seal. When the seal of public officers or other persons

authority of them, unless it is by approval of bond by § 6726;

Kipp, 10 S. D. 495, 74 N. W. 440. Majority of members of board of

11 N. D. 514, 92 N. W. 852. Proceedings by majority of board of

§ 7315. Repeal does not revive a law which has been repealed

§ 6727; Civ. C. 1877, § 2132; it shall be revived, unless repealed

highway by statute repealing it. § 7316. Effect of repeal. A statute

assembled shall not have the effect of repeal. The repeal of any statute

feiture shall so or liability incurred and the enforcement of such of sus

in force for the purpose of such of sus Civ. C. 1877, § 2133; R. C. 1899,

Penalties prescribed by statute 3 N. D. 154, 54 N. W. 919; Wells

e words "compound interest" mean e former becomes due and thereafter 6722; Civ. C. 1877, § 2127; R. C. 1899,

"The words "writing" and "written" except in the case of signatures and contrast to printing. Writing may be a person entitled to require the execution with ink it must be so made. [R. C. 1899, § 5137.]

v. The rule of the common law that be strictly construed has no application law of this state respecting the subject are to be liberally construed with a promote justice. Whenever this code is amended it may be designated simply as necessary, the number of the section. [R. C. 1899, § 5138.]

Pinkerton v. Le Beau, 3 S. D. 440, 54 N. W. 628, 57 N. W. 912; Landauer v. Conklin, 3 S. D. 516, 74 N. W. 447.

Yankton, 10 S. D. 516, 74 N. W. 447. ing "farm laborer" lien for wages. Lowe v. (S.) 1039, 119 N. W. 241.

Moen v. Moen, 16 S. D. 210, 92 N. W. 13. corporation are liable on implied contracts of received under express contract which has been because of breach by corporation. Chesley v. Soo

a court, public officer or person is required ss, commission, paper or instrument, the on of such seal upon the paper alone as thereto. [R. C. 1905, § 6725; Civ. C. 1877,

giving a joint authority to three or more construed as giving such authority to a otherwise expressed in the act giving the v. C. 1877, § 2131; R. C. 1899, § 5140.]

free officers required by statute sufficient. State v. constitutes legal quorum. Turnquist v. Cass County,

d of drain commissioners are valid. Turnquist v. 514, 92 N. W. 852.

Whenever any act of the legislative as ed a former act, such former act shall not all be expressly so provided. [R. C. 1905,

C. 1899, § 5141.] ute which repealed statute providing for obtaining of revive such former statute. Burleigh County v. Rhud,

the repeal of any statute by the legislative ect to release or extinguish any penalty, for- under such statute, unless the repealing act

such statute shall be treated as still remaining staining any proper action or prosecution for ty, forfeiture or liability. [R. C. 1905, § 6728,

9, § 5142.] not extinguished by its repeal. Nat. Bank v. Lemke, County v. McHenry, 7 N. D. 246, 74 N. W. 241.

Meaning of the term "successive weeks." *Finlayson v. Peterson*, 5 N. D. 587, 67 N. W. 953, 57 Am. St. Rep. 584, 33 L.R.A. 532.

As to similar provision in Ind. Rev. Stat. 1881, § 248, see *Western U. Teleg. Co. v. Brown*, 108 Ind. 542, 8 N. E. 171.

§ 7317. **Successive weeks construed.** Whenever in any act or statute of the state of North Dakota, providing for the publication of notices, the phrase "successive weeks" is used, the word "weeks" shall be construed to mean calendar weeks and the publication upon any day in such week shall be sufficient publication for that week; provided, that at least five days shall intervene between such publications and all publications heretofore or hereafter made in accordance with the provisions of this section shall be deemed legal and valid. [R. C. 1905, § 6729; 1889, ch. 38, § 1; R. C. 1895, § 5143.]

"Successive weeks" construed. *Finlayson v. Peterson*, 5 N. D. 587, 67 N. W. 953.

Publication once in each week covering thirty-seven days is for six successive weeks. *Thomas v. Issenhuth*, 18 S. D. 303, 100 N. W. 436.

§ 7318. **Fiscal year.** The fiscal year for the state of North Dakota shall commence on the first day of July and end on the thirtieth day of June each year and all reports required annually or biennially of any state officer or from any private corporation, unless specifically otherwise provided, shall be made to and include the thirtieth day of June preceding and all accounts of such officers shall be closed and balanced to that date. [R. C. 1905, § 6730; 1893, ch. 67, § 1; R. C. 1895, § 5144.]

See further as to annual or biennial reports, sections 95, 97, 98, 632.



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